JOINT USE AGREEMENT
FOR THE
CONSTRUCTION AND OPERATION OF
THE UNIVERSITY CENTER

This Joint Use Agreement for the Construction and Operation of the University Center ("Agreement"), dated and effective as of the 21st day of July, 2004, is entered into by and between the Santa Clarita Community College District, a public community college organized and existing pursuant to California law ("SCCCD") and the William S. Hart Union High School District, a public school district organized and existing pursuant to California law, ("Hart"). SCCC and Hart may hereinafter be referred to individually as "Party" and collectively as "Parties."

RECITALS

A. SCCC is a public community college district providing educational services for students pursuing degrees in higher education in grade levels 13 and beyond. Hart is a public school district providing educational services for students in grades 7 through 12 in certain areas within its boundaries and for students in grades 9 through 12 in other areas within its boundaries. The Parties desire to participate jointly in the construction of a portion of a building and related facilities to be known as the University Center. The Parties intend that the University Center shall be constructed within the current boundaries of SCCC's College of the Canyons ("COC") campus located in the City of Santa Clarita ("City"). A preliminary rendering of the University Center is set forth in Exhibit "A" hereto.

B. The Parties intend to use the University Center to offer educational and recreational programs and services to students of both SCCC and Hart, and for other such programs and services provided by other public and private educational entities. The Parties intend that the programs and services offered by SCCC at the University Center may include 4-year university programs. The Parties intend that the programs and services offered by Hart at the University Center may include a number of compatible programs including one that is presently offered at COC that is a grade 9 through 12 Middle College High School known as the Academy of the Canyons ("Academy"). The Parties intend that, while this Agreement, to a limited extent, provides for the operation and use of the University Center, the operation and use of the University Center shall be further governed by a separate "Operating Agreement," however denominated. Both of the Parties believe that construction, operation and joint-use of the University Center to provide such programs and services will be of benefit to SCCC, Hart, their students, and the public generally.

C. The Parties intend that the University Center shall consist of two multi-story buildings with a total of approximately one hundred and ten thousand (110,000) square feet of floor area and related facilities. One building shall be a two-story structure and the other shall be a three-story structure, with the two-story and three-story buildings joined together by a rotunda. SCCC will own the two-story building (hereinafter the "Two Story Building") and intends to
lease such structure to University Center partners consisting of public and private universities. The Parties intend that SCCCD and Hart shall jointly occupy and use the three-story building (hereinafter, the "Three Story Building"), together with the common areas at the University Center. The Parties intend that SCCCD shall own, occupy and use the upper two floors of the Three Story Building. The Parties intend that Hart, as provided herein, shall occupy and use the entire first floor of the Three Story Building, which will consist of approximately 20,000 square feet of floor area, on a long-term basis. The Parties intend that the University Center shall be constructed on approximately three and one-half (3.5) acres of real property owned by SCCCD ("University Center Site") as depicted in Exhibit "E" hereto. The Parties intend that parking for University Center students, staff and visitors shall be available in the existing and future parking areas surrounding the University Center.

D. The Parties have entered into this Agreement to set forth the terms for joint funding and construction, and to the extent set forth herein, the operation and use, of the University Center by the Parties. The Parties intend that this Agreement shall allow the Parties sufficient flexibility to maximize the potential for receiving funding for construction of the University Center from the State of California ("State"). Each Party intends to act cooperatively to design, construct, and jointly occupy the University Center. The Parties acknowledge that, pursuant to this Agreement, Hart will be making a financial contribution for construction of 20,000 square feet of the first floor of the Three Story Building, which is to be amortized on the basis of a long-term lease by Hart thereof.

E. Notwithstanding anything else in this Agreement, the Parties intend that: (i) with respect to the use of the SCCCD portion of the University Center, in the event of any conflict, SCCCD's programs, policies, regulations and decisions shall supersede any program, policy, decision or action of Hart and any other party; and (ii) with respect to the use of the Hart portion of the University Center, in the event of any conflict, Hart's programs, policies, regulations and decisions shall supersede any program, policy, decision or action of SCCCD and any other party.

F. The Parties intend, as provided herein, to cooperate, make all reasonable efforts, and expend all reasonable funds necessary in an attempt to obtain all governmental agency and/or private entity approvals required to implement the intent specified in this Agreement. The Parties further intend to make reasonable efforts to obtain funding for construction of the University Center from all available sources, including, but not limited to, federal, City, State, and County of Los Angeles ("County") agencies, private business and industry, and community groups.

G. The governing board of each Party has determined that the construction of the University Center and the proposed joint occupancy, operation and use thereof, as set forth herein, is consistent with that Party's authorized purposes and that it has authority to implement the joint intent of the Parties as set forth in this Agreement.

NOW, THEREFORE, the parties to this Agreement do acknowledge and agree as follows:
Section 1._completion of University Center Construction. Subject to the other provisions herein, the Parties shall make best efforts to commence and diligently pursue all aspects necessary for the planning and funding of the University Center so that construction is complete and ready for occupancy by Fall 2007. Therefore, SCCCD shall, in the manner required by law, commence preparation of all documents necessary for approval and construction of the University Center, i.e., plans, specifications, applications and other related documents (collectively, the “Construction Documents”), within a reasonable time after the effective date of this Agreement, and shall make all reasonable efforts to cause the Construction Documents to be completed not later than December 31, 5. Each Party shall make all reasonable efforts to timely obtain all necessary approvals for the University Center, as provided herein, to better ensure that the University Center, or at least the Three Story Building, is ready for occupancy in time for the Fall 2006 academic year.

