

AGENDA
ARKANSAS STATE UNIVERSITY
BOARD OF TRUSTEES
September 15, 2017
10:00 a.m.
ASU-Jonesboro

- I. Call to Order
Ron Rhodes, Chair
- *II. Approval of the Minutes of Past Meeting
June 8, 2017
- III. President's Report
Reports of the Chancellors
- *IV. Agenda
 - Proposed ASU System Resolutions
 - Resolution approving the revised Arkansas State University System Weapons Policy
 - Resolution approving the Arkansas State University System Internal Control Policy
 - Resolution approving the Arkansas State University System Investment Policy
 - Proposed ASU-Jonesboro Resolutions
 - Resolution approving ASU-Jonesboro to amend the Faculty Handbook of Policies and Procedures
 - Resolution approving ASU-Jonesboro to enter into a long-term lease agreement with the City of Imboden to construct a facility for a Disaster Preparedness Training Program
 - Resolution approving ASU-Jonesboro to enter into a long-term lease agreement with the City of Walnut Ridge to construct a facility for a Disaster Preparedness Training Program
 - Resolution approving ASU-Jonesboro to name the third-floor lounge area in the Carl R. Reng Student Union
 - Proposed ASU-Newport Resolutions
 - Resolution approving ASU-Newport to offer the Certificates of Proficiency in Automotive Mechanical Systems, Automotive Transmissions and Axles, Engine Performance, and Heating and Air Conditioning
 - Resolution approving ASU-Newport to name the Criminal Justice Department
- V. Executive Session
- *VI. Approval of Personnel Actions

VII. Other Business

*VIII. Adjournment

*Action Items

EXECUTIVE SUMMARY

Contact: Jeff Hankins (501) 660-1004

ACTION ITEM: The Arkansas State University System desires to amend its Weapons Policy.

ISSUE: Policies regarding the carrying of a concealed handgun on University property should be revised, pursuant to Act 562 of 2017 and Act 859 of 2017.

BACKGROUND:

- The Arkansas State University System revised its Weapons Policy on May 10, 2013, to specifically disallow the carrying of a concealed handgun.
- The legislature indicated in A.C.A. § 5-73-322(b)(2)(C) that a policy disallowing the carrying of a concealed handgun on University property should be readopted each year.
- On June 8, 2017, the ASU System reaffirmed its Weapons Policy disallowing the carrying of a concealed handgun on University property.
- The ASU System Weapons Policy, disallowing the carrying of a concealed handgun, remained in effect until September 1, 2017.
- On September 1, 2017, Act 562 of 2017 and Act 859 of 2017 ("laws") became law. Both laws allow individuals, who possess a concealed carry license and who obtain additional training from a program offered by the Arkansas State Police, to possess a concealed handgun on certain locations on University property.
- The ASU System Weapons Policy has been revised in order to implement these new laws. The revised Weapons Policy is attached to this resolution.

RECOMMENDATION/RESOLUTION:

Be it resolved that the Arkansas State University Board of Trustees approves the revised Arkansas State University System Weapons Policy, effective immediately.

Niel Crowson, Secretary

Ron Rhodes, Chair

ASU System Policy

Effective Date: 9/15/2017

Subject: Weapons Policy

1. Purpose

The Arkansas State University System is dedicated to providing an educational and social climate, which is conducive to the safety of all members of the University community. Acts of violence on University campuses have proven that weapons pose a serious threat to the safety of persons and property.

2. Arkansas State University System Weapons Policy

No person shall possess, discharge, or otherwise use any weapon at any campus, office, building, or event that is part of the Arkansas State University System, except as authorized by this policy. This prohibition extends to individuals having such weapons on their persons, including in briefcases, purses, handbags, backpacks, or other carrying cases; in personal vehicles or storage boxes contained in or affixed to their personal vehicles; or among other personal property or effects. Each System location shall post written notice of this prohibition. Exceptions to this prohibition are listed below.

3. Definitions

Weapons include, but are not limited to, firearms (specifically including concealed handguns), explosive devices, hazardous chemicals (other than pocket-sized sprays used for personal protection), knives with blades longer than four inches, nunchucks, brass knuckles, Tasers or other electrical stun devices, bows or cross bows, arrows, objects that propel projectiles, replicas of weapons (including water or toy guns), or any device or substance designed to or used to inflict a wound, cause injury, or incapacitate.

4. Exceptions

These prohibitions do not apply to the following:

- a. To an officer of an Arkansas State University Police Department who is regularly employed by a campus in the University System and who has been authorized by the Campus Chief of Police, or designee, to carry weapons as outlined in the applicable Police Policy.

- b. To an employee authorized by the Campus Chief of Police to possess or use such a device during the time when the employee is engaged in University work requiring such a device.
- c. When an individual uses or possesses a weapon in connection with an educational, recreational, or training program, or an activity authorized by the appropriate University official and the Chief of Police and under the supervision of a University employee.
- d. During the time when the weapon is worn as part of a military or fraternal uniform in connection with a pre-approved public ceremony or parade.
- e. To non-University law-enforcement officers of legally established law-enforcement agencies that are required by their employer to carry their weapons at all times.
- f. To non-University law-enforcement officers of legally established law-enforcement agencies who are engaging in work on campus requiring a weapon as part of their official duties or who have obtained approval from the Campus Chief of Police or designee to carry their weapon on campus.
- g. During a theatrical performance where a realistic replica of a weapon is used.
- h. To equipment, tools, devices and materials, which are prescribed for use by authorized University employees as a condition of employment or class enrollment.
- i. To the use and possession of weapons for educational, instructional, and research activities under the supervision of appropriate faculty members.
- j. To weapons found in vehicles that are traveling through city-maintained streets within the campus proper.

The campus Chief of Police, applicable Vice Chancellor, or their designees, may impose restrictions upon individuals who are otherwise authorized to possess or use weapons pursuant to Section 4 of this policy when it is determined that such restrictions are appropriate under the circumstances.

5. Lawful Possession of a Weapon on Campus

In 2017, Act 562 and Act 859 were signed into law. These new Acts allow a person, who meets certain qualifications, to carry a concealed handgun on a University campus. Effective September 1, 2017, a person in possession of a concealed carry license and who has also obtained an enhanced training endorsement from the Arkansas State Police may possess a concealed handgun on campus, subject to the restrictions as allowed by law. A concealed carry licensee may lawfully store a concealed handgun in his or her locked and unattended vehicle in a publicly owned and maintained parking lot.

A person who has a concealed carry license, along with an enhanced permit, may not possess a concealed handgun at the following locations:

- a. Locations where collegiate athletic events are taking place.
- b. Certain grievance and disciplinary meetings, initiated after at least twenty-four (24) hours' notice to participants, lasting no more than nine (9) hours, with posted notice of prohibition, and conducted in accordance with campus procedures.

- c. Daycare facilities.
- d. Other locations where possession of a concealed handgun is prohibited by state or federal law.

Employees of the ASU System may lawfully possess a concealed handgun on campus if they have a concealed carry license and they have obtained an enhanced training endorsement from the Arkansas State Police. An employee, who possesses a concealed handgun under this policy, is not acting in the course of or scope of their employment when carrying or using the handgun and is not entitled to workers' compensation benefits for injuries arising from his or her own negligent acts in possessing or using a concealed handgun and is not immune from personal liability with respect to possession or use of a concealed handgun.

6. Violations

Any student violating this policy shall be subject to sanctions up to and including expulsion. Any employee violating this policy shall be subject to discipline through the process applicable to that employee, up to and including discharge. Others violating this policy will be subject to prosecution under criminal laws and may be banned from Arkansas State University System campuses and events.

(Adopted by the Arkansas State University Board of Trustees on August 8, 1997, Resolution 97-23; revised December 12, 2008, Resolution 08-80; revised May 23, 2013, Resolution 13-11; revised September 18, 2015, Resolution 15-35; revised September 15, 2017, Resolution 17-__)

EXECUTIVE SUMMARY

Contact: Jeff Hankins (501) 660-1004

ACTION ITEM: The Arkansas State University System seeks approval to adopt an Internal Control Policy.

ISSUE: The Board of Trustees must approve all System policies.

BACKGROUND:

- The Arkansas State University System desires to establish a policy to provide a framework for effective internal controls, which are best practices utilized throughout higher education, to minimize the opportunities and pressures associated with fraud.
- A copy of the ASU System Internal Control Policy is attached to this resolution.

RECOMMENDATION/RESOLUTION:

Be it resolved that the Arkansas State University System Internal Control Policy is approved, effective immediately.

Niel Crowson, Secretary

Ron Rhodes, Chair

ASU System Policy

Effective Date: 9/15/17

Subject: Internal Control Policy

Purpose

The Arkansas State University System is committed to processes that reasonably prevent and detect fraud, waste, and abuse of institutional funds. In order to fulfill this commitment, the System will provide a framework for effective internal controls, which are best practices utilized throughout higher education, to minimize the opportunities and pressures associated with fraud. Specifically, the System will apply the COSO Internal Framework and the “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States. Known as “the Green Book”, this guide is a response to the recommendation of the Office of Management and Budget in 2 CFR 200.303, Uniform Guidance, Internal Controls. (COSO Internal Control Framework)

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) established a framework for internal controls in 1992; the Committee updated it in 2013. This framework serves as a guideline for designing, implementing, and conducting internal controls and assessing effectiveness of those controls. The five integrated components for internal control are the following:

1. Control environment – the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization;
2. Risk assessment – a dynamic process for identifying and assessing risks and one that forms the basis for determining the ways that risks will be managed;
3. Control activities – actions established through policies and procedures to help ensure that management’s directives are carried out to mitigate risks;
4. Information and communication – accurate information is necessary to carry out internal control responsibilities, and is generated from both internal and external sources; communication is the continual process of providing, sharing, and obtaining this information; and
5. Monitoring activities – ongoing evaluations used to determine whether each of the components of internal control is functioning as expected.

Internal Control Objectives

The COSO has directed that the five components of internal control be integrated with the internal control objectives of Operations, Reporting, and Compliance. All three categories, represented by the top columns in the cube, are affected and should be

controlled by the five components. According to COSO, the three objectives include those listed below:

1. Operations objectives, which pertain to effectiveness and efficiency of the entity's operations, including operational and financial performance goals and safeguarding assets against loss;
2. Reporting objectives, which pertain to internal and external financial and non-financial reporting and may encompass reliability, timeliness, transparency, or other terms as set forth by regulators, recognized standard setters, or the entity's policies;
3. Compliance objectives, which pertain to adherence to laws and regulations to which the entity is subject.

Internal Controls – General Information

Internal controls are the methods and procedures used to provide reasonable assurance that these organizational goals will be met:

- Reliability and accuracy of information;
- Compliance with policies and procedures, as well as with laws and regulations;
- Safeguarding of assets and University resources; and
- Economical and efficient use of resources.

Internal control applies to people, operations, communication, and the overall work environment, helping to set the tone for University operations.

The two primary types of internal controls are preventive controls and detective controls. Preventive controls are intended to deter instances of error or fraud, and require thorough processes and risk identification. Detective controls identify occurrences after the fact, and they measure the effectiveness of preventive controls.

Preventive controls include, but are not limited to, the following:

- Segregation of duties;
- Standardized forms;
- Physical control of assets; and
- Computer passwords.

Detective controls include, but are not limited to, the following:

- Performance and quality assurance reviews;
- Reconciliations;
- Cash counts; and
- Physical inventory counts.

Responsibility for Internal Controls

Everyone in the University has a role to play in internal control. University leaders are ultimately responsible for the establishment and maintenance of a system of internal control and for establishing an ethical tone for overall operations. Each campus is required to create, document, and implement internal control processes that produce reasonable assurance within its own operations, reporting, and compliance. Deans, directors, and department administrators have oversight responsibility for internal controls within their units and should monitor the execution and function of control procedures. Each individual within a department should be aware of proper internal controls related to his or her specific job duties.

Basic Components of Internal Control

Segregation of Duties

Duties should be divided among different individuals to reduce the risk of error or inappropriate activity.

Organizational Structure

Lines of authority and responsibility should be clearly defined. An organizational chart is a good method for defining this structure. Another part of the structure includes rules that must be followed by employees. Written policies and procedures should provide guidance as well as a means for enforcement of rules.

Authorization and Approval

Transactions should be authorized and approved to help ensure the activity is consistent with departmental and institutional goals and objectives.

Reviews and Reconciliations

Performance reviews of specific functions or activities may focus on compliance, financial, or operational issues. Reconciliations compare recorded transactions or activities to another source, such as a bank statement or a source document.

Security

Security may be physical, electronic, or both. Equipment, inventories, cash, checks, and other assets should be secured physically and periodically counted and compared with amounts shown on control records. Physical inventory counts confirm the security of physical assets. Electronic controls, such as passwords and virus-detection software, maintain the security of electronic systems and hardware.

Limitations of Internal Control

There are no perfect internal control systems. Staff size may limit the ability to segregate duties. All systems are limited by the potential for human error and misunderstanding. In addition, the cost of implementing a specific control should not exceed the expected benefit of the control. In some cases, realignment of duties may

be sufficient to accomplish a control objective. In analyzing the associated costs and benefits of a particular control, the intangible consequences should also be considered; the impact to the University's reputation may be just as important as a potential financial loss.

(Adopted by the Arkansas State University Board of Trustees on September 15, 2017, Resolution 17-XX.)

EXECUTIVE SUMMARY

Contact: Jeff Hankins (501) 660-1004

ACTION ITEM: The Arkansas State University System seeks approval to adopt an Investment Policy.

ISSUE: The Board of Trustees must approve all System policies.

BACKGROUND:

- Arkansas State University System desires to establish a policy to preserve and protect invested resources and to maximize dependable and stable returns to be utilized for operating needs.
- A copy of the ASU System Investment Policy is attached to this resolution.

RECOMMENDATION/RESOLUTION:

Be it resolved that the Arkansas State University System Investment Policy is approved, effective immediately.

Niel Crowson, Secretary

Ron Rhodes, Chair

ASU System Policy

Effective Date: 9/15/17

Subject: Investment Policy

Purpose

The Investment Policy of the Arkansas State University System is designed to meet the following objectives:

- Preserving and protecting invested principal;
- Providing liquidity for all operating needs;
- Managing interest-rate risk; and
- Maximizing dependable and stable returns, within established constraints.

University endowment funds are invested and managed in accordance with the Arkansas State University Foundation Investment Policy. This policy is not applicable to Foundation funds or funds held in trust by others, as specifically directed by additional documentation.

Delegation of Responsibility

1. The Vice Chancellor/Chief Financial Officer of each campus of the Arkansas State University System, or his/her designee, is authorized to make investment decisions and activities for his/her respective campus.
2. Each campus shall establish internal controls in support of this policy.
3. Investment Advisor
 - a. The ASU System, or individual campuses, may contract with an investment management firm to provide for management of funds under its control.
 - b. The advisor must certify receipt and review of this policy.
4. Investment Manager
 - a. The ASU System, or individual campuses, may employ external investment managers.
 - b. The manager must certify receipt and review of this policy.
 - c. The System office, or individual campuses, has the responsibility of making a good-faith determination that commissions or fees paid are reasonable and competitive.
5. External custodians are responsible for securities safekeeping, collection of income, settlement of trades, proceeds of maturing securities, daily investment of available cash, monthly statements and reporting, and collateralization of assets.
6. Funds should not be deposited with a financial institution if doing so would cause cash funds on deposit to exceed the capital of the financial institution.

7. Evaluation of external advisors and managers will be based on criteria developed at the time of contracting with such entity.

Authorized Investments

1. United States Treasury Securities
2. United States Agency Securities, issued by an institution below:
 - a. Federal Farm Credit Bank
 - b. Federal Home Loan Bank
 - c. Federal Home Loan Mortgage Corporation
 - d. Federal National Mortgage Association
 - e. Government National Mortgage Association
3. Other Governmental and Municipal Securities must be rated A or the equivalent by Moody's Investor Service or Standard and Poor's Corporation on the date of purchase.
4. Corporate bonds must be rated A2 or higher by Moody's Investors Service and A or higher by Standard and Poor's Corporation on the date of purchase.
5. Commercial Paper must be rated A1 or higher by Moody's Investor Services and P1 by Standard and Poor's Corporation, with a maturity not to exceed one year.
6. Certificates of Deposit must be issued by a state or national bank, a savings bank, or a state or federal credit union domiciled in this state. Certificates of Deposit, which exceed the FDIC insured amount, shall be collateralized in accordance with this policy.
7. Money Market Mutual Funds must be registered under the Investment Company Act of 1940, which states that they: a) are "no-load" (i.e. no commission fee shall be charged on purchases or sales of shares); b) have a constant daily net asset value per share of \$1.00; c) limit assets of the fund to U.S. Treasury securities, Federal Instrumentality securities, repurchase agreements collateralized by U.S. Treasury and Federal Instrumentality securities, and commercial paper; d) have a maximum stated maturity and weighted average maturity in accordance with Federal Securities Regulation 270-2a-7; and e) have a rating at the time of purchase of at least AAA by Standard and Poor's, Aaa by Moody's, or AAA/V1+ by Fitch.
8. All non-cash investment instruments must be held in safekeeping by the ASU campuses' depository banks or an independent third-party custodian. Safekeeping receipts must be sent to the ASU campus for which the investments are being held. The third-party custodian shall be required to issue an original safekeeping trust statement on a timely basis describing the specific instrument, coupon, maturity, par, CUSIP, and other pertinent information.

