

**AGENDA ITEM #IX-D-16
MARCH 20, 2018
HIGHLAND COMMUNITY COLLEGE BOARD**

**APPROVAL OF CONTRACT FOR ACQUISITION OF INTERNATIONAL
PRESERVATION STUDIES CENTER (IPSC) PROGRAM**

RECOMMENDATION OF THE PRESIDENT: That the Board of Trustees approves the attached Asset Purchase Agreement for acquisition of the International Preservation Studies Center (IPSC) program at a purchase price of \$50,000.

BACKGROUND: As previewed earlier, the College has been in negotiation with legal counsel for the former IPSC program, which was operated at the Campbell Center in Mount Carroll. The attached Asset Purchase Agreement reflects agreed upon terms and conditions. Projections for anticipated enrollment in the IPSC as it would be operated at Highland include estimates of 200 new students during the first year and gross revenue in excess of \$100,000. Because the program would bring students and part-time instructors from across the globe, it would also enrich the diversity and vibrancy of our campus culture, while enhancing regional communities in terms of needs for preservation training and related economic benefits.

BOARD ACTION: _____

ASSET PURCHASE AGREEMENT

This Agreement is made as of the ___ day of _____, 2018 by and between INTERNATIONAL PRESERVATION STUDIES CENTER, an Illinois not-for-profit corporation, of Mt. Carroll, Carroll County, Illinois, "Seller," and HIGHLAND COMMUNITY COLLEGE, an Illinois Community College in Freeport, Stephenson County, Illinois, "Buyer," and is made in consideration of the mutual promises, covenants, conditions and terms contained herein.

1. Agreement to Sell and Purchase. Seller hereby agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of the right, title and interest that Seller possesses in the following assets ("Assets"):

a. Right to use of the names "International Preservation Studies Center," "Restoration College Association," and/or "Campbell Center for Historic Preservation Studies";

b. Participants and Vendor lists, and all other information, files, records, data, plans and recorded knowledge of Seller;

c. Inventory of promotional and advertising products;

d. Business equipment, including but not limited to such equipment identified in the attached Exhibit A.

e. Right to the use and/or control of the phone number, fax number, social media site(s) and current website, and the domain name applicable thereto, of International Preservation Studies Center with such services to be maintained at Buyer's expense after the date of sale.

f. Good will.

2. Purchase Price. Buyer agrees to pay to Seller as consideration for the sale of the Assets the total sum of Fifty Thousand and No One Hundredths Dollars (\$50,000.00), payable as follows:

a. Twenty Five Thousand and No One Hundredths Dollars (\$25,000.00) at Closing.

b. An additional Twenty Five Thousand and No One Hundredths Dollars (\$25,000) payable in six MONTHLY installments, beginning on the 15th of the 1st month following the month of Closing.

3. Closing. Closing of the sale and payment of the portion of the purchase price set forth in 2.a. shall occur on or before March 31, 2018 ("Closing Date") and shall be held at the office of Ward, Murray, Pace & Johnson, P.C., Attorneys, 202 East 5th Street, Sterling, Illinois, ("Ward") at such time as mutually agreed upon by the parties. At closing, Buyer shall make payment of said portion of the purchase price set forth in 2.a. above by check. The Check shall be payable to the trust account of Attorney for Seller, John Cox. The balance of the purchase price shall be paid in

five (5) equal installments of four thousand one hundred sixty-six and no one hundredths dollars (\$4,166.00) on the 15th day of each of the following five (5) months and a final payment of four thousand one hundred seventy and no one hundredths dollars (\$4,170.00) on the 15th day of the sixth month following said closing. All such installment payments shall be made payable to The Trust Account of Attorney John Cox and mailed to P.O. Box 252 Galena, IL, At closing Seller shall deliver to Buyer the Assets and a Bill of Sale conveying free, clear and unencumbered title to the Assets excepting only a security interest of Seller for the unpaid balance of the purchase price. Any such security interest shall be released upon payment of the final installment payment. Seller shall also deliver to Buyer a fully executed form BCA 10.30 of the Secretary of State of Illinois (Articles of Amendment) duly signed by the authorized agent or officer of Seller, by which the name of Seller is changed to something other than “International Preservation Studies Center,” in order that Buyer may file such documents as may be required to utilize “International Preservation Studies Center” as an assumed name.

