SAN JOSE EVERGREEN COMMUNITY COLLEGE DISTRICT
BOARD RESOLUTION NO. 012715-1

RESOLUTION OF INTENTION TO LEASE SCHOOL
PROPERTY NOT NEEDED FOR SCHOOL CLASSROOM
BUILDINGS AND FIXING THE TIME AND PLACE AT
WHICH BIDS TO LEASE SHALL BE CONSIDERED

The Board of Trustees of the San Jose Evergreen Community College District, in
regular and open meeting, finds and resolves as follows:

WHEREAS, the San Jose Evergreen Community College District (sometimes
herein called the "District") owns real property located in the City of San Jose, County of
Santa Clara, State of California, consisting of approximately 27.1 acres, located adjacent to
Evergreen Valley College and near Yerba Buena Road and San Felipe Road, San Jose,
California (hereinafter called "Surplus District Property" or the "Property"), which Surplus
District Property is more particularly described in a document entitled the "Surplus
Property Description" which is on file and available for inspection at District
Administrative Services, located at 40 South Market Street, 6th Floor, San Jose, California
95113; and

WHEREAS, this Board has previously found that the Surplus District Property is
not now, and will not at the time of delivery of possession be needed by the District for
school classroom buildings; and

WHEREAS, this Board has determined that it is in the best interest of the District to
lease the Surplus District Property to a responsible bidder;

NOW, THEREFORE, BE IT RESOLVED, that this Board hereby declares its
intention to commence the process necessary to lease the Surplus District Property in
accordance with applicable law on terms and conditions which are hereinafter set forth; and

BE IT FURTHER RESOLVED, that Notice is hereby given that all sealed, written
proposals (bids) for the lease of the Surplus District Property must be delivered to Douglas
R. Smith, Vice Chancellor, Administrative Services, 40 South Market Street, 6th Floor, San
Jose, California 95113 prior to 5:00 p.m. on Tuesday, April 14, 2015. No sealed bids will
be accepted after 5:00p.m.; and

BE IT FURTHER RESOLVED, that this Board hereby authorizes Douglas R.
Smith, Vice Chancellor, Administrative Services, to receive and open sealed proposals to
lease and to call for oral bids; and
BE IT FURTHER RESOLVED, that Notice is hereby given that this Board fixes 7:00 p.m. on Tuesday, April 14, 2015, at 40 South Market Street, San Jose, CA as the time, date, and place for opening, examining, declaring, and considering the sealed bids which have been received, and for the calling for and considering of oral bids; and

BE IT FURTHER RESOLVED, that the Surplus District Property may be leased under the following terms and conditions:

1. The Property may be leased as more particularly hereinafter set forth. The District prefers a single tenant to master lease and develop the entire Surplus District Property and will not consider separate bids from prospective tenants to develop only retail or only residential housing on a portion of the Property.

2. Each written bid must be submitted on the District’s Bid Form, available upon application at the San Jose Evergreen Community College District Office from Douglas R. Smith, Vice Chancellor, Administrative Services, 40 South Market Street, San Jose, California 95113. Each bidder, at the time of submission of its bid, must deliver to District a certified check or cashier’s check in the amount of One Hundred Thirty Five Thousand Five Hundred Dollars ($135,500.00) as an initial bid deposit (“Initial Deposit”) payable to the San Jose Evergreen Community College District. The Initial Deposit shall not be placed in escrow but shall be held by the District. The completed Bid Form must be placed in a sealed envelope marked “Bid for the Surplus District Property”.

3. At the time and place set forth for the opening and examination of bids, upon a call for oral bids at said session, any responsible person, upon submitting to Douglas R. Smith, Vice Chancellor, Administrative Services, a certified check or cashier’s check in the amount of One Hundred Thirty Five Thousand Five Hundred Dollars ($135,500.00), may offer to lease the Surplus District Property upon the terms and conditions set forth in this resolution and notice for a price exceeding by at least five (5%) percent of the highest of said written proposals submitted. No final acceptance of an oral bid shall be made until the oral bid is reduced to writing on the District’s Bid Form, signed by the offerer, accompanied by an Initial Deposit and submitted to the District on or before 5:00 p.m. on April 15, 2015.

