

Des Moines Area Community College

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Board of Directors Meeting Minutes

10-28-2016

Board of Directors Meeting Minutes (October 28, 2016)

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Board of Directors
Des Moines Area Community College

Telephonic Board Meeting
October 28, 2016 – 3:30 p.m.

Agenda

1. Call to order.
2. Roll call.
3. Consideration of tentative agenda.
4. Public comments.
5. Board Report 16-137. Approval to Accept Gift of Property.
6. Adjourn.

Board of Directors
Des Moines Area Community College

SPECIAL MEETING
October 28, 2016

A telephonic meeting of the Des Moines Area Community College Board of Directors was held on October 28, 2016. This special meeting was necessary to approve a time-sensitive issue, and it was cost-effective to hold the meeting via conference call. Board Chair Joe Pugel called the meeting to order at 3:33 p.m.

ROLL CALL

Members connected via telenet: Fred Buie, Fred Greiner, Kevin Halterman, Cheryl Langston, Joe Pugel and Madelyn Tursi.

Members absent: Felix Gallagher, Jim Knott, and Denny Presnall.

Others present: Robert Denson, President; Carolyn Farlow, Board Secretary; Joe DeHart, Board Treasurer, and Greg Martin, Vice President of Business Services.

APPROVE AGENDA

Tursi moved; seconded by Greiner to approve the agenda. Motion passed unanimously. Aye- Buie, Greiner, Halterman, Langston, Pugel, Tursi. Nay-none.

PUBLIC COMMENTS

None.

APPROVAL TO ACCEPT GIFT OF
PROPERTY

Board Report 16-137. Attachment #1. Buie moved; seconded by Tursi recommending that Board authorize President Denson to finalize and execute the Agreement to accept the gift of property.

Motion passed unanimously. Aye- Buie, Greiner, Halterman, Langston, Pugel, Tursi. Nay-none.

ADJOURN

Tursi moved; seconded by Greiner to adjourn. Motion passed unanimously and at 3:41 p.m. Board Chair Joe Pugel adjourned the meeting. Aye- Buie, Greiner, Halterman, Langston, Pugel, Tursi. Nay-none.



JOE PUGEL, Board Chair



CAROLYN FARLOW, Board Secretary

REAL ESTATE SALE AGREEMENT

THIS REAL ESTATE SALE AGREEMENT ("Agreement") has been made as of October 31, 2016 (the "Effective Date"), by NEWTON ENTERPRISES LLC, an Iowa limited liability company ("Seller,"), and DES MOINES AREA COMMUNITY COLLEGE, an Iowa area community college ("Buyer").

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and subject to the conditions set forth in this Agreement, certain real estate locally known as 403 West 4th Street North, Newton, Iowa 50208 (the "Office Campus Parcel") and certain real estate located adjacent east, opposite West 4th Street of the Office Campus Parcel (the "Parking Lot Parcel"), and legally described on Exhibit A attached to this Agreement (the Office Campus Parcel and the Parking Lot Parcel are together referred to herein as the "Seller Parcel").

The Seller Parcel includes all improvements, fixtures, furnishings, easements, division rights, hereditaments and appurtenances associated with that real estate (the "Land"). The Land, Improvements, Personal Property and the Intangible Property that comprise the Seller Parcel is referred to collectively as the "Premises." The purchase and sale provided for in this Agreement is sometimes referred to as the "Purchase."

For purposes of the foregoing:

(a) "Improvements" shall mean all buildings and all other structures and improvements now situated on the Premises including, but not limited to, fixtures and equipment, elevators, heating, air conditioning, plumbing, mechanical, electrical, drainage, security, life safety and fire alarm systems, and their component parts;

(b) "Personal Property" shall mean Seller's interest in fixtures, furnishings, equipment, appliances, machinery, tools and other personal property which are owned by Seller, currently attached to, located on or used in connection with the ownership, management, maintenance and operation of the Improvements and the Premises, but specifically excluding certain furniture located in Seller's corporate offices located in Building 17 and 18 of the Premises including office furniture and filing cabinets, and certain conference tables upon mutual agreement of the parties hereto; and

