

Board of Directors
Des Moines Area Community College

Regular Board Meeting
July 14, 2025 – 4:00 p.m

DMACC Southridge Center, Room 20 C/D
1111 E Army Post Rd, Des Moines, IA

REVISED AGENDA

1. Call to order.
2. Roll call.
3. Consideration of tentative agenda.
4. Public comments.
5. Board Report 25-068. Consideration of appointment to fill vacancy in Director District 5. 1
6. Administration of Oath of Office to new Board member.
7. Presentations: Mike Hoffman, Non-credit Programming
Becky Deitenbeck, AI Bootcamp
8. Consent Items.
 - a. Consideration of minutes from June 16, 2025 Regular Board Meeting. 2-7
 - b. Human Resources report. 8-9
 - c. Consideration of payables. PDF file
9. Election of Board President
10. Election of Board Vice President
11. Administration of Oath of Office to newly elected officers.
12. Board Report 25-069. Ground Lease Agreement with Prairie Point, LC for Campus View Apartments on the Ankeny Campus. 10-45

13. Board Report 25-070. Consideration of a Memorandum of Understanding with Des Moines Area Community College Educational Services Association (ESA). 46
14. Board Report 25-071. A Resolution approving the form and content and execution and delivery of a Workforce Training and Economic Development Training Contract under **Chapter 260C**, Code of Iowa, for **Iowa Orthopedic Center PC DBA Iowa Ortho, Project #1** 47-48
15. Board Report 25-072. A Resolution approving the form and content and execution and delivery of a workforce training and economic development training contract under **Chapter 260C**, Code of Iowa, for **City of Bondurant, Project #1** 49
16. Board Report 25-073. A Resolution approving the form and content and execution and delivery of a workforce training and economic development training contract under **Chapter 260C**, Code of Iowa, for **Story Construction Co., Project #8** 50
17. Board Report 25-074. A Resolution approving the form and content and execution and delivery of a workforce training and economic development training contract under **Chapter 260C**, Code of Iowa, for **The Well Resource Center, Project #4** 51
18. Board Report 25-075. Consideration of appointment of a Board Member Emeritus. 52
19. Board Report 25-076. *Receive and file the President's recommendations for termination of specially funded contract under Iowa Code Chapter 279.* 53
20. *Presidential Search Update*
21. Presentation of Financial Report.
22. President's Report.
23. Campus/Pathway Updates.
24. Committee Reports.
25. Board Members' Reports.
26. Information Items:
 - July 15 – President position posted nationally
 - August 11 - Electronic Board Meeting (only if needed); 4:00 p.m.
 - August 14 – WTA Summer Graduation, Southridge Center; 6:00 P.M.
 - September 1 – Holiday; All campuses closed.
 - September 25- Transportation Institute Ribbon Cutting; 1:00 PM
27. Adjourn.



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-068
Date: July 14, 2025
Page: 1*

AGENDA ITEM

Consideration of appointment to fill vacancy in Director District 5.

BACKGROUND

It is necessary to fill the vacancy in Director District 5 created by the resignation of Joe Pugel effective June 17, 2025.

RECOMMENDATION

It is recommended that the Board appoint Chaz Allen as Director for District 5.

Robert J. Denson, President

**Board of Directors
Des Moines Area Community College**

**REGULAR BOARD MEETING
June 16, 2025**

The regular meeting of the Des Moines Area Community College Board of Directors was held at DMACC's Carroll Campus on June 16, 2025. Board Chair Joe Pugel called the meeting to order at 4:00 p.m.

ROLL CALL

Members present: Kevin Halterman, Cheryl Langston, Denny Presnall, Joe Pugel, Trish Roberts, Madelyn Tursi.

Members connected electronically: Felix Gallagher, Fred Greiner, Angela Jackson

Others present: Rob Denson, President/CEO; Brooke Stowe, Board Secretary; Bill LaTour, Board Treasurer; administrators, faculty, staff, and media.

CONSIDERATION OF AGENDA

Tursi moved; seconded by Roberts to approve the agenda as presented. Motion passed unanimously. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

PUBLIC COMMENTS

None.

PRESENTATIONS

Jen Wollesen, Executive Campus Dean of Carroll Campus, welcomed everyone to DMACC's Carroll Campus and showcased recent events held on campus and within the community. Students Pacey Bogue, Austin Heuss, and Benson Daniel shared their experiences as Career Advantage Plus students who earned associate degrees while in high school and winning the state-wide auto tech skills competition.

Joel Lundstrom, Executive Dean of Distance Learning, provided updates on DMACC's online learning. Several successes include online credit hours are up 20% in the spring, high school credits are up 37%, and the number of sections available to students are up 16%.

CONSENT ITEMS

Roberts moved; seconded by Presnall to approve the consent items: a) Minutes from the May 12, 2025 Regular Board Meeting; b) Human Resources Report and Addendum (Attachment #1); and c) Payables (Attachment #2).

Motion passed. Aye- Halterman, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

**Technical difficulties for virtual members Gallagher, Greiner, and Jackson*

APPROVAL OF HONORARY
ASSOCIATE OF ARTS DEGREE

Board Report 25-047. Halterman moved; seconded by Tursi recommending that the Board approve the award of an Honorary Associate of Arts Degree to Joe Pugel in recognition and appreciation of his service, support, and leadership of DMAACC.

Motion passed unanimously. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

APPROVE BOARD POLICIES:
SECTION 300 & 800
APPROVE THE RECATEGORIZING
AND RENUMBERING OF BOARD
POLICIES

Board Report 25-048. Halterman moved; seconded by Greiner recommending that the Board approve Board Policies section 300 and 800 and then further approve the recategorizing and renumbering as presented.

Motion passed unanimously. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

HIGHER EDUCATIONAL
ASSOCIATION (HEA) BARGAINING
AGREEMENT

Board Report 25-049. Presnall moved; seconded by Tursi recommending that the Board approve the agreement reached with HEA pending ratification by union members.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

EDUCATIONAL SERVICES
ASSOCIATION (ESA) BARGAINING
AGREEMENT

Board Report 25-050. Halterman moved; seconded by Langston recommending that the Board approve the agreement reached with ESA and ratified by union members.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

ADMINISTRATIVE/PROFESSIONAL,
CONFIDENTIAL CLERICAL, AND
TRAIL POINT SUPPORT PAY RATES

Board Report 25-051. Presnall moved; seconded by Roberts recommending that the Board approve the proposed Administrative/Professional, Confidential Clerical, and Trail Point Support pay rates.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

TEMPORARY, ADJUNCT, AND
STUDENT PAY RATES

Board Report 25-052. Halterman moved; seconded by Langston recommending that the Board approve the proposed Temporary, Adjunct, and Student pay rates.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

RECEIVE AND FILE
RECOMMENDATIONS FOR
TERMINATION OF SPECIALLY
FUNDED CONTRACTS/
CONSIDERATION OF
TERMINATION OF CONTINUING
CONTRACTS

Board Report 25-053. Tursi moved; seconded by Greiner recommending that the Board receive and file the President's recommendations for termination who were notified of this recommendation and did not request a Board hearing. As no hearings were requested, Tursi moved; seconded by Greiner to terminate the four specially funded, continuing contracts of Barry Thomas, Jason Junkens, Timothy Spooner, and Michael Balas.

Motion passed on a roll call vote. Aye-Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

CONSIDERATION OF
TERMINATION OF
PROBATIONARY TEACHER
CONTRACTS

Board Report 25-054. Tursi moved; seconded by Langston recommending that the Board terminate the probationary teacher contract of Paul Schmick.

Motion passed on a roll call vote. Aye-Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

STUDENT ACTIVITIES COUNCIL
BUDGETS FOR FY2026

Board Report 25-055. Halterman moved; seconded by Roberts to accept the Student Activities Council (SAC) budgets for FY2026 as proposed.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

ACCT DUES RENEWAL

Board Report 25-056. Roberts moved; seconded by Tursi to renew membership in ACCT and authorize payment of annual dues in the amount of \$8,379.00.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

CC FOR IOWA DUES RENEWAL

Board Report 25-057. Presnall moved; seconded by Langston to renew membership in CC for Iowa and authorize payment of annual dues in the amount of \$107,959.00.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

FY25 CURRICULUM ACTIVITY
SUMMARY

Board Report 25-058. Halterman moved; seconded by Roberts to approve the FY25 Curriculum Activity Summary.

Motion passed unanimously. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

APPROVAL OF MEMORANDUM
OF UNDERSTANDING BETWEEN
DMACC AND THE DMACC
FOUNDATION

Board Report 25-059. Attachment #3. Roberts moved; seconded by Langston to approve the Memorandum of Understanding between DMACC and the DMACC Foundation.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

REVISION OF THE DES MOINES
AREA COMMUNITY COLLEGE
QUALITY FACULTY PLAN

Board Report 25-060. Roberts moved; seconded by Langston to approve the 2025 Quality Faculty Plan.

Motion passed unanimously. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

RESOLUTION DESIGNATING THE
COLLEGE'S OFFICIAL DEPOSITORY

Board Report 25-061. Attachment #4. Halterman moved; seconded by Tursi to adopt a resolution extending the designation of Bankers Trust of Des Moines as the Official Depository for a five-year period beginning July 1, 2025 and ending June 30, 2030.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

TRAINING OR RETRAINING
AGREEMENTS

Tursi moved; seconded by Presnall recommending that the Board approve items 22 – 27 as one consent item.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

Leighton State Bank #2

Board Report 25-062. Attachment #5. A resolution approving the form and content and execution and delivery of a Workforce Training and Economic Development Training Contract under **Chapter 260C**, Code of Iowa, for **Leighton State Bank, Project #2.**

Story Construction Co., Project #6

Board Report 25-063. Attachment #6. A resolution approving the form and content and execution and delivery of a Workforce Training and Economic Development Training Contract under **Chapter 260C**, Code of Iowa, for **Story Construction Co., Project #6.**

*ODO Enterprises, L.L.C. dba
Berglund Sheet Metal, Project #1*

Board Report 25-064. Attachment #7. A resolution approving the form and content and execution and delivery of a Workforce Training and Economic Development Training Contract under **Chapter 260C**, Code of Iowa, for **ODO Enterprises, L.L.C. dba Berglund Sheet Metal, Project #1.**

Helena Industries, LLC, Project #2

Board Report 25-065. Attachment #8. A resolution approving the form and content and execution and delivery of a Retraining or Training Agreement under **Chapter 260F**, Code of Iowa, for **Helena Industries, LLC, Project #2.**

RCS Millwork, LC, Project #2

Board Report 25-066. Attachment #9. A resolution approving the form and content and execution and delivery of a Retraining or Training Agreement under **Chapter 260F**, Code of Iowa, for **RCS Millwork, LC, Project #2.**

*Record Printing Co, Inc. of Story
City, Project #13*

Board Report 25-067. Attachment #10. A resolution approving the form and content and execution and delivery of a Retraining or Training Agreement under **Chapter 260F**, Code of Iowa, for **Record Printing Co, Inc. of Story City, Project #13.**

PRESIDENTIAL SEARCH UPDATE

Halterman and Search Consultant Larry Ebbers provided an update on the Presidential Search. Mike Hoffman, Associate Vice President of Community Outreach, will join the screening committee of applicants.

FINANCIAL REPORT

Controller Ben Voaklander presented the May 2025 financial report as shown in Attachment #11 to these minutes.

PRESIDENT’S REPORT

Debbie Kepple-Mamros, Director of Institutional Effectiveness, provided an update on the funding status of several federal grants.

CAMPUS/PATHWAY UPDATES

Updates on activities and events at their campus/pathway were provided by Abby Zegers, Allen Goben, Bill Peters, Anne Powers.

COMMITTEE REPORTS

None.

CLOSED SESSION

Roberts moved; seconded by Tursi to hold a Closed Session as provided in Section 21.5(1)(c) of the Open Meetings Law to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

Motion passed on a roll call vote. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay- none.

RETURN TO OPEN SESSION

The Board returned to Open Session at 6:00 p.m.

ADJOURN

Halterman moved; seconded by Roberts to adjourn. Motion passed unanimously and at 6:01 p.m. Board Chair Joe Pugel adjourned the meeting. Aye- Gallagher, Greiner, Halterman, Jackson, Langston, Presnall, Pugel, Roberts, Tursi. Nay-none.

KEVIN HALTERMAN, Board Chair

BROOKE STOWE, Board Secretary



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

Date: July 14, 2025

Page: 1

AGENDA ITEM

Human Resources Report

BACKGROUND

I. Contract Change

1. Barger, Steven

Instructor, Homeland Security/TSA

From: Continuing Contract Administrative Professional

To: 9 Month Continuing Contract Faculty

Effective: 08/15/2025

2. Halverson, Kate

Pathway Academic Chair, Psychology, Sociology, and Human Services

From: 9 Month Continuing Contract Faculty

To: 12 Month Continuing Contract Faculty

Effective: 08/01/2025

3. Lundahl, Joshua

District Coordinator, Counseling and Wellness

From: Continuing Contract Faculty

To: Continuing Contract Administrative Professional

Effective: 07/01/2025

II. Resignation

1. Anderson, Daryl

Instructor, Paralegal

Urban Campus

Effective: 08/01/2025

2. Crandon, Elizabeth

Associate Academic Dean, Business & Information Technology

Ankeny Campus

Effective: 07/17/2025

3. Klein, Jesse

Instructor, Wind Turbine/Industrial Maintenance

Ankeny Campus

Effective: 06/27/2025

4. Namovicz, Katie

Instructor, Nursing

Boone Campus

Effective: 06/30/2025

RECOMMENDATION

It is recommended that the Board accepts the President's recommendation as to the above personnel actions.

Robert J. Denson, President



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-069
Date: July 14, 2025
Page: 1*

AGENDA ITEM

Ground Lease Agreement with Prairie Point, LC for Campus View Apartments on the Ankeny Campus.