Section 2. Construction Plans and Specifications. The Parties shall collaborate and cooperate in developing the Construction Documents for the University Center. SCCCD shall have primary authority with respect to plans and specifications for the interior “tenant improvements” for the upper two floors of the Three Story Building and for the Two Story Building, while Hart shall have primary authority for space planning for the interior tenant improvements for the first floor of the Three Story Building. Provided that the exterior appearance of the University Center shall be designed to complement other structures at the COC campus, SCCCD shall have primary authority with respect to the design of University Center common areas, and the Parties shall make best efforts to cooperate in developing the design of common areas of the University Center through regular input by Hart. The Construction Documents shall provide Hart with a separate and exclusive entrance to the first floor of the Three Story Building for use as a main entrance to the space occupied by Hart. Hart shall have the right of final approval of the plans with respect to Hart’s portion of the University Center. To the extent reasonably possible, the plans and specifications for construction of the University Center shall permit Hart to operate its portion of the University Center independently of other operations at the University Center, including, but not limited to, separate metering of utilities.

Section 3. Responsibility for Construction. Acting in consultation with Hart, SCCCD shall have primary responsibility and authority for contracting with an architect for preparation of the plans and specifications, overseeing preparation of the plans and specifications, obtaining all required approvals of the plans and specifications and of the University Center Site, and for construction of the University Center. The approvals obtained by SCCCD for the University Center Site and/or construction of the University Center shall include, without limitation, approvals from the Division of State Architect (“DSA”). Hart shall be responsible for obtaining approvals from California Department of Education (“CDE”) and the Department of Toxic Substances Control (“DTSC”) as may be required for grade 9 through 12 school sites, and SCCCD shall fully cooperate with Hart in this regard, including, without limitation, by providing all necessary access to the Construction Documents and design professionals. Acting in consultation with Hart, SCCCD shall have primary responsibility and authority for contracting for construction management services, competitive bidding of
construction in compliance with State and federal law, and for contracting for construction services. Hart shall be responsible for any costs of, and for obtaining any separate approvals required for, specific improvements or additional specialties, other than tenant improvements as specified herein, that Hart requests be included within the scope of the Construction Documents. After approval of the Construction Documents and during the course of construction of the University Center, the Parties shall collaborate and cooperate in attempts to reach agreement with respect to any change orders that affect the scope of construction of the University Center and with respect to how the Parties shall allocate any costs or savings attributable to such change orders. SCCCD may, without consulting with Hart, implement any change order related to the Three Story Building that does not change the scope of construction, if necessary as a result of errors or omissions in the plans and specifications for the University Center, so long as the total amount of such change order, whether construction is accomplished on a general-contract or multiple-prime contract basis, does not exceed the lesser of either five percent (5%) of the applicable contract amount as pertains to the Hart contribution, or fifty thousand dollars ($50,000).

Section 4. University Center Construction Budget. The Parties have established a preliminary total budget of twenty-eight million, six hundred thousand dollars ($28,600,000), based on an estimated $260 per square foot of construction, for planning and construction of the University Center to Field Act standards. Such preliminary budget includes all costs of architectural and other services incurred in developing the Construction Documents for the University Center, costs of obtaining approvals, costs of contracting for construction management services, costs of competitively bidding construction of the University Center, costs of testing and inspection, a ten-percent contingency, landscape and common area costs, and costs of contracting for construction of the University Center (collectively, "Project Construction Costs"). The Project Construction Costs shall not include any costs incurred by a Party as a result of its direct administration of this Agreement, which shall be the sole responsibility of such Party. The Project Construction Costs shall include such tenant improvements at thirty five dollars ($35) to fifty dollars ($50) per square foot and shall not cause the total contribution by Hart to exceed $5.2 million. These tenant improvements may include the build-out and finishes of the allotted space as agreed by the Parties or requested by a Party, and related HVAC distribution, lighting and controls. However, each Party otherwise shall be solely responsible for paying the costs of tenant improvements for its own portion of the University Center.

Section 5. Allocation and Funding of Project Construction Costs. Each Party shall make reasonable efforts to obtain funding for construction of the University Center from all available sources, including, but not limited to, federal, State, City and County agencies, private business and industry, and community groups, and, to the extent consistent with sound municipal financing practices, through issuance of Certificates of Participation and/or Lease Revenue Bonds or other means. Hart shall pay (and/or obtain contributions from other parties in order to pay) an amount not to exceed, except as otherwise provided herein, $5.2 million, which shall be Hart's financial contribution toward payment of the Project Construction Costs ("Hart Contribution"). The amount of the Hart Contribution is based on an estimated cost of
approximately two hundred sixty dollars ($260) per square foot for the 20,000 square feet of space making up the first floor of the Three Story Building.

Section 6. Increases or Decreases in Allocation of Costs. Hart acknowledges that the projected cost per square foot of construction of Hart’s portion of the Three Story Building is potentially subject to change due to reasonably unanticipated increases in construction costs, changes in design type or methodology reasonably required in order to obtain necessary approvals, and other reasonably unanticipated site or other physical conditions. Therefore, in the event of an increase in costs for such reasons, the Hart Contribution may be subject to increase of up to ten percent (10%), or a total maximum increase of $520,000 (the “Additional Contribution”). In addition, in the event of any such reasonably unanticipated increases in construction costs, changes in design type or methodology or other unanticipated site or physical conditions, the Parties, in their discretion, may agree to increase the Hart Contribution by more than ten percent, but in no event shall the Additional Contribution exceed fifteen percent of the original Hart Contribution, i.e., the Additional Contribution shall not exceed a maximum of $780,000.00. In the event of any decrease in costs for the foregoing reasons or if any amount attributable to Hart’s portion of the contingency fund described in Section 4 is not utilized, SCCCD shall allocate a fair and reasonable portion of the savings for purposes of reducing the Hart Contribution. If circumstances should arise during any stage of design or construction that SCCCD believes would necessitate changing the Hart Contribution, SCCCD shall immediately notify Hart of the circumstances, in writing, and the Parties shall thereafter confer as to the potential change.