(c) "Intangible Property" shall mean any and all right, title and interest of Seller in all (i) development rights and entitlements and other intangible property owned by Seller; (ii) assignable guaranties and warranties issued to Seller and with respect to the Improvements or the Personal Property; and (iii) any reports, studies, surveys and other comparable analyses, depictions or examinations of the Premises or the Improvements, or pertaining to the Premises, the Improvements or the Personal Property or use of them and which

in any way relate to the ownership, management or operation of the Premises (without warranty to accuracy or completeness), to the extent such information is in the possession of Seller.

1. **Purchase Price.** The total purchase price for the Premises is One U.S. Dollar (U.S. \$1.00) ("**Purchase Price**"), payable at Closing (as defined below). This is a donation and there is no consideration other than the required \$1.00 warranty deed consideration.

2. **Title; Survey.**

(a) **Title Policy. Abstract of Title.** Seller has delivered to Buyer, for Buyer's review and approval, an abstract of title to the Office Campus Parcel, continued through September 13, 2016 (the "**Office Campus Abstract**") and an abstract of title to the Parking Lot Parcel, continued through October 7, 2016 (the "**Parking Lot Abstract**", together with the Office Campus Abstract, the "**Abstracts**"). The Abstracts shall become the property of Buyer upon the Closing.

(b) **Title Opinion.** Buyer acknowledges and agrees that it has obtained an opinion of title for the Premises, and the title opinion shows marketable title in Seller in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association; provided that Seller delivers the Deed as provided in this Agreement.

(c) **Survey.** Buyer has, at its expense, ordered an ALTA/ACSM survey of the Premises and adjacent lands that locates the boundaries of the Premises, all improvements to the Premises, any easements or rights of way affecting the Premises and any encroachments across the boundaries of the Premises ("**Survey**"). The Survey has been performed in accordance with the current standards for ALTA/ACSM land title surveys and certified to Seller and Buyer. Buyer agrees to take title to the Premises, subject to such matters as the Survey shows.

3. **Inspections.**

(a) **Property Information.** Buyer acknowledges that Seller has delivered to or made available for inspection by Buyer certain existing inspection reports, title documents, surveys, environmental reports, governmental permits, plans, specifications, drawings, tax bills, leases, service contracts and other documents pertaining the Premises (collectively, "**Property Information**"). Buyer acknowledges that such Property Information has been provided for informational purposes only, and Seller makes no warranties or representations with respect to the accuracy or completeness of any Property Information prepared by a third party.

(b) **Inspection Rights.** During the period prior to Closing, Buyer shall have the opportunity to perform such additional investigations, inquiries and feasibility studies as it deems appropriate with respect to the Premises. All costs and expenses in connection with any such investigations, inquiries, and feasibility studies shall be borne solely by Buyer. Buyer understands that it is responsible for paying the costs of any property damage or personal injuries caused by Buyer or Buyer's Agents (as defined below) in the course of such work, and Seller's reasonable attorneys fees for defending against any claim brought against Seller for those liabilities.

(c) **"AS IS" Purchase.** Buyer acknowledges that Buyer has had, or will have prior to Closing, the opportunity to investigate matters pertinent to the Premises, including, without limitation, its environmental condition and history. Buyer further acknowledges that the Premises may require repairs or maintenance and, except as expressly set forth in Paragraph 4 below, or expressly represented and/or warranted in this Agreement, Buyer, on behalf of itself and all future owners, operators, tenants (other than Seller or any of its affiliates), and licensees of the Premises, agrees to accept the Premises in their present "AS IS" condition, "WITH ALL FAULTS," and with no warranties concerning their condition or permitted use.

4. **Environmental Matters.** In the event that Buyer determines during the course of its investigation of the Premises that any environmental matters concerning the Premises require remediation, then Buyer shall consider the scope, schedule and cost of such remediation work, and Buyer can either (i) terminate this Agreement, or (ii) elect to undertake the remediation of the Premises, at Buyer's sole cost and expense.