BACKGROUND

The Campus View Apartments on the Ankeny Campus have been sold and the new owner desired an updated ground lease agreement with the College. DMACC attorneys and attorneys for the owner collaborated on a lease agreement which was finalized on June 27, 2025.

RECOMMENDATION

The recommendation is to approve the Ground Lease Agreement and sign the Resolution approving the form and content and execution and delivery of a ground lease.

Robert J. Denson, President

Attachments: Ground Lease Agreement
Resolution Approving the Ground Lease Agreement

GROUND LEASE

THIS GROUND LEASE (this “**Lease**”) is made and entered into as of the Effective Date (as that term is defined herein) by and between **DES MOINES AREA COMMUNITY COLLEGE** (“**Lessor**”), and **PRAIRIE POINTE, LC**, an Iowa limited liability company (“**Lessee**”). Lessor and Lessee are hereinafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”. This Lease is made with reference to the following facts and circumstances:

RECITALS

- A. Lessor is the fee simple owner of the real property legally described as set forth on **Exhibit A**, located in the City of Ankeny, Polk County, Iowa, locally known as 2030 S. Ankeny Boulevard (the “**Land**”).
- B. Lessee is, or will become, the fee simple titleholder of the Improvements (defined below) upon the Land.
- C. Lessor desires to lease the Land to Lessee, and Lessee desires to lease the Land from Landlord pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Lease, Lessor and Lessee hereby agree as follows:

ARTICLE 1

1. **BASIC LEASE PROVISIONS.** This **Section 1** summarizes the basic provisions of this Lease. The full Lease of the Parties with respect to each of the following provisions is set forth in the remaining sections of this Lease.

1.1 **Premises.** The premises leased by Lessor to Lessee under this Lease (the “**Premises**”) consist of (i) the Land, and (ii) all buildings and other improvements, other than the Improvements, located on the Land as of the Effective Date (collectively, the “**Existing Structures**”). For purposes of this Lease, “**Improvements**” means the condominium units described in that certain Declaration of Submission of Property to Horizontal Property Regime filed, December 31, 2015, in Book 15857, Page 224, together with any supplements, amendments, or modifications thereto.

1.2 **Term.** This Lease shall be for a term (the “**Term**”) of fifty (50) Lease Years (as that term is defined herein), subject to the provisions of **Article 3** below. As used herein, “**Term**” shall include the Renewal Term(s) (as that term is defined herein), if applicable.

1.3 **Commencement Dates.** The Term of this Lease shall commence on the Effective Date (the “**Commencement Date**”). Rent (as that term is defined herein) shall commence on the Effective Date.

1.4 **Renewal Terms.** Two (2) consecutive terms of ten (10) Lease Years each, as more particularly set forth in **Article 27** below, and each being referred to as a “**Renewal Term**” with each consecutive Renewal Term being identified on **Exhibit B** as Renewal Term 1, Renewal Term 2, etc.

1.5 **Base Rent.** Rent to be paid by Lessee pursuant to the terms of **Section 5.1** below.

1.6 **Property Expenses.** Costs to be paid by Lessee directly and not to Lessor shall be paid pursuant to the terms of **Section 5.2** below, in addition to the Base Rent (as that term is defined herein) payable to Lessor hereunder, so that the Base Rent shall be net to Lessor.

1.7 **Lessor's Address for Payments and Notice.**

Des Moines Area Community College
2006 S. Ankeny Blvd., Bldg. 22
Ankeny, Iowa 50023
Attention: Ben J. Voaklander
Email: bjvoaklander@dmacc.edu
Tel: 515-964-6678

with a copy of all notices to:

Dentons Davis Brown, PC
120 S 16th St.
Ames, Iowa 50010
Attention: Brian D. Torresi
Email: brian.torresi@dentons.com

1.8 **Lessee's Address for Notice.**

Prairie Pointe, LC
Attn: Brent Haverkamp
510 S. 17th St., Suite 104
Ames, Iowa 50010
Email: brent@haverkampgroup.com
Tel: 515-956-1560

with a copy of all notices to:

Fredrikson and Byron, P.A.
Attn: Ryan L. Haaland
1601 Golden Aspen Dr., Suite 108
Ames, Iowa 50010
Email: rhaaland@fredlaw.com
Tel: 515-242-8900

1.9 **Lease Year.** The term "**Lease Year**" shall, with respect to the first year of the

1.10 **Expiration Date.** The initial Term shall expire on March 31, 2075 (the "**Expiration Date**").

1.11 **Parking Easement.** The Land and the Improvements have historically been served by offsite parking located at 2006 S. Ankeny Blvd., Ankeny, Iowa 50023 (the “**Parking Area**”). Lessor and Lessee shall enter into a parking easement for the Parking Area, which shall, at minimum, provide for a term that is coextensive with the Term of this Lease and provide for continuous unobstructed use and access of the Parking Area by Lessee and Lessee’s tenants.

ARTICLE 2

2. THE PREMISES.

2.1 **Lease of the Premises.** By this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, the Premises on all of the terms and conditions set forth in this Lease.

2.2 **Condition of the Premises at Commencement.** Lessor shall deliver the Premises to Lessee in its “AS-IS” condition, with no representations or warranties whatsoever as to the physical condition, structural condition, soils or geological condition, environmental condition, condition of title, zoning condition, governmental requirements, or any other condition relating to the Premises or Lessee’s intended use of the Premises. Lessor shall have no obligations whatsoever with respect to preparing the Premises for Lessee’s use or for correcting any condition on the Premises. By signing this Lease, Lessee represents and warrants that: (i) Lessor has made no representation or warranty as to the suitability of the Premises for Lessee’s planned use; and (ii) Lessor will have no responsibility to maintain the Premises in any particular condition or manner. Lessee waives any implied warranty that the Premises will be suitable for Lessee’s intended purposes. No representations of any kind regarding the condition of the Premises have been made by or on behalf of Lessor or relied upon by Lessee. Lessor shall give Lessee exclusive possession of the Premises on the Commencement Date.

ARTICLE 3

3. **TERM.** The Term shall be the period of time specified in **Section 1.2** above, commencing on the Commencement Date and expiring on the Expiration Date, as the same may be extended by Lessee pursuant to **Article 27** below.

ARTICLE 4

4. MORTGAGES; PROTECTIONS FOR LENDERS.

4.1 **Financing.** Lessor acknowledges that Lessee may require construction and permanent financing. Lessor shall not guarantee any such financing. In connection therewith and subject to the requirements set forth in **Section 4.1.1** and **Section 4.1.2** below, Lessee may, from time to time, grant to any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or association (each, a “**Person**”) providing financing to Lessee with respect to the Premises (i) one (1) or more mortgage liens encumbering Lessee’s interest in the Premises and its interest in, to, and under this Lease, together with an assignment of leases and rents and a security interest in any personal property owned by Lessee in order to secure the repayment of such financing, including interest thereon, and the performance of all of the terms, covenants, and agreements on Lessee’s part to be performed or observed under all agreements executed in connection with such financing or refinancing, or (ii) any other instrument, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or

conditional sale, or other title retention agreement on Lessee's leasehold interest in the Premises ((i) and (ii) collectively, when given by Lessee, a "**Mortgage**", and each holder of a Mortgage, a "**Lender**"). No such Mortgage, lien, or security interest shall attach to Lessor's interest in this Lease or Lessor's interest in the Premises or to any personal property owned by Lessor nor shall any such assignment affect Lessor's interest in this Lease, or in any leases and rents or other proceeds from the Premises. Lessee may have one (1) or more Mortgages at any time. In no event shall a Person be deemed a "Lender" unless such Person (i) has an "arms-length" relationship with Lessee, and (ii) engages in commercial real estate lending or investing from time to time; no holder of a Mortgage that is not a Lender shall be entitled to the benefits of this **Article 4**. For purposes of clarity, the purpose of the previous sentence is not to prohibit a capital investor in Lessee from electing to provide all or any portion of its capital investment in the form of debt financing in return for a Mortgage; the purpose of such sentence being to prohibit Lessee from indirectly obtaining the protections granted to Lenders under this **Article 4** by means of subterfuge or a "shell" transaction not conducted at "arms-length". Notwithstanding anything to the contrary herein, Lessor agrees to modify this Lease or enter into third party agreements with Lessee's lender ("**Lessee's Lender**") such as to give Lessee the ability to obtain financing for all purposes contemplated by this Lease, and for all subsequent refinancing thereof, including, without limitation, subordinating Lessor's interest in the Premises to the lien of Lessee's Lender's mortgage.

4.1.1 **Notice to Lessor.** Lessee shall give Lessor notice of each Mortgage together with contact information for notices to each Lender (such notice and/or any notice given by a Lender to Lessor of its contact information, collectively, the "**Lender Notice**"). Lessee shall promptly furnish Lessor with a complete copy of each Mortgage and all ancillary documents, amendments, extensions, modifications, and consolidations thereof, certified as such by Lessee.

4.1.2 **Lessor's Rights with Respect to Mortgages.** Lessee shall use good faith efforts to cause each Mortgage to provide that Lessor shall have the right to perform any term, covenant or condition under any Mortgage to be kept or performed by Lessee thereunder and to remedy any default by Lessee under such Mortgage, and that such Lender shall accept such performance by Lessor with the same force and effect as if furnished by Lessee. In connection therewith, each and every Mortgage shall include a provision which requires the applicable Lender to provide Lessor notice upon Lessee's default.

4.2 **Notice of Default.** After receipt of a Lender Notice, Lessor shall give each Lender (each, a "**Curing Party**"), in the manner provided by **Section 26.1** of this Lease, a copy of each notice of default given by Lessor to Lessee, at the same time that Lessor gives such notice of default to Lessee or promptly thereafter, provided Lessor shall be obligated to provide such notice of default only if Lessor has received the Curing Parties' contact information. The Curing Party(ies) shall have the right, but not the obligation, to cure such default or to cause such default to be cured, within the time periods set out in **Article 21** below.

4.3 **New Lease.** If this Lease is terminated for any reason, or if this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditors' rights (each, a "**Terminated Lease**"), Lessor shall give prompt notice thereof to each of the Curing Parties whose contact information Lessor has received in a Lender Notice, in the manner provided by **Section 26.1** of this Lease. Subject to **Section 4.3.2** below, Lessor, upon written request of any such Curing Party made any time within sixty (60) days after the giving of such notice by Lessor, shall promptly execute and deliver to such Curing Party a new lease of the Premises (a "**New Lease**"), naming such Curing Party or its designee as the Lessee under this Lease for the remainder of the term set forth in

the Terminated Lease and upon all of the terms, covenants, and conditions of the Terminated Lease (including options to extend the term of the Terminated Lease, if any) except for such provisions that must be modified to reflect such termination, rejection or disaffirmance and the passage of time, if such Curing Party shall pay to Lessor, concurrently with the delivery of such New Lease, all unpaid Rent due under the Terminated Lease up to and including the date of the commencement of the term of such New Lease. Curing Party or its designee shall execute and deliver to Lessor such New Lease within thirty (30) days after delivery of such New Lease by Lessor to Curing Party. Upon execution and delivery of such New Lease, Curing Party shall cure or cause to be cured all Events of Default (as that term is defined herein) existing under the Terminated Lease which are capable of being cured by such Curing Party or its designee promptly and with diligence after the delivery of such New Lease.

4.3.1 Priority of New Lease. The New Lease and the leasehold estate thereby created shall, subject to the terms and conditions of this Lease, have the same priority as the Terminated Lease with respect to any Mortgage, including any Fee Mortgage (as that term is defined herein), of the Premises or any leasehold interest therein or any other lien, charge or encumbrance thereon. Lessor shall execute any instruments reasonably necessary to maintain and enhance such priority. Concurrently with the execution and delivery of such New Lease, Lessor shall pay (or shall cause any depository or Fee Mortgagee (as that term is defined herein) to pay) to the lessee named in the New Lease, any moneys (including insurance and condemnation proceeds) then held by Lessor (and/or such depository or Fee Mortgagee) that would have been payable to Lessee as of the date of execution of the New Lease but for the termination of the Terminated Lease. With respect to any moneys held by Lessor under the terms of this Lease that would not be payable to Lessee if the Lease had not been terminated, Lessor shall continue to hold, and to disburse such moneys, in accordance with the terms of this Lease.

Bankruptcy; Survival. Lessor's agreement to enter into a New Lease with Curing Party shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by either Lessor or Lessee. The provisions of this **Article 4** shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if this **Article 4** was a separate and independent contract made by Lessor, Lessee and each Lender. The provisions of this **Article 4** are for the benefit of each Lender and may be relied upon and shall be enforceable by each Lender as if such Lender were a party to this Lease.

the prior written consent of all Lenders: (a) this Lease shall not be terminated, cancelled, or modified by the Parties; and (b) the Premises shall not be surrendered by Lessee, and Lessor shall not accept any such surrender of the Premises by Lessee. Notwithstanding the foregoing, (i) this Lease may be terminated by the Parties, and the Premises surrendered by Lessee in connection with such termination, in connection with a Casualty Event (as that term is defined herein) or Condemnation (as that term is defined herein) in accordance with the terms of this Lease, and (ii) Lessor may terminate this Lease by reason of an Event of Default (as that term is defined herein) hereunder in accordance with the terms and conditions of this Lease, subject to the Lender's rights under **Article 4** and **Article 21** hereunder (excluding the Lender consent requirement under this **Section 4.4**). If a Lender becomes the owner of the leasehold estate of Lessee hereunder, such Lender shall not be bound by any modification, amendment, or termination of this Lease made subsequent to the date of its Mortgage and delivery to Lessor of the Lender Notice except for (i) a termination effected in connection with a Casualty Event or Condemnation in accordance with the terms of this Lease, (ii) a termination occurring by reason of an Event of Default in accordance with the terms and conditions of this Lease, subject to all Lenders' rights under **Article 4** and **Article 21** hereunder (excluding the Lender consent requirement under this

Section 4.4), and (iii) a modification or amendment effected with such Lender's consent, or expressly contemplated by the terms of this Lease, including, without limitation, **Section 27.2** below.