Section 7. Responsibility to Obtain Funding. Hart shall attempt, consistent with applicable requirements, to obtain State funding for construction of the University Center pursuant to the Leroy F. Greene School Facilities Act of 1998 (“SFP”). However, Hart shall not be required to use such SFP funding to provide the Hart Contribution. SCCCD shall pay, or obtain contributions from other parties for, the balance of all Project Construction Costs not funded by Hart as provided in this Agreement. Each Party shall, if necessary, obtain funds from a combination of sources in order to fund its share of the Project Construction Costs, and each Party shall be solely responsible for obtaining all funding for its share of the Project Construction Costs. Except for any payments that are the sole responsibility of a Party pursuant to this Agreement, payments by the Parties shall be pro-rata based on the estimated construction costs for the University Center construction program (“program” including all soft costs, design costs, engineering and investigation costs, construction costs to the extent provided herein, inspection costs and contingencies, but excluding furniture and equipment).

Section 8. Termination of Agreement Due to Funding Limitations. If either Party reasonably determines that it cannot obtain the funding necessary to provide the financial contribution required of that Party pursuant to this Agreement, such Party may terminate this Agreement subject to the following:

(i) Termination Prior to Preparation of Construction Documents or Upon Failure to Agree on an Operating Agreement. If a Party reasonably determines prior to commencement of the preparation of the Construction Documents that it cannot obtain the funding it is required to
provide pursuant to this Agreement, such Party shall provide written notice thereof to the other Party. If the Parties, acting reasonably and in good faith, cannot within a reasonable time agree as to the terms and conditions of an Operating Agreement, either Party may provide written notice thereof to the other Party. Not less than sixty (60) days after giving any such written notice accompanied by supporting documentation, and after at least one meeting of the Parties’ representatives during such period held for purposes of resolving either the funding issue or the impasse with respect to terms of the Operating Agreement, if the resolution attempts are not successful, the Party that provided the written notice may terminate this Agreement.

(ii) Termination of Agreement Prior to Construction. If a Party reasonably determines after preparation of the Construction Documents has commenced, but prior to commencement of construction of the University Center, that it cannot obtain the funding it is required to provide pursuant to this Agreement (including, with respect to Hart, both the Hart Contribution and the Additional Contribution, if any), such Party shall provide written notice thereof to the other Party. Not less than sixty (60) days after giving such notice accompanied by supporting documentation and after at least one meeting of the Parties’ representatives during such period held for purposes of resolving the funding issue, if the resolution attempts are not successful, the Party giving written notice may terminate this Agreement.

(iii) Remedies. In the event this Agreement is terminated pursuant to this Section, each Party shall bear its own costs associated with this Agreement, the proposed University Center, and the work that has been undertaken pursuant to this Agreement. To the extent any portion of the Hart Contribution provided to SCCCD has not already been expended for the purposes set forth herein, SCCCD shall return such funds to Hart within a reasonable time not to exceed sixty (60) days after the effective date of the termination.

Section 9. Timing of Contributions. SCCCD intends to obtain funding from various sources, as addressed in Section 7, in order to provide its share of design and construction funding required for the University Center project. Except as provided in Section 8, SCCCD hereby represents and warrants that it shall have its proportionate share(s) of design and construction funds for the University Center project ready and available at such times as required of Hart pursuant to this Section. After providing written assurances satisfactory to Hart that funds are available, the Parties shall make their respective payments at the various stages of the University Center construction program as provided in this Section, beginning upon commencement of design and through completion of construction. SCCCD shall create and maintain a separate account into which all payments from Hart are deposited and into which SCCCD will also make deposits for the University Center project (“Construction Account”), and SCCCD shall have a fiduciary responsibility with respect to funds deposited into the Construction Account by Hart. Upon commencement of the design of the University Center and after written assurance as to the availability of SCCCD’s funding, Hart shall deposit into the Construction Account an amount equal to 25% of the total funds such Party is obligated to provide pursuant to this Agreement, to be used by SCCCD for design costs. Thereafter, subject to adjustment as provided herein, upon written assurance as to the availability of SCCCD’s funding, Hart shall deposit one-half of the remaining obligated funds into the Construction Account, for use for the first 50% of the actual construction, at least 3 months prior to the commencement of construction. Subject to adjustment as provided herein, upon written
assurance as to the availability of SCCCD’s funding. Hart shall deposit the other remaining one-half of obligated funds into the Construction Account, for use for the second 50% of the actual construction, at least 3 months prior to the anticipated half-way point of construction. By way of illustration, subject to adjustment as provided herein, Hart shall deposit into the Construction Account $1,300,000 upon commencement of the design, $1,950,000 not less than three months prior to commencement of construction, and $1,950,000 not less than three months prior to the reasonably anticipated half-way point of construction of the University Center.