4. The final acceptance or rejection by the Board of a written or oral bid may be made during a session of this Board to be held on April 14, 2015 at 7:00 p.m., or as otherwise determined by this Board. After acceptance of a bid (the “Bid Award”), the District and the successful bidder shall enter into negotiations of a ground lease for the Property consistent with the provisions of the accepted bid and containing other provisions as the District may require (“Lease”).

5. This Board reserves the right to reject any and all bids, written or oral, and to withdraw the Property from being leased. This Board also reserves the right to waive any and all defects in bids and to waive technicalities. The Board reserves the right to determine who is a responsible bidder, and to accept a bid that may not be the highest bid, based upon multiple factors that may be considered by the Board to the extent the
California Community College Board of Governors allows such factors to be considered. If the District accepts a bid, the District may accept the highest bid made by a responsible bidder that materially conforms to the terms and conditions specified in this Resolution, or it may accept a bid that is not necessarily the highest bid pursuant to the District’s Request for Waiver of Education Code Section 81370(b) allowing the District to accept such a bid, which Request has been made to and approved by the California Community College Board of Governors.

6. Time is of the essence in all terms and conditions of the Lease and of the terms of this Resolution as set forth herein.

7. The Lease shall be made without warranty by District, express or implied, except as expressly stated herein.

8. The bidder is responsible for inspecting the Property prior to submitting a bid. The District makes no warranties whatsoever concerning the exact area of the site, or the condition of the site, or any of the improvements thereon. Bidder, at its expense, shall be responsible for obtaining any subdivision of the Surplus District Property from the rest of the District’s lands sufficient to create legal parcels consistent with the property descriptions contained herein.

9. Upon final acceptance by the District, if any, of a bid, the Initial Deposit of the unsuccessful bidders will be returned to them.

10. The bidder acknowledges the City of San Jose’s current land use and zoning designation on the Property.

11. The time within which any obligation set forth herein is to be performed may be extended by the District at the sole option of the District. The District is under no obligation to grant any said extension other than those specifically set forth in the following paragraphs. Said extension, if any, shall be granted in the District’s absolute discretion where said extension would, in the District’s absolute discretion, be of benefit to the District.

12. The bidder’s rights and obligations shall not be assignable without the prior written consent of the District. Said consent may be granted or withheld at the District’s sole discretion.

13. In the event any legal action or litigation is undertaken by the District to enforce the provisions of the bid and agreement to lease, the bidder agrees to pay reasonable attorney fees incurred by the District.

14. A leasehold interest to the Property shall be conveyed in accordance with the terms hereof by a written lease to be written and subject to all liens, encumbrances, or other cloud on title that may affect the Property, whether of record or not.
15. The Initial Deposit shall become non-refundable and shall belong to the District without further action upon final acceptance of the bid by the Board. In the event the successful bidder fails to execute the Lease and consummate the transaction as described herein, the Initial Deposit and the shall be forfeited by the bidder and retained by the District as liquidated damages for the period the Property has been kept off the market due to the acceptance of said successful bid. The foregoing is without limitation or waiver of all other equitable and legal rights and remedies of the District with respect to said successful bidders’ failure to execute the lease and consummate the transaction, including without limitation an action at law for damages. District shall have the right, in its sole and absolute discretion, to terminate negotiations with the successful bidder at any time after the one hundred eightieth (180th) day after the Bid Award in the event a Lease has not been signed by such time. In such an event, the Initial Deposit shall be kept by the District.

The following is a summary of deposits required and its disposition:

<table>
<thead>
<tr>
<th>When Deposit Made</th>
<th>Amount</th>
<th>Becomes Nonrefundable</th>
<th>Returned by District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Deposit at time Bid Submitted</td>
<td>$135,500</td>
<td>Upon award of Bid to bidder</td>
<td>Upon Rejection of Bid</td>
</tr>
</tbody>
</table>

16. District’s decision to select a bidder will be subject to the District’s evaluation of the following information which should be submitted with each bid:

Accompanying the submission of a bid, Lessee shall provide District with information regarding the financial condition of Lessee and Lessee’s guarantor(s), including but not limited to: information demonstrating the overall financial strength of the development team and demonstrating the ability to provide necessary capital for funding predevelopment activities, securing construction and permanent loan financing, providing required equity either directly and/or with capital partners, and providing funding for ongoing operations (including maintenance, reserves, etc.). The information shall also demonstrate Lessee’s involvement in financing structures for projects similar to the proposed Project and provide any information which would indicate a current relationship with financial resources who have demonstrated an interest in financing the proposed Project. This information may include current prospectuses, financial statements, balance sheets and income statements. Lessee shall provide information to demonstrate its experience and ability to operate facilities similar to the proposed Project.