4.5 **Assignment by Lenders.** Notwithstanding anything set forth in **Article 13** hereof to the contrary, if and when a Lender or its designee succeeds Lessee as the Lessee under this Lease, or becomes the lessee under a New Lease, as the case may be, it may (i) assign this Lease and/or (ii) sublease all or part of the Premises leased by it without the consent of Lessor, but any subsequent assignment or sublease shall be subject to the terms of **Article 13** below.

4.6 **Participation by Lenders in Insurance Adjustments.** Lender(s) shall have the right to participate in the adjustment of losses with any insurance company with respect to any Casualty Event affecting any portion of the Premises on which they hold a Mortgage and such Lender(s) shall have the right to supervise and control the receipt and disbursements of all applicable insurance proceeds, subject to, and in compliance with, the terms of this Lease.

4.7 **Condemnation.**

4.7.1 **Participation; Application.** If there is a Condemnation, Lessor and Lessee will cooperate with each other to obtain the maximum Condemnation Award (as that term is defined herein) from the condemning authority through negotiation and, if necessary, litigation with a minimum of duplicated effort. Lender(s) shall have the right to participate in any Condemnation proceedings and settlement discussions and Lender(s) shall have the right to supervise and control the receipt and disbursement of all Condemnation Awards to the extent attributable to Lessee's interest in the Premises subject to the provisions of the Mortgage(s) applicable to the affected portions of the Premises, or, if there is more than one (1) Mortgage with respect to such affected portions of the Premises, with the terms of the Mortgage that has the senior lien, but shall not have any right in any Condemnation Awards attributable to Lessor's interest in the Premises. Lessor shall be entitled to the portion of all Condemnation Awards representing just compensation attributable to Lessor's interest in the Premises regardless of any terms contained in any Mortgage.

4.7.2 **Substantial Condemnation.** If a Substantial Condemnation (as that term is defined herein) occurs, the Condemnation Award, net of reasonable costs, fees and expenses incurred by Lessor and Lessee with respect to the negotiation and collection of the Condemnation Award (including, without limitation, reasonable attorneys' fees and costs), shall be allocated between Lessor and Lessee as follows: (i) Lessor shall be entitled to (x) an allocation of the portion of the Condemnation Award applicable to the underlying Land so taken (and any consequential damages to and diminution of the value of the Land not so taken) and (y) any award for loss of future ground rental income under this Lease from the Land so taken; and (ii) Lessee shall be entitled to an allocation of the portion of the Condemnation Award applicable to the Existing Structures and Improvements. Notwithstanding the foregoing, any Lender shall be entitled to any Condemnation Award otherwise due Lessee, to the extent Lender is entitled to same under any applicable Mortgage (and if there is more than one (1) Mortgage, then the terms of the Mortgage that has the superior lien shall control) and for the purposes of calculating any amount under item (ii) above, any portion of the Condemnation Award payable to a Lender shall be deemed to have been paid to Lessee. The Parties agree to make good faith, commercially reasonable efforts to agree on the respective allocations of the Condemnation Award, and if they are unable to reach agreement within sixty (60) days of the determination of the amount of the Condemnation Award, then such allocations shall be determined by three (3) qualified appraisers licensed in the State of Iowa and experienced in such appraisals in the Ankeny, Iowa market. Each Party shall select an appraiser qualified as set forth above and such appraisers will together select

a third appraiser to perform the third appraisal. The allocation shall be based on the average of the two (2) closest appraisals. The costs of the appraiser(s) shall be shared equally between the Parties.

4.7.3 Partial Condemnation. If there is a Partial Condemnation (as that term is defined herein), including the taking of a permanent easement, the Condemnation Award, net of reasonable costs, fees and expenses incurred by Lessor and Lessee with respect to the negotiation and collection of the Condemnation Award (including, without limitation, reasonable attorneys' fees and costs), shall be allocated between Lessor and Lessee as follows: (i) Lessor shall be entitled to an allocation of the portion of the Condemnation Award equivalent to all elements of the just compensation attributable to Lessor's reversionary interest in the Premises (as such interest is described in more detail in **Section 7.6** and **Article 24** below); and (ii) Lessee shall be entitled to an allocation of the portion of the Condemnation Award equivalent to all elements of the just compensation attributable to their interests in the Premises. Notwithstanding the foregoing, any Lender shall be entitled to any Condemnation Award otherwise due Lessee, to the extent Lender is entitled to same under any applicable Mortgage (and if there is more than one (1) Mortgage, then the terms of the Mortgage that has the superior lien shall control) and for the purposes of calculating any amount under item (ii) above, any portion of the Condemnation Award payable to a Lender shall be deemed to have been paid to Lessee. The Parties agree to make good faith, commercially reasonable efforts to agree on the respective allocations of the Condemnation Award, and if they are unable to reach agreement within sixty (60) days of the determination of the amount of the Condemnation Award, then such allocations shall be determined by three (3) qualified appraisers licensed in the State of Iowa and experienced in such appraisals in the Ankeny, Iowa market. Each Party shall select an appraiser qualified as set forth above and such appraisers will together select a third appraiser to perform the third appraisal. The allocation shall be based on the average of the two (2) closest appraisals. The costs of the appraiser(s) shall be shared equally between the Parties.

4.7.4 Temporary Easement. If there is the taking of a Temporary Easement (as that term is defined herein) upon a portion of the Premises for a period that will end after the then Expiration Date but such Condemnation is not a Substantial Condemnation, the portion of the Condemnation Award equivalent to all elements of the just compensation attributable to periods after the Expiration Date shall be paid to Lessor and the portion of the Condemnation Award equivalent to all elements of the just compensation attributable to Lessee's costs of Restoration (as that term is defined herein), if any, and Lessee's interest in the Premises for the period prior to the Expiration Date shall be paid to Lessee and applied first to effect Restoration, if any is required. Notwithstanding the foregoing, any Lender shall be entitled to any Condemnation Award otherwise due Lessee, to the extent Lender is entitled to same under any applicable Mortgage (and if there is more than one (1) Mortgage, then the terms of the Mortgage that has the superior lien shall control) and any portion of the Condemnation Award payable to a Lender shall be deemed to have been paid to Lessee. If the immediately preceding sentence is operative, the Parties agree to make good faith, commercially reasonable efforts to agree on the respective allocations of the Condemnation Award, and if they are unable to reach agreement within sixty (60) days of the determination of the amount of the Condemnation Award, then such allocations shall be determined by three (3) qualified appraisers licensed in the State of Iowa and experienced in such appraisals in the Ankeny, Iowa market. Each Party shall select an appraiser qualified as set forth above and such appraisers will together select a third appraiser to perform the third appraisal. The allocation shall be based on the average of the two (2) closest appraisals. The costs of the appraiser(s) shall be shared equally between the Parties.

4.8 No Merger. There shall be no merger of this Lease or the leasehold estate created by this Lease with a fee interest in the Premises by reason of the fact that the same Person may

acquire, own or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease and the fee estate in the Premises, unless and until such Person and every Lender and Fee Mortgagee shall join in a written instrument expressly providing for such merger and such instrument is recorded.

4.9 **Inconsistency.** To the extent any of the other provisions of this Lease are inconsistent with the provisions of this **Article 4**, so long as any Mortgage remains in effect, the provisions of this **Article 4** shall control and shall be read in a manner to give the protection of the provisions hereof to the holder(s) of such Mortgage(s).

4.10 **Further Assurances.** Lessor and Lessee shall each, from time to time, execute, acknowledge and deliver such further instruments as the other and/or a Lender may reasonably request in order to effectuate the intent and purposes of this Lease, including but not limited to **Article 4**.

ARTICLE 5

5. **RENT.** The term “**Rent**” as used in this Lease shall mean Base Rent plus any and all other amounts required to be paid by Lessee to Lessor under the terms of this Lease.

5.1 **Base Rent.** Lessee agrees to pay base rent (“**Base Rent**”) in the amounts set forth in **Exhibit B** for each month of the Term, payable in advance on the first day of each month commencing on the first day of the calendar month following the Effective Date, without any deduction or set off whatsoever (except as set forth in **Article 23** below). If the Effective Date is not the first day of a month, a prorated monthly installment shall be paid on the Effective Date for the fractional month during which the Effective Date occurs. If the last day of the Term of this Lease is not the last day of a month, the Base Rent for such month shall be prorated for the number of days during such month that are a part of the Term compared to the actual number of days of such month.

5.2 **Net Rental.** It is the purpose and intent of Lessor and Lessee that the Rent

services or facilities or to make any repairs or alterations in or to the Premises, Lessee hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises whether interior or exterior, and whether structural or otherwise.

5.3 **Rent Not Contingent.** Neither the Base Rent, Property Expenses nor any other amount payable hereunder by Lessee shall be contingent on: (a) the completion of any construction on the Land; or (b) the receipt of any payments by Lessee from any third-party.

ARTICLE 6

6. UTILITIES, TAXES AND COVENANTS AND RESTRICTIONS OF RECORD.

6.1 **Utilities.** Lessee shall pay directly to the provider thereof any and all costs and expenses related to any utilities utilized by Lessee at the Premises, including, but not limited to, internet service and related utilities.

6.2 **Covenants, Conditions and Restrictions.** Lessee shall make all payments under any easement, license, operating agreement, declaration, restrictive covenant or instrument pertaining to the sharing of costs by the Premises.

6.3 **Taxes.** Commencing on the Effective Date, Lessee shall pay all of the taxes set forth in **Section 6.3.1** through **Section 6.3.3** below (collectively, “**Taxes**”). All such payments shall be made prior to any delinquency date. Upon request, Lessee shall promptly furnish Lessor with satisfactory evidence that such Taxes have been paid. If Lessee fails to pay any such Taxes, Lessor, at its sole and absolute option, may (but is not obligated to) pay or discharge the same and the amount so paid by Lessor (including any interest and penalties thereon paid by Lessor), together with interest at the Default Rate (as that term is defined herein) computed from the date Lessor makes such payment, shall be deemed to be and shall be payable by Lessee, and Lessee shall reimburse such sums to Lessor within ten (10) business days following demand. Any Taxes relating to periods prior to or after the Expiration Date or earlier termination of this Lease shall be prorated so that Lessee shall pay only that portion of the tax bill applicable to the period that this Lease is in effect.

6.3.1 **Real Property Taxes.** Lessee shall pay all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges, commercial rental taxes, in lieu taxes, levies, penalties or other impositions of every kind and nature, whether general, special, ordinary or extraordinary or in connection with the ownership, leasing or operation of the Premises applicable to the period commencing on the Effective Date and expiring on the Expiration Date (collectively, “**Real Property Taxes**”). Without limiting the foregoing, “Real Property Taxes” shall also include: (a) any assessment, tax, fee, levy or charge imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other services, whether or not such assessment, tax, fee, levy or charge was previously commonly included within the definition of real property tax and whether or not such services were formerly provided without charge to property owners or occupants; and (b) any assessment, tax, fee, levy or charge upon this transaction or any document to which Lessee is a party, creating or transferring an interest or an estate in the Premises. “Real Property Taxes” shall not include any tax on Lessor’s rent from the Premises or against Lessor’s business of leasing any of the Premises, or Lessor’s federal, state or city income, franchise, inheritance or estate taxes, except, in each case, taxes imposed after the date hereof expressly in lieu of any of the Taxes referenced in items (a) or (b) in the immediately preceding sentence. If a Mortgage requires escrow payments of the Real Property Taxes to the holder of such Mortgage, Lessee may pay such Real Property Taxes to such holder; provided that the foregoing shall not relieve Lessee of its obligation to cause all Real Property Taxes to be paid to the applicable governmental agencies or to provide Lessor with proof of payment, each as set forth in **Section 6.3** above.

6.3.2 **Taxes on Lessee’s Personal Property.** Lessee shall pay all taxes that are measured by or reasonably attributable to the cost or value of equipment, furniture, trade fixtures and other personal property located in the Premises (excluding the equipment, furniture, trade fixtures and personal property of Lessee whose interest is separately assessed).

6.3.3 **Possessory Interest Tax.** Lessee shall pay any possessory interest tax that may be imposed on any possessory interest (other than the fee interest) in the Premises.

6.4 **Right to Contest Real Property Taxes.** Subject to the provisions of any Mortgage, Lessee may, at Lessee’s sole cost and expense, endeavor from time to time to reduce the assessed valuation of the Premises for the purpose of reducing the Real Property Taxes payable by Lessee. Lessor agrees to offer no objection to such contest or proceeding and, at the request of Lessee,

to reasonably cooperate with Lessee in pursuing such contest or proceeding, but without expense to Lessor. Any such contest or proceeding shall be brought in Lessee's name unless otherwise required by law, in which case the contest or proceeding may be brought in Lessor's name. If all or any part of any Real Property Taxes is refunded to either Party (whether through cash payment or credit against future Real Property Taxes), the Party who paid the Real Property Taxes to which the refund relates shall be entitled to such refund. If either Party receives a refund (whether by cash payment or credit) to which the other Party is entitled, the receiving Party shall promptly pay the amount of such refund or credit to the entitled Party.

ARTICLE 7

7. LESSEE'S WORK AND CAPITAL EXPENDITURES.

7.1 **Capital Expenditures.** Lessee shall expend no less than ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) of capital expenditures related to Improvements no later than thirty-six (36) months from and after the Effective Date.

7.2 **Lessor Has No Responsibility.** It is expressly acknowledged and agreed that Lessor shall have no responsibility for performing any work to the Premises under this Lease in order to prepare the Premises for construction by Lessee, and that all such work shall be performed by Lessee at Lessee's sole cost and expense.