Section 10. Ground Lease to Hart. As required in order for Hart to use SFP funding in connection with construction of the University Center, and in accordance with Education Code Section 17070.70, SCCCD hereby leases to Hart the entire first floor of the Three Story Building other than any common areas on an exclusive basis, together with the common areas of the University Center Site on a non-exclusive use basis, on the terms set forth in this Agreement. Hart shall make reasonable and continuous efforts, once it has been granted occupancy of its portion of the Three Story Building, to vacate and remove or relocate the portable classrooms presently located at COC for purposes of housing the Academy.

Section 11. Annual Lease Payments. Each year on or before such date as agreed by the Parties, Hart shall make annual lease payments to SCCCD in exchange for the ground lease specified in Section 10 (each an “Annual Lease Payment”). The initial Annual Lease Payment shall be based on 18.18% (20,000 sq. ft./110,000 sq. ft.) of the fair market ground-lease value of the University Center Site, assuming undeveloped land, as indicated in an appraisal performed by an appraiser agreed upon by the Parties. Such appraiser shall be a member of the Appraisal Institute and shall have not less than ten years of experience valuing commercial and public property, including ground leases, within the County. If a capitalization, interest or similar rate is used for purposes of the appraisal, the rate used shall be the greater of the rate actually earned on school district funds deposited with the County Treasurer during the twelve-month period preceding the lease inception or the rate actually earned on school district funds deposited into the Local Agency Investment Fund during the twelve-month period preceding the lease inception. In the event either or both of such funds are terminated or deposit into either or both of such funds is hereafter prohibited, the Parties shall agree on a similar fund or funds, the interest earnings on which shall be used for the purposes of this Agreement. The Parties may not unreasonably refuse to modify the basis for calculation of the Annual Lease Payments if at some future point the amounts thereof become patently unfair to either of the Parties despite being calculated as provided in this Agreement.

Section 12. Yearly Adjustments to Annual Lease Payments. The amount of the Annual Lease Payment shall be adjusted (increased or decreased) each year during the Lease Term (defined in Section 15), commencing with year 2 of the Lease Term, based on the percentage change over the preceding twelve months in either the rate actually earned on school district funds deposited with the County Treasurer or the rate actually earned on school district funds deposited into the Local Agency Investment Fund, whichever rate has the greater positive (or, if both are negative, the greater negative) percentage change.
Section 13. Ten Year Adjustments to Annual Lease Payments. Notwithstanding the provisions of Section 12, the amount of the Annual Lease Payment shall be adjusted in years 11, 21, 31, 41, 51, and 61 of the Lease Term as provided in this Section, in lieu of being adjusted as provided in Section 12. Prior to Hart incurring any obligation to make the Annual Lease Payment in years 11, 21, 31, 41, 51, and 61 of the Lease Term, the amount of the Annual Lease Payment shall be re-established through re-appraisal of the fair market ground lease value of the University Center Site, in the manner set forth in Section 11, by an appraiser meeting the standards set forth in Section 11. In each of such years, the Annual Lease Payment, consistent with the procedure set forth in Section 11, shall be adjusted (increased or decreased) based on the then-current appraised fair market ground lease value of the University Center Site.

Section 14. Example of Ground Lease Determinations. This Section is included solely for purposes of illustrating the calculations described in Sections 11, 12 and 13. This Section shall not be deemed or construed to represent actual calculations of the Annual Lease Payment(s) pursuant to this Agreement or to constitute any expression of the Parties as to whether the amounts set forth herein would represent a fair and/or reasonable determination of the Annual Lease Payment(s).

Step 1: Assume the following: (i) the University Center Site consists of 152,000 square feet of area; and (ii) the initial fair-market ground-lease value of the University Center Site is appraised at $0.75 per-square-foot per-year. Thus, the annual fair-market ground-lease value of the entire University Center Site would be $114,000 (152,000 sq. ft. x $0.75/sq. ft.), and the initial Annual Lease Payment would be approximately $20,725 ($114,000 x 18.18%).

Step 2 (Example A): Assume the following: (i) over the first year of the Lease Term, the percentage change in the rate actually earned on school district funds deposited with the County Treasurer equaled 4.9%; and (ii) over the first year of the Lease Term, the percentage change in the rate actually earned on school district funds deposited into the Local Agency Investment Fund equaled 1.8%. Thus, the adjustment factor would be 104.9% (100% + 4.9%), and the Annual Lease Payment for year two of the Lease Term would be approximately $21,741 ($20,725 x 104.9%).

Step 2 (Example B): Assume the following: (i) over the second year of the Lease Term, the percentage change in the rate actually earned on school district funds deposited with the County Treasurer equaled -1.4%; and (ii) over the second year of the Lease Term, the percentage change in the rate actually earned on school district funds deposited into the Local Agency Investment Fund equaled -2.1%. Thus, the adjustment factor would be 97.9% (100% - 2.1%), and the Annual Lease Payment for year three of the Lease Term would be approximately $21,284 ($21,741 x 97.9%).

Step 3: Assume the following: (i) as of the end of year ten of the Lease Term, the fair-market ground-lease value of the University Center Site is appraised at $1.57 per-square-foot per-year. Thus, the annual fair-market ground-lease value of the entire University Center Site at such time would be $238,640 (152,000 sq. ft. x $1.57/sq. ft.), and the Annual Lease Payment for year eleven of the Lease Term would be approximately $43,385 ($238,640 x 18.18%).
Step 4: Assume the following: (i) over the eleventh year of the Lease Term, the percentage change in the rate actually earned on school district funds deposited with the County Treasurer equaled 3.1%; and (ii) over the eleventh year of the Lease Term, the percentage change in the rate actually earned on school district funds deposited into the Local Agency Investment Fund equaled 9.3%. Thus, the adjustment factor would be 109.3% (100% + 9.3%), and the Annual Lease Payment for year twelve of the Lease Term would be approximately $47,420 ($43,385 x 109.3%).