Maturities

1. To the extent possible, investments shall be matched with anticipated cash-flow requirements.

2. In order to minimize the impact of market risk, it is intended that all investments will be held to maturity. The following guidelines should be used:
 - a. No less than twenty percent (20%) of the portfolio shall be held in short-term investments (maturity not to exceed 12 months).
 - b. Investments may be sold prior to maturity for cash-flow or appreciation purposes. However, no investment shall be made based solely on earnings anticipated from capital gains.

Collateralization

1. Certificates of Deposits held by, or on behalf of, the University must be fully collateralized with such collateral being evidenced by a bonded, third-party custodian. The third-party custodian shall be required to issue an original safekeeping trust statement, on a timely basis, describing the specific instrument, coupon, maturity, par, CUSIP, and other pertinent information.
2. Collateral may be in the form of the following instruments:
 - a. FDIC insurance coverage
 - b. United States Government Securities
 - c. Securities of agencies of the United States
 - d. Irrevocable letter of credit issued by a Federal Home Loan Bank
 - e. Eligible securities defined under A.C.A. §19-8-203.
3. The collateralization level will be maintained at a rate of not less than 105% of the value of principal and accrued interest.
4. All collateral shall be subject to inspection and audit by Arkansas State University.

Pooling of Funds

1. It may be determined that it is in the best interest of ASU to pool funds from all campuses.
2. If funds are pooled, the investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proration their respective average balances bear to the total pooled balance. Interest earnings shall be distributed to the individual campuses on a monthly basis.

Conflicts of Interest

1. Board members are frequently persons of wide-ranging interests. Therefore, a prudent, independent, investment decision-making process may result in investments in firms or organizations with which a board member is affiliated. "Affiliation" shall be interpreted within this section to mean an employee, officer, director, or owner of five percent or more of the voting stock of a firm or organization. The investment staff or an unaffiliated investment manager may invest in such securities. However, the following restrictions shall apply:
 - a. A board member shall not direct or participate in the decision to purchase or sell securities of a firm with which such board member is affiliated; and
 - b. Investments will not be purchased from or sold to a board member.

2. The Chief Financial Officer (CFO) involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair his/her ability to make impartial decisions. The CFO shall disclose any material interests in financial institutions with which he or she conducts business. He or she shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. The CFO shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the University.

Prudence

The standard of prudence to be used by all parties shall be the “prudent-person” standard and shall be applied in the context of managing an overall portfolio. CFOs, acting in accordance with written procedures and this investment policy and exercising due diligence, shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy. The “prudent-person” standard states, “Investments shall be made with judgement and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

(Adopted by the Arkansas State University Board of Trustees on September 15, 2017, Resolution 17-XX.)

EXECUTIVE SUMMARY

Contact: Kelly Damphousse (870) 972-3030

ACTION ITEM: Arkansas State University-Jonesboro (ASUJ) requests approval to amend the Faculty Handbook of Policies and Procedures

ISSUE: The Board of Trustees must approve all revisions to handbooks.

BACKGROUND:

- The ASU-Jonesboro Faculty Handbook outlines the procedure to be applied in the event that a grievance is filed by a faculty member.
- Certain changes to the Grievance Procedure are necessary to reflect changes in federal law under Title IX of the Educational Amendment of 1972 and its implementing statutes, regulations, and official guidance. The law seeks to address changes in departments and colleges and to streamline the procedure, so that it is clear in its requirements of all involved parties, and can be consistently implemented. Specifically, the changes include the following:
 1. The Sexual Discrimination Grievance Procedure, consistent with Title IX, implemented in the Arkansas State University System Staff Handbook has been incorporated in the Faculty Handbook's Grievance Procedure;
 2. Language is added to clarify that student grievances against faculty members are governed by the relevant provision of the Student Handbook;
 3. Language is added to allow faculty members from other departments to serve on a departmental grievance committee in the event that a department has less than five (5) faculty members;
 4. Titles of administrators, who serve a function within the Grievance Procedure, have been corrected to reflect the current title for the position;
 5. Language is added that formalizes the current practice for the Assistant Vice Chancellor for Human Resources to consult with the Office of General Counsel regarding any legal issues involved in a grievance;
 6. Several non-substantive changes were made to ensure consistency in the language throughout the procedure.
- The proposed changes have been approved through the shared governance process.
- A copy of the revised Faculty Grievance Procedures is attached to this resolution.

EXECUTIVE SUMMARY

Contact: Kelly Damphousse (870) 972-3030

RECOMMENDATION/RESOLUTION:

Be it resolved that Arkansas State University-Jonesboro is approved to amend its Faculty Handbook of Policies and Procedures in accordance with the changes proposed for its Faculty Grievance Procedure, effective immediately.

Niel Crowson, Secretary

Ron Rhodes, Chair

Shared Governance Proposal
Proposed by the Faculty Handbook Committee
February 28, 2017
Rational:

After a review of the most current Faculty Handbook (BOT Approved September 19, 2014), it has become clear that an extensive reorganization is in order. This reorganization originated with the Faculty Handbook Committee and has had preliminary approval from the Chancellor, Provost, and the SGOC.

There are a number of issues and concerns, both substantive and editorial, with the current Handbook that will need to be addressed. Among these are duplications, confusions, obsolete information and inaccuracies. Since changes to the Handbook require vetting through the shared governance process it is felt that one major proposal to address all of the issues would be impractical. Therefore, reorganization has been undertaken which will chunk the information currently in the Handbook into smaller sections and thereby making it easier to review and consider potential changes. Initially this reorganization process will only be lifting current text and placing it in a new format with several more sections than in the current version. It is anticipated that this process will take the majority of this academic year. It is also anticipated that as this process unfolds there will be substantive edits that will need to be made through the shared governance process. When and as, these arise they will be noted and cataloged for further action.

What you are being asked to do is review and approve these reorganizational revisions one at a time. By so doing at the end of the process we will have our (the faculty's) version of the Handbook. Also, we will have a document that can be recompiled and already approved for BOT consideration. When you receive this, or future Sections, and information has been changed that might be considered more than editorial that information will be transparent and underscored in the proposal submitted for your approval.

The purpose of this proposal is to reorganize the information in Section V of the current Faculty Handbook. Please be aware the Section Numbering may change in the final draft and you are being asked to review this section as a free standing section which will replace the existing Section V. This edit was performed, in large part, by the System Office.

Section VI
Faculty Grievance Procedure

The grievance procedure is designed to resolve grievances at the department, college, or university level whenever possible, or failing that, through a committee which will be empowered to hear the complaint. Grievants are encouraged to discuss and resolve the grievance at the level closest to the

faculty member, regardless of the nature of the grievance. If the grievance remains unresolved after initial discussions, the faculty member may file a formal grievance pursuant to the procedures below. Grievances are filed by individual faculty members using the procedures identified in Section VI.B., if the issue to be grieved is consistent with Section VI. A, including if the grievance is alleging discrimination on the basis of color, race, age, national origin, religion, marital status, Veteran status, genetic information or disability.

Faculty grievances on the denial of promotion or tenure are governed under Section VI. C. herein.

Faculty grievances alleging discrimination on the basis of sex are governed by the Sexual Discrimination Grievance Procedure, as outlined in Section VI. D. herein.

Student grievances against or involving a faculty member are governed by the Student Academic Grievance Procedure or Student Rights Grievance Procedure, as applicable.

Arkansas State University will not discriminate against, and is prohibited from discriminating against, any person who has filed a grievance.

VI.A. Grieveable Issues

The faculty grievance procedure applies only to alleged institutional error which affects the terms or conditions of that faculty member's employment, and includes allegations of discrimination on the basis of color, race, age, national origin, religion, marital status, Veteran status, genetic information or disability. **Institutional error occurs when no legitimate reason exists for the action taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error.** Dissatisfaction with or recommended changes to university policy are not Grieveable Issues and must be pursued through the University Governance procedures set out in Section I of this Faculty Handbook. A representative from the Department of Human Resources will be available to assist the faculty member in determining whether a Grieveable Issue exists.

All grievances will be investigated within the stated time period to ensure prompt, yet thorough, action. The Assistant Vice Chancellor for Human Resources will grant time adjustments in the event of circumstances that prevent the grievance from being heard within the time period outlined in this Faculty Handbook. In such circumstances all parties will be notified in writing by the Associate Vice Chancellor for Administration of the length of extension granted.

Employee files of a faculty grievant and of other similarly situated faculty members, for purposes of comparison, will be available to faculty grievance committees to the extent that such committees deem such records relevant and necessary to the fair disposition of the grievance before them.

PRT files of other similarly situated faculty members, whether current or on retention in the Office of the Provost/Academic Affairs and Research, will be available to the Academic Hearing Committee to the extent that the Academic Hearing Committee deems such records relevant

and necessary to the fair disposition of the grievance before them. PRT files may be reviewed by the committee in the Office of the Provost/Academic Affairs and Research.

VI.B. Steps in the Grievance Procedure

Any grievance not related to promotion, retention, or tenure must be filed in writing within ninety (90) days from the time the events leading to the complaint occurred.

Any faculty member with a complaint based on discrimination because of race, color, religion, age, disability, gender, or national origin should at this point also contact the Office of Affirmative Action. All discrimination complaints will be monitored by the Office of Affirmative Action and the Assistant Vice Chancellor for Human Resources.

Grievance committee discussions, Votes and recommendations are confidential at all levels: members will not share any individual information outside the committee. Voting at all levels will be by secret ballot and tallied by the committee chair.

VI.B.1. Department level:

Initial Discussions

Initially, a faculty member seeking to file a grievance should discuss the grievance with the department chair. It is the chair's responsibility to give an impartial, informal hearing, to make a complete investigation, and, if possible, to seek an answer or resolution agreeable to all parties. The department chair shall reply orally to the faculty member within twenty (20) business days. If a mutually agreeable resolution is not reached within twenty (20) business days after the presentation of the grievance to the chair, the faculty member may submit a written complaint to the Department Grievance Committee. Complaint forms can be obtained in the Department of Human Resources and, upon request, a staff member there will assist in the preparation of a complaint and explain the steps involved in the grievance procedure. The Department of Human Resources will maintain secure files on all grievances and will monitor their outcome once they have reached this level.

Department Grievance Committee

Composition:

Each department shall establish a Department Grievance Committee, including at least five (5) members to represent all tenured and non-tenured faculty members in the department. This committee is a standing body elected by the full-time faculty in the department. Faculty selected will reflect the racial, ethnic, and gender diversity of the department. Members serve two-year terms with a portion being replaced annually as determined by the department. The committee elects a chair each year. No faculty member may sit on a committee to hear a grievance against himself or herself, a grievance he/she has filed, or a grievance which he/she may later review or act upon, except that a member of the Department Grievance Committee shall sit on the College Grievance Committee. The Assistant Vice Chancellor for Human Resources or his/her designee will serve as an ex-officio, nonvoting member of the committee for the

purpose of providing advice and assistance on university procedural and policy matters. The Assistant Vice Chancellor for Human Resources will be present for the initial presentation of the grievance to the committee and during any formal hearing. The Assistant Vice Chancellor for Human Resources will not be present during committee discussions and deliberations unless asked to attend; however, he/she will review the committee's report of findings and their recommendations for technical and/or legal issues prior to submission. In cases of alleged discrimination, the role of an affirmative action coordinator is limited as described above for the Assistant Vice Chancellor for Human Resources.

For those departments which do not have at least five (5) faculty members, faculty members from other departments, both within and outside of the college, may be substituted to compose the Department Grievance Committee. Any person serving on the Department Grievance Committee is prohibited from sitting on the Academic Hearing Committee for the same grievance.

Proceedings:

The Department Grievance Committee has no more than twenty (20) business days after a complaint is received to make a recommendation in writing to the department chair, the grievant, and any other party in the grievance with a copy to the Assistant Vice Chancellor for Human Resources. All proceedings of this committee shall be in closed session and will not include the grievant or the party complained against unless the committee requests their oral testimony. If oral testimony is requested by the committee, both parties may be present. Each party may have up to two (2) advisers or colleagues present during the testimony, whose role shall be limited to personal consultation. The committee will be notified at least one (1) business day and not fewer than twenty-four (24) hours in advance of the identity of any advisers to be present. The chair of the committee may examine official files relevant to the case. These data may be submitted in summary form by the committee as part of the record, giving due regard to confidential information. If a mutually agreeable resolution is not reached by the Department Grievance Committee, a written complaint should be submitted by the grievant to the dean within ten (10) business days after the Department Grievance Committee's response is received.

Recommendations:

In resolving a case the Department Grievance Committee has two (2) options:

- A. It may recommend after hearing the evidence that the grievance should be denied on the grounds that no institutional error was found.
- B. If the Department Grievance Committee decides that an institutional error has been made, it will recommend a remedy. Recommendations for redress of the grievance will be based upon the committee's perceived need for an appropriate change in a term or condition of employment.

Findings:

In all instances the committee will prepare a written record of its findings of fact, a statement of its conclusion, including the reasons or policy criteria used in reaching their conclusions and recommendations for the resolution of the grievance. This response will be filed with the Department of Human Resources as the committee's official findings and will be retained for a period of not less than five (5) years. Copies of the Departmental Grievance Committee report will also be sent to the grievant, the party complained against, the department chair, the dean of college, and in cases of alleged discrimination to the affirmative action coordinator. If the complaint remains unresolved after the Department Grievance Committee action, the grievance may be sent to the dean of the college by any of the parties within ten (10) business days following the receipt of the findings of the Department Grievance Committee.

VI.B.2. College level:

Initial discussions with the Dean

After receiving a written grievance, the dean shall have ten (10) business days to prepare a written response. In that time the dean will consult with the department chair and chair of the Department Grievance Committee involved, study all the relevant facts, carefully examine any policies involved, discuss the issue with the faculty member and, if possible, resolve the issue raised within the framework of existing university policy to the satisfaction of all involved. If a mutually agreeable resolution is not reached within ten (10) business days after presentation of the grievance to the dean, the grievant may submit a written complaint to the College Grievance Committee. The Department of Human Resources will maintain secure files on all complaints and will monitor their outcome once they have reached this level. The grievant along with any other parties involved in the grievance, the department chair, and the Assistant Vice Chancellor for Human Resources shall receive written notification of the dean's response to the grievance. A copy of this response should also be sent to the affirmative action coordinator if a complaint of discrimination is involved.

College Grievance Committee

Composition:

Each college shall establish a College Grievance Committee, consisting of at least five (5) tenured faculty members representing all tenured and non-tenured faculty. The College Grievance Committee will include one (1) representative from each department within the college serving on his or her department's Departmental Grievance Committee (normally the chair of that committee). This committee is a standing body representing all faculty members in the college. Faculty selected will reflect the racial, ethnic, and gender diversity of the college. Members serve staggered two (2) year terms with a portion being replaced annually. The committee elects a chair each year. No faculty member may sit on a committee to hear a grievance against himself or herself, a grievance he/she has filed, or a grievance which he/she may later review or act upon.

In discrimination complaints the College Grievance Committee shall have three (3) additional members who shall be selected by the College Grievance Committee from a pool of nine (9) tenured faculty members who are appointed by the Chancellor and who will have special training in issues involving discrimination. These nine members (9) will also serve two-year

terms on a rotating basis.

The Assistant Vice Chancellor for Human Resources or his/her designee will serve as an ex-officio, nonvoting member of the committee for the purpose of providing advice and assistance on university procedural and policy matters. The Assistant Vice Chancellor for Human Resources will be present for the initial presentation of the grievance to the committee and during any formal hearing. The Assistant Vice Chancellor for Human Resources will not be present during committee discussions and deliberations unless asked to attend; however, he/she will review the committee's report of findings and their recommendations for technical and/or legal issues prior to submission to the dean. The Assistant Vice Chancellor for Human Resources may consult with the Office of General Counsel for the Arkansas State University System regarding any legal issues related to the grievance. In cases of alleged discrimination, the role of an affirmative action coordinator is limited as described above for the Assistant Vice Chancellor for Human Resources.