17. The Lease shall be subject to such other terms and conditions as the District may require, including but not limited to District’s review and approval of the status of the entity making the bid. District’s acceptance of a bid shall not constitute a binding
agreement with District for the lease of the Property, and any such binding obligation to lease shall occur, if at all, upon the execution of the Lease. In the event District and the successful bidder are not able to agree on all terms of the Lease, then the District may terminate negotiations with the successful bidder and/or request new bids to lease. All deposits held by District shall be retained by District to the extent each such deposit has become non-refundable. If negotiations are terminated by the District as provided herein, such termination shall be without penalty or liability of the District to the successful bidder.

18. The minimum basic terms to be included in the Lease are as follows (the successful bidder shall henceforth be referred to herein as “Lessee”):

18.1. TERM: The initial term shall be Fifty-five (55) years. The Term shall commence upon execution of the Lease. (“Lease Commencement Date”). Lessee shall have two options to extend the Lease Term, each for an additional Twenty (20) years (each option referred to as “Extension Option” and collectively as “Extension Options”) on the same terms and conditions set forth in the Lease except that Base Rent shall be reset as provided herein. As used herein, “Term” shall refer to the initial fifty-five (55) years plus each Twenty (20) year extension if one or both of the Extension Options are exercised by Lessee.

18.2. USE: The proposed use of the Property shall be a combination of retail, office, multi-family housing, and other proposed uses consisting of (i) 125 units or more of multi-family residential market rate rental housing, (ii) at least 80 units of senior housing, (iii) at least 18,000 square feet of office space, (iv) 30,000 square feet or more of retail space (each “Project Component and together the “Project”). The Project may also include other uses. Lessor shall have the right to approve any proposed nonresidential tenant, which approval shall not be unreasonably withheld. Approval parameters will be listed in the Lease, which shall include examples of uses which will and will not be allowed. The Chancellor of Lessor shall be the point of contact regarding approval of tenants.

18.3 BASE RENT:

(a) The Base Rent (“Base Rent”) shall be at least One Million Five Hundred Thousand Dollars ($1,500,000.00) per year paid in equal monthly installments. The Base Rent shall commence being paid as follows (“Base Rent Commencement Date”): (i) on the first day of the month immediately following the issuance of the first certificate of occupancy for a residential structure on the Property, or the expiration of Thirty Six (36) months from the Lease Commencement Date, whichever occurs sooner, Lessee shall commence paying a portion of the Base Rent in the amount of Forty-
Five Thousand Dollars ($45,000.00) per month; (ii) on the first day of the month immediately following the issuance of one or more certificates of occupancy for one or more commercial (retail and/or office) structures on the Property whose square footage totals more than 25,000 gross square feet of building space, Lessee shall commence paying a portion of the Base Rent in the amount of Fifteen Thousand Dollars ($15,000.00) per month; and (iii) the provisions 18.3(a) and 18.3(b) herein notwithstanding, the entire amount of Base Rent, as adjusted in accordance with paragraph 18.5 below, shall commence being paid monthly on the first to occur of: the first day of the 49th month of the Lease Term; occupancy of at least 180 residential units; or 18 months after the issuance of the first certificate of occupancy for a residential building in the Project.