Section 15. Term of Ground Lease and Agreement. The term of the ground lease and for this Agreement ("Lease Term") shall be sixty-six (66) years commencing on the date SCCCD records a Notice of Completion for the construction of the University Center or the date of “completion” (as presently defined in Subdivision (e) of Public Contract Code Section 7107) of the construction of the University Center, whichever occurs first. Upon expiration of the Lease Term, the ground lease and this Agreement shall automatically terminate and all improvements, contributions, and fixtures (other than those with respect to which Hart specifically notifies SCCCD after installation that Hart intends to remove and retain) shall revert to SCCCD. Prior to or concurrent with expiration of the Lease Term, Hart shall have vacated its portion of the Three Story Building, removed all personal property, and left such premises in a reasonably clean and safe condition.

Section 16. Holding Over. In the event Hart and/or its tenants retain possession of Hart’s space in the University Center after expiration of the Lease Term, either with or without SCCCD’s express or implied consent, the resulting tenancy shall be from “month to month” only, subject to the terms and conditions of this Agreement, but shall not be a renewal thereof, and the monthly rent shall be market rate or as otherwise agreed by the Parties. SCCCD may, during the holdover period, terminate such tenancy by giving written notice to Hart and its tenants, if any, not less than ninety days prior to the effective date of the termination. Hart may, during the holdover period, terminate such tenancy by giving written notice to SCCCD not less than thirty days prior to the effective date of the termination.

Section 17. Hart Access and Entry. During the Lease Term, Hart and its staff, students, and invitees shall have full access to and rights to use all common areas of the University Center subject to compliance with all reasonable rules and policies of SCCCD for use thereof. At all times during the Lease Term, Hart shall have access through its separate and exclusive entrance to the first floor of the Three Story Building. In addition, Hart shall have access to such space through a keyed entry in the atrium lobby, and SCCCD shall at all times provide Hart with a reasonable number of keys for such entrance, including after any time SCCCD changes the lock(s) to such entrance. Hart may make such additional copies of the keys to the lobby entrance to Hart’s space as Hart deems necessary. Hart shall not permit members of the general public to use the access through the atrium lobby, although Hart employees, agents, consultants, and contractors shall be entitled to freely use such access for all purposes.

Section 18. SCCCD Right of Entry to Hart Space. SCCCD shall retain copies of the key to the lobby entrance to the first floor of the Three Story Building for access in the event of
any emergencies, to address security issues, and as necessary to perform any reasonably required repairs, maintenance and/or operations within Hart’s portion of the Three Story Building, inclusive of repairs, maintenance and operations to be performed by SCCCD at Hart’s request pursuant to Section 20. Except in the event of an emergency constituting a threat of injury or death to any persons or damage or loss of property, or to secure any life or property, SCCCD shall not enter into Hart’s portion of the Three Story Building without either Hart’s consent or notice to Hart (if SCCCD unilaterally determines to enter) not less than 24 hours in advance of the entry. SCCCD shall cooperate in coordinating any entrance by SCCCD into Hart’s portion of the Three Story Building to minimize any adverse impact on Hart’s activities.

Section 19. Facility Repair, Maintenance and Operations Costs.

(a) Hart shall pay its proportionate share of reasonable building exterior and equipment systems maintenance and repair, utilities, custodial services, building and grounds security, and grounds and landscape maintenance and repair for the University Center (collectively, “M&O Costs”). SCCCD shall develop a method of reliably tracking and allocating actual M&O Costs and of reasonably projecting future M&O Costs based on such actual costs. SCCCD shall bill such M&O Costs to Hart on a monthly basis.

(b) The Parties acknowledge that, during the Lease Term, the Parties may incur certain unforeseen and significant repair and/or replacement costs in connection with the operation of the University Center, such as air conditioning replacement or significant deferred maintenance/modernization. The Parties acknowledge and agree that the M&O Costs calculated in accordance with Subsection (a) of this Section are deemed not to include such unforeseen and significant repair and replacement costs. Therefore, each Party hereby agrees to contribute its pro-rata share of such unforeseen and significant repair and/or replacement costs as are reasonably incurred. Either Party may bring deferred maintenance/modernization items to the attention of the other. SCCCD shall be responsible for scheduling, planning and executing such repairs and/or replacements. Within thirty (30) days after written notice from SCCCD that includes documentation reasonably sufficient to document such costs, or at such other times as agreed by the Parties, Hart shall pay its pro-rata share of the costs reasonably expended by SCCCD for repair and replacement purposes described in this Subsection. Hart shall in no event be liable for such repair and replacement costs to the extent attributable to any failure by SCCCD to reasonably maintain the University Center.

Section 20. SCCCD Repair and Maintenance of Hart Space. Hart may request that SCCCD perform maintenance and repair of the interior of Hart’s portion of the Three Story Building, for which Hart shall reimburse to SCCCD its reasonable costs to provide those services. The Parties may agree on a flat fee to be paid by Hart to SCCCD for the repair and maintenance services so provided by SCCCD. However, unless the Parties enter into such agreement, SCCCD shall not be responsible for maintenance of the interior of Hart’s portion of the Three Story Building.