4. Allocation of Purchase Price. The parties agree that the Purchase Price shall be allocated among the Assets as follows, and that each of them shall not take any position upon or within any tax filing or other official document that differs from the allocation as set forth.

a. Right to name	\$ 30,000
b. Participant lists and files	\$ 5,000
c. Inventory, equipment, phone and fax numbers, social media, website, domain name, etc. items	\$ 10,000
d. Good will	\$ 5,000

In addition, each shall supply and deliver to the other at Closing the tax identification number of that party in order that each may file form 8594 Asset Acquisition Statement with the Internal Revenue Service reporting the transaction consistently with this Agreement.

5. Representations and Warranties of Seller. Seller represents and warrants to Buyer that:

a. Seller is a corporation duly formed, operating and in good standing in the state of Illinois and has full power and authority to enter into and consummate the transaction contemplated and describe in this Agreement;

b. Seller has good and merchantable title to the Assets, and said Assets are, or at Closing will be, free, clear and unencumbered and not subject to any liens or security interests (except those which will be released upon payment of sums not exceeding the net amount due from Buyer at Closing);

c. This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms;

d. Seller has not made any untrue, false or misleading statement or representation to Buyer to induce Buyer to enter into and complete this Agreement;

e. There are no actions, suits, or proceedings pending, threatened or anticipated before any court or governmental or administrative body or agency affecting Seller or the Assets;

f. There are no tax liens on the Seller or the Assets; there are no obligations relating to, or claims asserted for, taxes or assessments against the Seller or the Assets. The Assets are not subject to any obligation or liability for any taxes whatsoever that may be payable by Seller;

g. Seller will execute and provide all documents necessary to transfer the Assets to Buyer;

h. After Closing, Seller will cease all use of the name, website, and social media sites transferred to Buyer.

i. From the sale proceeds the Seller, through its attorney John Cox, shall make payment of monies owed to the following:

1. Susan Russick	\$1,728.22
2. Tonia Grafakos	1,735.82
3. Christine Conniff-O'Shea	2,060.58
4. Travus Copeland	1,200.00
5. Roger Machin	81.14
6. Methods & Materials, Inc.	585.11
7. Anna Cannizzo	354.85
8. Harold Mailand	494.99
9. Gary Laughlin	106.24
10. James Bernstein	5,442.75
11. Rebecca Pollak	<u>2,380.00</u>

IPSC shall remit payment of at least 50% of the outstanding balances, to the identified individuals, at the time of receiving initial payment. The balances owed to the individuals shall be paid through use of the installment proceeds. Upon payment of all balances, proof of such payment shall be provided to Buyer.

6. Liabilities Not Assumed. Buyer shall not assume or agree to assume and shall not acquire any liability or obligation of any kind or nature of Seller, direct, contingent or otherwise, including, but not limited to the following:

a. any product liability or similar claim for injury to person or property, regardless of when made or asserted, which arises out of or is based upon any express or implied representation, warranty, agreement or guarantee made by Seller, or alleged to have been made by Seller, or which is imposed or asserted to be imposed by operation of law, in connection with any service performed or product sold or leased by or on behalf of Seller on or prior to the Closing, including without limitation any claim relating to any product delivered in connection with the performance of such service and any claim seeking recovery for consequential damages, lost revenue or income;

b. any federal, state or local income or other tax (i) payable with respect to the Business, Assets, properties or operations of Seller, or (ii) incident to or arising as a consequence of the negotiation or consummation by Seller of this Agreement and the transactions contemplated hereby;

c. any liability or obligation under or in connection with the Assets, including, but not limited to, any supply or manufacturing agreements with respect thereto, or any liability or obligation in connection with the Business prior to Closing; or

d. any liability or obligation arising prior to or as a result of the Closing to any employees, agents or independent contractors of Seller, or under any benefit arrangement with respect thereto.