(b) Notwithstanding the Base Rent commencement schedule above, should a California Environmental Quality Act ("CEQA") related lawsuit delay entitlement approval, the Base Rent commencement schedule shall be extended on a day for day basis by the amount of time required to resolve the lawsuit, but in no event shall the Base Rent commencement schedule be extended by more than eighteen (18) months. For example, in the event of a delay in obtaining entitlements due to a CEQA related lawsuit, in no event shall the Forty Five Thousand Dollar ($45,000.00) rent payment referred to in Paragraph 18.3(a) herein commence later than Fifty-Four (54) months from the Lease Commencement Date. Once Base Rent or any portion thereof has commenced pursuant to Paragraph 18.3(a), such payment shall not be abated due to a CEQA related lawsuit, but a CEQA related lawsuit extension shall apply to any portion of the Base Rent which has not commenced prior to a CEQA lawsuit delay, except that no extension for a CEQA related lawsuit shall apply to the commencement of Base Rent based on the performance milestones set forth in Paragraph 18.3(a)(i) (issuance of first certificate of occupancy), Paragraph 18.3(a)(ii) (issuance of first certificate of occupancy), and Paragraph 18.3(a)(iii) (occupancy of at least 180 residential units or 18 months after issuance of first residential certificate of occupancy).

(c) Notwithstanding adjustments to the Base Rent as set forth in paragraphs 18.4 and 18.5 below, the Base Rent shall be increased by at least the amount of one hundred sixty thousand dollars ($160,000) commencing on the first (1st) day of the eleventh (11) year following the Lease Commencement Date ("Ten Year Base Rent Increase Date"). The increased Base Rent shall remain in effect for the balance of the Term and shall be subject to the calculation of Base Rent Escalation as set forth in paragraph 18.5 below. For example, if Base Rent has increased to the amount of $1,540,000 by end of the
tenth (10th) year following the Lease Commencement Date as a result of escalations described in paragraph 18.5 herein, then beginning in the eleventh (11th) year, the new Base Rent shall be one million seven hundred thousand dollars (1,700,000). The amount of one million seven hundred thousand ($1,700,000) shall be subject to the provisions regarding Base Rent escalation set forth in paragraph 18.5 for the balance of the term of the Lease.

18.4. PERIODIC BASE RENT ADJUSTMENT: Upon the occurrence of any of the events described below, Base Rent shall be increased to the fair market rental value of the Property ("FMV"). The Base Rent will be reset to an amount agreed to by the Lessor and Lessee and if they cannot agree, then the Base Rent shall be reset pursuant to an appraisal process described below. The events, each of which shall trigger the resetting of Base Rent, are: (a) the expiration of thirty (30) years following the Lease Commencement Day; (b) the exercise of any of the Extension Options by Lessee; (c) the Project is modified during the Term, enhancing its value, as a result of any change in the allowed use, zoning, or the square footage of the Project. In the event an appraisal is required to determine the new Base Rent, Lessor and Lessee shall each select a qualified appraiser and each appraisal shall offer an opinion as to the FMV. If the two opinions are within a range of 10%, then the opinions shall be averaged and said average shall become the new Base Rent. In the event the two opinions are not within 10% of each other, then the two appraisers previously selected shall agree upon a third appraiser who shall offer an opinion on the FMV. The amount of the third opinion shall be averaged with one or both of the other opinions if one or both of the first two opinions are within 10% of the third opinion and if not, then the third opinion shall be averaged with the opinion that is closest to the third opinion and that average shall become the new Base Rent. In no event shall Base Rent be reduced as a result of the periodic Base Rent adjustment process set forth herein.

18.5. BASE RENT ESCALATION: The Base Rent shall be increased every year during the Term of the Lease except for years when the Base Rent is increased pursuant to Paragraph 18.4 above or to Paragraph 18.3(c) above. The increase shall equal the percentage change in the Consumer Price Index (CPI) for the prior twelve (12) month period as published by the U.S. Department of Labor’s Bureau of Labor Statistics for All Urban Consumers for the San Jose - San Francisco - Oakland Metropolitan Statistical Area. The first increase shall occur on the first day of the second year of the Term and except as set forth herein, shall occur every year thereafter during the Lease Term ("Rent Adjustment Date"). In no event shall
Base Rent be reduced. During the first ten (10) years of the Lease Commencement Date, the minimum annual CPI increase shall be one (1%) and the maximum annual increase shall be three (3%). For the remainder of the Term, the minimum annual CPI increase shall be one (1%) and the maximum annual CPI increase shall be four (4%). On the Ten Year Base Rent Increase Date, the Base Rent shall be recalculated as set forth in Paragraph 18.3(c) herein. Thereafter, the annual Base Rent escalation shall be calculated by applying the percentage change in the CPI for the prior twelve (12) months to the recalculated Base Rent.