7.3 **Compliance With Laws.** At all times during the Term, Lessee must construct the Improvements and Alterations (as that term is defined herein), and perform all repairs, replacements and other maintenance work, in conformance with any and all laws.

7.4 **Title to Existing Structures or Improvements.** As between Lessor and Lessee, title to the Existing Structures and Improvements constructed pursuant to this Lease shall remain with Lessee until the expiration or earlier termination of this Lease (as it pertains to the Premises or a portion thereof), at which time title shall automatically transfer to Lessor, in accordance with **Article 24** of this Lease. During the Term, Lessee alone shall be entitled to all of the tax attributes of ownership of the Existing Structures, Improvements, all Alterations and all personal property acquired (or leased) by Lessee or an Affiliate thereof, including, without limitation, the right to claim depreciation or cost recovery deductions. For purposes of this Lease, "**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person.

7.5 **Other Liens on Lessor's Interest in the Premises.** Subject to Article 4, Lessee agrees that without the prior written consent of Lessor, Lessee shall not create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any instrument, mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement on Lessor's interest in the Premises.

ARTICLE 8

8. REPAIRS AND ALTERATIONS.

8.1 **Lessee's Obligations.** As between Lessor and Lessee, Lessee shall, at Lessee's sole expense and subject to **Article 9** and **Article 12** hereof, (i) maintain the Premises, the Existing Structures, Improvements, and Alterations thereon in an orderly and safe condition; and (ii) keep the Land free and clear of debris and other materials and objects, including snow accumulation, and in a manner consistent with the standards of operation, maintenance and appearance of properties similar to the Premises and in compliance with all requirements of law.

8.2 **No Obligation of Lessor; Waiver of Rights.** As between Lessor and Lessee: (i) Lessee shall be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including the Existing Structures and any and all Improvements, from and after the Commencement Date; (ii) Lessor shall have no obligation to make repairs or replacements of any kind or maintain the Premises, the Existing Structures or Improvements or any portion thereof, except to the extent caused by the negligence or intentional misconduct of Lessor; and (iii) Lessee waives the benefit of any existing or future law that would permit Lessee to make repairs or replacements at Lessor's expense, or abate or reduce any of Lessee's obligations under, or terminate this Lease, on account of the need for any repairs or replacements.

8.3 **Notice.** Lessee shall deliver to Lessor, promptly after receipt, a copy of any notice which Lessee may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any applicable requirements of law, asserting that the Premises is in material violation of such requirements of law; or (ii) from the insurance company issuing or responsible for administering one (1) or more of the insurance policies required to be maintained by Lessee under **Article 10**, asserting that the requirements of such insurance policy or policies are not being met. If the requirement of law allegedly being violated is an Environmental Law (as that term is defined herein), such violation shall be deemed "material" for purposes of this **Section 8.3**.

8.4 **Alterations.** Subject to the terms hereof, Lessee may, at its sole option and at its sole cost and expense, make any additions, replacements, changes, alterations, installations, repairs or improvements to the Premises (the "**Alterations**") that Lessee, in its sole discretion, deems necessary or appropriate, provided that such Alterations do not materially diminish the value of the Premises. All Alterations shall be made in a good and workmanlike manner. To the extent reasonably necessary, but in no event at the expense of Lessor, Lessor shall cooperate with Lessee in Lessee's efforts to obtain the required permits, approvals, and authorizations for the construction of the Alterations, including by joining in applications for building permits. Lessee shall deliver to Lessor, upon request, copies of the "as built" plans for all material Alterations and Restorations (including replacements of or material Alterations to building systems, structural alterations to the structural elements of the Existing Structures, and additions to the Existing Structures), including all drawings, plans, and specifications, electronic or otherwise.

ARTICLE 9

9. FIRE OR OTHER CASUALTY DAMAGE.

9.1 **General.** If at any time during the Term any damage to or destruction of the

the rights and obligations of the Parties shall be as set forth in this **Article 9**.

9.2 **Notice.** In the event of a Casualty Event that (i) could materially impair the use or operation of any material portion of the Premises, the Existing Structures, or Improvements for their intended purposes for a period of ten (10) days or longer, or (ii) exceeds the amount of one hundred thousand dollars and 00/100 (\$100,000.00), then Lessee shall promptly, but not more than ten (10) days after the occurrence of the Casualty Event, give written notice thereof to Lessor describing the nature and extent of such damage or destruction; provided, however, that Lessee shall provide Lessor with a supplemental and more detailed written report describing such matters with specificity within ninety (90) days after the occurrence of the Casualty Event.

9.3 **Rent after Damage or Destruction; No Termination.** If there is any damage to or destruction of the Premises, including the Existing Structures or Improvements thereon, this Lease shall not terminate. Lessee shall continue to pay to Lessor all Rent at the times and in the manner described in this Lease, subject to **Section 9.4.2** below.

9.4 **Lessee's Obligation to Restore; Insurance Proceeds If Mortgage Controls.**

9.4.1 **Generally.** Except as otherwise expressly provided in this **Article 9**, if all or any portion of the Existing Structures or Improvements are damaged or destroyed, then Lessee may, in its sole discretion, and at its sole cost and expense and subject to **Section 9.3** through **Section 9.5**, restore or cause to be restored the Existing Structures or Improvements (in each such instance, a "**Restoration**"; "**Restore**"; and "**Restored**" shall have correlative meanings). All Restoration to be performed by or on behalf of Lessee shall be in accordance with and subject to the terms hereof including Lessor's prior approval rights as set forth herein, including **Section 8.4**. The Parties agree to cooperate and coordinate so as to minimize any interference or delay with respect to the Restoration by Lessee.

9.4.2 **Insurance Proceeds If Mortgage Controls.** Except as otherwise expressly provided in this **Article 9**, all insurance proceeds with respect to a Casualty Event, if any (other than business or rental interruption insurance), shall be paid in accordance with the terms of **Article 4** hereof.

9.4.3 **Razing Damaged Buildings or Improvements.** Without limiting any of Lessee's obligations under this **Article 9**, and notwithstanding any provision herein to the contrary, in the event of any Casualty Event for which a Restoration will not be completed, or is not required to be completed pursuant to this **Article 9**, Lessee, at its sole cost and expense, shall promptly perform any and all demolition and razing activities with respect to that part of the Existing Structures and/or Improvements subject to the Casualty Event (although Lessee may use any available insurance proceeds to do so).

9.5 **Insurance Proceeds If No Mortgage.** In the absence of controlling provisions under a Mortgage with respect thereto: (i) in event the amount of all insurance proceeds relating to a Casualty Event are less than five hundred thousand dollars and 00/100 (\$500,000.00), the amount of such proceeds shall be paid to Lessee; and (ii) in event the amount of all insurance proceeds relating to a Casualty Event exceeds five hundred thousand dollars and 00/100 (\$500,000.00), all insurance proceeds relating to such Casualty Event, whether received by Lessor or Lessee, shall be kept in an escrow account to be established with an escrow company selected by Lessor, and such escrow company shall disburse such proceeds during the course of the work on an as-needed basis in accordance with this **Section 9.5**; provided, however, that if at any time the reasonably estimated or actual hard costs of Restoration (the "**Casualty Restoration Cost**") exceeds the net insurance proceeds

actually deposited with the escrow company, then Lessee shall either (x) also deposit with the escrow company such cash as is sufficient to cover the difference between the Casualty Restoration Cost and the net insurance proceeds (the “**Additional Casualty Cash**”), or (y) obtain payment or performance bonds in the full amount of the Additional Casualty Cash to cover the payment and performance of the Restoration and in a commercially reasonable, industry standard form (such bonds, together with such net insurance proceeds and any interest earned thereon, and the Additional Casualty Cash, the “**Casualty Restoration Funds**”).

9.5.1 **Retention; Negotiation.** If the net insurance proceeds exceed the Casualty Restoration Cost, Lessee shall retain the excess, provided if at the time such net proceeds are to be paid to Lessee a monetary Event of Default is continuing hereunder, then Lessee shall promptly pay to Lessor such amount and Lessee shall be entitled to keep any excess remaining after such payment to Lessor necessary to cure such Event of Default. Lessee shall have the right to negotiate an insurance settlement with its insurer for claims made under its insurance for such Casualty Event provided if a monetary Event of Default is continuing hereunder Lessor shall have the right to participate in such negotiation and no settlement shall be accepted unless agreed to by Lessor and Lessee, both acting in good faith; further provided, however, that any such negotiations or settlement shall not relieve or release Lessee from any of its Rent or Restoration obligations or other obligations under this Lease.

9.5.2 **Release of Casualty Restoration Funds.**

(a) **Use by Lessee.** Subject to this **Section 9.5** and the satisfaction by Lessee of all of the terms and conditions of this **Article 9**, the escrow company shall pay to Lessee from time-to-time any Casualty Restoration Funds it holds, but not more than the amount actually collected by the escrow company upon the loss, together with any interest earned thereon, after reimbursing itself therefrom for any amounts to which it is entitled for acting as escrowee, to be utilized by Lessee solely for the Restoration:

(1) prior to commencing any Restoration, Lessee shall have provided and Lessor shall have approved all items required pursuant to **Section 9.4.1**;

Lessee to the escrow company and Lessor showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by Lessee; provided, however, that if any lien is filed against Lessor or Lessor’s interest in the Premises in connection with the Restoration, Lessee shall not be entitled to receive any further installment until such lien is satisfied or discharged, or security provided to Lessor therefor, in accordance with **Section 7.5.3** hereof, unless such lien will be discharged with funds from such installment and at the time Lessee receives such installment Lessee delivers to Lessor and the escrow company a release of such lien executed by the lienor and in recordable form;

(3) the amount of each installment to be paid to Lessee shall be the aggregate amount of Casualty Restoration Costs theretofore incurred by

Lessee minus the aggregate amount of Casualty Restoration Funds theretofore paid to Lessee in connection therewith; provided, however, that all disbursements to Lessee shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the escrow company is sufficient to complete the Restoration; and

(4) except as provided in **Section 9.5.2(a)(3)**, upon completion of and payment for the Restoration by Lessee, the escrow company shall, subject to the terms below, pay the balance of the Casualty Restoration Funds, including any retention amount, it holds, if any, to Lessee; provided, however, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), Lessee shall nevertheless be required to make the Restoration and provide the Additional Casualty Cash necessary to complete the Restoration as provided in **Section 9.5.2**, provided further if at the time escrow company is to pay the balance of the Casualty Restoration Funds to Lessee, as set forth above, a monetary Event of Default is continuing hereunder, then escrow company shall first pay to Lessee an amount equal to the amount of such monetary Event of Default and only the remaining balance thereof, after such payment, shall be paid to Lessee.

(b) **Conditions of Payment.** The following shall be conditions precedent to each payment made to Lessee as provided in **Section 9.5.2(a)**:

(1) Lessee shall have provided and Lessor shall have approved all items required pursuant to **Section 9.4.1**;

(2) at the time of making such payment, no Event of Default exists; and

(3) the Restoration shall be carried out in accordance with **Article 9**, and there shall be submitted to the escrow company and Lessor the certificate of the applicable architect or engineer substantially in a form reasonably acceptable to Lessor.

9.6 **Rights of Lessor.** In addition to the other rights and remedies available to Lessor that are set forth elsewhere in this Lease, in any case where this Lease shall expire or be terminated with respect to all or any portion of the Premises prior to the completion of any Restoration thereon required under this Lease, Lessee shall, at Lessor's option: (i) promptly perform the demolition and razing activities (and Lessee may use any available insurance proceeds to do so); (ii) promptly account to Lessor for all amounts spent in connection with any Restoration which was undertaken; (iii) immediately pay over or cause the escrow company to pay over to Lessor the remainder, if any, of the Casualty Restoration Funds received by Lessee or held by the escrow company prior to such termination or cancellation; (iv) pay over or cause the escrow company to pay over to Lessor, within five (5) business days after receipt thereof, any Casualty Restoration Funds received by Lessee or the escrow company subsequent to such termination or cancellation; (v) immediately pay over to Lessor any outstanding Additional Casualty Cash that Lessee should have deposited with the escrow company prior to such termination or cancellation; and (vi) immediately pay to Lessor all accrued and unpaid Rent through the date of such expiration or termination; provided that any amounts paid to Lessor

pursuant to preceding clauses (iii), (iv) or (v) are subject to the rights in any such sums of any Fee Mortgagee and/or Lender under a Mortgage on the affected portion(s) of the Premises (as and to the extent provided in such Fee Mortgage or Mortgage). Upon completion of and payment for the Restoration and any accrued and unpaid Rent, Lessor shall return to Lessee any unused portion of the Casualty Restoration Funds, subject to the rights of any Lender under any applicable Mortgage(s).

ARTICLE 10

10. INSURANCE.

10.1 **Lessee's Obligation to Maintain Insurance.** Lessee shall maintain or cause to be maintained all types of insurance as are reasonable and prudent in light of the terms and conditions of this Lease, the transactions and relationships contemplated hereby and the obligations of Lessee hereunder. For the sake of clarity, coverages that are appropriate during the course of construction need not be maintained when construction is not occurring. The minimum limits of the insurance required under this **Section 10.1** shall be subject to adjustment at any time, and from time to time, in accordance with commercially reasonable standards applicable to projects similar to the Premises. In addition, Lessee shall obtain any such other insurance coverage, limits, endorsements, and or deductibles in accordance with commercially reasonable standards applicable to projects similar to the Premises.