Section 21. Modifications. Subject to the other provisions of this Agreement, Hart may modify the interior spaces of the first floor of the Three Story Building as it deems fit as long as such modifications are compatible with the programs and services of the University.
Center and the construction activities do not unreasonably interfere with the operation of University Center and/or the infrastructure. If there is a possibility of significant interference or disturbance, Hart shall notify SCCCD thereof and make mutually agreeable arrangements prior to interference or disturbance of University Center operations. Hart may not modify the exterior of any building at the University Center, provided that SCCCD shall not unreasonably withhold, delay or condition its consent for Hart to modify its separate and exclusive access to the Three Story Building subject to any such modifications being consistent with the overall exterior of the University Center.

Section 22. Programs and Services at University Center. During the term of this Agreement, each Party shall conduct its programs and services at the University Center so as to ensure that they are reasonably compatible with the programs and services of the other Party at the University Center and educationally-oriented. Each Party shall be solely responsible for funding its own programs and services at the University Center, and each Party shall be responsible for managing all of its own general, special, operational and other funds used, obtained or raised for purposes of its programs and services at the University Center. Hart and/or its tenants shall not use Hart’s space in the University Center for commercial purposes, provided that sales of items typically or occasionally sold at Hart schools for fund-raising or other school-related purposes (e.g., caps, t-shirts, candy and other items) are not hereby prohibited.

Section 23. No Competition. Hart shall not use or permit any of its tenants to use Hart’s space in the University Center in any manner that competes with or is incompatible with the presently anticipated or reasonable future uses by SCCCD and other tenants of the University Center of the respective spaces they occupy. Likewise, SCCCD shall not use or permit any of its tenants to use the space they occupy in the University Center in any manner that competes with or is incompatible with the presently anticipated or reasonable future uses by Hart of the space that it will occupy in the University Center. In no event shall any presently-anticipated use, as set forth herein, be deemed or construed to compete or be incompatible with other uses in the University Center provided such use is conducted in a reasonable manner. In the event a Party intends to lease or sublet any portion of the space at the University Center, or to materially change the use of any such space, the Party shall provide written notice thereof to the other Party prior to, as applicable, occupancy by the lessor/sub-lessee or commencement of the changed use. Upon receipt of such notice, the other Party shall have 30 calendar days to provide, in writing, any reasonable objections with regard to, as applicable, the proposed lease/sub-lease or changed use being a competing use or an incompatible use. In the event of any dispute related thereto, such dispute shall be resolved pursuant to the dispute resolution provisions of this Agreement.

Section 24. Hours of Program Operation. The Parties and their tenants may conduct their educational and other programs only during the hours specified in this Section. The provisions of this Section shall not be deemed or construed to limit the hours during which a Party or its tenants may conduct any administrative functions or necessary repairs, maintenance or building operations. Programs at the University Center may be conducted on specific days of the week, during specific hours, as follows:
(i) Monday through Friday: 6 a.m. to 11:30 p.m.
(ii) Saturday: 8 a.m. to 5 p.m.
(iii) Sundays and the Parties' respective school holidays: Closed

Section 25. Parking: During the Lease Term, Hart and its staff, students and invitees shall have full access to and right to use all parking lots at COC serving the University Center subject to compliance with all reasonable rules and policies of SCVCCD for use thereof. SCVCCD shall issue, without charge, parking permits for such of Hart's staff necessary for the programs and activities (including maintenance and operation) at the University Center as designated in writing by Hart. Students in the programs conducted within Hart's space in the University Center shall be subject to the same requirements related to parking at COC as are other students participating in programs in the University Center or COC, including, without limitation, any requirement to purchase parking permits.

Section 26. Sale and Sublease. Hart may not sell its interests in the University Center other than to SCVCCD on terms as provided herein or as otherwise agreed by the Parties. However, subject to Section 23, Hart shall have the right, consistent with applicable law, to sublet all or any portion of its space in the University Center. SCVCCD shall have the right of first refusal to sublease any portions of Hart's space in the University Center that Hart seeks to sublease, on the same terms and conditions as Hart intends to offer to an intended sublessee. Hart shall provide a minimum of 90 days written notice to SCVCCD of the intent to sublease, and the Parties shall negotiate in good faith for at least 45 days during this 90 day period in an attempt to reach an agreement on a sublease of the space to SCVCCD. In the event SCVCCD declines the right of first refusal, or after conclusion of the good-faith negotiations as provided herein without agreement between the Parties, Hart may sublet all or any lesser portion of the space that was the subject of notice to SCVCCD, subject to the requirements of Section 23.

Section 27. Additional Space Requirements for Hart. The Parties acknowledge that SCVCCD does not presently contemplate having the ability to expand or add to the floor space that will initially be available at the University Center. Thus, Hart acknowledges that space for its programs in the University Center, except as provided herein, shall be limited to the first floor of the Three Story Building. At any point during the Lease Term, Hart may notify SCVCCD that it desires additional space in the University Center for purposes of expanding or conducting additional programs. Thereafter, in the event of any expansion or addition to the University Center, or in the event of a vacancy of any space in the University Center, SCVCCD shall consult with Hart as to its space requirements and, if the Parties can reach agreement, shall make additional space available for occupancy by Hart on such terms as agreed by the Parties.

Section 28. Agreement to Terminate and Unilateral Termination by Hart: If Hart and SCVCCD agree to discontinue the ground lease and this Agreement through a termination agreement, or if Hart should unilaterally choose to terminate the ground lease and this Agreement, SCVCCD shall pay to Hart the unamortized value of Hart's portion of the University Center. Such calculation shall be based on amortizing the amount of Hart Contribution, as herein may be adjusted, over the entire Lease Term, determined in months, on a straight-line
basis, i.e., with no discount rate application. In the event of a mutual termination, SCCCD shall pay to Hart the amount required pursuant to this Section within such time as agreed by the Parties. In the event of unilateral termination by Hart, it shall provide written notice to SCCCD not less than one year prior to the effective date of the termination. Within a reasonable time after delivery of such notice from Hart, the Parties shall meet and agree on the timing of payments from SCCCD to Hart of the amount required pursuant to this Section, but, in any and all events, SCCCD shall pay the full required amount to Hart within 24 months of the effective termination date.