Proceedings:

The College Grievance Committee has no more than twenty (20) business days after a complaint is received to make a recommendation in writing to the dean, to the grievant, others party to the grievance and a copy to the Department of Human Resources. All proceedings shall be in closed session and will not include the grievant or the party complained against unless the committee requests their oral testimony. If oral testimony is requested by the committee, both parties may be present. Each party may have up to two (2) advisers present during the testimony, whose role shall be limited to personal consultation. The committee will be notified at least one (1) business day, and not fewer than twenty-four (24) hours in advance of the identity of any advisor or colleague to be present.

Recommendations:

In resolving a case the College Grievance Committee has two options:

- A. It may recommend after hearing the evidence that the grievance should be denied on the grounds that no institutional error was found.
- B. If the Academic Hearing Committee decides that an institutional error has been made, it will recommend a remedy. Recommendations for redress of the grievance will be based upon the committee's perceived need for an appropriate change in a term or condition of employment.

Findings:

In all instances the committee will prepare a written record of its findings of fact, a statement of its conclusion, including the reasons or policy criteria used in reaching their conclusions and recommendations for the resolution of the grievance. This response will be filed with the Department of Human Resources as the committee's official findings and will be retained for a period of not less than five (5) years. Copies of the College Grievance Committee report will also be sent to the grievant, the party complained against, the department chair, the dean of the college, the Provost and Vice Chancellor for Academic Affairs and Research, and in cases of alleged discrimination to the affirmative action coordinator. If a mutually agreeable resolution is not reached by the College Grievance Committee, the grievance may be sent to the chair of the

Academic Hearing Committee (AHC) by any of the parties involved within ten (10) business days of receipt of the findings of the College Grievance Committee.

VI.B.3. University level:

Academic Hearing Committee

Composition:

At the end of each spring semester, the Executive Committee of the Faculty Senate will present to the Chancellor a list of the names of fifteen (15) tenure-track/tenured full time faculty members (at least half of whom will have served during the previous academic year) who will serve two (2) year terms that are staggered to provide continuity to the committee. Terms will begin at the start of each academic year. The Executive Committee of the Faculty Senate will ensure that all colleges are represented when drawing up the list of names. Faculty selected will reflect the racial, ethnic, and gender diversity at Arkansas State University.

At the first committee meeting, the AHC will elect a chair who has recently served on the AHC. The chair of the AHC must be a tenured faculty member. When a grievance reaches the level of the AHC, the chair of the AHC will notify the Chancellor. The Chancellor will select from the committee of the whole, a subcommittee of five (5) to hear each grievance. The Chancellor will also select a dean, from among the pool of academic deans, and a department chair, from the pool of department chairs, to serve for each subcommittee empaneled. The AHC chair will serve as the nonvoting chair for the seven (7) member subcommittee empaneled. Faculty members who have been selected to serve on a College Grievance Committee may not simultaneously sit on the Academic Hearing Committee for the same grievance.

Each subcommittee will elect one (1) of its members to prepare a record of the proceedings and deliberations and prepare a formal report of the committee findings. The Chancellor will select a replacement from the AHC for any member of a subcommittee who must recuse him/herself or who will not be available for the duration of the hearing.

In cases of alleged discrimination, three (3) additional tenured professors, selected from the University Diversity and Affirmative Action Committee, will join the AHC. The parties on each side of such a case will each choose one (1) member from the UDAAC; the two (2) individuals selected from the UDAAC will in turn select a third person from the UDAAC to sit on the AHC. The Department of Human Resources will assemble any necessary materials relevant to the grievance before the subcommittee, arrange facilities, and maintain an official written record of the hearing when completed.

The Assistant Vice Chancellor for Human Resources or his/her designee will serve as an ex-officio, nonvoting member of the committee for the purpose of providing advice and assistance on university procedural and policy matters. The Assistant Vice Chancellor for Human Resources will be present for the initial presentation of the grievance to the subcommittee and during any formal hearing. The Assistant Vice Chancellor for Human Resources will not be present during subcommittee discussions and deliberations unless asked to attend; however, he/she will review the subcommittee's report of findings and their recommendations for technical and/or legal issues prior to submission to the Chancellor by the chair of the AHC. The Assistant Vice Chancellor for Human Resources may consult with the Office of General Counsel

for the Arkansas State University System regarding any legal issues related to the grievance. In alleged discrimination cases, the role of an affirmative action coordinator is limited as described for the Assistant Vice Chancellor for Human Resources.

Proceedings:

The Academic Hearing Committee has no more than twenty (20) business days after a grievance is received to make a recommendation in writing to the Chancellor, Assistant Vice Chancellor for Human Resources, and any and all parties to the grievance. All proceedings of this committee shall be private and will not include the grievant or the party complained against unless the committee requests their oral testimony. If oral testimony is requested from either party, both parties may be present. Each party may have up to two (2) advisers present during the testimony; however, the role of the advisor will be limited to personal consultation. The committee will be notified at least one (1) business day and not fewer than twenty-four (24) hours in advance of the identity of any advisers to be present. The committee will make their recommendations to the Chancellor, the Assistant Vice Chancellor for Human Resources, and all individuals party to the grievance. In all deliberations regarding a case before the AHC, only the empaneled committee members may be present and participate.

Recommendations:

In resolving a case the Academic Hearing Committee has two (2) options:

- A. It may recommend after hearing the evidence that the grievance should be denied on the grounds that no institutional error was found.
- B. If the Academic Hearing Committee decides that an institutional error has been made, it will recommend a remedy. Recommendations for redress of the grievance will be based upon the committee's perceived need for an appropriate change in a term or condition of employment.

In all instances the committee will make a written record of its finding of fact, a statement of its conclusion, including the reason or policy criteria used in reaching its conclusion, and any recommendation for resolution of the grievance. All recommendations by the AHC shall be forwarded to the Chancellor. Copies of the committee's recommendation shall also be sent to all parties concerned, the department chair, the dean, the Provost and Vice Chancellor for Academic Affairs and Research, the Assistant Vice Chancellor for Human Resources, and in cases of alleged discrimination to the university affirmative action coordinator.

The Chancellor shall render a final decision on the grievance and communicate that decision in writing in the form of a letter to the grievant and to the chairperson of the AHC within ten (10) working days after receipt of the AHC's recommendation. In the event that the Chancellor does not follow the recommendation of the AHC he/she will include in the letter to all parties involved his/her basis for not accepting the Committee's recommendation.

VI. C. Grievance on Promotion or Tenure

A faculty member who has been denied promotion or tenure and believes there are grounds for a grievance relating to his/her case must begin the grievance process within thirty (30) business days after receipt of the letter from the Provost and Vice Chancellor for Academic Affairs and

Research notifying him/her that his/her application for promotion and/or tenure has been denied. The faculty member may discuss denial of promotion or tenure with the Provost and Vice Chancellor for Academic Affairs and Research and, if the faculty member remains unsatisfied, he/she may submit a grievance to the AHC. Since promotion and tenure recommendations come through a series of departmental, college, and university committees, grievances involving decisions relating to promotion and tenure will be reviewed by the Academic Hearing Committee for institutional error only.

Non-tenure or probationary faculty members who are not reappointed have the right to discuss this issue with the chair of their Department PRT Committee, the department chair, the dean, and the Provost and Vice Chancellor for Academic Affairs and Research but may not grieve.

VI.C.1. Document Collection and Disposition:

When a grievance proceeding has been closed, all material relating to that case including official written records of the hearing, statements, other non-confidential evidence and documents, and a list of confidential materials examined shall be archived in the Department of Human Resources for a minimum of five (5) years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file.

VI. D. Sexual Discrimination Grievances

Arkansas State University is committed to providing an educational and work environment for its students, faculty, and staff that is free from sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence. No form of sexual discrimination will be tolerated.

1. Definitions:

- a. Sexual Harassment is defined as unwelcome gender-based verbal or physical conduct that is severe, persistent or pervasive and occurs when:
 - i. Submission to, or toleration of, such conduct is made a term or condition of instruction, employment, or participation in other university activities;
 - ii. Submission to, or rejection of, such conduct is used as a basis for employment or education decisions affecting the individual; or
 - ii. Such conduct has the effect of unreasonably interfering with an individual's education or employment performance or creating an intimidating, hostile, or offensive university environment.
- b. Sexual assault occurs when a person is subjected to an unwanted sexual act by force or threat without consent. Sexual acts occur without consent when they are perpetrated against a person's will or where a person is incapable of giving consent due to minority, intellectual impairment, or use of mind altering substances such as drugs or alcohol.
- c. Sexual violence includes sexual assault but may also consist of an attempt to obtain a sexual act or sexual advances using coercion which do not result in a completed sexual act.
- d. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.

- e. Domestic Violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Arkansas.
 - f. Dating Violence is defined as violence committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors: (A) the length of the relationship, (B) the type of relationship, and (C) the frequency of interaction between the persons involved in the relationship.
2. It is important to preserve all evidence of sexual discrimination, especially if the discrimination is also a criminal offense, such as sexual assault, sexual violence, stalking, domestic violence, or dating violence.
3. Supervisors and faculty members must recognize that their positions necessarily embody unequal power relationships with their subordinates and students. Because of the inherent power differences in these relationships, the potential exists for the less powerful to perceive a coercive element in suggestions relative to activities outside those appropriate to the professional relationship. It is the responsibility of supervisors and faculty members to behave in such a manner that their words or actions cannot reasonably be perceived as coercive.
4. Arkansas State University has a Title IX Coordinator who is charged with investigating allegations of sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence and dating violence.
5. Faculty and employees with supervisory responsibilities, including deans, vice chancellors, department chairs, faculty, student conduct personnel, human resources personnel, athletic administrators, coaches, and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator who will conduct an immediate, thorough, and objective investigation of all claims. If sexual discrimination has occurred, appropriate remedial action commensurate with the severity of the offense will be taken up to and including termination. All reports, complaints, and investigations are treated with discretion and confidentiality is maintained to the extent allowed by law.
6. The Title IX Coordinator will notify the appropriate law enforcement agency of all reports of sexual assault, sexual violence, stalking, domestic violence or dating violence. The person who has allegedly been subjected to sexual discrimination may also contact law enforcement and may seek an order of protection, no contact order, or similar order. The Title IX Coordinator will assist the person alleging to be subjected to sexual discrimination with locating resources for counseling, medical treatment, legal advice, victim advocacy, or other services.
7. Each campus within the Arkansas State University System provides educational materials and programs on sexual discrimination. Contact the Human Resources Department or Title IX Coordinator for information on awareness and prevention of sexual discrimination.
8. The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual discrimination in order to protect individuals' rights and personal safety. Such measures include, but are not limited to, modification of campus living or employment arrangements, interim suspensions from campus, no contact or communications requirements, leave with or without pay, and reporting the matter to law enforcement. Persons reporting allegations of sexual discrimination must follow the Sexual Discrimination Grievance Procedure.

9. Sexual Discrimination Grievance Procedure:
 - a. GRIEVANCE ISSUES: The Sexual Discrimination Grievance Procedure applies to all allegations of sexual discrimination including sexual harassment, sexual assault, sexual violence, stalking, domestic violence, and dating violence.
 - b. REPORT OF SEXUAL DISCRIMINATION: Any faculty member, employee, student, or visitor who believes he or she has been subjected to sexual discrimination should report the incident to the Title IX Coordinator utilizing the grievance form available on the Human Resources or Student Conduct web sites. Faculty members and employees with supervisory responsibilities including deans, vice chancellors, department chairs, faculty, student conduct personnel, human resources personnel, athletic administrators, coaches, and university police personnel must report incidents of sexual discrimination either observed by them or reported to them to the Title IX Coordinator. In the event the sexual discrimination allegation is against the Title IX Coordinator, the report form should be submitted to the Office of General Counsel. In order to ensure timely investigation and remedy, a sexual discrimination grievance should be activated within sixty (60) days from the time the events leading to the complaint occurred. All complaints are investigated; however, delay in reporting impedes the ability to achieve prompt resolution. All efforts will be made to honor a request for confidentiality but confidentiality cannot be ensured. Reports of sexual assault, sexual violence, stalking, domestic violence and dating violence will be reported to law enforcement authorities. Criminal investigations by any law enforcement agencies or investigations conducted under the Faculty, Staff, or Student Handbooks may occur simultaneously with a sexual discrimination grievance and do not affect the grievance process.
 - c. TITLE IX COORDINATOR'S RESPONSE: Within forty-five (45) calendar days after receipt of a written grievance form, the Title IX Coordinator, or designee, will conduct a full and impartial investigation including interviewing the complainant, the accused, and any witnesses identified as well as reviewing any documentary evidence submitted by either party. As early as possible in the investigation, the Title IX Coordinator should determine whether temporary remedial measures are warranted such as suspension from employment with or without pay, suspension from classes, issuance of a no contact directive, reassignment of job duties, or changing class or classroom assignments. If immediate action is required to protect the complainant, the Title IX Coordinator shall work with the appropriate administrator to implement temporary remedial measures. The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or any subsequent hearing unless the party was found to be responsible, the previous incident was substantially similar to the present allegation, and the past actions indicate a pattern of behavior consistent with the current allegations. After studying all the pertinent facts and documents, carefully examining any policies involved, and discussing the issue with the parties and witnesses, the Title IX Coordinator shall either (i) propose an informal resolution to the parties which, if accepted, shall be documented in writing and shall conclude the investigation or (ii) prepare a formal written report making a finding, based on the preponderance of the evidence, as to whether sexual discrimination occurred, and if so, recommending a remedy which will end the discrimination, prevent its recurrence, and remove its effects on the complainant and the university community. The report shall be transmitted simultaneously to the complainant and the accused and implemented immediately. If both parties agree with the report, the grievance shall be closed and the remedies continued. If either party does not agree with the finding of the Title IX Coordinator and

desires to appeal, that party must submit, within five (5) working days of the date of the report, a written request to the Department of Human Resources for a hearing before the Sexual Discrimination Hearing Committee. The written request will detail the alleged error of the Title IX Coordinator and the requested remedy. The Department of Human Resources will provide the party not appealing with a copy of the request. Within five (5) working days of the date of the letter from the Human Resources Department, the party not appealing may submit a written response to the request for hearing countering any allegations in that document. Copies will be provided to the Title IX Coordinator for placement in the case file. Timelines may be extended by the Title IX Coordinator in extenuating circumstances.

- d. **SEXUAL DISCRIMINATION HEARING COMMITTEE COMPOSITION:** The Sexual Discrimination Hearing Committee is composed of members selected by the Chancellor from the Academic Hearing Committee, the Student Conduct Hearing Committee, and the Staff Hearing Committee for that campus. The Sexual Discrimination Hearing Committee is composed of seven (7) members. When a student is the complainant, three (3) members of the committee shall be students, two (2) members faculty, and two (2) members staff; when the complainant is a staff member the committee shall be composed of three (3) staff members, two (2) faculty members, and two (2) students; when the complainant is a faculty member the committee shall be composed of three (3) faculty members, two (2) students, and two (2) staff. The committee elects a chair once convened. The Sexual Discrimination Hearing Committee shall have specific training on sexual discrimination. A member of Human Resources or Human Resources' designee sits as an ex-officio, non-voting member of the Sexual Discrimination Hearing Committee, offering technical assistance on procedural and policy matters.
- e. **SEXUAL DISCRIMINATION HEARING COMMITTEE FUNCTIONS:** The Sexual Discrimination Hearing Committee reviews the findings of the Title IX Coordinator to determine, based on the preponderance of the evidence, whether institutional error has occurred and, if so, to recommend an appropriate corrective action. Institutional error occurs when no legitimate reason exists for the action taken. Decisions which require the exercise of judgment or discretion cannot constitute institutional error. The committee has twenty (20) working days to prepare a written response after it has received a complaint. All proceedings shall be in closed session. Because the committee will have received the entire file from the Title IX Coordinator including all witness statements, the hearing will not include the grievant, the party complained against, or other witnesses unless either (i) the Committee requests their oral testimony or (ii) either party requests to testify and/or present witnesses. In the event that oral testimony is requested, the grievant and the party complained against may be present and question the witnesses. If the grievance is one alleging sexual assault, sexual violence, stalking, domestic violence, or dating violence the parties will not question the other. Instead, the party testifying before the committee shall be screened so that they may be heard by the other party but not seen. The non-testifying party shall have the opportunity to provide written questions to the committee to be asked of the testifying witness based on his or her testimony. The committee may also question any person testifying. Each party may have an advisor present during the testimony who may provide personal consultation but may not actively participate in the hearing. The parties must disclose to the Chair of the Sexual Discrimination Hearing Committee the identity of any testifying witness or any advisor at least two (2) working days before any hearing. The Chair shall provide the list of witnesses to each party upon receipt. No audio or video recording is permitted. In

reviewing a case two options are open to the Committee: i. It may find no institutional error has occurred and recommend that no further action be taken, or; ii. It may find that institutional error has occurred and recommend a remedy different than that proposed by the Title IX Coordinator.