18.6. ADDITIONAL RENT: In addition to Base Rent, Lessee shall pay additional rent ("Additional Rent") to Lessor as follows:

a. Lessee shall pre-pay Base Rent ("Pre-Paid Rent") to Lessor as follows: Lessee shall pay One Million Dollars ($1,000,000) to Lessor upon the execution by the Parties hereto of a ground lease for the Property. Amounts deposited pursuant to Paragraph 18.12 below shall be credited toward the Pre-Paid Rent. Pre-Paid Rent shall be applied to the Base Rent as Base Rent becomes due as set forth in paragraph 18.3 above. Once the Pre-Paid Rent has been applied in full to accruing Base Rent then Lessee shall pay further accruing Base Rent directly to Lessor. Pre-Paid Rent shall be non-refundable except in the case of a Lessor default.

b. Lessee shall pay to Lessor twenty-five percent (25%) of the Net Profit resulting from any sale, assignment or transfer of any kind ("Transfer") of the Lease, one or more Project Component(s) or of any improvement on the Property. Transfer shall not include a refinancing. Net Profit shall be determined by reducing the gross revenue received by Lessee resulting from any such Transfer less the actual out-of-pocket costs paid by Lessee to construct the transferred Project Component(s) or transferred improvement and less any reasonable cost incurred to close the actual Transfer. Actual out-of-pocket costs shall include construction costs, architects fees, mechanical and engineering fees, necessary consultant expenses and construction financing expenses. Gross revenue shall be further reduced by a time value factor which shall equal seven percent (7%) per year of the capital cost which shall be defined in the Lease. Capital costs shall include Lessor approved capitol renovations or expansion costs undertaken subsequent to initial construction. The time value factor shall commence as of the date of completion of construction of each Project Component. Capital Cost and all other out-of-pocket costs to be used in the calculation of the Net Profit shall be reported to Lessor no later than one hundred twenty (120) days after completion of each Project Component and thereafter that
information shall be reviewed and reasonably agreed upon by Lessor and Lessee

18.7 POSSESSION: Possession of the Property shall be delivered twelve (12) months after execution of the Lease, subject to certain conditions precedent to transfer of possession which shall be set forth in the Lease.

18.8 DUE DILIGENCE: Prior to the Bid Award, Lessee may conduct its own due diligence investigation of the Property, at its sole cost and expense, which investigation may include:

a. Lessee’s review of the condition of title to the Property.

b. Lessee’s review of the physical condition of the Property, including without limitation: soil and ground water conditions, the stability and load bearing capacity of the soil; the presence of hazardous material on the Property or the potential for migration of hazardous material onto the Property from other properties; archeological and geological matters; and any matters deemed appropriate by Lessee. Lessee or its agents and contractors will have the right to enter the Property to inspect it and conduct tests. Prior to entry, Lessee will execute an indemnity prepared by Lessor to indemnify Lessor against any losses resulting from such entry or inspection, though, not from diminution in value due to discovered defect.

c. Lessee’s review and evaluation of the Property’s intended use in all respects, including without limitation, all matters with respect to zoning, access, availability of utilities and infrastructure and any other matters deemed appropriate by Lessee.

d. Lessee’s review of any existing plans, specifications, correspondence with governmental agencies and marketing studies relating to the Property, including environmental. Lessor will make available to Lessee documents, records, reports, surveys, governmental approvals, and other documentary information in Lessor’s possession which relate to the use, occupancy, or condition of the Property.

18.9 CONDITION OF PROPERTY: Lessee shall accept the Property in its “AS-IS” present condition, subject to limited representations and warranties as follows: Lessor will represent that, to Lessor’s current actual knowledge, (i) Lessor has not received any written notice that the Property is in violation of applicable laws, (ii) there are no pending or threatened condemnation proceedings, governmental
investigations or any other litigation or other proceedings that affect the Property, (iii) Lessor has not received any written notice of presence of any hazardous material on, in, under or adjacent to the property except for permitted hazardous materials used in conjunction with Lessor’s operations or as otherwise disclosed, (iv) Lessor has entered into no other agreements, contracts, or leases with respect to the Property (unless disclosed in writing to Lessee) and, if such other agreements, contracts, or leases exist there is no defaults thereunder, and (v) Lessor has no knowledge of and has not received any written notice of any pending special assessments or other tax increases.