5. **Assignment of Leases.** Seller shall assign to Buyer all leases at the Premises. Seller shall provide estoppel certificates from each such lessee to Buyer in form and substance acceptable to Buyer.

6. **Payment of Costs and Expenses; Collection of Rent.** Seller shall be responsible for payment of all costs and expenses of the Premises through the Effective Date, and shall be entitled to collection of all rental payments due prior to the Effective Date. Except for janitorial costs described in Paragraph 7.e. herein, Buyer shall be responsible for payment of all costs and expenses of the Premises subsequent to the Effective Date, and shall be entitled to collection of all rental payments due subsequent to the Effective Date. Any rental payments due after the Effective Date but received by Seller either prior or subsequent to the Effective Date shall immediately be remitted to Buyer.

7. **Seller's Use of Premises.** Following the Effective Date, Seller shall have the right to continue to occupy and use certain areas of the Premises as follows:

- a. Seller shall be permitted to remain in its corporate offices located in Buildings 17 and 18 of the Premises free of rent for a period of six (6) months following the Effective Date. Such period may be extended for an additional three (3) month period with Buyer's consent, which consent shall not be unreasonably withheld, during which extension period Seller shall pay Buyer \$5,000 per month for utilities.
- b. Seller shall be permitted to house a server in the Data Center located in Building 20 as well as one (1) IT employee who shall office in the corporate office located in Building 18 of the Premises, free of rent, each for an indefinite but commercially reasonable period following the Effective Date. In the event Buyer determines a need to use the corporate office space occupied by the IT employee

for other purposes, Buyer shall be permitted to move such employee to another equivalent office as determined by Buyer in Buyer's sole discretion.

- c. Seller shall be permitted to continue to utilize its existing storage space located in Building 82 of the Premises, such storage being located in certain side bays (not in front of the glass doors or in the large aisle running east to west), free of rent for a period of three (3) years following the Effective Date. Seller shall not be permitted to utilize the storage space in a way that would restrict access to any doors, the overhead door or the center aisle.
- d. Buyer shall not be responsible for, and Seller shall indemnify and hold Buyer harmless against any loss or damage to, Seller's equipment, furnishings, or stored items while such items remain on the Premises.
- e. Seller shall maintain janitorial service for the office space Seller occupies pursuant to Paragraphs 7.a. and 7.b. above.

8. **Confidentiality; Indemnity.** All information obtained by Buyer or Buyer's agents, employees, or contractors ("Buyer's Agents") from Seller or the affiliates, officers, employees, agents, consultants or contractors of Seller, or by reason of any inspection of the Premises by Buyer or Buyer's Agents, including, but not limited to, the Property Information, and any data, surveys, written reports, field notes, and drawings resulting from any inspection, survey, test or other inquiry (collectively, "Confidential Information"), shall be held strictly confidential by Buyer and Buyer's Agents, subject to the requirements of the Iowa Open Records Law, Chapter 22 of the Code of Iowa. All inspections and tests performed on the Premises by Buyer or Buyer's Agents shall be conducted in compliance with all federal, state, and local laws, orders, regulations, and ordinances. Buyer understands that it is responsible for paying the costs of: (a) any property damage or personal injuries caused by Buyer or Buyer's Agents in the course of such work and Seller's reasonable attorneys fees for defending against any claim brought against Seller for those liabilities; and (b) Seller's damages for release of any Confidential Information in violation of this Paragraph. The obligations of Buyer under this Paragraph shall survive the Closing and any termination of this Agreement.