- f. **SEXUAL DISCRIMINATION HEARING COMMITTEE FINDINGS:** In all instances the committee shall make a record of its findings, a statement of its conclusion, including the reason or policy criteria used in reaching a decision, and its recommendations for resolution of the grievance. The Committee decision shall be forwarded to the Chancellor of the campus for action. Copies will be filed with the Title IX Coordinator as a part of the complaint record and sent to the grievant and the accused. Within ten (10) working days of receipt of the Committee recommendation, the Chancellor will accept or reject the Committee recommendation in writing after review of all file materials. The Chancellor's decision is final. A copy of the decision shall be provided to the Title IX Coordinator for distribution to both the complainant and the accused. The Department of Human Resources or Student Conduct (as appropriate) will coordinate the implementation of any remedies resulting from the grievance.
- g. **DOCUMENT COLLECTION:** When a sexual discrimination grievance proceeding has been closed, all material relating to that case shall be retained on file by the Title IX Coordinator for seven (7) years. Care will be taken to ensure that no incomplete or inaccurate information pertaining to the grievance is retained in the file. Sexual discrimination grievance proceedings are considered confidential and no person involved with the grievance may make the documents public except as required by law.

EXECUTIVE SUMMARY

Contact: Kelly Damphousse (870) 972-3030

ACTION ITEM: Arkansas State University-Jonesboro (ASUJ) requests approval to enter into a long-term lease agreement with the City of Imboden to construct a facility for a Disaster Preparedness Training Program.

ISSUE: The Board of Trustees approves certain lease agreements.

BACKGROUND:

- ASUJ offers a bachelor degree and an associate degree in Disaster Preparedness and Emergency Management through the College of Nursing and Health Professions, and offers a minor in Homeland Security and Disaster Preparedness through the College of Nursing and Health Professions and the College of Liberal Arts and Communication.
- This lease and the facilities to be constructed will provide ASUJ students and the geographic area's first responders, emergency support functions, emergency managers, providers, public partners, and private partners with a first-class, multi-disciplinary, multi-agency training. This will bridge the gap between academia and practice, provide valuable resources in training and certification, and facilitate the research and development of disaster-preparedness and emergency-management programs through the use of hands-on experience and disaster drills in various types of emergencies, all in a single location.
- ASUJ will endeavor to obtain grants, seek donations, solicit funding, and enter into collaborations and partnerships to fund the construction of this project in a manner that is fiscally responsible and considers the existing demands on ASUJ's appropriations from the state of Arkansas, and other revenue sources.
- ASUJ shall enter into a lease with the City of Imboden with the following provisions:
 1. The lease will have an initial term of fifty (50) years, and may be renewed, at ASUJ's option, for five (5) additional terms of five (5) years each.
 2. The premises, comprising 183.189 acres of undeveloped land, will be rent-free for the first five (5) years of the lease, and shall have an annual rent of ten thousand dollars (\$10,000.00) for every year thereafter.

EXECUTIVE SUMMARY

Contact: Kelly Dampousse (870) 972-3030

3. ASUJ has the right to construct buildings and other improvements on the property, at its sole discretion.
4. In the event that ASUJ is unable to obtain necessary funding or does not receive sufficient appropriations to make the annual rent payment, ASUJ can terminate the lease without further liability.
5. Any improvements constructed on the premises shall be and shall remain the property of ASUJ until disposed of by ASUJ.

RECOMMENDATION/RESOLUTION:

Be it resolved that Arkansas State University-Jonesboro is approved to enter into a long-term lease agreement with the City of Imboden to construct a facility for a Disaster Preparedness Training Program, for which the Chancellor of Arkansas State University-Jonesboro or the Chancellor's designee is authorized to sign all documents necessary to close the transactions.

Niel Crowson, Secretary

Ron Rhodes, Chair

LAND LEASE

This Land Lease is made and entered into this ____ day of May, 2017 (the “Effective Date”), by and between the City of Imboden (hereinafter referred to as “Lessor”), and Arkansas State University – Jonesboro, an institution of higher education and an agency of the State of Arkansas (hereinafter referred to as “Lessee”).

1. Premises

The Lessor hereby leases to Lessee said site located at Highway 63, Imboden, AR; approximately 183.189 acres of land, more or less, lying within Lawrence County, more particularly described as:

TRACT 1

Part of the S ½ of the SW ¼ of Section 14 & part of the NW ¼ of Section 23 in Township 18 North Range 2 West, Lawrence County, Arkansas, more particularly described as follows:

Beginning at the intersection of the South line of the N ½ of the NW ¼ of said Section 23 and the Easterly right of way line of US Hwy. No. 63; thence N26°16'17"W along said Easterly right of way line, 1510.48 feet; thence N37°52'41"E 737.99 feet; thence N00°16'10"W 94.71 feet; thence N54°33'47"W 458.92 feet to the NE ¼ corner of the campus lot, Sloan-Hendrix Addition to the Town of Imboden; thence N34°34'51"E 60.01 feet; thence N54°33'47"W 98.61 feet; thence N34°34'51"E along the Southeasterly right of way line of Block 19 of said Sloan-Hendrix Addition if extended, 433.80 feet; thence along the Westerly right of way line of BNSF Railroad the following: S54°54'50"E 1142.12 feet and 472.09 feet along a curve to the right said curve having a radius of 1907.54 feet and a central angle of 14°10'48"; thence leaving said right of way line thence S79°14'30"W 73.45 feet; thence Southwesterly along the center of Hardin Creek 3704 feet more or less to the Easterly right of way line of US Hwy. No. 63; thence N26°16'17"W along said right of way line, 210.07 feet to the point of beginning, containing 39.4 acres more or less.

TRACT 2

Part of the S ½ of the SW ¼ of Section 14, part of the NW ¼, part of the NW ¼ of the NE ¼ and part of the SW ¼ of the NE ¼ Section 23, Township 18 North Range 2 West Lawrence County, Arkansas, more particularly described as follows:

Commence at the intersection of the South line of the N ½ of the NW ¼ of said Section 23 and the Easterly right of way line of US Hwy. No. 63; thence S26°16'17"E along said Easterly right of way line, 210.07 feet to the

point of beginning; thence Northeasterly along the center of Hardin Creek 3704 feet more or less; thence N79°14'30"E 73.45 feet to the Westerly right of way line of BNSF Railroad; thence Southeasterly along said BNSF right of way line the following: 624.79 feet along a curve to the right said curve having a radius of 1907.54 feet and a central angle of 18°45'59" and S21°58'04"E 1114.41 feet; thence leaving said right of way line S59°16'32"W 1155.57 feet; thence S22°30'07"E 200.00 feet; thence S63°18'55"W 399.36 feet; thence N26°16'17"W along the Easterly right of way line of US Hwy. No. 63, 814.47 feet to the point of beginning, containing 46.1 acres.

TRACT 3

Part of the SE ¼ of the NW ¼, part of the SW ¼ of the NE ¼, part of the NE ¼ of the SW ¼, part of the NW ¼ of the SE ¼ and part of the NE ¼ of the SE ¼ of Section 23, Township 18 North, Range 2 West, Lawrence County, Arkansas more particularly described as follows:

Beginning at the Southeast corner of said NW ¼ SE ¼; thence N89°49'08"W along the South line thereof, 1330.48 feet; thence continue N89°49'08"W along the South line of said NE ¼ SW ¼, 177.65 feet; thence along the Easterly right of way line of US Hwy. No. 63 the following: N02°57'59"W 49.37 feet; N02°36'01"E 151.01 feet; N14°51'52"W 107.69 feet; 52.14 feet along a curve to the left said curve having a radius of 1554.67 feet and a central angle of 01°55'17"; N09°05'40"W 317.90 feet; N38°32'47"W 120.60 feet; N32°39'02"W 90.00 feet; and N26°16'17"W 1047.93 feet; thence leaving said right of way line N63°18'55"E 399.36 feet; thence N22°30'07"W 200.00 feet; thence N59°16'32"E 1155.57 feet; thence along the Westerly right of way line of BNSF Railroad the following: S21°58'04"E 1179.42 feet; 892.34 feet along a curve to the left said curve having a radius of 1937.48 feet and a central angle of 26°23'19"; S48°21'23"E 899.88 feet and 444.53 feet along a curve to the right said curve having a radius of 2751.89 feet and a central angle of 09°15'19"; thence leaving said right of way N89°49'08"W along the South line of said NE ¼ SE ¼, 1028.23 feet to the point of beginning, containing 97.689 acres.

Lessor hereby authorizes Lessee to utilize the premises described above (hereinafter the "Premises") for educational uses or otherwise in accordance with the mission of Lessee.

2. Term

Lessor hereby authorizes Lessee to utilize the Premises for a fifty (50) year term commencing _____ 1, 2017, and ending _____ 3_, 2067. Lessee has the right to renew this Lease for additional terms of five (5) years each. Lessee shall give written notice of intent to renew for additional terms no later than ninety (90) days

prior to the then current date of termination.

3. Holdover

In the event of a holdover past the term of the Lease the tenancy shall continue on a month-to-month basis at the same rental rate in effect at the time of the lease's expiration and all terms and conditions of the Lease shall continue in full force and effect.

4. Rent

Lessor authorizes Lessee to use the Premises at no charge for the first five (5) years of the Lease. For all years following the first five (5), Lessee shall pay annual rent in the amount of Ten Thousand Dollars (\$10,000.00) payable in monthly installments of Eight Hundred Thirty-Three Dollars and Thirty-Three/100 (\$833.33) which shall be due and payable no later than the fifteenth (15th) day of the month for which rent is payable.

5. Taxes

Lessee shall pay when due during the term any applicable ad valorem taxes, assessments, or any other governmental charge levied or assessed against or attributable to the Improvements, as defined in Section 7 herein, constructed by Lessee on the Premises, and/or Lessee's leasehold, by the appropriate governmental authorities, together with any applicable ad-valorem taxes assessment or other governmental charge levied against any stock of merchandise, furniture, furnishings, equipment and other property located in, or upon the Premises, which is owned by the Lessee. All taxes shall be paid by the Lessee on a timely basis and receipts therefore shall be provided to the Lessor upon request. Lessor shall cooperate with Lessee to cause all tax assessments and bills levied or assessed against or attributable to the Improvements constructed by Lessee on the Premises to be sent directly to Lessee, and Lessor shall transmit to Lessee promptly upon receipt copies of all tax assessments and bills received by Lessor which are levied or assessed against or attributable to the Improvements constructed by Lessee on the Premises.

In the event Lessee fails to pay such taxes and assessments when due, Lessee shall be obligated to pay all resulting interest and penalties on such delinquent taxes and assessments. Lessee may exercise any rights provided by law to contest or pay under protest any taxes and shall not thereby be deemed in default under this Lease, provided that such contest or payment under protest does not result in the imposition of a lien for delinquent taxes on the Premises or any Improvements, and Lessee promptly pays all taxes and assessments, and any interest and penalties with respect thereto, ultimately determined to be due. Lessee's obligations under this Article shall survive the expiration or earlier termination of the term of this Lease.

6. Insurance

Lessee shall be responsible for insurance coverage meeting or exceeding the requirements

herein, unless protected by the State of Arkansas.

- a. **Property Insurance.** Lessee shall at its sole expense, obtain and maintain throughout the term of this Lease, casualty and property insurance on and for all Buildings and Improvements now or hereafter erected, installed or used at the Premises, as annotated on Exhibit A, on a not less than one-hundred percent (100%) of replacement cost basis, for the benefit of Lessee, with such coverage, in such form, and with such company or companies authorized to conduct business in Arkansas, and as Lessor shall approve in writing, which approval will not be unreasonably withheld, including coverage for damage by fire, the elements or other casualty with standard extended endorsements.
- b. **Construction Insurance.** Lessee shall obtain, or require any contractor or subcontractor with whom Lessee has entered into an agreement to provide services toward the construction or repair of Improvements, as defined herein, to obtain, an insurance policy in accordance with Lessee's customary practices of insurance requirements for construction projects. Lessee shall require that any such insurance policy name Lessee and Lessor as additional insureds where permitted.
- c. **Certificates of Insurance.** Within thirty (30) days after the Effective Date of this Lease, and within thirty (30) days after the expiration of any policy or policies provided by Lessee hereunder, Lessee shall furnish an original certificate of insurance to Lessor evidencing such coverage, naming the Lessor as an additional insured under the policies required by this Article, and confirming that the policy or policies will not be canceled or modified nor the limits thereunder decreased without ten (10) days' prior written notice thereof to Lessor. Lessee shall also provide Lessor with copies of endorsements and other evidence of the coverage set forth in the certificate of insurance as Lessor reasonably may request.
- d. **Umbrella and Blanket Insurance.** Any such insurance may be maintained by means of a policy or policies of blanket insurance covering additional items or locations or insured's and/or umbrella insurance.

7. Construction of Improvements

Lessee shall have the right during the existence of this Lease, at its sole cost and expense, to erect upon the Premises buildings and support facilities as may be needed to meet the educational or mission oriented uses of the Premises by Lessee, in Lessee's reasonable discretion; to erect additions thereto, and to place appropriate signs in or upon the buildings and Premises (hereinafter collectively referred to as "Improvements"). Said Improvements are, shall be, and shall remain the property of Lessee. Failure on the part of Lessee to perform in accordance with any and all provisions of this Lease shall in no way affect Lessee's right, title, and interest in and to any and all Improvements constructed hereunder.

- a. Lessee agrees that in the development of plans for Improvements, it will coordinate and review its plans with Lessor. Lessee agrees that it shall seek the concurrence of the Lessor, to the greatest extent practicable; to ensure that said Improvements erected upon the Premises conform to general site plans and general architectural requirements which the Lessor has adopted for its sites and buildings. Lessor agrees that such concurrence will not be unreasonably withheld.
- b. Lessee will afford Lessor twenty (20) business days to review the plans and specifications for Improvements. In the event the Lessor does not object to the plans and specifications within twenty (20) business days after the date of submittal, the plans and specifications shall be deemed accepted by the Lessor.
- c. Lessee shall, at its sole expense, maintain and repair the interior and exterior of all Improvements constructed by Lessee.

8. Disposal of Improvements and Restoration of the Premises

Any and all Improvements shall remain the property of Lessee and within six (6) months after termination or expiration of this Lease, Lessee, at its option, shall dispose of such Improvements in one of the following ways:

- a. In accordance with applicable laws and regulations in effect at the time of the disposal, provide the Lessor with the right of first refusal to acquire the Improvements. The conveyance of any or all Improvements to the Lessor would be made upon payment to Lessee of a mutually agreed upon figure based on the appraised fair market value of the Improvements, as may be depreciated and as discounted for the fair market value of the leasehold.
- b. Disposal of any or all Improvements to a party or parties other than the Lessor. However, Lessor must approve, in advance and in writing, any such conveyance to a third party and if the Lessor so approves, shall execute a lease of the Premises with the third party, upon reasonable rental terms and at fair market value.
- c. Dispose of or have disposed by a third party such Improvements by dismantling them and removing them from the Premises, including completely removing all hazardous and non-hazardous waste materials, and restoring the areas affected by such removal to a condition similar to the condition as was received.

9. Damage or Destruction

If, at any time during the term of this Lease or an exercised renewal, the Improvements constructed by Lessee upon said Premises shall be substantially damaged or destroyed by fire or other casualty, Lessee shall have the option of commencing and thereafter proceeding with reasonable diligence, subject to a reasonable time allowance for appropriation of any additional funds required and for any other unavoidable delay, to restore or rebuild the Improvements as nearly as possible to their value immediately prior to such damage or destruction.

If, at any time during the term of this Lease or an exercised renewal, the Premises are substantially damaged by casualty, Lessee shall have the option of immediately terminating said Lease upon written notice to Lessor.

10. Utility Connections and Services

Lessor conveys the right to Lessee to connect to existing or future Lessor owned or operated utilities and/or services, including but not limited to, gas, electricity, water, telephone, steam and chilled water, refuse removal, and sewer systems, as applicable and as long as available. It is understood that said connections to the utilities, use of utilities, and/or services which Lessor may provide at the request of Lessee, will be subject to payment from Lessee of appropriate connection and monthly service charges as are reasonable and customary and mutually agreed upon.