18.10. DESIGN APPROVAL: All improvements to be placed on the Property by Lessee shall feature an attractive, upscale, aesthetically-pleasing, high-quality, first-class appearance and design, and the design of the improvements shall be subject to approval by Lessor. The design of all improvements shall be submitted to Lessor for review and approval prior to Lessee’s submission to the City of San Jose of its application for entitlements. The process for approval of the design of the improvements shall include public review, comment and advice. Once Lessee has obtained public approvals Lessee shall have the right to construct the improvements in substantial accordance with the public approvals.

18.11. MAINTENANCE: Once built, all improvements shall be maintained in good repair and condition at all times by Lessee at its sole cost and expense.

18.12 DEPOSIT: In the event that this letter of intent shall be approved by the Board of Trustees of Lessor, Lessee shall deliver a deposit to Lessor in the amount of One Hundred Thirty-Five Thousand Five Hundred Dollars ($135,500) within three (3) days of written notification to Lessee of such approval. Lessee acknowledges that Lessor shall engage in a Bid Process as described below. In the event that Lessee is the successful bidder pursuant to the Bid Process, then the One Hundred Thirty-Five Thousand Five Hundred Dollars ($135,500) deposit shall become non-refundable and shall be applied to the Base Rent. In the event that Lessee is not the successful bidder pursuant to the Bid Process, the One Hundred Thirty-Five Thousand Five Hundred Dollars ($135,500) deposit shall be refunded to Lessee without interest.

18.13 BROKERAGE COMMISSIONS: Lessor and Lessee each will indemnify the other against any claims for brokerage commissions or finder’s fees associated with the Lease or development of the Property.
18.14 GUARANTY: An entity approved by Lessor, at its sole discretion, will provide to Lessor a guaranty for the completion of the construction of all proposed improvements to the Property, Lessee will also guarantee the payment of Base Rent and Additional Rent during the first eight-four (84) months of the Lease Term and said guaranty shall be capped at four million dollars ($4,000,000).

18.15 LESSEE RESPONSIBILITIES: Lessee, at its sole cost and expense shall be responsible for all aspects of the proposed development of Property, including but not limited to: (a) securing all necessary government approvals for the Project; (b) securing all necessary environmental approvals for the Project; (c) securing all necessary subdivision approvals for the Project and (d) obtaining all necessary financing required to complete the Project. The approvals described in subsections 18.15 (a), (b) and (c) herein shall be collectively referred to as “Entitlements”. The parties acknowledge that the Property will require a vesting parcel map to create the parcels that are contemplated for the Project. The Lessee will be responsible for the clean-up of hazardous materials, if any, that are discovered on the Property. Lessee shall diligently pursue and use commercially reasonable efforts to obtain the Entitlements. Lessee shall provide Lessor with copies of all applications and documentation delivered to any government agency for the purpose of obtaining the Entitlements. Lessor shall have the right to approve the contents of all such applications. Such approvals are not to be unreasonably withheld, conditioned or delayed, and Lessor shall execute and join in such applications and provide its support. Lessee shall provide whenever practical at least seven (7) days notice of any meetings, including public meetings with governmental staff, regarding such applications and a representative of Lessor may attend any such meeting. Lessee shall promptly notify Lessor of any governmentally required changes to the applications. Lessee agrees to make oral and written progress reports from time to time as reasonably requested by Lessor advising Lessor on the progress of all applications and studies pertaining to the Entitlements.

18.16 NO SUBORDINATION: The fee interest in the Property shall not be subordinate to the leasehold interest in the Property. All improvements on the Property will be owned by Lessee and Lessee shall be entitled to grant a first-priority lien in such improvements to any lender providing financing for the Project (in addition to a pledge of Lessee’s right in the Lease). The Lease will contain standard lender protection rights to be reasonably agreed upon by Lessor and Lessee. Lessee and any sublessees shall be entitled to customary non-disturbance protection from Lessor and Lessor’s lenders.
18.17 TAXES: Lessee shall pay all possessory interest taxes, real property taxes and any other taxes related to the Property or Project.