Section 29. Termination Without Cause by SCCCD. During the first 40 years of the Lease Term, SCCCD may not unilaterally and without cause terminate the ground lease or this Agreement. If SCCCD should choose after such 40-year period to terminate the ground lease and this Agreement, SCCCD shall provide written notice to Hart not less than one year prior to the proposed termination date. In such event, SCCCD shall pay to Hart an amount equal to the unamortized portion of the Hart Contribution, as may be adjusted pursuant to this Agreement, plus an amount equal to the unamortized portion of the cost of any improvements, including fixtures, performed to or installed in or on Hart’s portion of the University Center at Hart’s cost. The calculation of the unamortized amount of the Hart Contribution shall be performed as provided in Section 28. The calculation of the unamortized portion of the cost of improvements shall be based on amortizing the improvement cost over the period commencing upon the date Hart first incurred such cost until the end of the Lease Term, determined in months, on a straight-line basis, i.e., with no discount rate application.

Section 30. Damage or Destruction.
(a) In the event all or any portion of the University Center is damaged by fire, incidents of war, earthquake, or other reasons so as to render the premises reasonably unfit for occupancy by Hart and/or its tenants, the Parties shall confer regarding whether insurance proceeds and funds from other sources, including, without limitation, the State, will be adequate to reasonably repair, reconstruct or replace the damaged facilities. If the Parties reasonably determine that it is not practical or possible to reasonably repair, reconstruct or replace the damaged facilities considering available funds, this Agreement shall terminate, and each Party shall accept insurance proceeds payable thereto pursuant to policy(ies) maintained by or on behalf of such Party. Hart shall not thereafter be obligated for any further Annual Lease Payments or other costs as provided herein, and SCCCD shall refund any unearned charges paid in advance by Hart.

(b) In the event of damage only to Hart’s portion of the University Center, and in the absence of significant damage to other portions of the University Center, Hart, in coordination with SCCCD, may repair such damage and restore its space as necessary. In the event that Hart determines it is not practical or possible to reasonably repair, reconstruct or replace the facilities that have suffered such damage, Hart shall have the right, in its sole discretion, to terminate the ground lease and this Agreement pursuant to Section 28, in which event SCCCD shall accept insurance proceeds attributable to policies maintained with respect to Hart’s portion of the University Center and shall pay to Hart the unamortized portion of the Hart Contribution, as may be adjusted pursuant to this Agreement.
Section 31. Notices. Notices required to be given pursuant to this Agreement shall be in writing and shall be delivered via: (i) personal delivery, delivery receipt requested; (ii) certified or registered United States mail, postage pre-paid and return receipt requested; (iii) facsimile transmission, with original deposited into United States mail, first-class postage prepaid, within twenty-four hours of transmission; or (iv) reliable overnight delivery service, such as U.P.S., Federal Express or Overnite Express. A Party may change its name, address or person to whom attention should be directed by giving notice as provided herein. Any notice given pursuant to this Agreement shall be deemed given only upon receipt by the receiving Party. Any such notice, and the envelope containing same, shall be addressed to the Party that is the intended recipient at the address set forth below for such Party, or at such other place as may hereinafter be designated in writing by the Parties:

To SCCCD: Santa Clarita Community College District
Attention: Assistant Chancellor Business Services
26455 Rockwell Canyon Road
Santa Clarita, CA 91350
Facsimile: (661) 362-5405

To Hart: William S. Hart Union High School District
Attention: Assistant Superintendent of Business Services
21515 Centre Pointe Parkway
Santa Clarita, CA 91350-0323
Facsimile: (661) 259-4762

Section 32. Dispute Resolution. The Parties desire to quickly and cost-effectively resolve any disputes related to the interpretation or enforcement of this Agreement. Therefore, the Parties shall make reasonable attempts to informally resolve any dispute arising from or related to this Agreement, including any disputes involving a Party and a third-party participating in providing programs at the University Center. As a condition of being permitted to participate in providing the programs at the University Center, each third-party participant shall agree in writing, with respect to the interpretation or enforcement of this Agreement, to be subject to the dispute resolution procedures and requirements set forth herein. Informal attempts at dispute resolution shall involve, at a minimum, a period of not less than thirty days during which the disputing parties shall engage in written communications and face-to-face meetings. If, after such thirty-day period, one or more of the disputing parties determines that the attempts at informal dispute resolution are, or will be, unavailing, any of the disputing parties may invoke binding arbitration. Such arbitration shall be conducted by a retired judge of the Superior Court for the County. The arbitrator shall be required to conform to and apply all substantive case and statutory law applicable in this State, and any variance therefrom shall be outside of the arbitrator’s authority and subject to vacation or correction. Subject to the other provisions herein, the decision of the arbitrator shall be final and binding. Each disputing party shall be responsible for its own costs of arbitration, including attorneys’ fees and costs. Invoking the dispute resolution provisions herein shall be deemed a condition precedent to filing any action to enforce or interpret this Agreement or any decision rendered by the arbitrator.
Section 33.  Indemnification and Defense.