In the event that no such Lessor owned or operated utilities and/or services, as outlined in the immediately preceding paragraph, are available or service charges for the same cannot be mutually agreed upon, Lessor acknowledges Lessee has the right to obtain such utilities and/or services at Lessee's sole expense.

11. Access to the Premises

In addition to any public point of access for the Premises, Lessor does hereby agree that Lessor shall take no actions to prohibit Lessee from accessing the Premises and otherwise utilizing the private county road at the south property line of the Premises.

12. Mineral Development

Lessor agrees that it shall not conduct nor shall it cause to be conducted any surface and/or subsurface drilling and/or excavation of the Premises without the written consent of Lessee, which shall not be unreasonably withheld.

13. Maintenance of Points of Ingress and Egress

Lessor shall be responsible for and shall maintain in a good, safe, serviceable manner all points of ingress and egress to the Premises.

14. Lessee's Invitees

Lessee is permitted to invite persons, in Lessee's sole discretion, on to the Premises for any purpose Lessee deems acceptable. Lessor shall not be held responsible for personal injury or property damage caused by or incurred by such persons while on the Premises, except for any personal injury or property damage incurred by such persons while on a point of ingress or egress to the Premises.

15. Applicable Regulations and Permitted Use of Chemicals

Lessee shall not suffer any waste to be committed in or about the Premises, shall keep the Premises free and clear of any and all refuse and other nuisance, shall strictly adhere to applicable regulations for the use and disposal of chemicals; and observe all other applicable laws, rules, regulations, and ordinances relating to the maintenance, use and occupancy of the Premises.

16. Environmental Matters

- a. Compliance. Lessee shall comply with all "Environmental Laws", which are defined as all applicable federal, state and local statutes, laws, ordinances, regulations, administrative rulings, orders and requirements pertaining to the protection of the environment, including but not limited to those regulating the use, storage, handling and disposal of any contaminant, toxic or hazardous waste, or any other substance the removal of which is required or the use of which is restricted, prohibited or penalized under any federal, state or local statute, law, ordinance, regulation, rule or judicial or administrative order with respect to environmental conditions, health, or safety, including, without limitation, asbestos or petroleum products ("Hazardous Substances") and storm-water pollution prevention.
- b. Use Limitations. Further, during the term of this Lease, neither Lessee nor any agent or party acting at the direction or with the consent of Lessee shall use, store, handle or dispose of by any means any Hazardous Substances at the Premises, except that Lessee shall be entitled to use Hazardous Substances of the type and in the quantities typically used by institutions of higher education engaged in offering educational programs on disaster response in accordance with all applicable Environmental Laws.
- c. Representations and Presumptions. Lessor does hereby certify that during the entirety of its ownership of the Premises it has not, and it is not aware of any other party, acting in violation of Environmental Laws, as outlined in herein, with regards to using, storing, handling or disposing of any contaminant, toxic or hazardous waste, Hazardous Substances, or any other substance subject to removal or disposal regulations. Lessor further certifies that the Premises are currently in compliance with all Environmental Laws. Notwithstanding any other provision hereof Lessor does not undertake any obligation to remediate, or to take any other action with respect to any environmental condition not attributable to actions at the Premises by Lessee, its officers, employees, agents, contractors, subcontractors, licensees or invitees, but shall be responsible for remediating any actions taken by Lessor, or by any other party prior to the effective date of this Lease.
- d. Environmental Assessments. Lessee, at Lessee's expense, shall have Phase 1, and, if necessary, Phase 2, environmental assessments shall be conducted on the Premises. In the event of any finding within either environmental assessment

which is objectionable or would render the Premises unsuitable for the anticipated use by Lessee, in Lessee's sole discretion, this Lease may be immediately terminated by Lessee and Lessee shall have no other liability under this Lease.

17. Right of Entry and Inspection by Lessor

Lessee agrees that at all times during the term Lessor shall have the right to enter upon the premises for the purposes of inspecting the same. Further, Lessee agrees that Lessor shall have the right to enter the Premises for the purposes of accessing Lessor's water treatment plant. Lessor also maintains the right to allow Lessor and others to enter the Premises for the sole purpose of accessing Lessor's fishing pond and park. The parties agree that any person entering the Premises for the purposes of accessing Lessor's water treatment plant or fishing pond and park are Lessor's invitees, and, as between the parties, Lessor shall be solely liable for any personal injury or property damage caused by or incurred by said invitees, and shall indemnify and hold Lessee harmless for the same.

18. Termination

- a. For Breach. Lessor retains the right to terminate this Lease at any time upon sixty (60) days' written notice to Lessee of Lessee's non-compliance with the terms and conditions of this Lease, and Lessee's failure to cure such breach or make significant progress towards curing such breach within the sixty (60) day notification period.
- b. For Unavailability or Prevention of Use. If, after the Effective Date of this Lease, the Lessee is precluded or prevented from using the Premises for those intended uses of Lessee, by reason of any zoning law, building codes, exercise of eminent domain, government taking, ordinance or regulation of Lessor or others having jurisdiction over the Premises and such prohibition shall continue for a period in excess of thirty (30) consecutive days, the Lessee may terminate this Lease by giving Lessor fifteen (15) days' notice in writing, in addition to any other remedies available to Lessee applicable by law. In the event of such termination, Lessee shall have no further obligation to perform as contemplated herein, nor shall Lessee have any further liability hereunder.
- c. For Insufficient Funding. Lessee reasonably believes that legally available funds in an amount sufficient to pay all rent during the term can be obtained and agrees to do all things lawfully within its power to obtain and maintain funds from which the rent and other amounts due may be paid. Lessee may terminate this Lease by giving at least sixty (60) days' notice prior to the end of Lessee's then current fiscal period certifying that: (1) sufficient funds were not appropriated and budgeted by Lessee's governing body or will not otherwise be available to continue this Lease beyond Lessee's then current fiscal period; and (2) that the Lessee has exhausted all funds legally available for payment of the rent beyond Lessee's then current fiscal period. Upon termination of this Lease, Lessee's obligations under this Lease, except those that expressly

survive the end of this Lease, and any interest in the Premises shall cease and Lessee shall surrender the Premises, and shall dispose of Improvements in accordance with Article 5.3 herein. Notwithstanding the foregoing, Lessee agrees that, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current fiscal period, it will use its best efforts to take all action necessary to avoid termination of this Lease, including making budget requests for each fiscal period during the term for adequate funds to meet its obligations hereunder and to continue this Lease in force. Lessor and Lessee intend that the obligation of Lessee to pay rent constitutes a current expense of Lessee and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Lessee's current fiscal period.

19. Default

Any omission of either party to exercise any right upon the default of the other party shall not preclude said party from the exercise of such right upon any subsequent default of the other party.

20. Force Majeure

Neither Lessor, nor Lessee, shall be deemed in violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargos, shortages of materials, acts of God, epidemics, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage, or any other circumstances for which it is not responsible, or which are not under its control; provided, however, that this Section does not exempt the Lessee from paying the rentals, fees, and charges set forth herein except for the time the instance of force majeure exists and prevents said performance. In any such case, a prompt written notice shall be given to the other party of the existence of such causes and of readiness to resume performance upon the removal or non-existence thereof.

21. Severability

Should any provision or portion of such provision of this Lease be held invalid, the remainder of this Lease or the remainder of such provision shall not be affected thereby.

22. Successors and Assigns

Lessee may not assign or sublet any part of this land without consent of Lessor in writing. The terms and provisions of this Lease and the conditions herein shall bind Lessee and Lessor, and their permitted successors and assigns.

23. Notification

All notices or official communications which may be required under this Lease, given by either party to the other, shall be in writing and addressed to such party's address, unless otherwise provided herein, as follows:

- a. Notice to LESSOR:
Arkansas State University – Jonesboro
Attn: Vice Chancellor for Finance and Administration
P.O. Box 2100
State University, AR 72467

With copy to: Arkansas State University System
Office of General Counsel
Attn: Katherine Prescott
P.O. Box 10
State University, AR 72467

- b. Notice to Lessor:
City of Imboden
P.O. Box 487
Imboden, AR 72434

With copy to: Ryan Cooper
113 W Main
Walnut Ridge, AR 72476

Either party may from time to time, by written notice to the other, designate a different address to which notices shall be sent.

24. Governing Law

This Lease shall be governed by and construed in accordance with the laws of the State of Arkansas. Lessee is an agency of the State of Arkansas. The State of Arkansas and its agencies, including Lessee, are protected from suit by sovereign immunity. Nothing in this Lease is intended to nor shall it waive the sovereign immunity of Lessee. Any provision of this Lease which is in conflict with the laws of the State of Arkansas is null and void.

25. Representation

The making, execution, and delivery of this Lease have been induced by no representations, statements, or warranties other than those herein expressed. This Lease embodies the entire understanding of the parties, and there are no further or other

agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Lease may be amended only upon the written consent of both parties.

26. Sovereign Immunity

Nothing in this Lease is intended to nor shall be construed as a waiver by Lessee of Lessee's sovereign immunity.

LESSOR:

CITY OF IMBODEN

Chris Jones,
Mayor of Imboden

LESSEE:

ARKANSAS STATE
UNIVERSITY-JONESBORO

Dr. Kelly Damphousse,
Chancellor

EXECUTIVE SUMMARY

Contact: Kelly Damphousse (870) 972-3030

ACTION ITEM: Arkansas State University-Jonesboro (ASUJ) requests approval to enter into a long-term lease agreement with the City of Walnut Ridge to construct a facility for a Disaster Preparedness Training Program.

ISSUE: The Board of Trustees approves certain lease agreements.

BACKGROUND:

- ASUJ offers a bachelor degree and an associate degree in Disaster Preparedness and Emergency Management through the College of Nursing and Health Professions, and offers a minor in Homeland Security and Disaster Preparedness through the College of Nursing and Health Professions and the College of Liberal Arts and Communication.
- This lease and the facilities to be constructed will provide ASUJ students and the geographic area's first responders, emergency support functions, emergency managers, providers, public partners, and private partners with a first-class, multi-disciplinary, multi-agency training. This will bridge the gap between academia and practice, provide valuable resources in training and certification, and facilitate the research and development of disaster-preparedness and emergency-management programs through the use of hands-on experience and disaster drills in various types of emergencies in a single location.
- ASUJ will endeavor to obtain grants, seek donations, solicit funding, and enter into collaborations and partnerships to fund the construction of this project in a manner that is fiscally responsible and considers the existing demands on ASUJ's appropriations from the state of Arkansas and other revenue sources.
- ASUJ shall enter into a lease with the City of Walnut Ridge with the following provisions:
 1. The lease will have an initial term of fifty (50) years, and may be renewed, at ASUJ's option, for two (2) additional terms of five (5) years each.
 2. The premises, comprising 100 acres of undeveloped land at the Walnut Ridge Airport, will have an annual rent of twelve thousand five hundred dollars (\$12,500.00), which shall be adjusted every five (5) years by the greater of three percent (3%) or the cumulative average annual change in the Consumer Price Index. For the first two (2) years of ASUJ's tenancy, the City of Walnut Ridge shall pay the annual rent on behalf of ASUJ.

EXECUTIVE SUMMARY

Contact: Kelly Damphousse (870) 972-3030

3. ASUJ has the right to construct buildings and other improvements on the property at its sole discretion.
4. In the event that ASUJ is unable to obtain necessary funding or does not receive sufficient appropriations to make the annual rent payment, ASUJ can terminate the lease without further liability.
5. Any improvements constructed on the premises shall be and shall remain the property of ASUJ until disposed of by ASUJ.

RECOMMENDATION/RESOLUTION:

Be it resolved that Arkansas State University-Jonesboro is approved to enter into a long-term lease agreement with the City of Walnut Ridge to construct a facility for a Disaster Preparedness Training Program, for which the Chancellor of Arkansas State University-Jonesboro or the Chancellor's designee is authorized to sign all documents necessary to close the transactions.

Niel Crowson, Secretary

Ron Rhodes, Chair

WALNUT RIDGE AIRPORT COMMISSION

NON-AERONAUTICAL LAND LEASE

AGREEMENT

Between

the Walnut Ridge Airport Commission

and

Arkansas State University - Jonesboro

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DRAFT

THIS AGREEMENT, (“Ground Lease” or “Agreement”) made and entered into this ____ day of September, 2016, by and between **the City of Walnut Ridge, acting by and through the Walnut Ridge Airport Commission**, a municipal corporation existing under the laws of the State of Arkansas, (hereinafter referred to as the "Lessor"), and **Arkansas State University - Jonesboro**, an agency of the State of Arkansas and an institution of higher education, (hereinafter referred to as “ASU” or the "Lessee"). The Lessor and the Lessee are sometimes collectively referred to herein as the "Parties".

WITNESSETH:

WHEREAS, the Lessor owns and operates the Walnut Ridge Regional Airport, located in the County of Lawrence, in the state of Arkansas, hereinafter referred to as the “Airport”; and

WHEREAS, said property constitutes a portion of the Walnut Ridge Airport which exists for the convenience and necessity of the aviation community in the Walnut Ridge area; and,

WHEREAS, Lessee desires to lease approximately one hundred (100) acres of said airport property designated for non-aeronautical use for the construction and operation of a disaster training facility and such other legal and related functions as may be required in the conduct of its training operation.

WHEREAS, Lessor has determined the use of said property will be deemed as a compatible non-aeronautical use which shall be considered as a concurrent use of property; and

WHEREAS, Lessee has expertise in managing and operating a training facility of this nature, and proposes to undertake operation of the facility on behalf of Lessee.

WHEREAS, the Lessor desires to Lease and Grant, and the Lessee desires to Lease and use at the Walnut Ridge Regional Airport certain premises and facilities on the Airport, together with certain rights, licenses, and privileges thereon; and

WHEREAS, the Lessor has agreed to lease such property to the Lessee subject to certain terms and conditions, and to that end as set forth hereinafter;

NOW, THEREFORE, in consideration of the premises and the mutual covenants, terms, and conditions to be performed as set forth and hereinafter provided, the receipt and sufficiency of which are hereby acknowledged, the Parties have agreed as follows:

ARTICLE I – PREMISES

Subject to the terms and conditions set forth in this Lease, Lessor hereby demises and leases to Lessee and Lessee hereby leases from Lessor, that certain land and utility installations, currently existing or hereafter located thereon at the Walnut Ridge Regional Airport, more particularly described on Exhibit "A" hereto ("Premises"), consisting of one hundred (100) acres more or less. Lessee hereby leases the Premises subject to, and Lessee hereby agrees to comply with:

- a. All airport regulations, whether state (Arkansas Department of Aeronautics) or federal (Federal Aviation Administration or other federal entities exercising authority over the Airport), all applicable building codes, zoning regulations, and municipal, county, state and federal laws, ordinances and regulations governing or regulating the Premises or its uses,
- b. All covenants, easements and restrictions of record as of the date of this Agreement,
- c. Rules and Regulations of the Walnut Ridge Airport Commission, as the same may be amended from time to time ("Airport Rules"), and
- d. The Walnut Ridge Airport Commission's current FAA-approved Airport Layout Plan, as the same may be amended from time to time (the "Airport Layout Plan"). Lessor represents and warrants to Lessee that Lessee's use of the Premises for the purposes permitted by this Lease shall not violate the Airport Layout Plan.

1.1 Condition of Premises. Except as agreed to elsewhere in this Agreement, Lessee accepts the Premises "AS-IS-WHERE-IS". Lessee acknowledges that Lessor has made no representations or warranties relating to the suitability of the Premises for any particular use, other than for the availability of land to construct facilities that Lessee has determined to be suitable for the operation of Lessee's training facility and other subsidiary uses. Unless otherwise expressly provided in this Lease, Lessor shall have no obligation whatsoever to incur any cost or expense with respect to the Premises.

Lessee shall not permit any unlawful nuisance, waste or injury on the Premises. Lessee agrees to surrender the Premises upon the expiration of this Lease, or earlier termination hereof in a condition substantially similar to the condition of the Premises on the date of the Agreement, ordinary wear and tear excepted. Any improvements made to the Premises by Lessee shall either be removed by Lessee, transferred to Lessor for the fair market value of the improvements at the time of transfer, as outlined in Article 5.3, or may be sold to a third party,

provided that said third party and Lessor shall enter into a mutually acceptable ground lease for the Premises. In entering in to such negotiations with a third party, Lessor shall negotiate in good faith to reach a mutually acceptable ground lease.

1.2 Construction of Improvements by Lessee. Lessee shall have responsibility for construction of any and all improvements on the Premises. Any new or replacement construction by Lessee on the Premises shall be in accordance with local building codes, as applicable.

1.3 Quiet Enjoyment. Lessor agrees that, subject to Lessee's performance of the terms and conditions of this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises in accordance with the terms and conditions of this Lease.