18.18 CONDITIONS PRECEDENT TO LESSEE'S PERFORMANCE.

(a) Upon execution of the Lease, there shall be no conditions precedent to Lessee’s performance thereunder except for the following: Within Thirty-Six (36) months from the Lease Commencement Date (“Entitlement Period”), Lessee shall use its best efforts to obtain zoning, land use and environmental approvals for the development of at least 200 residential units on the Property and at least 25,000 square feet of commercial space on the Property from the City of San Jose and any other agencies with jurisdiction. If Lessee is not able to obtain said zoning, land use and environmental approvals within the Entitlement Period, then Lessee may terminate the Lease by giving at least sixty (60) days prior notice to the Lessor between the period commencing on the first day of the Thirty-Seventh (37th) month of the Term and expiring on the last day of the Forty-Second (42nd) month of the Term (“Termination Period”). Notwithstanding the Entitlement Period should a CEQA-related lawsuit delay obtaining the required zoning and environmental approvals referred to herein, the Entitlement Period shall be extended on a day for day basis by the amount of time required to resolve the lawsuit, but in no event shall the Entitlement Period be extended by more than eighteenth (18th) months. Lessee’s right to terminate pursuant to the terms of this Paragraph shall also be extended on a day for day basis by the amount of time required to resolve the lawsuit but in no event shall the right to terminate be extended than by more than eighteenth (18th) months. For Example, if a delay of six (6) months occurred as a result of a CEQA related lawsuit, then Lessee’s right to terminate the Lease by giving at least sixty (60) days prior notice to the Lessor would commence on the first day of the Forty-Third (43rd) month of the term and expire on the last day of the Forty-Eighth (48th) month of the Term.

(b) Lessee shall have the right to extend the above Entitlement Period, the Termination Period and the Base Rent Commencement Date by an additional twelve (12) months by paying the sum of Five Hundred Thousand Dollars ($500,000) to Lessor (“Entitlement Period and Base Rent Extension Payment”). The Entitlement Period and Base Rent Extension Payment must be delivered to Lessor no later than sixty (60) days prior to the expiration of the Entitlement Period. Upon the extension of the Entitlement Period, the Termination Period will not commence until the expiration of the extended Entitlement Period. For example, if the Entitlement Period is extended, then it would expire forty-eight (48th) months from the
Lease Commencement Date and the Termination Period would commence on the first day of the forty-ninth (49\textsuperscript{th}) month of the Term and expire on the last day of the fifty-fourth (54\textsuperscript{th}) month of the Term. The extension of the Base Rent Commencement Date shall only apply to the expiration of the thirty-six (36\textsuperscript{th}) month period set forth in Paragraph 18.3(a)(i) and the forty-eighth (48\textsuperscript{th}) month period set forth in Paragraph 18.3(a)(iii). The performance milestones set forth in Paragraph 18.3(a)(i) (issuance of first certificate of occupancy, 18.3(a)(ii) (issuance of first certificate of occupancy and 18.3(a)(iii) (occupancy of at least 180 residential units or 18 months after issuance of first residential certificate of occupancy) shall not be extended.

8.19 MISCELLANEOUS PROVISIONS: Lessee agrees to establish a system to prioritize rental housing availability to Lessor's students, faculty and staff. The specific terms of such priority policy shall be mutually agreed upon. Lessee agrees to work with District to negotiate tenancies that may encourage a mutually beneficial relationship between the District and Lessee.

18.20. UTILITIES: All light, heat, power and utilities to be paid by Lessee.

18.21. ALL COSTS: Lessee is to pay all costs associated with Lessee's activities concerning the Property.

18.22 INSURANCE: Lessee to pay all insurance charges during the lease term, including liability insurance in an amount to be mutually agreed upon by the parties and District shall be named as an additional insured.

18.23 INDEMNITY: Lessee shall indemnify, defend and hold District harmless from any expense or liability arising from or with respect to the development, construction, improvements, possession and/or use of the Property.

18.24. TREATMENT OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION OF LEASE: The ownership of the improvements will be transferred to Lessor without further consideration upon the termination or expiration of the Lease. However, at the sole option of Lessor, upon at least two (2) years written notice, Lessee may be required to remove all improvements it has made to the Property at its sole cost and expense.
18.25 ASSIGNMENT: Lessee shall not assign or transfer its interest in the Lease without the prior written consent of Lessor who shall establish standards in the Lease for the financial strength, experience and reputation of the proposed transferee.