9. **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller, that:

(a) Buyer has all necessary power and authority to enter into and perform this Agreement;

(b) Buyer has taken all necessary action to approve, execute, deliver, and perform this Agreement, and this Agreement is the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms;

(c) No judgment is outstanding against Buyer and no litigation, action, suit, judgment, proceeding, or investigation is pending or outstanding before any forum, court, or

governmental body, department or agency or, to the knowledge of Buyer, threatened, that has the stated purpose or the probable effect of enjoining or preventing the Closing;

(d) No insolvency proceeding, including, without limitation, bankruptcy, receivership, reorganization, composition, or arrangement with creditors, voluntary or involuntary, affecting Buyer or any of Buyer's assets or properties, is now or on the Closing Date will be pending or, to the knowledge of Buyer, threatened;

(e) Buyer will have sufficient funds to close the Purchase on the Closing Date; and

(f) Buyer has reviewed the Property Information, Abstracts, Title Documents and other information provided by Seller, and has or will conduct all other inspections, reviews and/or due diligence pertaining to the Premises it desires, and has or will become fully satisfied with such information and results of due diligence.

Buyer shall neither take nor permit any action that would render any of the foregoing representations and warranties untrue or incorrect. The Buyer's representations and warranties set forth in this Agreement shall be deemed to have been made again by Buyer as of the Closing Date.

10. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer, that:

(a) Seller has all necessary power and authority to enter into and perform this Agreement;

(b) Seller has taken all necessary action to approve, execute, deliver, and perform this Agreement and the Purchase, and this Agreement is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms;

(c) No judgment is outstanding against Seller and no litigation, action, suit, judgment, proceeding, or investigation is pending or outstanding before any forum, court, or governmental body, department or agency or, to the knowledge of Seller, threatened, that has the stated purpose or the probable effect of enjoining or preventing the Closing;

(d) No insolvency proceeding, including, without limitation, bankruptcy, receivership, reorganization, composition, or arrangement with creditors, voluntary or involuntary, affecting Seller or any of Seller's assets or properties, is now or on the Closing Date will be pending or, to the knowledge of Seller, threatened;

(e) Seller is not a "foreign person" as defined in §1445(f)(3) of the Internal Revenue Code and regulations promulgated under it, which Seller shall so certify at Closing; and

(f) To Seller's knowledge, as of the Effective Date, except for any such matters which may have been previously cured by Seller and except as otherwise disclosed in any environmental reports obtained by Buyer, or delivered or made available to Buyer, (i) Seller has not received written notice from any governmental entity of any violation of any ordinance, code, law, rule, requirement or regulation of any governmental agency affecting the Premises or its use, including Environmental Laws related to the Premises, or of the presence or release of Hazardous Materials on or from the Premises; (ii) Seller has not manufactured, introduced, released or discharged from or onto the Premises any Hazardous Materials or any toxic wastes, substances or materials (including, without limitation, asbestos) in violation of Environmental Laws, (iii) there are no abandoned wells, solid waste disposal sites, underground storage tanks, private burial sites or private sewage disposal systems located in or on the Premises in violation of Environmental Laws. As used herein, the term "Environmental Laws" includes without limitation, all statutes, ordinances, orders, rules and regulations of all federal, state or local governmental agencies relating to the use, generation, manufacture, installation, release, discharge, storage or disposal of Hazardous Materials as they relate to the Premises. As used herein, the term "Hazardous Materials" includes petroleum, petroleum products, asbestos, asbestos containing materials, polychlorinated biphenyls, radioactive materials, radon gas or any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste" or "toxic substances," or words of similar import, under any Environmental Laws, including without limitation the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Superfund Amendments and Reauthorization Act, as amended (42 U.S.C. § 9601 et seq.), and the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.).

(g) All costs and expenses of the Premises through the Effective Date have been paid.

Seller shall neither take nor permit any action that would render any of the foregoing representations and warranties untrue or incorrect. The Seller's representations and warranties set forth in this Agreement shall be deemed to have been made again by Seller as of the Closing Date.

11. **Conditions Precedent to Buyer's Obligation.** The obligation of Buyer to buy the Premises shall be subject to full satisfaction of the following conditions precedent:

(a) The truth and accuracy of each representation and warranty of Seller contained in this Agreement as if made on and as of the Closing Date.

(b) Seller shall not then be in default of any covenant or agreement to be performed by Seller under this Agreement.

(c) Seller shall have assigned to Buyer any and all service contracts pertaining to the Premises and provided written confirmation that there are no past due expenses to be assumed.