1.4 Permitted uses. The Lessee agrees that the Premises shall be used exclusively for the purposes of Lessee's disaster response training facility and its related functions. Such disaster trainings include, but are not limited to, tactical, active shooter, military exercises, hazardous materials, live agent, commercial warehouse and transportation emergencies, tornado response, earthquake response, emergency search and rescue, rubble piles, emergency medical services, fire, utility work, civil unrest, floods (incoming and receding), boat and motor emergencies, grain entrapment rescue, tractor roll-over, and auger accidents ("Intended Uses"). Any use of the Premises other than those related to disaster response training are expressly prohibited without the express written consent of the Lessor; such consent will not be unreasonable withheld by Lessor. The Lessee agrees that no use of the Premises will be conducted in such a manner as to constitute a nuisance or a hazard to aviation and that, in connection with the use of the Premises, the Lessee will observe and comply with all applicable laws, ordinances, orders and regulations prescribed by lawful authorities having jurisdiction over the Premises.

1.5 Signage. The Lessee shall have the right to erect and maintain such sign or signs on the Premises as may be deemed reasonably necessary by Lessee; provided, however, the Lessor must approve any such signs in writing prior to erection, which approval shall not be unreasonably withheld, conditioned or delayed. All signs erected by Lessee shall comply with all applicable FAA regulations and shall not create a hazard to aviation.

ARTICLE II - TERM OF AGREEMENT

The primary term of this Agreement shall commence on the 1st day of _____, 2017, and shall run through midnight, the 31st day of _____, 20____, for a total primary term of fifty (50) years, unless otherwise terminated as hereinafter provided (hereinafter the "Term"). Lessor and Lessee agree that possession of the Premises shall be taken by Lessee on January 1 of the year to be determined, following notification prior to the

end of the immediately preceding crop cycle. Notice requesting possession should be provided to the Lessor no later than October 1 of the year prior to the year in which Lessee intends to take possession. Lessor and Lessee further agree that if possession is not taken by Lessee within five (5) years following the execution of this Agreement, that Lessor shall have the right, upon thirty (30) days' written notice to Lessee, to terminate this Agreement.

ARTICLE III - OPTIONAL EXTENSION OF TERM OF AGREEMENT

Lessee shall have the option to extend the Term for two (2) terms of five (5) years each (a "Renewal Option"). Lessee shall exercise the Renewal Option by giving Lessor written notice of Lessee's desire to exercise such Renewal Option on or before one hundred eighty (180) days prior to the expiration of the then current term. Notice of Lessee's exercise of the Renewal Option will be made in substantially the same form as that attached as Exhibit B to this Agreement. All terms and conditions of this Agreement shall remain in full force and effect. In the event that Lessee does not exercise the Renewal Option in accordance with the terms hereof, then, at any time after the lapse or expiration of such Renewal Option, Lessee shall, at the request of Lessor, execute, acknowledge and deliver such documents as Lessor may reasonably request to evidence the date of expiration of this Lease.

ARTICLE IV - RENT

4.1 Monthly Rent. Lessee will pay the annual lease rate of Twelve Thousand Five Hundred U.S. Dollars (\$12,500.00) for the premises at the rate of One Thousand Forty-One and 66/100 (\$1,041.66) per month. Lease charges are due in advance on the first (1st) day Lessee has possession of the Leased Premises and thereafter on the first (1st) day of each month of each successive twelve (12) month annual period. Lease payments are delinquent after the tenth (10th) day of the month in which said payment is due. Failure to make lease payment after a period of one (1) month shall be a default hereunder.

For the first twenty-four (24) months that rent is due, the City of Walnut Ridge shall make the monthly rent payment to the Walnut Ridge Airport Commission on behalf of Lessee, and shall be solely responsible for obtaining the necessary funds for making said payment. In the event that the City of Walnut Ridge does not make a monthly payment(s), the default of the City of Walnut Ridge shall not be imputed to Lessee, nor shall Lessee be held to be in breach of this Agreement on the basis of the City of Walnut Ridge's failure to make the payment.

Every five (5) years on the anniversary of the effective date of this Agreement, the Monthly Rental set out in this section shall be adjusted to reflect an annual change of the greater of three percent (3%) or the cumulative average annual change in the Consumer Price Index on the first (1st) day of the first month of the fifth (5th) year

of this Lease Agreement and thereafter on the first (1st) day of the first (1st) month of each fifth (5th) year for the duration of the Lease Agreement. The Consumer Price Index refers to the Consumer Price Index for all urban-consumers (CPI-U) U.S. city average all items index. The parties shall use the current standard CPI-U reference base as published by the Bureau of Labor Statistics. If there is a delay in obtaining the CPI-U for the first month of any five (5) year period, any rental increases shall be applied retroactively to the first month of the rental term and all successive rental terms. Should the compilation of the Consumer Price Index be deemed inflationary by the U.S. Department of Labor, then a comparable Index shall be determined by the mutual negotiation of the Lessor and Lessee.

4.2 Time of the Essence. The parties agree to promptly perform, comply with and abide by this Lease, and agrees that timely payment is of the very nature and essence hereof.

4.3 Late Fees on Amounts Due. Any installment of Monthly Rent or other amounts due from Lessee under this Lease that is not received within sixty (60) business days after it is due, shall be charged a late fee of One-hundred (\$100) U.S. Dollars per each sixty (60) day period thereafter, or as pro-rated if less than sixty (60) days, from sixty (60) days following the date when the same was originally due until paid by Lessee.

ARTICLE V - IMPROVEMENTS TO THE PREMISES

5.1 Right to Make Improvements to the Premises. Lessor does hereby grant Lessee, during the Term of this Agreement, the right to make improvements to the Premises and any buildings thereon, as deemed necessary in the sole discretion of Lessee, to offer disaster response training. Such improvements shall be at Lessee's sole cost and expense, and shall not disturb the structural integrity of any existing improvements on the Premises. Lessee shall have responsibility for construction of any and all improvements on the Premises. Any new or replacement construction by Lessee on the Premises shall be governed by and subject to the terms contained within Article I herein. Failure on the part of Lessee to perform in accordance with any and all provisions of this Agreement shall in no way affect Lessee's right, title, and interest in and to any and all structures and facilities constructed hereunder, which are included and covered by the terms and conditions of this Agreement.

5.2 Construction Risks. Each of the parties agree to be responsible for the costs, claims, losses, damages, and liens arising from that party's actions, or the actions of that party's employees, agents, representatives, or assigns, in relation to the construction of any buildings or improvements to the structures. Lessee shall not be responsible for claims, losses, or damages related to the construction or improvement of structures where the cause of the incident resulting claim, losses, or damages is related to previously existing buildings or structures.

5.3 Confirmation of Ownership. Any and all improvements made to the Premises by Lessee or at Lessee's direction ("Improvements") shall remain the property of Lessee. No less than one (1) year prior to the date of termination of this Agreement, Lessee and Lessor shall begin engaging in good faith negotiations regarding the potential for disposition of the Improvements following the termination of this Agreement, and within six (6) months after termination or expiration of this Agreement, Lessee, at its option, shall dispose of such Improvements in one of the following ways:

(a) Transfer of the Improvements to Lessor. In accordance with applicable laws and regulations in effect at the time of the disposal, in the event that a third party provides Lessee with an offer to purchase the Improvements, Lessee shall provide the Lessor with the right of first refusal to acquire the Improvements at the same price and upon the same terms as the third-party offer. In the event that no third party offer is received, Lessee and Lessor shall engage in good faith negotiations regarding the potential for Lessor to purchase the Improvements. The conveyance of any or all Improvements to the Lessor would be made upon payment to Lessee of a mutually agreed upon figure based on the appraised fair market value of the Improvements, as may be depreciated and as discounted for the fair market value of the leasehold.

(b) Transfer of any or all Improvements to a party or parties other than the Lessor. In the event that Lessor does not exercise its right of first refusal, Lessee may transfer ownership of the Improvements to a third party. However, the Lessor must approve, in advance and in writing, any such conveyance to a third party by executing a lease of the Premises with the third party, upon reasonable rental terms and at fair market value.

(c) Dispose of or have disposed by a third party such Improvements by dismantling them and removing them from the Premises, including completely removing all hazardous and non-hazardous waste materials, and restoring the areas affected by such removal to a condition similar to the condition as was received.

In the event that any Improvements remain on the Premises following the termination of this Agreement, including for the six (6) month period contemplated herein, Lessee shall be deemed to be in a month to month holdover lease for no longer than twenty-four (24) months, and the parties shall act in accordance with Article XIX herein.

ARTICLE VI - REPAIRS AND ALTERATIONS

Lessor shall not be obligated to maintain or repair the Premises or any Improvements located thereon or any part thereof during the Term or any renewal thereof. The Lessee agrees, at its

sole expense, to maintain all of the Improvements thereupon, including but not limited to, buildings, roadways, driveways, fences, gates and the parking and service areas located on the Premises in a good state of maintenance and repair and to keep the Premises in a condition in accordance with local ordinances, including but not limited to the Lawrence County Code, the City of Walnut Ridge Code, the Airport Development Standards, the Walnut Ridge Airport Commission Airport Rules and Regulations, and all other applicable community standards and/or ordinances, or any variances obtained therefrom.

Lessee, at its sole cost and expense, may make such alterations or major renovations to the existing improvements as it deems appropriate, provided, however, that such alterations or renovations shall not disturb the structural integrity of such existing improvements, and provided that the alterations or renovations shall comply with all applicable governmental regulations.

ARTICLE VII - UTILITIES

The Lessee shall be responsible for all costs of electricity, lights, water, sewer, heat, janitorial service, refuse storage and removal, or any other utility or service consumed in connection with the Premises. The Lessor shall have no liability for the failure to procure, or the interruption of, any such services or utilities, except where such interruption is caused by the negligence or intentional acts of Lessor, its employees, agents, representatives, or assigns.

ARTICLE VIII - TAXES

8.1 Property Taxes and Assessment. The Lessee shall pay when due during the Term any applicable ad- valorem taxes, assessments (including, without limitation, storm water utility charges) or any other governmental charge levied or assessed against the Premises (including the Lessee's leasehold by the appropriate governmental authorities), together with any applicable ad-valorem taxes assessment or other governmental charge levied against any stock of merchandise, furniture, furnishings, equipment and other property located in, or upon the Premises, which is owned by the Lessee. All taxes shall be paid by the Lessee on a timely basis and receipts therefore shall be provided to the Lessor upon request. Lessor shall cooperate with Lessee to cause all tax assessments and bills applicable to the Premises to be sent directly to Lessee, and Lessor shall transmit to Lessee promptly upon receipt copies of all tax assessments and bills received by it applicable to the Premises.

8.2 Partial Year. If the Term of this Agreement expires or is earlier terminated prior to the close of the tax year for which any such tax is payable, or if the Term of this Agreement commences on a date other than the first day of such tax year, Lessee shall be responsible for paying a percentage of the tax calculated by dividing the number of days that this Agreement was in

effect during such tax year by the total number of days that the Premises was leased to Lessee (excluding any Lessee engaging in a use of the Premises which results in the Premises being exempt from taxation) during such tax year. If this Agreement is in effect for a period less than any entire period for which an assessment other than a tax is imposed, Lessee shall pay a percentage of the assessment calculated by dividing the number of days this Agreement was in effect during that assessment period by the total number of days in the assessment period.

8.3 Delayed Payment. In the event Lessee fails to pay such taxes and assessments when due, Lessee shall be obligated to pay all resulting interest and penalties on such delinquent taxes and assessments. Lessee may exercise any rights provided by law to contest or pay under protest any taxes and shall not thereby be deemed in default under this Agreement, provided that such contest or payment under protest does not result in the imposition of a lien for delinquent taxes on the Premises or any Improvements, and Lessee promptly pays all taxes and assessments (and any interest and penalties with respect thereto) ultimately determined to be due. Lessee's obligations under this Article shall survive the expiration or earlier termination of the Term of this Lease.

ARTICLE IX - INSURANCE

Lessee shall be responsible for insurance coverage meeting or exceeding the requirements herein, unless protected by the State of Arkansas.

9.1 Property Insurance. Lessee shall at its sole expense, obtain and maintain throughout the Term of this Agreement, casualty and property insurance on and for all Buildings and Improvements now or hereafter erected, installed or used at the Premises, as annotated on Exhibit A, on a not less than one-hundred percent (100%) of replacement cost basis, for the benefit of Lessee, with such coverage, in such form, and with such company or companies authorized to conduct business in Arkansas, and as Lessor shall approve in writing, which approval will not be unreasonably withheld, including coverage for damage by fire, the elements or other casualty with standard extended endorsements.

9.2 Construction Insurance. Lessee shall obtain, or require any contractor or subcontractor with whom Lessee has entered into an agreement to provide services toward the construction or repair of Improvements to obtain, an insurance policy in accordance with Lessee's customary practices of insurance requirements for construction projects. Lessee shall require that any such insurance policy name Lessee and Lessor as additional insureds where permitted.

9.3 Sovereign Immunity. Nothing in this paragraph shall be construed as a waiver by Lessor or Lessee of the protections of sovereign immunity.

9.4 Certificates of Insurance. Within thirty (30) days after the Commencement Date of this Agreement, and within thirty (30) days after the expiration of any policy or policies provided by Lessee hereunder, Lessee shall furnish an original certificate of insurance to Lessor evidencing such coverage, naming the Lessor as an additional insured under the policies required by this Article, and confirming that the policy or policies will not be canceled or modified nor the limits thereunder decreased without ten (10) days' prior written notice thereof to Lessor. Lessee shall also provide Lessor with copies of endorsements and other evidence of the coverage set forth in the certificate of insurance as Lessor reasonably may request.

9.5 Umbrella and Blanket Insurance. Any such insurance may be maintained by means of a policy or policies of blanket insurance covering additional items or locations or insured's and/or umbrella insurance.

ARTICLE X - DESTRUCTION OF PREMISES OR IMPROVEMENTS

Damage to the Premises or Improvements by fire or other casualty shall not cause an abatement of Lessee's obligation to pay pro-rated Monthly Rent to Lessor, or to make any other payments required to be made by Lessee under this Agreement, except as follows:

10.1 Partial Destruction of the Premises. In the event that less than fifty percent (50%) of the Premises is destroyed by fire or other casualty, the Lessor shall proportionally abate the Lessee's Monthly Rent during this time.

10.2 Total Destruction of the Premises. In the event more than fifty percent (50%) of the Premises is destroyed by fire or other casualty, the Lessee, at its option, may cause said Premises to be repaired as rapidly as practicable, or may terminate this Agreement. In the event Lessee does not elect to terminate this Agreement, the Lessor shall proportionally abate the Lessee's Monthly Rent during this time.

a. If the Lessee, at its option, elects not to repair the Premises, the Lessee shall, at its sole expense, remove all damaged or destroyed building and Improvements made by Lessee after the effective date of this Agreement, and all rubble or debris resulting there from and properly dispose of such debris in accordance with all applicable laws and/or regulations. Any undamaged Improvements, or Improvements which may be repaired by Lessee, in Lessee's sole discretion, shall be disposed of in accordance with Section 5.3 herein. Thereafter, the Agreement shall be terminated and the Lessee shall retain the remaining insurance proceeds attributable to the Improvements.

10.3 Total Destruction of the Improvements. In the event that more than fifty (50%) of the Improvements are destroyed by fire or other casualty, the Lessee, at its option, may cause said improvements to be replaced or said damage to be repaired as rapidly as practicable, or may terminate this Agreement. In the event that Lessee does not elect to terminate this Agreement, the Lessor shall proportionally abate the Lessee's Monthly Rent during this time for replacement or repair.

a. If Lessee, at its option, elects to repair or replace the Improvements, upon receipt by Lessee or Lessor of the proceeds of any property or builder's risk insurance policy or policies, Lessee and the Lessor shall deposit same in an interest-bearing/escrow account to pay for the cost of such repair, replacement and rebuilding. Lessee shall receive and hold such proceeds (and any interest earned thereon) in trust for such work, and Lessee shall distribute such proceeds (and any interest earned thereon during construction) solely to pay the cost of such work. If the amount of such insurance proceeds (together with the interest earned thereon) is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged Improvements, Lessee shall pay any additional sums required to ensure the Premises are safe for Lessee's intended use. If the amount of such insurance proceeds (together with the interest earned thereon) is in excess of the costs thereof; the amount of such excess shall be retained by Lessee.

b. If the Lessee, at its option, elects not to repair and/or replace the building and Improvements upon the Premises, the Lessee shall, at its sole expense, remove all remaining portions of the damaged or destroyed building and Improvements made by Lessee after the effective date of this Agreement, and all rubble or debris resulting therefrom and properly dispose of such debris in accordance with all applicable laws and/or regulations. Any undamaged Improvements, or Improvements which may be repaired by Lessee, in Lessee's sole discretion, shall be disposed of in accordance with Section 5.3 herein. Thereafter, the Agreement shall be terminated and the Lessee shall retain the remaining insurance proceeds.