18.26 MINERAL RIGHTS: All mineral rights shall be reserved to the District.

18.27 CUSTOMARY PROVISIONS: The Lease shall contain customary provisions, including but not limited to assignment, amendment, alteration, casualty, condemnation, mortgages, and lender's provisions for default notice and opportunity to cure, estoppels, nondisturbance and attornment, hypothecation, eminent domain, prorations, quiet enjoyment, District's right of inspection, waste, surrender, notice, District's remedies, interpretation of documents, and force majeure, provided that such terms are consistent with the terms contained in the accepted bid, as well as such other terms and conditions as District and Tenant may agree.

18.28 PROJECT LABOR AGREEMENT: The Lessor desires the development of the Project on the Property be constructed pursuant to a project labor agreement ("PLA") to be negotiated between Lessee and the Santa Clara and San Benito Counties Building and Construction Trades Council ("Council"). Lessee and the Council shall negotiate the PLA in good faith prior to commencement of construction. The PLA shall include, at a minimum, the following: (i) that contractors working on the Project pay not less than the wages set forth in the Master Agreement of the respective crafts, including the payment of contributions into the funds for vacation, pension and other deferred compensation, apprenticeship, worker protection and assistance, and health benefits established by the applicable Master Agreement(s) for each hour worked on the Project in the amounts designated in the Master Agreement(s) of the Signatory Unions., (ii) that contractors performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the signatory Unions (iii) the employment of apprentices from state approved Joint Apprenticeship Training Programs consistent with minimum ratios set forth in section 1777.5 of the California Labor Code or as set forth in the Master Collective Bargaining Agreement for the Signatory Union, (iv) good faith efforts to create employment opportunities for students and graduates of Lessor, as well as for women, minorities, veterans and at-risk youth, (v) satisfaction and release of PLA requirements on a per Phase basis, (vi) Lessee's right to have competitive bidding requirements to assure best pricing consistent
with the payment of prevailing wages, and (viii) labor peace at the Project site. Lessor reserves the right to waive the provisions of this paragraph in the event that it determines that the PLA has not been negotiated in good faith. As used herein, the term "Phase" shall refer to each phase of construction of the Project. For example, one Phase might consist of the construction of office buildings and another Phase might consist of the construction of residential structures.

19. Each bidder should include in its bid proposal any additional material terms of the Lease which it wishes to propose:

20. After the Bid Award, no conditions shall exist to Lessee’s performance under the Lease, except that the Lease shall be subject to final approval by the City of all necessary land use/planning, zoning, environmental and building approvals for development of the Property as described in Paragraph 18.18(a) herein.

BE IT FURTHER RESOLVED, that the amounts paid by Lessee and designated as non-refundable, are reasonable estimates of the damages that at the time might be otherwise difficult to fix and ascertain. The Lessee agrees that by submission of a bid, that said amounts are reasonable estimates of damages and agrees that said amounts shall be retained by the District as liquidated damages, and not as penalty.

BE IT FURTHER RESOLVED, that the Secretary of this Board is hereby directed to post copies of this Resolution and Notice signed by the President of this Board in three public places in the District not less than fifteen (15) days before the date of said public meeting referred to above, and to publish a copy of this Resolution and Notice not less than once a week for three (3) successive weeks before the date of said public meeting in a newspaper of regular circulation in the District.
PASSED AND ADOPTED by the Governing Board of the San Jose Evergreen Community College District by the vote of not less than two-thirds (2/3) of its members on the 27th day of January, 2015 as follows:

AYES: 6
NOES: 0
ABSTENTIONS: 1
ABSENT: 0

I, Rita Cepeda, Secretary of the Board of Trustees of the San Jose Evergreen Community College District, do hereby certify the foregoing is a full, true and correct copy of a resolution adopted by the Board of Trustees at a regular meeting thereof held at its regular place of meeting at the time and by the vote stated above, which resolution is on file in the office of the Board of Trustees.

Rita Cepeda, Secretary,
Board of Trustees, San Jose Evergreen Community College District

SJECCCD Resolution
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