(d) Seller shall have assigned to Buyer any and all leases and provided tenant estoppels to Buyer as provided in Paragraph 5 hereof.

Buyer may waive any of the conditions precedent to Buyer's obligation to perform under this Agreement. If the conditions set forth in this Paragraph are not satisfied or waived by Buyer, then in addition to any other remedies Buyer may have, Buyer may elect by written notice to Seller to terminate this Agreement, and the parties shall have no further obligations to each other except for such obligations as this Agreement provides expressly survive its termination.

12. **Conditions Precedent to Seller's Obligation.** The obligation of Seller to sell the Premises shall be subject to timely satisfaction or waiver of the following conditions precedent:

(a) Buyer's timely delivery of any funds required of Buyer, if any, under this Agreement.

(b) The truth and accuracy of each representation and warranty of Buyer contained in this Agreement as if made on and as of the Closing Date.

(c) Buyer shall not then be in default of any covenant or agreement to be performed by Buyer under this Agreement.

Seller may waive any of the conditions precedent to Seller's obligation to perform under this Agreement. If the conditions set forth in this Paragraph are not satisfied or waived by Seller, then in addition to any other remedies Seller may have, Seller may elect by written notice to Buyer to terminate this Agreement, and the parties shall have no further obligations to each other except for such obligations as this Agreement provides expressly survive its termination.

13. **Closing.** The closing ("Closing") shall take place as soon as reasonably possible after all contingencies have been satisfied and all the documents have been prepared, on a date ("Closing Date") and at a location mutually acceptable to Buyer and Seller. At the Closing:

(a) Seller shall execute and deliver to Buyer the Deed, subject only to the Permitted Exceptions, a groundwater hazard statement and a declaration of value in accordance with Iowa law;

(b) Seller shall execute and deliver to Buyer a bill of sale for the Personal Property and Intangible Property relating to the Seller Parcel warranting solely against the acts and neglects of Seller or those holding under Seller;

(c) Buyer shall pay the real estate transfer taxes, documentary stamp fees and conveyance fees, if any;

(d) Buyer shall pay to Seller the Purchase Price, and pay the recording fees for the Deeds;

(e) Seller shall execute a Certificate of Non-Foreign Status, if necessary, and

(f) Each party shall sign a closing statement setting forth the transaction and all other documents that may be reasonably necessary to evidence the transaction. Each party shall be responsible for its own attorneys' fees.

14. **Possession.** Seller shall deliver possession of the Premises to Buyer immediately following the Closing in at least as good a condition as on the Effective Date, reasonable wear and tear excepted. Buyer understands that Seller is not guaranteeing to Buyer that Buyer will be able to use existing utility lines, services and easements for providing utilities to the Premises, and Buyer must make its own arrangements to confirm the availability of those utilities.

15. **Taxes and Assessments.** Seller shall not be responsible for real property taxes for the first four months of fiscal year 2016-2017. All other prior property taxes with respect to the Seller Parcel have been paid in full by Seller. Buyer shall pay all future property taxes, if any, with respect to the Seller Parcel. Seller shall pay all installments of special assessments with respect to the Seller Parcel that are a lien and due and payable as of the Closing Date. Buyer shall pay all installments of special assessments with respect to the Seller Parcel that first become a lien or due and payable or both after the Closing Date.

16. **Default.** If Buyer defaults in Buyer's obligations under this Agreement and the transaction contemplated by this Agreement does not close then Seller may, at its option and as its only remedies, either (i) terminate this Agreement by notice to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement, except as expressly provided in this Agreement, or (ii) seek specific performance of this Agreement. If Seller defaults in Seller's obligations under this Agreement and the transaction contemplated by this Agreement does not close, Buyer may, at its option and as its only remedies, either (i) terminate this Agreement by notice to Seller, and neither Seller nor Buyer shall have any further liability to the other under this Agreement, except as expressly provided in this Agreement to the contrary, or (ii) seek specific performance of this Agreement.