10.2 **Waiver of Subrogation.** Whenever (i) any loss, cost, damage or expense resulting from any Casualty Event is incurred by either of the Parties or anyone claiming by, through or under it in connection with the Premises, and (ii) such Party is then either covered in whole or in part by insurance with respect to such loss, cost, damage or expense, or required under this Lease to be so insured, then the Party so insured (or so required) hereby releases the other Party from any liability said other Party may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance (or which could have been recovered, had insurance been carried as so required) and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessor and Lessee each agree to give each insurance company that has issued, or in the future may issue, a policy of the type required from time to time pursuant to **Section 10.1**, written notice of the terms of this mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver. Notwithstanding the foregoing, the foregoing release and waiver of claims shall not be operative, nor shall the foregoing endorsements be required, in any case in which the effect of such release or waiver is to invalidate insurance coverage or the right of the insured to recover thereunder or increase the cost thereof (provided that in the case of increased cost the other Party shall have the right, within ten (10) days following notice from the Party procuring such insurance, to pay such increased cost, thereby keeping such release or waiver in full force and effect), nor shall it be construed as waiving any rights for claims of indemnification or reimbursement against third parties or for deductible amounts where the damage or loss is caused by the act or negligence of Lessor or Lessee.

ARTICLE 11

11. WAIVER AND INDEMNIFICATION.

11.1.1 **By Lessee.** To the fullest extent permitted by law, and except as otherwise provided in this Lease, Lessee agrees to, and does hereby, hold harmless and indemnify Lessor, Lessor's officials, officers, members, managers, employees, agents, representatives, engineers, and attorneys (the "**Lessor Parties**") from any and all third-party claims that may be asserted at any time against any of such parties in connection with: (a) the development, construction, maintenance or use of any portion of the Premises; (b) Lessee's failure to comply with any of the terms of this Lease; (c) the conduct or management of the Existing Structures or Improvements or any other work done in and on the Premises, the Existing Structures or Improvements or any part thereof, (d) any breach or default on the part of Lessee in the performance of any term, covenant, condition, obligation or lease on the part of Lessee, including Lessee's failure to pay a Contractor, subcontractors or materialmen in connection with any portion of the Premises; (e) any act of negligence or intentional misconduct by Lessee, or any of Lessee's agents, Contractors, tenants, servants, employees, or licensees, or anyone acting by through or under any of them ("**Lessee Parties**") (including the negligent or intentional exacerbation of any Hazardous Substances (as that term is defined herein) introduced to the Premises prior to the Effective Date); (f) any accident, injury or damage whatsoever caused to any Person in or on the Premises, the Existing Structures or any other buildings or Improvements, or any part thereof, resulting from the negligence of Lessee or any Lessee Parties; (g) the generation, presence, disposal, release or threatened release of any Hazardous Substances on over, under, from or affecting the Premises caused or permitted by Lessee or any Lessee Parties (except for Hazardous Substances introduced to the Premises prior to the Effective Date); (h) any bodily injury (including wrongful death) or property damage (real or personal) arising out of or relating to any such generation, presence, disposal, release or threatened release of any Hazardous Substances (except for Hazardous Substances introduced to the Premises prior to the Effective Date); and (i) any violations of or failure to comply with any Environmental Laws with respect to the construction of the Premises by Lessee (collectively, "**Lessee Indemnified Claims**").

11.1.2 **By Lessor.** To the fullest extent permitted by law, and except as otherwise provided in this Lease, Lessor agrees to, and does hereby, hold harmless and indemnify Lessee, Lessee's officials, officers, members, managers, employees, agents, representatives, engineers, and attorneys from any and all third-party claims that may be asserted at any time against any of such parties in connection with any bodily injury (including wrongful death) or property damage (real or personal) arising out of or relating to Hazardous Substances introduced to the Premises prior to the Effective Date, except to the extent that such claims arise out of or are related to (i) Lessee's failure to perform certain Hazardous Substances remediation with respect to the Premises, (ii) Lessee's failure to comply with all Environmental Laws applicable to any Hazardous Substances, or (iii) any negligence or intentional misconduct of Lessee or any Lessee Parties with regard to any Hazardous Substances (collectively, "**Lessor Indemnified Claims**") and, together with the Lessee Indemnified Claims, "**Indemnified Claims**").

11.2 **Limitations on Indemnification.** The indemnification provisions of **Section 11.1** shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the indemnitor or any Contractor or subcontractor of the indemnitor under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. In no event shall the indemnifications contained in **Section 11.1** extend to any Indemnified Claims arising solely out of the negligent or willful acts or omissions of the indemnified party(ies). The amount of any indemnification to which any of the indemnified party(ies) are entitled pursuant to **Section 11.1** hereof shall be reduced by the insurance proceeds actually received and any other amount, if any, recovered from third-parties by the indemnified party with respect to the facts giving rise to such indemnification payment. If an indemnified party receives any indemnification payment under

this Lease and subsequently receives insurance proceeds or other amounts with respect to the facts giving rise to such indemnification payment, then such indemnified party will promptly reimburse the indemnitor, after deducting the amount of the reasonable expenses incurred by such indemnified party in procuring such recovery, up to (but not exceeding) the payments made by such indemnitor with respect to such matters. In no event shall Lessee or Lessor be liable under this Lease for incidental, indirect, punitive or consequential damages, including lost profits.

11.3 **Notice of Claim or Potential Claim.** The indemnified party(ies) shall notify the indemnitor (such notification is herein called a “**Notice of Claim**” or “**Notice of Potential Claim**,” as the case may be) of any Indemnified Claim or of any occurrence or event that could give rise to an Indemnified Claim (“**Potential Claim**”) for which such indemnified party(ies) are (or believes they are) entitled to be indemnified or defended under this Lease promptly after such indemnified party(ies) obtain actual knowledge of any Indemnified Claim or Potential Claim. A Notice of Claim or Notice of Potential Claim shall specify, in reasonable detail, the nature and estimated amount of any such Indemnified Claim or Potential Claim and the basis for such indemnified party(ies)’ belief as to why they are entitled to be indemnified or defended. Notwithstanding the foregoing, the failure by an indemnified party(ies) to give such notice shall not relieve the indemnitor of its indemnification obligations under this Lease, except to the extent that the indemnitor is materially prejudiced as a result of such failure.

11.4 **Defense Expense.** Lessee shall, and does hereby agree to, pay all reasonable expenses, including legal fees and administrative expenses, reasonably incurred by Lessor in defending itself with regard to any and all of the Lessee Indemnified Claims. Lessor shall, and does hereby agree to, pay all reasonable expenses, including legal fees and administrative expenses, reasonably incurred by Lessee in defending itself with regard to any and all of the Lessor Indemnified Claims.

11.5 **Survival of Indemnities.** The provisions of this **Article 11** and the respective rights and obligations of Lessor and Lessee hereunder shall continue in full force and effect without regard to the expiration or earlier termination of this Lease.

ARTICLE 12

12. EMINENT DOMAIN.

12.1 **General.** If at any time during the Term there is a taking or damaging, including severance damage, of all or any part of the Premises, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law (each such event, a “**Condemnation**”), which may occur pursuant to the entry by a court of competent jurisdiction of a final judgment order, or by a voluntary sale of all or any part of the Premises to the condemning authority (or to a designee of the condemning authority), provided that the Premises or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action, the rights and obligations of the Parties shall be as set forth in this **Article 12**.

12.2 **Notice.** In case of the commencement of any proceedings or negotiations which might be in lieu of or result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of

the Condemnation which might result therefrom, as the case may be, and shall include a copy of any notice, information or documentation received from the condemning authority.

12.3 **Waiver.** The Parties intend that this Lease fully govern all of their rights and obligations in the event of a Condemnation, and each hereby waive any and all rights the Parties may have with respect to Condemnation that are not specifically set forth herein.

12.4 **Substantial Condemnation.** In the event of a Condemnation of the (i) the entire Premises, (ii) Lessee's entire leasehold estate in the Premises or (iii) less than the entire Premises, but it shall have been agreed between Lessor and Lessee that in any such case either the Premises cannot be repaired, restored or replaced in a manner that permits the remaining portions thereof to be operated as an economically useful and architecturally complete unit or the Premises cannot be redeveloped in a manner mutually acceptable to Lessor and Lessee (a "**Substantial Condemnation**"), this Lease and all of Lessee's right, title, interest and future obligations thereunder shall terminate on the date when title to the condemned property vests in the condemning authority by delivery of a deed or entry of a final judgment order establishing the date on which the vesting of title will occur (the "**Condemnation Date**"); provided, however, that such termination shall not terminate any of Lessee's obligations or liabilities under this Lease that are expressly stated herein to survive the termination of this Lease.

12.5 **Partial Condemnation.** In the event of a Condemnation of less than (i) the entire Premises or (ii) Lessee's entire leasehold estate in the Premises, and it shall have been agreed between Lessor and Lessee that either portions of the Premises can be repaired, restored or replaced in a manner that permits the remaining portions thereof to be operated as economically useful and architecturally complete units or the Premises can be redeveloped by Lessee in a manner acceptable to Lessee (a "**Partial Condemnation**");

12.5.1 this Lease and all of Lessee's right, title and interest thereunder, shall terminate on the Condemnation Date only with respect to the portion of the Premises or Lessee's leasehold estate in the Premises so taken; provided, however, that such termination shall not terminate any of Lessee's obligations or liabilities under this Lease that are expressly stated herein to survive the termination of this Lease;

12.5.2 this Lease shall remain in full force and effect as to the portion of the Premises or Lessee's leasehold estate in the Premises so taken remaining immediately after such Partial Condemnation;

12.5.3 Lessee shall proceed promptly to Restore the Premises in a manner consistent with the terms and conditions set forth in **Section 9.4** and **Section 9.5** above (with corresponding adjustments of the language therein to reflect the existence of a Condemnation instead of a Casualty Event); and

12.5.4 the Base Rent due hereunder from Lessee to Lessor for the remainder of the Term from and after the Condemnation Date shall be reduced by multiplying the following fraction against the Base Rent: the value of the remainder of the Premises after the Condemnation Date divided by the value of the entire Premises immediately before the Condemnation Date. If the Parties are unable to agree on the foregoing fraction within sixty (60) days following the Condemnation Date, then such fraction shall be determined by three (3) qualified appraisers licensed in the State of Iowa and experienced in such appraisals in the Ankeny, Iowa market. Each Party shall select an

appraiser qualified as set forth above and such appraisers will each separately calculate the fraction and together select a third appraiser to calculate the fraction. The final fraction shall be equal to the average of the two (2) closest fractional calculations. The costs of the appraiser(s) shall be shared equally between the Parties.

12.6 **Allocation of Condemnation Award.** All amounts, compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, this Lease, settlement or otherwise (the “**Condemnation Award**”) to either Lessor or Lessee on account of a Condemnation, shall, if applicable, be paid in accordance with the provisions of **Section 4.7** hereof. In the absence of any Mortgage, and in the event of a Substantial Condemnation, the Condemnation Award, net of reasonable costs, fees and expenses incurred by either Lessor or Lessee as applicable (including, without limitation, reasonable attorneys' fees and costs) in the collection thereof, shall be allocated between Lessor and Lessee pursuant to the terms of **Section 4.7.2** excluding the provision related to any Lender being entitled to any Condemnation Award. In the absence of any Mortgage, and in the event of a Partial Condemnation, the Condemnation Award, net of reasonable costs, fees and expenses incurred by either Lessor or Lessee as applicable (including, without limitation, reasonable attorneys' fees and costs) in the collection thereof, shall be allocated between Lessor and Lessee pursuant to the terms of **Section 4.7.3** excluding the provision related to any Lender being entitled to any Condemnation Award.

12.7 **Temporary Easement.** In the event of any Condemnation of all or any of the Premises or Lessee's leasehold estate in the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Partial Condemnation for the remainder of the Term (a “**Temporary Easement**”), this Lease shall remain in full force and effect without any reduction or abatement of Rent, and, to the extent feasible, Lessee shall proceed promptly to Restore the Premises in a manner consistent with the terms and conditions set forth in **Section 9.4.1** above. In such event, any Condemnation Award shall be payable pursuant to **Section 4.7.4**.

12.8 **Benefit of Lessor.** Except as otherwise expressly provided in this Lease, the requirements of this **Article 12** are for the benefit only of Lessor, and no other Person shall have or acquire any claim against Lessor as a result of any failure of Lessor to actually undertake or complete any Restoration as provided in this **Article 12** or to obtain the evidence, certifications and other documentation provided for herein.

ARTICLE 13

13. ASSIGNMENT AND SUBLETTING.

13.1 **Assignment by Lessee.** Lessee shall be authorized, without consent of Lessor, to assign this Lease to any third party bona fide purchaser of the Improvements, provided that such assignee shall have unconditionally assumed, pursuant to an instrument of assumption in form and substance reasonably satisfactory to Lessor, the performance of all of terms, covenants, conditions, agreements and obligations of Lessee to be performed or met under this Lease from and after the effective date of such assignment. Subject to the foregoing, Lessee shall not assign this Lease without the prior written consent of Lessor which shall not be unreasonably withheld, conditioned or delayed. Any permitted assignment or subletting shall not relieve Lessee from its covenants and agreements herein contained including its agreement to pay Rent, in the event any assignee(s), transferee(s), or subtenant(s) shall default in the performance of them, unless Lessor specifically, in writing, shall specifically release Lessee therefrom. Notwithstanding any other provision of this Lease, Lessee shall have the right at all times during the Term to assign the Lease or sublet all or part of the Premises to a

parent business organization of Lessee, to one (1) or more subsidiaries of Lessee, to any Affiliate of Lessee, or to the surviving business organization of a merger with or purchaser of Lessee or of Lessee's operations at the Premises; provided, however, that Lessee shall give Lessor prior written notice of any such assignment or subletting and Lessee shall not be released or relieved of any of its duties, obligations or primary liability under the Lease, whether past, present or future, as a result of any such assignment or subletting unless Lessor, in Lessor's sole good faith discretion, agrees in writing to such release.