ARTICLE XI – COOPERATION ON CLAIMS

11.1 By Lessor. Lessor shall indemnify, defend and hold completely harmless Lessee from and against any and all liabilities, losses, suits, claims, demands, judgments, fines, damages, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert fees and reasonable attorneys' fees and costs, including fees and charges for the services of paralegals or other personnel working under the supervision of such attorneys ("Attorneys' Fees") which may be incurred by, charged to or recovered from any of the foregoing:

- a. By reason or on account of damage to or destruction of any property directly related to Lessor's use of property, injury to or death to any person resulting from or arising out of the use or occupancy of the Premises or any Improvements which were existing at this effective date of this Agreement, or the Lessor's operations thereon, or the acts or omissions of Lessor's officers, employees, agents, contractors, subcontractors, licensees or invitees, regardless of where the damage, destruction, injury or death occurred, except to the extent that such liability, loss, suit, claim, demand, judgment, fine, damage, penalty, cost or expense was proximately caused by the person to be indemnified hereunder,
- b. Arising out of the failure of Lessor to keep, observe or perform any of the covenants or agreements in this Agreement to be kept, observed or performed by Lessor, or
- c. Imposed on or assessed against the Lessee by reason of or arising out of any act or omission on the part of Lessor, or any other person acting by, through or for Lessor. Lessee agrees to give Lessor reasonable notice of any suit or claim for which indemnification will be sought by it hereunder, to allow Lessor or its insurer to compromise and defend the same to the extent of its interest and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations hereunder, Lessor shall use counsel reasonably acceptable to the Lessee.

11.2 By Lessee. Under Arkansas law, Lessee may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from damages. However, with respect to loss, expense, damage, liability, claims or demands either at law or in equity for actual or alleged injuries to persons or property arising out of any negligent act or omission by Lessee and its employees or agents in the performance of this Agreement, Lessee agrees with Lessor that : (1) it will cooperate with Lessor in the defense of any action or claim brought against Lessor seeking the foregoing damages or relief; (2) it will in good faith cooperate with Lessor should Lessor present any claims of the foregoing nature against University to the Claims Commission of the State of Arkansas; (3) it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however, Lessee reserves its right to assert in good faith all claims and defenses available to it in any proceedings in said Claims Commission or other appropriate forum. The obligations of this paragraph shall survive the expiration or termination of this agreement.

Lessee is an agency of the State of Arkansas. The State of Arkansas and its agencies are protected from suit by sovereign immunity. Nothing in this contract is intended to nor shall it

waive the sovereign immunity of Lessee. Any provision of this contract which is in conflict with the laws of the State of Arkansas is null and void.

11.3 The provisions of this Article shall survive the expiration or earlier termination of this Agreement with respect to any acts or omissions occurring during the term of this Agreement.

ARTICLE XII - ENVIRONMENTAL MATTERS

12.1 Compliance. Lessee shall comply with all "Environmental Laws", which are defined as all applicable federal, state and local statutes, laws, ordinances, regulations, administrative rulings, orders and requirements pertaining to the protection of the environment, including but not limited to those regulating the use, storage, handling and disposal of any contaminant, toxic or hazardous waste, or any other substance the removal of which is required or the use of which is restricted, prohibited or penalized under any federal, state or local statute, law, ordinance, regulation, rule or judicial or administrative order with respect to environmental conditions, health, or safety, including, without limitation, asbestos or petroleum products ("Hazardous Substances") and storm-water pollution prevention.

12.2 Use Limitations. Further, during the Term of this Agreement, neither Lessee nor any agent or party acting at the direction or with the consent of Lessee shall use, store, handle or dispose of by any means any Hazardous Substances at the Premises, except that Lessee shall be entitled to use Hazardous Substances of the type and in the quantities typically used by institutions of higher education engaged in offering educational programs on disaster response in accordance with all applicable Environmental Laws.

12.3 Representations and Presumptions. Lessor does hereby certify that during the entirety of its ownership of the Premises it has not, and it is not aware of any other party, acting in violation of Environmental Laws, as outlined in Article 12.1, with regards to using, storing, handling or disposing of any contaminant, toxic or hazardous waste, Hazardous Substances, or any other substance subject to removal or disposal regulations. Lessor further certifies that the Premises are currently in compliance with all Environmental Laws. Notwithstanding any other provision hereof Lessor does not undertake any obligation to remediate, or to take any other action with respect to any environmental condition not attributable to actions at the Premises by Lessee, its officers, employees, agents, contractors, subcontractors, licensees or invitees, but shall be responsible for remediating any actions taken by Lessor, or by any other party prior to the effective date of this Agreement.

12.4 Environmental Assessments. Lessee, at Lessee's expense, shall have Phase 1, and, if necessary, Phase 2, environmental assessments shall be conducted on the Premises. In the

event of any finding within either environmental assessment which is objectionable or would render the Premises unsuitable for the anticipated use by Lessee, in Lessee's sole discretion, this Agreement may be immediately terminated by Lessee and Lessee shall have no other liability under this Agreement.

ARTICLE XIII - PREVENTION OF USE

If, after the effective date of this Agreement, the Lessee is precluded or prevented from using the Premises for those Intended Uses identified elsewhere in this Agreement by reason of any zoning law, building codes, regulation issued by the Arkansas Department of Aeronautics or other agency of the State of Arkansas responsible for issuing regulations for airports in the State of Arkansas, regulation issued by the Federal Aeronautical Agency or another airports in the United State of America, Walnut Ridge Airport Commission Rules and Regulations, exercise of eminent domain, government taking, ordinance or regulation of Lessor or others having jurisdiction over the Premises and such prohibition shall continue for a period in excess of thirty (30) consecutive days, the Lessee may terminate this Agreement by giving Lessor fifteen (15) days' notice in writing, in addition to any other remedies available to Lessee applicable by law. In the event of such termination, Lessee shall have no further obligation to perform as contemplated herein, nor shall Lessee have any further liability hereunder.

ARTICLE XIV - EMINENT DOMAIN

If all of the Premises shall be taken under a power of eminent domain by another governmental agency, all of the compensation or proceeds awarded for the taking of the land, building and/or improvements on the Premises shall be divided amongst the Lessor and Lessee according to the following process:

- a. An Investment Ratio shall be determined by dividing the Lessee's total contribution, which shall include any funds, obtained from any source, including but not limited to state appropriations, grants, donations, or any other funds made available to Lessee for Lessee's use, invested into the Improvements or Premises by Lessee during the primary term or any renewal term, by the total cost of Improvements and the total value of Premises (hereinafter "total project cost") {FOR EXAMPLE: if total Lessee contribution is \$800,000 and total project cost is \$1,600,000, then the Investment Ratio would be .5 or 50%}. This Investment Ratio shall be calculated by Lessee, with method shown, within sixty (60) days after completion of such Improvements and will be attached hereto.
- b. The proceeds shall be multiplied by the Investment Ratio. This amount shall be paid to the Lessee. The balance of the proceeds shall be paid to the Lessor. {FOR EXAMPLE:

Proceeds (\$1,000,000) x Investment Ratio (.5) = \$500,000 = \$500,000 paid to Lessee and \$500,000 paid to Lessor}. It is understood and agreed that all condemnation proceeds for any Partial Taking of the Premises, which does not substantially interfere with the Lessee's ability to carry out the Intended Uses, shall be held in trust and used for the repair, reconstruction, and replacement of the Improvements, with any portion of such proceeds not needed for such repair, reconstruction and replacement to be retained by Lessor. In the event that such Partial Taking of the Premises substantially interferes with Lessee's ability to carry out the Intended Uses, this Lessee may terminate this Agreement in accordance with Article XIII herein, and all condemnation proceeds paid for the Partial Taking shall be divided amongst the Parties in accordance with the equation stated herein.

14.1 Effect upon Term. Upon a Taking of the entire Premises, Lessee's interest in this Agreement shall continue until the Taking is completed by deed, contract or final order of condemnation, unless otherwise specified by court order, if Lessee may maintain use of the Premises for the purpose of providing disaster response training until such Taking is completed. If the Taking is of substantially all of the Premises, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the Taking, elect to treat the taking in accordance with the preceding sentence. If Lessee does not so notify Lessor, this Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the Monthly Rent payable hereunder by Lessee shall be equitably adjusted (a "Partial Taking").

14.2 Temporary Takings. Upon any Taking of the temporary use of all or any part of the Premises or Improvements, or both, the Monthly Rent shall be equitably reduced and Lessee shall be entitled to any award for the use or estate taken.

14.3 Option to Terminate. If either a temporary or partial taking is to such an extent that it is impracticable for the Lessee to continue the operation of its business on the Premises, the Agreement, at the option of either party, may be terminated.

14.4 Reservation of Rights. Nothing herein shall prevent the Lessor and/or the Lessee from seeking any and all damages sustained from the condemning agency by reason of the exercise of the power of eminent domain, specifically including the right of Lessee to claim business damages.

ARTICLE XV - GOVERNMENT SEIZURE

In the event the United States Government, or any agency or subdivision thereof, at any time during the term of this Agreement takes over the operation or restricts the use of the airfield and/or Airport which results in the Lessee being unable to operate under the terms of the

Agreement, then the Agreement may be extended upon mutual agreement of the Lessee and the Lessor for an additional period equal to the time the Lessee has been deprived of the value of this Agreement with Lessee having no responsibility to make payments during that time, or the rent shall be completely abated during the time of government seizure. If the duration of the seizure exceeds ninety (90) consecutive days, Lessee, at its sole discretion, may terminate this Agreement.

ARTICLE XVII - DEFAULT

The occurrence of any of the following shall constitute an event of default (an "Event of Default") by Lessee under this Agreement:

- a. The failure of Lessee to make any payment of Monthly Rent or any other payment required to be made by Lessee hereunder when due which failure is not remedied within ten (10) days following receipt of written notice from Lessor, subject to force majeure, provided, however, that where such failure could not reasonably be cured within said ten (10) day period, that Lessee shall not be in default unless it has failed to promptly commence and thereafter be continuing to make diligent and reasonable efforts to cure such failure as soon as practicable and in no event later than one hundred eighty (180) days;
- b. The failure of Lessee to keep, observe or perform any other material covenant or agreement herein, and the continued failure to observe or perform any such covenant or agreement after a period of thirty (30) days after written demand, subject to force majeure, provided, however, that where such failure could not reasonably be cured within said thirty (30) day period, that Lessee shall not be in default unless it has failed to promptly commence and thereafter be continuing to make diligent and reasonable efforts to cure such failure as soon as practicable and in no event later than one hundred eighty (180) days;
- c. Commencement by or against the Lessee of an insolvency or bankruptcy proceeding, including, without limitation, a proceeding for liquidation, reorganization or for the readjustment of its indebtedness, or the insolvency of the Lessee, or an assignment or arrangement for the benefit of its creditors or the appointment of a receiver, trustee or custodian, provided, however, that any of the foregoing set forth in this subsection which is commenced by a person other than Lessee shall not constitute an Event of Default if it is discharged within sixty (60) days following receipt of written notice from Lessor; or the placement of any lien upon the Premises or any Improvements (excluding liens for taxes which are not delinquent and Mortgages permitted hereunder) which is

not discharged of record by payment or bond within thirty (30) days following receipt of written notice from Lessor.

17.1 Remedies for Default. Upon the occurrence of an Event of Default, the Lessor may in its sole discretion terminate the Agreement and re-enter and repossess the Premises, not including those Improvements made by and belonging to Lessee, and the parties shall act in accordance with Section 5.3 herein with regards to the disposition of the Improvements.

17.2 Lessee's Right to Contest. Notwithstanding anything to the contrary contained herein, if Lessor claims that a default has occurred under Section 17, and Lessee has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 17 shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

17.3 Default by Lessor. The occurrence of any of the following shall constitute an event of default by Lessor hereunder (each, a "Lessor Event of Default"):

a. Lessor shall have failed to observe or perform any other covenant or obligation of Lessor hereunder and Lessor shall not have cured such failure within thirty (30) calendar days after Lessor shall have received written notice thereof from Lessee; provided, however, that if such failure is such as cannot with diligent effort be cured within thirty (30) calendar days, Lessor shall not be in default hereunder if Lessor shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

b. If Lessor shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency state or law (collectively, "Insolvency Laws"), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Lessor of Lessor's covenants and obligations under this Agreement, as applicable, or of all or any substantial part of its properties or of the Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

c. The commencement of any action, case, or proceeding against Lessor of the performance of Lessor's covenants and obligations under this Agreement seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Lessor of the

performance of Lessor's covenants and obligations under this Agreement, as applicable, of any trustee, receiver, or liquidator of Lessor or of all or substantially all of its properties or of the Project, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

- d. If any warranty or representation of Lessor contained in this Agreement is untrue in any material respect as of the date made; or
- e. Lessor shall be dissolved or liquidated or shall be involved in proceedings toward dissolution or liquidation.

17.4 Lessee's Remedies. Upon the occurrence of a Lessor Event of Default, subject to the terms hereof, Lessee shall be entitled to exercise:

- a. Any right or remedy available at law or in equity.
- b. In the event that Lessor defaults hereunder or fails to timely comply with any of its duties or obligations hereunder, provided said default is not cured within thirty (30) calendar days after the giving of written notice thereof by Lessee to Lessor, unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no default is to occur so long as Lessor commences the curing of the default within such thirty (30) day period and thereafter diligently pursues the curing of same. Lessee may, in addition to any other right or remedy available to Lessee hereunder or at law or in equity, immediately terminate this Agreement, and may seek all actual costs and expenses incurred by Lessee, plus interest at the Default Rate for any costs and any damages incurred by Lessee as a result of such default or failure.

17.5 Lessor's Right to Contest. Notwithstanding anything to the contrary contained herein, if Lessee claims that a default has occurred under Section 17.3, and Lessor has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 17.3(a) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

17.6 Remedies Non-exclusive. The rights and remedies given to Lessor and Lessee by this Agreement shall not be exclusive, and in addition thereto, the parties shall have such other rights and may pursue such other remedies as are provided by law or in equity. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by a party shall not impair its standing to exercise any other right or remedy.

17.7 Non-Waiver by Either Party. No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement shall constitute a waiver of any subsequent breach of such covenant or condition or justify or authorize the non-observance on any other occasion

of the same or of any other covenant or condition hereof. The acceptance of Monthly Rent, Monthly Rent or other payments from Lessee by Lessor at any time when Lessee is in default under this Agreement shall not be construed as a waiver of such default or of Lessor's right to exercise any remedy arising out of such default, nor shall any waiver or indulgence granted by either party to the other party be taken as an estoppel against the waiving party, it being expressly understood that the waiving party may at any time thereafter, if such default continues, exercise any such remedy in the manner hereinbefore provided or as otherwise provided by law or in equity.

ARTICLE XVIII – TERMINATION BY LESSEE FOR NON-ALLOCATION OF FUNDS

Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Term can be obtained and agrees to do all things lawfully within its power to obtain and maintain funds from which the Rent and other amounts due may be paid.

Lessee may terminate this Agreement by giving at least sixty (60) days' notice prior to the end of Lessee's then current fiscal period certifying that: (1) sufficient funds were not appropriated and budgeted by Lessee's governing body or will not otherwise be available to continue this Agreement beyond Lessee's then current fiscal period; and (2) that the Lessee has exhausted all funds legally available for payment of the Rent beyond Lessee's then current fiscal period. Upon termination of this Agreement, Lessee's obligations under this Agreement, except those that expressly survive the end of this Agreement, and any interest in the Premises shall cease and Lessee shall surrender the Premises, and shall dispose of Improvements in accordance with Article 5.3 herein. Notwithstanding the foregoing, Lessee agrees that, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current fiscal period, it will use its best efforts to take all action necessary to avoid termination of this Agreement, including making budget requests for each fiscal period during the Term for adequate funds to meet its obligations hereunder and to continue this Agreement in force.

Lessor and Lessee intend that the obligation of Lessee to pay Rent constitutes a current expense of Lessee and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Lessee's current fiscal period.

ARTICLE XIX – HOLDING OVER

- a. If Lessee remains in possession of the Leased Premises after the expiration of this Agreement, without a new lease reduced to writing and duly executed, even if Lessee shall have paid and Lessor shall have accepted, rent in respect of such holding over, Lessee shall be deemed to be occupying the Leased Premises only as a tenant from month to month, subject to all the covenants, conditions and agreements in this Lease Agreement and cancelable by either party upon thirty (30) days written notice to the other.