17. **Condemnation; Fire; Other Casualty.** Seller shall promptly notify Buyer of any impending or actual condemnation proceedings against the whole or any part of the Premises of which Seller has actual notice or any fire or other casualty to the Premises. If any material portion of the Premises (meaning a portion having a replacement cost exceeding \$250,000 for any Parcel), or any right of ingress or egress, is threatened to be taken or is taken as a result of condemnation proceedings or is damaged as a result of fire or other casualty prior to the closing, Buyer shall have the right:

(a) To terminate this Agreement by a written notice to Seller within ten (10) days after receipt of notice of such proceedings or damage, in which case neither Seller nor

Buyer shall have any further liability to the other under this Agreement; except as expressly provided in this Agreement; or

(b) To proceed to Closing as provided in this Agreement, agreeing to take the Premises in their then-current condition, in which case Buyer shall be entitled to receive all of the condemnation or insurance proceeds payable as a result of such condemnation or such damage, which Seller shall assign to Buyer at closing pursuant to an assignment that is reasonably acceptable to Buyer.

18. **Naming Rights.** The parties agree that the courtyard of the Premises shall be named "Kargarzādeh Kourt."

19. **Miscellaneous.**

(a) Each party agrees and represents to the other that no broker is involved in this transaction who is entitled to a commission. If a broker makes a claim for remuneration in connection with this transaction, each party shall indemnify and hold harmless the other from any amount that the other may be required to pay to a broker that the other did not retain, including, without limitation, the legal costs and reasonable attorneys' fees expended to defend against the claim.

(b) This Agreement and the other documents referenced in this Agreement embody the entire agreement and understanding between the parties to this Agreement with respect to the subject matter of this Agreement and supersede all prior oral or written agreements and understandings relating to the subject matter of this Agreement. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement and/or the other documents referenced in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

(c) The parties to this Agreement acknowledge and agree that: (i) each party and the party's counsel has reviewed and negotiated, or has had the opportunity to review and negotiate, the terms and provisions of this Agreement and have contributed to its review and revision; (ii) any rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be used to interpret this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to all parties to this Agreement and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

(d) This Agreement shall bind and benefit Seller and Buyer and their respective successors and assigns. Buyer may not assign this Agreement or any right or obligation under this Agreement without the prior written consent of Seller.

(e) Time is of the essence of this Agreement. If the date for Closing, for the delivery of a document, or for the giving of a notice, falls on a Saturday, Sunday or bank holiday,

then it shall be automatically deferred to the next day that is not a Saturday, Sunday or bank holiday.

(f) All notices, requests, consents and other communications (collectively, "Notices") under this Agreement shall be in writing, shall be addressed to the receiving party's address set forth below or to any other address a party may designate by notice under this Agreement, and shall be either (i) delivered by hand, (ii) sent by fax or electronic mail, and mailed promptly by first class mail, (iii) sent by nationally recognized overnight courier, or (iv) sent by certified mail, return receipt requested, postage prepaid.

To Buyer: Des Moines Area Community College
2006 South Ankeny Boulevard
Ankeny, Iowa 50023
Attention: Mr. Robert Denson
Telephone: (515) 964-6638
Fax: (515) 965-7002
Email: rjdenson@dmacc.edu

With a copy to: Davis, Brown, Koehn, Shors & Roberts, P.C.
666 Walnut Street, Suite 2500
Des Moines, Iowa 50309
Attention: David B. VanSickel, Esq.
Telephone: (515) 246-7808
Fax: (515) 243-0654
Email: dbv@lawiowa.com

To Seller: Newton Enterprises LLC
403 W. 4th St. N
Newton, IA 50208
Attention: Reza Kargarzadeh
Telephone: (641) 787-0321
Fax: (641) 787-0389
Email: reza@epcmfg.com

With a copy to: Newton Enterprises LLC
403 W. 4th St. N
Newton, IA 50208
Attention: Melissa C. Lewis, Esq.
Telephone: (641) 787-0321
Fax: (641) 787-0389
Email: lawoffice.melissalewis@gmail.com

(g) The terms and provisions of this Agreement may be waived, or consent for the departure from the terms and provisions may be granted, only by written document executed by the parties. No waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar.