13.2 **Lessee No Longer Liable Upon Assignment.** Neither the consent by Lessor to any assignment nor the collection or acceptance by Lessor of rent from such assignee shall relieve Lessee or any assignee or other party from obtaining the consent in writing of Lessor to any further assignment, as may be required by this **Article 13**. Provided (i) no Event of Default shall be continuing under this Lease and (ii) the assignee shall have unconditionally assumed, pursuant to an instrument of assumption in form and substance reasonably satisfactory to Lessor, the performance of all of terms, covenants, conditions, agreements and obligations of Lessee to be performed or met under this Lease from and after the effective date of such assignment, Lessee shall be released from its obligations hereunder arising from and after the effective date of such assignment, all subject to the Lessor's approval, if any, under **Section 13.1**.

13.3 **Transfers Without Consent Voidable.** Any assignment, sublease or transfer by Lessee in violation of this **Article 13** shall be voidable by Lessor and, at Lessor's election, constitute an Event of Default.

13.4 **Transfers of an Interest in Lessee.** For purposes of this **Article 13**, a transfer

existing members, partners or shareholders of Lessee, (b) an issuance, assignment or transfer of direct or indirect interests in Lessee related to infusions of new capital into such entities under circumstances where the owners of such entities prior to such issuance, assignment or transfer maintain, directly or indirectly, their capital in and day-to-day operating control of such entities, or (c) an assignment or transfer of direct or indirect interests in Lessee by a member thereof to a third-party, so long as such transfer or assignment does not result in a change in direct or indirect day-to-day control of Lessee.

ARTICLE 14

14. **TRANSFER OF LESSOR'S INTEREST; RIGHT OF FIRST OFFER.** Lessor has the right to transfer all or any portion of its interest in the Premises and in this Lease and Lessee agrees that in the event of any such transfer and written assumption of same by such transferee, Lessor shall, subject to **Section 26.18** below, be released from all liability under this Lease and Lessee agrees to look solely to such transferee for the performance of Lessor's obligations hereunder after the date of such transfer. Lessee further acknowledges that Lessor may assign its interest in this Lease to a Fee Mortgagee as additional security and agrees that such an assignment shall not release Lessor from its obligations hereunder and that Lessee shall continue to look to Lessor for the performance of its obligations hereunder.

ARTICLE 15

15. **USE OF PREMISES.**

15.1 **DMACC Student Housing.** Lessee shall use the Premises primarily for housing students of Des Moines Area Community College (collectively, “DMACC Students”). If Lessee is unable to secure enough subletters that are DMACC Students to fill the apartments on the Premises, Lessee may, with the prior written consent of Lessor, which consent shall not be unreasonably delayed or withheld, sublet apartments to individuals that are not DMACC Students. Lessee covenants and agrees that it shall not use, or permit any person or persons to use, the Premises or any part thereof for any use or purpose in violation of any requirements of law, or in such a manner as to create waste or a nuisance. Lessee shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Land. Lessee shall not, in any manner, utilize the name and image of, and/or other intellectual property rights of, DMACC with respect to signs, advertisements, and other promotions of the apartments at the Premises.

15.2 **Safety and Security.** Lessee hereby understands, acknowledges, and agrees that Lessor shall not provide, and has no obligation to provide, any security services, security personnel, or security equipment for the benefit of the Premises or any occupants thereof, including, without limitation, any DMACC Students. Lessee expressly acknowledges that Lessor has made no representations or warranties, express or implied, with respect to security measures on or around the Premises. Lessee shall be solely responsible for all security measures at the Premises as Lessee deems appropriate, which may include, but are not limited to, access control systems, surveillance equipment, lighting, and other security measures deemed necessary for the safety and security of the Premises and the residents thereof. Lessee shall notify all residents of the Premises that Lessor does not provide security services at the Premises and that said residents should take appropriate precautions for their personal safety and security. Lessee shall maintain adequate insurance with respect to safety and security at the Premises, which shall include coverage for security-related incidents.

ARTICLE 16

16. **QUIET ENJOYMENT.** Lessor covenants that if and so long as Lessee observes and performs each and every covenant, agreement, term, provision and condition of this Lease on the part of Lessee to be observed and performed, Lessee shall quietly enjoy the Premises without hindrance or molestation of Lessor or any person acting through Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease.

ARTICLE 17

17. COMPLIANCE WITH LAWS; HAZARDOUS SUBSTANCES.

17.1 **Compliance with Laws and Other Requirements.** During the Term, Lessee and its use and operation of the Premises shall comply, at no cost to Lessor, (i) with all requirements of law (subject to **Section 17.5** hereof) and (ii) with the requirements of all policies of insurance required to be maintained pursuant to **Article 10** of this Lease. It is understood and agreed that Lessee's obligation to comply with all requirements of law shall include the obligation to make, at no cost to Lessor, all additions to, modifications of, and installations on the Premises that may be required by any requirements of law regulating the Premises.

17.2 **Unforeseen Requirements.** The Parties acknowledge and agree that Lessee's obligation under this **Article 17** to comply with all present or future requirements of law is a material part of the bargained-for consideration under this Lease.

17.2.1 Lessee's obligation to comply with all requirements of law shall include, without limitation, the obligation to make substantial or structural repairs and alterations to

the Premises, the Existing Structures, or Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Lessee or Lessor, the degree to which curative action may interfere with Lessee's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular requirements of law involved, or the relationship between the requirements of law involved and Lessee's particular use of the Premises; and

17.2.2 No occurrence or situation arising during the Term, nor any present or future requirements of law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee of its obligations hereunder, nor give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against Lessor, except as may be conferred upon it by any existing or future requirement of law.

17.3 **Definitions.** As used in this Lease, the term "**Hazardous Substances**" shall mean and include: (a) any friable asbestos or asbestos-containing material, polychlorinated biphenyls, dioxins or urea formaldehyde foam insulation; (b) any petroleum products; (c) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in (or for purposes of) any Environmental Laws; and (d) any waste substance, material, pollutant or contaminant, the presence, disposal, release or threatened release of which on, onto or from any premises (including the Premises or the Land), is governed by any applicable Environmental Laws. As used in this Lease, the term "**Environmental Laws**" shall mean all requirements of law now or at any time hereafter in effect which regulate, relate to or impose liability or standards of conduct concerning the generation, disposal, release, threatened release or the presence or management of any Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended by the Hazardous and Solid Wastes Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), the Clean Water Act (33 U.S.C. § 1321 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), comparable state and local requirements of law, and any and all rules and regulations which have become effective prior to the Date of Lease or at any time and from time to time thereafter during the term of this Lease under any and all of the aforementioned laws, or any amendments, modifications or supplements thereto or replacements thereof from time to time.

17.4 **Lessee's Obligations.**

17.4.1 **Compliance With Environmental Laws.** Subject to **Section 17.5** hereof, Lessee shall at all times comply with all Environmental Laws. Notwithstanding anything set forth in this Lease to the contrary, Lessee shall have no obligations and no liabilities and shall bear no expense with respect to any Hazardous Substances (i) existing on the Premises prior to the Effective Date, or (ii) at the Premises and not caused or knowingly permitted by Lessee or any Lessee Parties, except that: (1) Lessee shall be obligated to comply with all Environmental Laws applicable to any Hazardous Substances; and (2) nothing set forth in this **Section 17.4.1** shall be deemed to excuse or

release Lessee from any obligation or liability arising out of or relating to any negligence or intentional misconduct of Lessee or any Lessee Parties with regard to any Hazardous Substances.

17.4.2 **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises in violation of Environmental Laws, Lessee shall immediately give Lessor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to such Hazardous Substance.

17.5 **Right to Contest.** Lessee shall have the right to contest, at its sole cost, by appropriate legal proceedings, the amount or validity of any fine, charge or penalty imposed in connection with an alleged violation of any requirement of law (including but not limited to Environmental Laws), the validity of any requirement of law (including but not limited to Environmental Laws) to the Premises, the validity of any application of any requirement of law (including but not limited to Environmental Laws) to the Premises, the existence of any violation of any requirement of law (including but not limited to Environmental Laws), and/or the validity of any issued notice of violation of a requirement of law (including but not limited to Environmental Laws) (the “**Contested Obligation**”). Lessee may defer payment and/or performance of the Contested Obligation, and such deferred payment and/or performance shall not give rise to an Event of Default hereunder, to the extent that and so long as Lessee is diligently contesting, at its expense, by appropriate legal proceedings the existence, amount or validity of the Contested Obligation, provided that all of the following conditions are met: (i) there is no continuing Event of Default under this Lease; (ii) such contest is made and prosecuted in good faith; (iii) Lessee is not contesting a criminal liability, penalty, or sanction; (iv) Lessor is not exposed to any risk of criminal liability, penalty, or sanction; (v) Lessee shall, promptly upon Lessor’s request, apprise Lessor of the status of the contest and provide Lessor with copies of all documentation relating to such contest; and (vi) Lessee promptly and diligently prosecutes such contest to final conclusion by appropriate legal proceeding. Lessee shall, promptly after the final determination of such contest, comply with the requirements of such determination and pay all amounts levied, assessed, charged or imposed on any of the Lessor Parties, Lessee, the Premises or any part thereof, in connection therewith, together with all fines, penalties, interest, costs and liabilities related thereto.

ARTICLE 18

18. **SUBORDINATION OF FEE MORTGAGE.** Any instrument (including any instrument in the nature of an indenture, mortgage, deed of trust, collateral assignment of beneficial interest in a land trust or other similar instrument) creating a lien as security for any debt and any supplement thereto or any renewal, modification, consolidation, replacement or extension thereof that may now or hereafter be placed by Lessor against Lessor’s interest in the Premises, and all renewals, modifications, consolidations, replacements and extensions thereof (each, a “**Fee Mortgage**”), is and shall be expressly subject and subordinate to this Lease, any current or future New Lease, and all amendments, modifications, and extensions thereof, and shall include the agreement of the holder or holders at any time or from time to time of the note evidencing the debt and other obligations secured by any Fee Mortgage (each, a “**Fee Mortgagee**”) to execute and deliver to any Lender’s designee, for recording, with respect to any New Lease, a subordination agreement containing such terms as are reasonably acceptable to the Fee Mortgagee and applicable Curing Party. Lessee shall not subordinate this Lease to any Fee Mortgage without the prior written consent of all Lenders. Lessor represents that there is not any Fee Mortgage or Fee Mortgagee as of the Effective Date. After receipt of a notice of

the existence of a Fee Mortgagee and the contact information of the Fee Mortgagee, Lessee shall give Fee Mortgagee, in the manner provided by **Section 26.1** of this Lease, a copy of each notice of default given by Lessee to Lessor, at the same time that Lessee gives such notice of default to Lessor or promptly thereafter, provided Lessee shall be obligated to provide such notice of default only if Lessee has received such contact information. The Fee Mortgagee shall have the right, but not the obligation, to cure such default or to cause such default to be cured, within the time periods set out in **Article 28** below.

ARTICLE 19

19. **ESTOPPEL CERTIFICATE.** Lessee and Lessor, as the case may be, shall at any time upon not less than twenty (20) days prior written notice from the other Party execute, acknowledge and deliver to the requesting Party a written and signed estoppel certificate in a form reasonably approved by the Parties. Any such estoppel certificate may be conclusively relied upon by any Lender or any prospective purchaser or Fee Mortgagee of the Premises. A requested Party's failure to deliver an estoppel certificate within such time shall be conclusive upon the requested Party, as applicable, (i) that this Lease is in full force, without modification except as may be represented by the requesting Party, (ii) that there are no uncured defaults in Lessor's performance or uncured Events of Default, as applicable, and (iii) that not more than one (1) month's Base Rent has been paid in advance.

ARTICLE 20

20. **EVENTS OF DEFAULT.** Each of the following shall constitute an "**Event of Default**" hereunder: (i) Lessee or Lessor fails to pay any amount due when due hereunder and such failure shall continue for a period of ten (10) days after the defaulting Party's receipt of written notice that such amount is past due; (ii) Lessor or Lessee fails to observe or perform any other term, condition or covenant of this Lease binding upon or obligating Lessor or Lessee, as applicable, but only if such Party (x) does not cure such failure within thirty (30) days after written notice from the non-defaulting Party or (y) if such failure cannot be reasonably cured within thirty (30) days, the defaulting Party does not (i) within said thirty (30) days initiate such cure and (ii) within ninety (90) days after such notice, both (Y) diligently pursue appropriate measures to cure the failure and (Z) cure the failure, or if such failure cannot reasonably be cured within such ninety (90) day period, diligently pursue the completion of such cure; (iii) the Premises are abandoned by reason of a course of conduct by Lessee that reasonably evidences an intent to permanently relinquish its rights under this Lease and such conduct continues for a period of ninety (90) consecutive days; (iv) Lessee makes or consents to a general assignment for the benefit of creditors or a common law composition of creditors, or a receiver of the Premises or all or substantially all of Lessee's assets is appointed; or (v) Lessee files a voluntary petition in any bankruptcy or insolvency proceeding, or an involuntary petition in any bankruptcy or insolvency proceeding is filed against Lessee and is not discharged by Lessee or the guarantor within sixty (60) days.

ARTICLE 21

21. RIGHTS OF OTHERS TO CURE; REMEDIES.

21.1 **Cure Rights.** The non-defaulting Party shall not exercise its remedies set forth in **Section 21.3** below for an Event of Default if:

21.1.1 As to a monetary Event of Default, the defaulting Party cures such Event of Default on or before the date that is thirty (30) days after such defaulting Party is given notice of the defaulting Party's default; and

21.1.2 As to a non-monetary Event of Default, (i) the non-defaulting Party receives written notice from the defaulting Party (the "**Cure Notice**") within thirty (30) days after the date such defaulting Party is given notice of default, that such defaulting Party agrees to remedy the default and (ii) the defaulting Party cures such default on or before the expiration of the applicable notice and cure periods set forth in items (ii) - (v) in **Article 20** above, with such applicable notice and cure period commencing on the date on which the defaulting Party receives notice of the default, as aforesaid (the "**Cure Period**"). Notwithstanding the foregoing, if any non-monetary default is not capable of being remedied within the Cure Period, the Cure Period shall be the greater period of time as is reasonably necessary to cure such Event of Default if within ninety (90) days of the Cure Notice, the defaulting Party provides the non-defaulting Party notice that it intends to cure the Event of Default and is continuously diligently pursuing such cure.