ARTICLE XX - NOTICES

Any notice, report, statement, approval, consent designation, demand or request to be given and any option or election to be exercised by a party under the provisions of this Agreement shall be effective only when made in writing and delivered (or mailed by registered or certified mail with U.S. postage prepaid or overnight/express delivery) to the other party at the addresses given below:

Lessor: City of Walnut Ridge, acting by and through the Walnut Ridge Airport Commission
ATTN: Stacy Hoggard, Airport Manager
11 Skywatch
Walnut Ridge, Arkansas 72476
Telephone: 870-886-5432
E-mail: shoggard@walnutridgeairport.com and
wrcityhall@att.net

Lessee: Arkansas State University - Jonesboro

Printed Name: Dr. Len Frey, Vice Chancellor for Finance and Administration

Signature: _____

Address: P.O. Box 2100

City/State/Zip Code: State University, AR 72467

Telephone: 870-972-2024

E-Mail Address: lfrey@astate.edu

With a copy to:

Katherine Prescott,
Senior Associate General Counsel,
Office of General Counsel,
Arkansas State University System,
P.O. Box 10
State University, AR 72467

Provided, however, that either party may designate a different representative or address from time to time by giving to the other party notice in writing of the change. Rental payments to the Lessor shall be made by the Lessee at an address to be furnished to the Lessee.

ARTICLE XXI - RIGHT TO INSPECT

The Lessor may enter the Premises upon reasonable notice:

- a. To inspect or protect the Premises or any Improvements located thereon;
- b. To determine whether the Lessee is complying with the applicable laws, orders or regulations of Lessor or any lawful government agency having jurisdiction over the Premises or any business conducted therein;
- c. To exhibit the Premises to any prospective purchaser or Lessee during the final sixty (60) days of the Agreement term, or at any time after either party has notified the other that the Agreement will be terminated for any reason; or
- d. No authorized entry by the Lessor shall constitute an eviction of the Lessee or a deprivation of its rights or alter the obligation of the Lessor or create any right in the Lessor adverse to the interest of the Lessee hereunder.

ARTICLE XXII - REMOVAL OF FIXTURES

- a. At the expiration of the Agreement, any and all trade equipment, signs and personal property, used by the Lessee in the operation of its business, on the Premises shall remain the Lessee's sole property and the Lessee shall have the right to remove the same provided any damages in removal caused by Lessee, its employees, agents, representatives, or assigns are repaired by the Lessee at Lessee's sole cost.

- b. However, any such property remaining on the Premises more than one hundred eighty(180) days after said expiration shall be deemed the property of Lessor.
- c. A fixture shall be defined as an article, which was chattel, but which, by being physically annexed or affixed to the realty by the Lessee and becoming incapable of being removed without structural or functional damage to the realty, becomes a part and parcel of it. Any fixtures which are annexed or affixed to the Premises by Lessee shall remain the property of Lessee and shall be governed by Article 5.3 at the expiration of the term or earlier termination of this Agreement. Non-fixtures personally owned by the Lessee at the expiration of the term or earlier termination of this Agreement, for any reason, shall continue to be owned by Lessee and, at its option, it may remove all such personally. Any damage to the Premises caused by the removal by Lessee of any such personally shall be repaired by Lessee forthwith at its expense.

ARTICLE XXIII - AIRPORT-RELATED RESTRICTIONS

23.1 Airport Protection. The Lessee acknowledges that the Lessor is required by law to operate under Federal Aviation Regulations, federal policies as promulgated by the FAA, and the FAA-approved Airport Layout Plan and the Lessee covenants that it will use the Premises consistent with said regulations, policies and the Airport Layout Plan. The Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with 14 CFR Part 77, "Objects Affecting Navigable Airspace", and all other Federal Aviation Regulations, State Statutes and local ordinances, rules, and regulations now existing and hereinafter promulgated.

The Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the Premises that would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard. The Lessor represents and acknowledges that the use of the Premises as proposed by the Lessee shall not interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard. The Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in such airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation or flight in the airspace, and for use of said airspace for landing on, taking off from, or operating on the Airport.

23.2 Property Rights Reserved. This Agreement and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Lessor acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the

Agreement of said lands from the Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Lessor pertaining to the Airport.

ARTICLE XXIV - NONDISCRIMINATION

The Lessee for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant that:

- a. No person on the grounds of religion, gender, marital status, race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Lessee's facilities; and,
- b. That in the construction of any Improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of religion, gender, marital status, race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

In the event of the breach of any of the above non-discrimination covenants, the Lessor shall promptly notify the Lessee, in writing, of such breach and the Lessee shall immediately commence corrective action. Such action by the Lessee shall be diligently pursued to its conclusion, and if the Lessee shall then fail to commence or diligently pursue action to cure said breach, the Lessor shall then have the right to terminate this Agreement and to re-enter and repossess the Premises.

ARTICLE XXV - ASSIGNMENT AND SUBLETTING

Lessee shall not assign this Agreement or sublet the Premises or any portion thereof, or otherwise transfer any right or interest hereunder without the prior written consent of the Lessor, which consent may not be unreasonably withheld, conditioned or delayed. If the Lessor consents, in writing, to the assignment, subletting or other transfer of any right or interest hereunder by the Lessee, such approval shall be limited to the particular instance specified in the written consent and the Lessee shall not be relieved of any duty, obligation or liability under the provisions of its Agreement, unless otherwise provided for in Lessor's consent.

ARTICLE XXVI - MISCELLANEOUS

26.1 Binding Effect. The terms and provisions of this Agreement shall be binding on the parties hereto and their respective heirs, successors, assigns and personal representatives. It is

acknowledged that the validity of said Agreement is subject to its approval by the Federal Aviation Administration.

26.2 Applicable Law/Venue. The terms of this Agreement shall be construed and enforced according to the laws of the State of Arkansas, except to the extent State law is abrogated by the laws of the United States of America. In the event of litigation arising out of this writing, venue shall be in the appropriate federal or state courts in the State of Arkansas, provided that the parties do hereby acknowledge that any action against Lessee is subject to the exclusive jurisdiction of the Arkansas State Claims Commission and consent to the jurisdiction thereof.

26.3 Attorneys Fees. In any action arising out of the enforcement of this writing, the prevailing party shall be entitled to seek an award of reasonable attorney's fees and costs, both at trial and all appellate levels, based upon the prevailing rates of private attorneys in the venue.

26.4 Identity of Interest. The execution of this Agreement or the performance of any act pursuant to the provisions hereof shall not be deemed or construed to have the effect of creating between the Lessor and the Lessee the relationship of principal and agent or of a partnership or of a joint venture and the relationship between them shall be and remain only that of Lessor and Lessee.

Each party covenants and agrees that, except as elsewhere specifically provided for in this Agreement, it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the property covered by this Agreement, and that no third person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act of omission of said other party. All persons contracting with the Lessee or furnishing materials or labor to said Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Agreement.

The Lessee shall not be deemed to be the agent of the Lessor so as to confer upon a laborer bestowing labor upon the Premises, a mechanic's lien upon the Lessor's estate under the provisions of the Arkansas Statutes, or any subsequent revisions thereof.

26.5 Entire Agreement. This Agreement contains all of the understandings by and between the parties hereto relative to the leasing of the Premises, and all prior or contemporaneous agreements relative thereto have been merged herein or are voided by this instrument, which may be amended, modified, altered, changed, revoked or rescinded in whole or in part only by an instrument in writing signed by each of the parties hereto.

26.6 Force Majeure. Neither Lessor, nor Lessee, shall be deemed in violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strikes,

boycotts, labor disputes, embargos, shortages of materials, acts of God, epidemics, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage, or any other circumstances for which it is not responsible, or which are not under its control; provided, however, that this Section does not exempt the Lessee from paying the rentals, fees, and charges set forth herein except for the time the instance of force majeure exists and prevents said performance. In any such case, a prompt written notice shall be given to the other party of the existence of such causes and of readiness to resume performance upon the removal or non-existence thereof.

ARTICLE XXVII – SUBORDINATION

This Agreement shall be subordinate to the provisions of any existing and future agreements between Lessor and the United States of America, the State of Arkansas, and Lawrence County, Arkansas, their courts, boards, agencies, or commissions, solely with respect to the operation or maintenance of the Walnut Ridge Municipal Airport, the execution of which has been or is required as a condition to the expenditure of federal, state or county funds or the issuance of bonds for the development of the Airport, provided that Lessee’s agreement to subordinate is subject to the governmental unit delivery to Lessee a recognition and non-disturbance agreement satisfactory to Lessee, or adequate provision is made in the subject agreement, assuring that Lessee’s rights under this Agreement shall be recognized and not disturbed upon any enforcement or foreclosure, so long as Lessee is not in default under this Agreement and Lessee attorns to any party acquiring title to the Premises following such enforcement. Lessee shall execute an appropriate and reasonable subordination agreement in compliance with the foregoing and any subject agreement.

Nothing Follows

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ____ day of

_____.

ATTEST: CITY OF WALNUT RIDGE

By: _____

Mayor Charles Snapp

WALNUT RIDGE AIRPORT COMMISSION, a Municipal Corporation

By: _____

Commission Chairman

Approved as to Form and Legality for the City of Walnut Ridge and the Walnut Ridge Airport
Commission only:

By: _____

City Attorney

**ATTEST: Arkansas State University - Jonesboro, an agency of the State of Arkansas and an
institution of higher education,**

By: _____

Authorized Representative

By: _____

Authorized Representative

Exhibits Attached:

Exhibit A.....Survey and Legal Description

Exhibit B.....Sample Lease Extension Agreement

DRAFT

Exhibit A.....Survey and Legal Description

Survey for Arkansas State University, hereinafter ASU, and Walnut Ridge Airport Commission

TRACT 1: The following described lands in Lawrence County, Arkansas, to-wit: That part of the South Half of the South Half of Section 13, Township 17 North, Range 1 East, and that part of the Southwest Quarter of the Southwest Quarter of Section 18, Township 17 North, Range 2 East, described as follows: Beginning at a found brass cap at the Southeast corner of said Section 13, run thence North 88°01'46" West 504.7 feet, to the true point of beginning: run thence North 88°02'19" West 2685.1 feet, run thence North 01°58'00" East 1204.3 feet, run thence South 87°47'30" East 3312.0 feet, run thence South 41°25'56" West 147.7 feet, run thence South 53°27'01" West 187.3 feet, run thence South 37°01'33" West 209.6 feet, run thence South 24°17'34" West 407.1 feet, run thence South 21°00'54" West 257.2 feet, run thence South 11°12'38" West 170.3 feet to the true point of beginning containing 80.00 acres, more or less, and subject to right of way for County Road 428 along and across the South side thereof, and subject to any other applicable easements or restrictions.

TRACT 2: The following described lands in Lawrence County, Arkansas, to-wit: That part of the South Half of the South Half of Section 13, Township 17 North, Range 1 East, described as follows: Beginning at a found brass cap at the Southeast corner of said Section 13, run thence North 88°01'46" West 504.7 feet, run thence North 88°02'19" West 2685.1 feet, to the true point of beginning: run thence North 01°58'00" East 1204.3 feet, run thence North 87°47'30" West 742.4 feet, run thence South 00°04'58" West 1208.2 feet, run thence South 88°02'19" East 702.6 feet to the true point of beginning, containing 20.00 acres, more or less, and subject to right of way for County Road 428 along and across the South side thereof, and subject to any other applicable easements or restrictions. _____ Nothing Follows _____

DRAFT

EXHIBIT B SAMPLE LEASE EXTENSION AGREEMENT

THIS LEASE EXTENSION AGREEMENT, made and entered into this ____ day of _____, 20____, by and between the WALNUT RIDGE AIRPORT COMMISSION, a municipal corporation existing under the laws of the State of Arkansas , (hereinafter referred to as the "Lessor"), and the Arkansas State University - Jonesboro, hereinafter ASU, an agency of the State of Arkansas and an institution of higher education (hereinafter referred to as the "Lessee") provides that:

IN AND FOR CONSIDERATION of compliance with the terms of that certain LEASE AGREEMENT between the parties dated _____20____, and the mutual covenants hereinafter provided, the receipt and sufficiency of which are hereby acknowledged, the parties have agreed as follows:

1. The Leasehold of the afore-mentioned Lease Agreement may be extended for an additional One (1) year from the date of the expiration of the Initial Term.
2. The Monthly Rent for the first year of said extension shall be a minimum of _____ U.S. Dollars, payable monthly as stipulated in the primary Lease Agreement.
3. The Leasehold shall terminate at the end of this extended term and Lessee may negotiate with Lessor for an addition term.
4. All other terms and provisions of the Lease Agreement shall remain in full force and effect unless application of the same shall lead to an unjust enrichment for either party.

**ARKANSAS STATE UNIVERSITY
BOARD OF TRUSTEES**

A Resolution Recognizing the Significant Contributions of
James E. and Wanda Lee Vaughn
to Arkansas State University-Jonesboro

WHEREAS, the Board of Trustees has retained unto itself the authority to name facilities of the University in honor of individuals who have significantly distinguished themselves through service to and support of the University; and

WHEREAS, James E. and Wanda Lee Vaughn were respected leaders in the education community and supporters of higher education and the students we serve; and

WHEREAS, James E. and Wanda Lee Vaughn made significant contributions to Arkansas State University, throughout their lifetimes and through their estates, of a magnitude worthy of special gratitude and lasting recognition;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Arkansas State University that the third floor lounge area, formerly known as Heritage Plaza Lounge, in the Carl. R. Reng Student Union facility on the ASU-Jonesboro campus, shall be known henceforth as:

The Vaughn Student Lounge

DULY ADOPTED AND APPROVED this 15th day of September 2017

Ron Rhodes, Chair

Tim Langford, Vice Chair

Niel Crowson, Secretary

Stacy Crawford, Member

Price Gardner, Member

Charles L. Welch, President

EXECUTIVE SUMMARY

Contact: Holly Smith (870) 512-7704

ACTION ITEM: Arkansas State University-Newport (ASUN) requests approval to offer Certificates of Proficiency in Automotive Mechanical Systems, Automotive Transmissions and Axles, Engine Performance, and Heating and Air Conditioning

ISSUE: The Board of Trustees must approve the offering of any new degree.

BACKGROUND:

- The proposals for Certificates of Proficiency were developed based on the recommendation of the Automotive Services Technology Advisory Committee.
- To meet current industry demands, additional specialized certifications for automotive technicians are needed to work in specialized fields.
- These Certificates of Proficiency align with the Automotive Service Excellence (ASE) Certificate and will serve as an embedded, industry-recognized credential within the Technical Certificate in Automotive Service Technology (AST) at ASUN.
- No additional funding is required.

RECOMMENDATION/RESOLUTION:

Be it resolved that Arkansas State University-Newport is approved to offer the Certificates of Proficiency in Automotive Mechanical Systems, Automotive Transmissions and Axles, Engine Performance, and Heating and Air Conditioning, effective spring semester of 2018.

Niel Crowson, Secretary

Ron Rhodes, Chair

**ARKANSAS STATE UNIVERSITY
BOARD OF TRUSTEES**

A Resolution Recognizing the Life and Service of
Lieutenant Patrick Weatherford
to Arkansas State University-Newport

WHEREAS, the Board of Trustees has retained unto itself the authority to name facilities and programs of the University in honor of individuals who have significantly distinguished themselves through support and service to the state, the community, and the University; and

WHEREAS, Lt. Patrick Weatherford was a devoted and courageous Arkansas law-enforcement officer and public servant, dedicated to the community of Newport and to Arkansas State University-Newport, performing his job with distinction and making the ultimate sacrifice in the line of duty in service to his community on June 12, 2017; and

WHEREAS, Lt. Weatherford was a graduate of Newport High School; obtained an associate's degree from ASU-Newport, a bachelor's degree in Criminal Justice from Arkansas State University-Jonesboro, and a master's degree in Criminal Justice from the University of Arkansas at Little Rock, and completed the elite FBI National Academy program in Quantico, Virginia, in 2016; and

WHEREAS, Lt. Weatherford, a consummate professional and 15-year veteran of the Newport Police Department, provided security and protection to the students, faculty, and staff as a part-time campus police officer at ASU-Newport, making a lasting impact on the University and the community of a magnitude worthy of enduring recognition;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Arkansas State University, that the Criminal Justice Department at ASU-Newport shall be known henceforth as the

LIEUTENANT PATRICK WEATHERFORD CRIMINAL JUSTICE DEPARTMENT

DULY ADOPTED AND APPROVED this 15th day of September 2017

Ron Rhodes, Chair

Tim Langford, Vice Chair

Niel Crowson, Secretary

Stacy Crawford, Member

Price Gardner, Member

Charles L. Welch, President