Each waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent. No failure or delay by a party to this Agreement to exercise any right, power or remedy under this Agreement, and no course of dealing among the parties to this Agreement, shall operate as a waiver of any right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party to this Agreement, nor any abandonment or discontinuance of steps to enforce any the right, power or remedy, shall preclude the party from any other or further exercise of the right, power or remedy or the exercise of any other right, power or remedy under this Agreement. The election of any remedy by a party to this Agreement shall not constitute a waiver of the right of the party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement shall entitle the party receiving the notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving the notice or demand to any other or further action in any circumstances without the notice or demand.

(h) This Agreement and the rights and obligations of the parties under this Agreement shall be governed and interpreted by the laws of the State of Iowa that are applied to contracts made and performed in that State.

(i) In the event that any court of competent jurisdiction shall determine that any provision, or any portion of a provision, contained in this Agreement shall be unenforceable in any respect, then the provision shall be deemed limited to the extent that the court deems it enforceable, and as so limited shall remain in full force and effect. In the event that the court shall deem any provision, or portion of any provision, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

(j) The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions of this Agreement.

(k) This Agreement may be executed in one or more counterparts, and by different parties to this Agreement on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures on this Agreement shall be deemed to have the same legal effect as original signatures.

(l) The parties shall not issue any press release or otherwise make any public statement with respect to the transactions contemplated by this Agreement until and unless the parties mutually agree on such press release or statement, except as may be required by law.

(m) Neither party under this Agreement shall be deemed to be in default or otherwise responsible for delays or failures in performance resulting from acts of God; acts of war or civil disturbance; governmental action or inaction; fires; earthquakes; or other causes beyond their respective reasonable control.

(n) In the event of a dispute arising out of this Agreement, the prevailing party shall be awarded its actual attorneys' fees and costs.

(o) The parties agree to cooperate with each other to effectuate this Agreement. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed before or after the Closing any and all such further acts as may be reasonably necessary or appropriate to accomplish the intent and purposes of this Agreement and to consummate the transaction contemplated by this Agreement. Specifically, Buyer acknowledges that Seller may determine that in order to maximize the Purchase's allowable tax advantages to Seller, the transaction must be re-structured. Buyer agrees to work in good faith with Seller to do so, so long as Seller assumes any material costs of the re-structuring.

(p) Buyer expects that it will utilize the personal property located at the Premises to provide post-secondary education and training services to the individuals and organizations it serves. If it is determined within three years of acquisition that Buyer cannot utilize the personal property in furtherance of such purpose, Buyer will file a certification as required under Internal Revenue Code Section 170(e)(7)(D).

[Remainder of page intentionally left blank; Signatures on the following page]

Seller and Buyer have signed or caused this Real Estate Sale Agreement to be signed by their duly authorized representatives as of the date(s) set forth opposite their signatures.

**NEWTON ENTERPRISES LLC,
An Iowa limited liability company**

Date: _____

By _____

Its _____

Seller

**DES MOINES AREA COMMUNITY
COLLEGE, an Iowa area community
college**

Date: _____

By _____

Its _____

Buyer

EXHIBIT A

Land

LOT 3 IN SYNERGY ADDITION TO NEWTON, JASPER COUNTY, IOWA, AS APPEARS IN PLAT RECORDED IN PLAT CABINET A PAGE 639 IN THE OFFICE OF THE RECORDER OF SAID COUNTY.

AND

PARCEL A OF THE MAYTAG PLANT 1 ALTA/ACSM SURVEY IN NEWTON, JASPER COUNTY, IOWA AS RECORDED IN BOOK 1154 PAGE 141, AS SHOWN IN PLAT CABINET A PAGE 638 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, EXCEPTING THEREFROM THE NORTH 8 FEET OF THAT PORTION OF LOT 2 OF RAILROAD ADDITION, LYING BETWEEN THE EAST LINE OF WEST 4TH STREET NORTH AND THE WEST LINE, EXTENDED NORTHERLY OF WEST 3RD STREET NORTH.