21.2 **Abandonment Notice.** At any time after the delivery of the Cure Notice, Curing Party may notify Lessor, in writing, that it has relinquished possession of the Premises, or that it will not institute foreclosure proceedings, or, if such proceedings have been commenced, that it has discontinued or will discontinue such proceedings, and that it relinquishes all right to a New Lease (the "**Abandonment Notice**"). In such event, Curing Party shall have no further obligation to cure Lessee's default(s). Lessor may, at any time after receipt of such Abandonment Notice or upon Curing Party's failure to comply with the requirements of **Section 21.1** above, terminate this Lease in accordance with **Section 21.3** below, without any obligation to give Curing Party a New Lease.

21.3 **Lessor's Remedies.** Subject to **Section 21.1**, upon the occurrence of an Event of Default by Lessee, Lessor may, at its election, (i) terminate this Lease or (ii) terminate Lessee's right to possession of the Premises, without terminating this Lease. Upon termination of this Lease, or upon any termination of the Lessee's right to possession of the Premises, without termination of this Lease, Lessee shall surrender possession and vacate the Premises immediately, and deliver possession of the same to Lessor, and Lessee hereby grants to Lessor the full and free right, without demand or notice of any kind to Lessee, to enter into and upon the Premises, with or without process of law, and to repossess the Premises as Lessor's former estate and, subject to **Section 21.4** below, to expel or remove Lessee

21.4 **Termination of Lease.** If Lessor elects, pursuant to **Section 21.3** above, to terminate this Lease, Lessor shall be entitled to recover as damages all Rent and other sums due and payable by Lessee on the date of termination, plus such other damages resulting from such default, the cost of performing any other covenants to be performed by the Lessee and all other costs and expenses of Lessor resulting from such default, including attorneys' fees, allowable under this Lease or at law.

21.5 **Termination of Right of Possession.** If Lessor elects, pursuant to **Section 21.3** above, to terminate Lessee's right to possession of the Premises without terminating this Lease, Lessor

may, at Lessor's option, enter into the Premises, remove all property, signs, and other evidences of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating this Lease or releasing Lessee, in whole or in part, from Lessee's obligations to pay the Rent hereunder for the full Term or from any of its other obligations under this Lease. Lessor shall have the right to relet all or any part of the Premises for such rent and upon such terms as shall be satisfactory to Lessor in its sole discretion (including the right to relet a portion of the Premises and the right to change the character or use made of the Premises); provided, however, Lessor shall have the obligation to mitigate damages to the extent required under applicable requirements of law. Notwithstanding an election by Lessor to terminate Lessee's right to possession of the Premises, Lessor may at any time thereafter elect to terminate this Lease as it pertains to the Premises.

21.6 **Lessee's Remedies.** Subject to **Section 21.1**, upon the occurrence of an Event of Default by Lessor, Lessee may exercise any and every remedy available in equity or at law, including, without limitation termination of this Lease and commencement of action for damages suffered by Lessee.

21.7 **Remedies Cumulative.** No remedy herein or otherwise conferred upon or reserved to either Party shall be considered to exclude or suspend any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to any Party may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

21.7.1 **No Waiver.** No delay or omission of Lessor to exercise any right or power arising from any default shall impair any such right or power or be construed to be a waiver of any such default or any acquiescence therein. No waiver by Lessor of any default of any of the covenants of this Lease shall be construed, taken or held to be a waiver of any other default, or as a waiver, acquiescence in or consent to any further or succeeding default of the same covenant. The acceptance by Lessor of any payment of Rent or other sums due hereunder after the termination by Lessor of this Lease, or of Lessee's right to possession hereunder, shall not, in the absence of agreement in writing to the contrary by Lessor, be deemed to restore this Lease or Lessee's rights hereunder, as the case may be, but shall be construed as a payment on account, and not in satisfaction of damages due from Lessee to Lessor.

21.8 **Late Charge.** After the first (1st) occasion in any twelve (12) month period that any Rent due hereunder is not paid by the tenth (10th) day after which said Rent is due and payable, then Lessee shall immediately pay to Lessor, as additional Rent, a late charge equal to five percent (5%) of the amount of such Rent. In addition, any late Rent payment shall bear interest from the date that Rent became due and payable to the date of payment by Lessee at the interest rate of four (4) percentage points above the then applicable Wall Street Journal Prime Rate (U.S. money center commercial banks) (the "**Default Rate**"), provided that in no case shall the Default Rate be higher than the highest rate permitted by applicable law. If a Rent check is returned for insufficient funds or otherwise is not accepted by Lessor's bank, in addition to other remedies, Lessor may impose an appropriate fee which shall be paid by Lessee upon receipt of written demand, and Lessor may require that subsequent payments of Rent be made by certified checks.

21.9 **Inconsistency.** To the extent any of the other provisions of this Lease are inconsistent with the provisions of this **Article 21**, so long as any Mortgage remains in effect, the provisions of this **Article 21** shall control and shall be read in a manner to give the protection of the provisions hereof to the holder(s) of such Mortgage(s).

ARTICLE 22

22. **RIGHT OF NON-DEFAULTING PARTY TO CURE DEFAULTING PARTY'S DEFAULT.** If an Event of Default occurs and remains uncured beyond the applicable cure period the non-defaulting Party may (but shall not be obligated to), after giving the defaulting Party an additional fifteen (15) days' written notice of its intention to cure such Event of Default (except in the case of an emergency, in which case no additional notice shall be required), make such payment or do such act to cure the Event of Default, and charge the expense, together with interest, at the Default Rate, to any such Party. Payment for the cure shall be due and payable by the defaulting Party upon demand; however, the making of any payment or the taking of such action by the non-defaulting Party shall not be deemed to cure the Event of Default or to prevent the non-defaulting Party from the pursuit of any remedy to which the non-defaulting Party would otherwise be entitled.

ARTICLE 23

23. **EXCULPATION OF LESSOR; LESSEE'S RIGHT OF SETOFF.** Lessor, the Lessor Parties and Lessor's attorneys shall have no personal liability with respect to any provision of this Lease, or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations. Lessee (and any person claiming by or through Lessee) shall look solely to the equity of Lessor in the fee title to the Premises for the satisfaction of any remedies of Lessee; provided, however, that if as a consequence of such breach or default, Lessee recovers a final, non-appealable money judgment against Lessor, such judgment may be satisfied (i) out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Lessor in the Premises, (ii) out of any rents or other income from such property receivable by Lessor, including by exercising a setoff in the amount of such judgment against Rent next coming due hereunder, or (iii) out of the consideration received by Lessor from sale or other disposition of all or any part of Lessor's right, title and interest in all or any portion of the Premises.

ARTICLE 24

24. **SURRENDER OF PREMISES.** Lessee shall peaceably surrender the Premises to Lessor on the Expiration Date or earlier termination of this Lease, with all structures, the Existing Structures, the Improvements, fixtures and alterations constructed by Lessee intact and in good and operating condition, normal wear and tear excepted, except that Lessee may remove its personal property from the Premises. Upon the expiration or earlier termination of this Lease, Lessor shall automatically become the owner of title to all such structures, the Existing Structures, the Improvements, fixtures and alterations. Lessee shall repair any damage to the Premises, except for reasonable wear and tear and loss by fire or other casualty not caused by Lessee or its agents. Any personal property left on or in the Premises after the Expiration Date or earlier termination of this Lease shall be deemed to be abandoned, and, at Lessor's option, title shall pass to Lessor under this Lease.

ARTICLE 25

25. **HOLDING OVER.** In the event that Lessee shall not immediately surrender the Premises to Lessor on the Expiration Date or earlier termination of this Lease, Lessee shall be deemed to be a month to month tenant upon all of the terms and provisions of this Lease, except the monthly Rent shall be one hundred fifty percent (150%) of the monthly Rent in effect during the last month of the Term. If Lessee shall hold over after the Expiration Date or earlier termination of this Lease, and Lessor shall desire to regain possession of the Premises, then Lessor may forthwith re-enter and take possession of the Premises without process or by any legal process in force in the State of Iowa. Lessee shall indemnify Lessor and all Lessor Parties against all liabilities and damages sustained by Lessor by reason of such holding over.

ARTICLE 26

26. GENERAL MATTERS.

26.1 **Notices.** All notices or other communications between the Parties shall be in writing and shall be deemed duly given, if delivered in person, or one (1) business day following deposit with a nationally recognized overnight courier, addressed and sent to the Parties at their addresses set forth in **Section 1.7** and **Section 1.8** above. Lessor and Lessee may from time to time by written notice to the other designate another address for receipt of future notices.

26.2 **Successors and Assigns.** The covenants and agreements herein contained shall, subject to the provisions of this Agreement, bind and inure to the benefit of the successors and assigns of the respective Parties hereto, and the same shall be construed as covenants running with the Premises. Lessee may not assign its rights and obligations under this Agreement except in connection with **Article 13** herein.

26.3 **Memorandum of Ground Lease.** The Parties agree to execute and record in the form attached hereto as **Exhibit C** (the "**Lease Memo**"). Promptly upon Lessor's request following the Expiration Date or earlier termination of this Lease, Lessee shall deliver to Lessor a duly executed and acknowledged release and termination of the Lease Memo suitable for recordation with the Recorder and in form and content satisfactory to Lessor, for the purpose of evidencing in the public records the termination of Lessee's interest under this Lease. Lessor may record such release and termination of the Lease Memo at any time on or after the Expiration Date or earlier termination of this Lease, without the need for any approval or further act of Lessee. The terms of this **Section 26.3** shall survive the expiration of the Term or earlier termination of this Lease.

26.4 **Waiver; Integration.** The consent of Lessor in any instance to any variation of the terms of this Lease shall not be deemed to be a waiver as to any breach of any Lease covenant or condition, nor shall any waiver occur to any provision of this Lease except in writing, signed by Lessor or Lessor's authorized agent. It is understood and acknowledged that there are no oral leases between the Parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations and understandings, if any, between the Parties hereto and none thereof shall be used to interpret or construe this Lease. This Lease and any exhibits and addenda hereto executed by Lessor and Lessee in connection with this Lease and dated of even date herewith contain all of the terms, covenants and Leases of the Parties relating in any manner to the Premises, and shall be considered to be the only Lease between the Parties hereto and their representatives and agents.

26.5 **Severability.** If any term or provision of this Lease or any application shall be invalid or unenforceable, then the remaining terms and provisions of this Lease shall not be affected.

26.6 **Force Majeure.** For purposes of this Lease, the term “**Force Majeure**” shall mean delays due to strikes, lock-outs, acts of God, inability to obtain materials or commercially reasonable substitutes for such materials, governmental restrictions, failure of governmental authorities to timely or reasonably issue permits, inspect, approve or provide other necessary authorizations where not due to the fault of Lessee or Lessor (as the case may be), civil commotion, medical/health pandemic, fire, unavoidable casualty or similar causes, provided such similar causes are beyond the reasonable control of Lessee or Lessor, as the case may be, and with respect to Lessee shall also include any delay arising out of Lessor's failure to take any action required by the terms of this Lease to be taken by Lessor within the time period or periods specified hereunder for such action. In no event shall this **Section 26.6** be interpreted to relieve Lessee of any of its obligations to pay any amounts when due under this Lease.

26.7 **Attorneys' Fees.** If either Party commences litigation against the other for the specific performance of this Lease, for damages for breach hereof or otherwise for enforcement of any remedy hereunder, the Parties hereto agree to and hereby do waive any right to a trial by jury and, in the event of any such commencement of litigation, the prevailing Party shall be entitled to recover from the other Party such costs and reasonable attorneys' fees as may have been incurred in connection with such litigation.

26.8 **Governing Law.** This Lease shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Iowa.

26.9 **Submission of Lease.** Submission of this instrument for examination or signature by Lessee does not constitute a reservation of or an option for lease and it is not effective as a lease or otherwise until execution and delivery by both Lessor and Lessee.

26.10 **Brokers.** Lessee hereby represents and warrants that Lessee has not engaged the services of a real estate broker and/or agent in connection with the negotiation of this Lease, and Lessee agrees to indemnify, defend and hold the Lessor harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the dealings by Lessee with any real estate broker or agent. The terms of this **Section 26.10** shall survive the expiration of the Term or earlier termination of this Lease.

_____ shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

26.12 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the Parties hereto or by any third-party to create the relationship of principal and agent, partnership, joint venturer or any association between Lessor and Lessee, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the Parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

26.13 **Time of Essence.** Time is of the essence of this Lease and each of its provisions.

26.14 **Authority.** If Lessor is a corporation, partnership or other form of legal entity, each individual executing this Lease on behalf of Lessor hereby represents and warrants that Lessor is a duly formed and existing entity qualified to do business in Iowa and that Lessor has full right and authority to execute and deliver this Lease and that each person signing on behalf of Lessor is authorized to do so. If Lessee is a corporation, partnership or other form of legal entity, each individual executing this Lease on behalf of Lessee hereby represents and warrants that Lessee is a duly formed and existing entity qualified to do business in Iowa and that Lessee has full right and authority to execute and deliver this Lease and that each person signing on behalf of Lessee is authorized to do so.

26.15 **Amendment.** This Lease may only be amended by a written instrument which is signed by both Parties hereto.

26.16 **Counterparts.** This Lease may be signed in counterparts, each of which shall be deemed an original but all of which together constitute one (1) and the same instrument.

26.17 **Exhibits.** The Recitals hereto and the exhibits that are attached to this Lease are all incorporated herein by this reference as if fully set forth.