7. Agreement Not to Compete. Seller agrees and covenants that for twenty-four (24) months after the sale contemplated herein, Seller and any key employees shall not directly or indirectly:

a. Solicit, sell, serve, or divert any student or participant of International Preservation Studies Center existing as of the date of sale, except as provided herein, nor

b. Absent authorization from Buyer, be an employee, employer, consultant, officer, director, partner, trustee, or shareholder of any person or entity that engages in the same or a substantially similar business, within a sixty (60) mile radius of the primary place of Operation for Highland Community College.

8. Statutory Requirements. The parties acknowledge that the sale contemplated herein is a sale of substantially all of the assets of Seller, and that notice of such intended sale to the Illinois Department of Revenue and Illinois Department of Employment Security is required. Therefore, Seller agrees to deliver to Buyer, not later than 20 Days before Closing, the identifying number of Seller as issued by said departments and the Federal Tax Identification Number of Seller. Buyer shall deliver to Seller, not later than 20 days before Closing, the Federal Tax Identification Number of Buyer. Each party shall deliver such notices to the departments as may be required by law, and agree to comply with any stop order or other order issued by such department or agency.

9. General Matters.

a. Except as specifically set forth in this Agreement to the contrary, all fees and expenses incurred by Seller in connection with this Agreement will be borne by Seller and all fees and expenses incurred by Buyer in connection with this Agreement will be borne by Buyer.

b. This Agreement and the agreements, instruments, schedules, and other writings referred to in this Agreement contain the entire understanding of the parties with respect to the subject matter of this Agreement. There are no restrictions, agreements, promises, warranties, covenants, or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by all of the parties of their successors or assigns.

c. The section and paragraph headings contained herein are for the convenience of the parties only and are not intended to define or limit the contents of their sections and paragraphs.

d. This Agreement may be executed in any number of counterparts and any party thereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

10. Remedies. In the event that either party to this Agreement should fail to perform any condition or covenant agreed to herein, or should breach this Agreement, then in any action filed to obtain performance or collect any sum due hereunder or damages arising from such failure to perform or breach, the prevailing party in such action shall have and recover from the non-prevailing party the reasonable attorney fees and expenses incurred in such action. In order to be deemed a "prevailing party," it is not necessary that all relief sought be awarded but an award of partial relief sought shall be sufficient for the party to whom awarded to be deemed "prevailing." Any action under or to enforce the terms or conditions of this Agreement shall be filed or brought in the circuit court of Stephenson County, Illinois and venue therein is hereby established by agreement.

INTERNATIONAL PRESERVATION
STUDIES CENTER

By _____
President

HIGHLAND COMMUNITY COLLEGE

By _____
Chairman, Board of Trustees

EXHIBIT A
(IPSC - HCC Inventory)

Tolman Hall

12 high top tables
12 High chairs
Board Shearer
Two matte cutters and blades
Small book presses
12 Small wooden easels
Hygrothermographs and other tools from hall closet
Stackable grey chemical cabinets
Selected chemicals
Chemical safety sheets
Archival paper supplies
Blueboard supplies
Matte board supplies
Book board
Book cloth
Japanese tissue
Historic flat paper collection
Historic book collection
Scientific supplies from central storage
Adhesives, polishes, cleaners, supplies, and other chemicals from central storage
Brushes, hand tools, strainers
Small appliances: blenders, irons, cook pots, hotplates, hair dryers
Plastic grey drawers and contents
Contents of white built-in shelving from central storage
Large rolls of foam, paper, poly, and plastic, from matte cutting room
Historic painting collections
Flat plastic paper trays
Egg crate flat strainers
Plastic tubs of gilding supplies
Plastic tubs of pest management supplies
Plastic tubs and boxes of class supplies from upstairs storage room
Selections from historic object collections
Mount making hand tools
Mount making torches
Mount making chemicals and supplies
Drill press
Table saw
Power grinder
Power buffer
Jigsaw

Textile supplies from shelving
Mannequin making supplies
Historic textile collection
Book press
Reference books
Sample archival materials
Contents of metal cabinet in small first floor office

Sawyer House

Laptop computers
Projectors
Student records
Instructor files
Selected office supplies
All gift shop and promotional merchandise
Conference booth and tablecloth

Library

Selected books from library
Photo Equipment

Howe Hall

All gift shop items and supplies

Metcalf

Emergency Preparedness Supplies
Selected artifacts for Emergency Preparedness class