26.18 **Limitations on Lessor's Liability Following Transfer.** The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only Lessor or the owners of Lessor's interest in the Premises at the time any determination is made under this Lease and, in the event of any transfer or transfers of Lessor's interest in the Premises, its Affiliates (and in case of any subsequent transfer or conveyance, the grantor in any such transfer or conveyance) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all liability, provided such transferee assumes Lessor's obligations hereunder from and after the date of such transfer in writing, in respect of the performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed; provided that, with respect to any funds or securities in which Lessee has an interest, Lessor (or such grantor) at the time of such transfer or conveyance, shall not be freed or relieved of liability until (i) such funds and securities shall be accounted for and turned over to the grantee or, at the request of Lessee, to a bank or trust company to be selected by Lessor, and whose fees or charges shall be paid by Lessor, in trust for the purposes for which said funds or securities were paid to Lessor (or such grantor), and (ii) any amount then due and payable to Lessee by Lessor (or such grantor) under any provision of this Lease shall be paid to Lessee and any such assignee agrees to assume the obligations of Lessor from and after the date of any such assignment. Notwithstanding the foregoing, or any other provision contained in this Lease, Lessor's obligations under this Lease shall not constitute a personal obligation of Lessor or any of the Lessor Parties and Lessee or any other person claiming by, through or under Lessee will look solely to Lessor's interest in the Premises for satisfaction of any liability of Lessor in respect to this Lease and will not seek recourse against any other assets of Lessor, Lessor's attorneys or the Lessor Parties.

26.19 **Method of Payment.** All amounts payable under this Lease shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

26.20 **Premises Name and Signage.** Lessee desires prominent identification indicating its tenancy in the Premises and shall be allowed such signage provided it is in compliance with the applicable city or municipal code and approved by the local city or municipality, if required.

ARTICLE 27

27. RENEWAL OPTIONS.

27.1 **Renewal Right.** Lessee shall have the right to extend the Term for the Renewal Terms, as defined in **Section 1.4** above, upon the same terms and conditions as are herein provided, except that the Base Rent during the Renewal Term shall be as set forth on **Exhibit B** attached hereto. Such right shall be exercised by Lessee by giving written notice (the "**Notice to Renew**") to Lessor at least twelve (12) months prior to the then current Expiration Date. Time shall be of the essence for the exercise of such option. Lessee shall have no further right to extend or renew this Lease beyond the expiration of the Renewal Terms. Lessee may exercise an option to renew hereunder, and an exercise thereof shall be only effective, if at the time of Lessee's exercise of the applicable option, this Lease is in full force and effect and there are no continuing Events of Default by Lessee under this Lease. Notwithstanding the foregoing, Lessor may, in its sole discretion, accept Lessee's exercise of such option even if all of the criteria set forth above are not satisfied.

27.2 **Renewal Term Amendment.** If Lessee has validly exercised a renewal right, then, within fifteen (15) business days after the request by either Party, Lessor and Lessee shall enter into a written amendment of this Lease confirming the terms, conditions and provisions applicable to such Renewal Term as determined in accordance herewith.

(SIGNATURE PAGE FOLLOWS)

**SIGNATURE PAGE OF
GROUND LEASE**

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date defined on the first page of this Lease.

DES MOINES AREA COMMUNITY COLLEGE, Lessor

By: _____
_____,
NAME TITLE
DATED: June __, 2025

PRAIRIE POINTE, LC, Lessee

By: _____
_____,
NAME TITLE
DATED: June __, 2025

EXHIBIT A
LEGAL DESCRIPTION

Commencing at the East Quarter (E $\frac{1}{4}$) corner of said Section Twenty-six (26), thence along the North line of the South Half (S $\frac{1}{2}$) of said Section Twenty-six (26) on an assumed bearing S 89°57'17" W, a distance of 3,900 feet to the point of beginning; thence N 89°57'17" E along the North line of said South Half (S $\frac{1}{2}$) of Section Twenty-six (26), a distance of 320 feet; thence S 20°08'29" E, a distance of 300.3 feet; thence S 59°29'48" W, a distance of 344.19 feet; thence N 45°02'43" W, a distance of 178.9 feet; thence N 0°02'43" W, a distance of 330 feet to the point of beginning, containing 3.32 acres, more or less

EXHIBIT B
RENT SCHEDULE

The Base Rent payable by Lessee during the Term shall be in the following amounts:

Lease Year 1 through Lease Year 10 -	\$	100.00
Lease Year 11 through Lease Year 20 -	\$	100.00
Lease Year 21 through Lease Year 30 -	\$	100.00
Lease Year 31 through Lease Year 40 -	\$	100.00
Lease Year 41 through Lease Year 50 -	\$	100.00
Renewal Term 1 -	\$	_____
Renewal Term 2 -	\$	_____

EXHIBIT C
FORM OF MEMORANDUM OF GROUND LEASE



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

Number: 25-070

Page: 1

AGENDA ITEM

Consideration of a Memorandum of Understanding with Des Moines Area Community College Educational Services Association (ESA)

BACKGROUND

During the June 16, 2025 Board meeting, the ESA Tentative Agreement was approved differentiating Night Shift custodial employees and classifying them as a grade 6, with the understanding that if they go back to a dayshift custodian, grade 5, they would experience the lost in pay at the rate of the difference of the starting minimums.

We would like to extend this same methodology to maintenance custodians, maintenance custodian technicians, and custodians.

We propose to remove the current language in the ESA agreement.

“Night shift custodial employees will be classified as a grade 6, with the understanding that if they are to go back to a dayshift custodian, grade 5, that they would experience the loss in pay at the rate of the difference of the starting minimums.”

We propose to replace the language regarding the Night Shift to the following.

“Night shift employees will be classified at a grade above standard classification, with the understanding that if they are to go back to a dayshift position, that they would experience the loss in pay at the rate of the difference of the starting minimums and return to their standard pay grade.”

RECOMMENDATION

It is recommended that the Board accepts the Memorandum of Understanding reached with the ESA.

Robert J. Denson, President



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-071
Date: July 14, 2025
Page: 1 of 2*

AGENDA ITEM

**A RESOLUTION APPROVING THE FORM AND CONTENT AND
EXECUTION AND DELIVERY OF A WORKFORCE TRAINING
AND ECONOMIC DEVELOPMENT TRAINING CONTRACT
UNDER CHAPTER 260C, CODE OF IOWA, FOR IOWA
ORTHOPEDIC CENTER PC DBA IOWA ORTHO, PROJECT
1**

BACKGROUND

Chapter 260C.18A, Code of Iowa, provides for retraining programs for businesses currently conducting retooling of a production facility and training programs for small businesses which meet other criteria established by the State of Iowa. Workforce Training and Economic Development Funds for projects are obtained from the State of Iowa through the Iowa Department of Education. The company identified below has met state criteria and DMACC is prepared to enter into an agreement to provide retraining or training as follows:

Company Name/Address:	Iowa Orthopedic Center PC dba Iowa Ortho 450 Laurel Street Des Moines, IA 50314
Product/Service:	This company provides physical medicine and rehabilitation, access to pain management specialists, as well as a full staff of medical professionals dedicated to orthopedics.
Type of Project:	Retraining project for existing work force
Nature of Project:	The project will provide for: Leadership Development Training and Coaching
Training Period:	6/12/2025 - 6/11/2026
Average Wage Rate:	\$36.44
Number of Jobs Affected:	28
First Year of Operation:	1970
Available Training Funds:	\$ 20,000
Form of Training Funds:	Forgivable Loan

RECOMMENDATION

The proposed Resolution, Contract and Budget are on file with the Board Secretary and available for inspection. It is recommended that the Board adopt the Resolution approving the form and content and execution and delivery of the Contract for this project.

Robert J. Denson, President



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-072
Date: July 14, 2025
Page: 1 of 1*

AGENDA ITEM

**A RESOLUTION APPROVING THE FORM AND CONTENT AND
EXECUTION AND DELIVERY OF A WORKFORCE TRAINING
AND ECONOMIC DEVELOPMENT TRAINING CONTRACT
UNDER CHAPTER 260C, CODE OF IOWA, FOR CITY OF
BONDURANT, PROJECT #1**

BACKGROUND

Chapter 260C.18A, Code of Iowa, provides for retraining programs for businesses currently conducting retooling of a production facility and training programs for small businesses which meet other criteria established by the State of Iowa. Workforce Training and Economic Development Funds for projects are obtained from the State of Iowa through the Iowa Department of Education. The company identified below has met state criteria and DMACC is prepared to enter into an agreement to provide retraining or training as follows:

Company Name/Address:	City of Bondurant
Product/Service:	This organization is a municipal government entity
Type of Project:	Retraining project for existing work force
Nature of Project:	The project will provide for: leadership development training
Training Period:	06/02/2025- 06/02/2026
Average Wage Rate:	\$31.98
Number of Jobs Affected:	10
First Year of Operation:	1897
Available Training Funds:	\$10,819
Form of Training Funds:	Forgivable Loan

RECOMMENDATION

The proposed Resolution, Contract and Budget are on file with the Board Secretary and available for inspection. It is recommended that the Board adopt the Resolution approving the form and content and execution and delivery of the Contract for this project.

Robert J. Denson, President



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-073
Date: July 14, 2025
Page: 1 of 1*

AGENDA ITEM

**A RESOLUTION APPROVING THE FORM AND CONTENT AND
EXECUTION AND DELIVERY OF A WORKFORCE TRAINING
AND ECONOMIC DEVELOPMENT TRAINING CONTRACT
UNDER CHAPTER 260C, CODE OF IOWA, FOR STORY
CONSTRUCTION CO., PROJECT #8**

BACKGROUND

Chapter 260C.18A, Code of Iowa, provides for retraining programs for businesses currently conducting retooling of a production facility and training programs for small businesses which meet other criteria established by the State of Iowa. Workforce Training and Economic Development Funds for projects are obtained from the State of Iowa through the Iowa Department of Education. The company identified below has met state criteria and DMACC is prepared to enter into an agreement to provide retraining or training as follows:

Company Name/Address: Story Construction Co.
2810 Wakefield Circle
Ames, IA 50010

Product/Service: Construction Services

Type of Project: Retraining project for existing work force

Nature of Project: The project will provide for: TWI training

Training Period: October 1, 2025- March 30, 2026

Average Wage Rate: \$36.29/hr
Number of Jobs Affected: 8
First Year of Operation: 1934
Available Training Funds: \$20,000

Form of Training Funds: Forgivable Loan

RECOMMENDATION

The proposed Resolution, Contract and Budget are on file with the Board Secretary and available for inspection. It is recommended that the Board adopt the Resolution approving the form and content and execution and delivery of the Contract for this project.

Robert J. Denson, President



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-074
Date: July 14, 2025
Page: 1 of 1*

AGENDA ITEM

A RESOLUTION APPROVING THE FORM AND CONTENT AND EXECUTION AND DELIVERY OF A WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT TRAINING CONTRACT UNDER CHAPTER 260C, CODE OF IOWA, FOR THE WELL RESOURCE CENTER, PROJECT #4

BACKGROUND

Chapter 260C.18A, Code of Iowa, provides for retraining programs for businesses currently conducting retooling of a production facility and training programs for small businesses which meet other criteria established by the State of Iowa. Workforce Training and Economic Development Funds for projects are obtained from the State of Iowa through the Iowa Department of Education. The company identified below has met state criteria and DMACC is prepared to enter into an agreement to provide retraining or training as follows:

Company Name/Address:	The Well Resource Center
Product/Service:	This company provides life skills training and coaching, as well as a work program for clients (manufacturing).
Type of Project:	Retraining project for existing work force
Nature of Project:	The project will provide for: Resp workplace, leadership, CPR/First aid, Excel
Training Period:	06/16/2025-06/16/2026
Average Wage Rate:	\$25.30
Number of Jobs Affected:	60
First Year of Operation:	2011
Available Training Funds:	\$19,936
Form of Training Funds:	Forgivable Loan

RECOMMENDATION

The proposed Resolution, Contract and Budget are on file with the Board Secretary and available for inspection. It is recommended that the Board adopt the Resolution approving the form and content and execution and delivery of the Contract for this project.

Robert J. Denson, President



BOARD REPORT

*To the Board of Directors of
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*Number: 25-075
Date: July 14, 2025
Page: 1*

AGENDA ITEM

Consideration of appointment of a Board Member Emeritus

BACKGROUND

As the Board is aware, Joe Pugel served on the DMACC Board for 28 years and recently retired from the DMACC Board as its longest serving Board Chair. He was recognized and awarded an Honorary DMACC Degree at the June meeting of the Board. The Honorary Degree was recently delivered to Joe at the very successful DMACC CEO Golf Invitational. It was very well deserved.

The DMACC Board is in the process of a search for the next DMACC President/CEO, with the official announcement to be posted July 15.

Given the importance of the process and decision to come before the Board over the next 6 months I would like to ask Joe Pugel to serve in an Emeritus Trustee role, first, because of his DMACC knowledge and history, having served with all four (4) DMACC Presidents and involved in the selection of three (3); and second, he has played a role in the success DMACC has experienced.

He would not be in a voting role but could be called upon to give guidance and advice.

RECOMMENDATION

That Joe Pugel be designated DMACC Board Member Emeritus.

Kevin Halterman, Vice Chair of DMACC Directors



BOARD REPORT

*To the Board of Directors of
Des Moines Area Community College*

*Number: 25-076
Date: July 14, 2025
Page: 1 of 1*

AGENDA ITEM

Receive and file the President's recommendations for termination of specially funded contracts under Iowa Code Chapter 279.

BACKGROUND

Funds used to pay the salary of one (1) specially funded faculty position is insufficient to retain the position.

DMACC administration was informed June 30 that the special funding related to Adult Education was not yet available for the upcoming fiscal year. The decision was made on July 10 to rescind the faculty member's specially funded contract, for the upcoming academic year. Should sufficient funding become available, it is our intent to re-employ this individual.

RECOMMENDATION

It is recommended that the Board receive and file the President's recommendation for termination of the continuing contract under Iowa Code Chapter 279.

Robert J. Denson, President