(a) Claims Arising From Sole Acts. Each Party (as "Indemnitor") hereby agrees to indemnify, defend, and hold-harmless the other Party and its board members, officers, administrators, employees, and agents (collectively, the "Indemnitee") against and from any liability, including, without limitation, damage to property and injury or death of any person, and any claim, action or proceeding against or involving the Indemnitee, arising solely out of the acts or omissions, or the willful misconduct, of the Indemnitor in the performance of this Agreement or the operation of the Indemnitor's programs at the University Center. In its sole discretion and at its own cost and expense, the Indemnitee may participate in the defense of any such claim, action or proceeding, utilizing legal counsel of its choice; however, such participation shall not relieve the Indemnitor of any obligation imposed pursuant to this Section. The Indemnitee shall promptly notify the Indemnitor of any such claim, action, or proceeding and shall cooperate fully in the defense of same.

(b) Claims Arising from Joint Acts. Except as provided in Subsection (c) of this Section, each Party shall provide its own defense with respect to any liability, claim, action or proceeding arising out of the joint acts or omissions of the Parties in the performance of this Agreement or in the operation of their programs at the University Center. In such cases, each Party shall retain its own legal counsel and bear its own defense costs, and each Party hereby waives any right to reimbursement of such defense costs from the other Party.

(c) Joint Defense. Notwithstanding the provisions of Subsection (b) of this Section, the Parties may agree in writing to a joint defense of any demand, claim, action or proceeding arising out of the joint acts or omissions of the Parties in the performance of this Agreement or in the operation of their programs at the University Center. In such event, the Parties shall agree on legal counsel to defend such demand, claim, action or proceeding. Except as provided in Subsection (d) of this Section, the Parties shall equally bear the cost of any such joint defense and any amount paid by the Parties in settlement of, or as a result of a court judgment, arbitration or mediation of, the claim, action or proceeding. Except as provided in Subsection (d) of this Section, the Parties shall equally share in any amount awarded to or received by the Parties in settlement of or as a result of a court judgment, arbitration or mediation of, the demand, claim, action or proceeding. Neither Party may bind the other Party to any settlement of a demand, claim, action, or proceeding without the express written consent of the other Party.

(d) Comparative Fault. A Party may request that any settlement, court judgment, or arbitration or mediation award allocate or determine the comparative fault of the Parties, if any. Notwithstanding anything in this Section to the contrary, in the event any settlement, court judgment, or arbitration or mediation award allocates or determines the comparative fault of the Parties, a Party may seek reimbursement from the other Party, with respect to defense costs, settlement payments, judgments and awards, consistent with such comparative fault to the extent such settlement, judgment, award, payment or costs are not covered by insurance the Parties are required to maintain under this Agreement.

Section 34. Insurance.

(a) Required Insurance. Each Party, at its own cost, shall obtain and maintain during the Lease Term such insurance coverage as, in the Party's prudent business
judgment or as otherwise determined pursuant to the dispute resolution provisions of this Agreement, is necessary, appropriate and sufficient to protect that Party, the portion of the University Center facilities that it and/or its tenants occupy in the case of Hart, the entirety of the University Center facilities in the case of SCCCD, and any personal property owned by that Party. Such insurance coverage shall include as a minimum, but is not limited to, liability insurance, property insurance and workers' compensation insurance. Each Party shall, by endorsement, be named as an additional insured in any liability and property insurance policies of the other Party. Each Party hereby waives, on behalf of its insurer(s), any rights the insurer(s) may have to subrogation against the other Party, and each insurance policy shall so specify. Each policy shall provide, without limitation, for severability of interests (separation of insureds). Any deductibles or self-insured retentions applicable to a Party's insurance coverage shall be subject to the reasonable approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. The Parties shall confer and/or negotiate in good faith in the event a Party seeks review and/or reconsideration of the amount, type or terms and conditions of any insurance coverage maintained by the other Party. Either Party may obtain and maintain the insurance coverage required herein through a joint-powers insurance cooperative of which the Party is a member, provided that all foregoing conditions are satisfied. In all other cases, each policy required herein shall be issued by an insurer licensed to do business in the State and having an A.M. Best Company rating ("Best's Rating") of not less than an "A minus" and Financial Size Category of not less than "IX."

(b) Certificates of Insurance. Within a reasonable time after substantial completion of the University Center, each Party shall provide to the other copies of certificate(s) evidencing that such Party has obtained the insurance policies required pursuant to this Section (each a "Certificate of Insurance"). The Certificates of Insurance shall include the additional-insured endorsements required pursuant to this Section. The Certificates of Insurance shall require that the insurer provide written notice to each Party not later than thirty days prior to cancellation, termination, reduction in coverage or expiration without renewal of such insurance policies, except that such notice shall be provided not less than ten days prior to cancellation for non-payment of premium. Language to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable. Not less than thirty days prior to the expiration of any insurance policy required pursuant to this Section, the Party maintaining such insurance shall provide to the other a copy of the Certificate of Insurance for that renewed policy.

(c) Release of Claims. Upon receipt by a Party ("Receiving Party") of insurance proceeds attributable to any claim or liability arising from the performance of this Agreement or the operation of the programs at the University Center for which the other Party may be liable, the Receiving Party shall release the other Party from such claim or liability, but only to the extent that such claim or liability is satisfied or paid by the net amount remaining after deducting the Receiving Party's reasonable costs of obtaining such proceeds.

Section 35. Attorney's Fees. Except as otherwise provided herein, each Party shall bear its own attorney's fees, costs and expenses should there be any action, arbitration or other proceeding based on or related to this Agreement.
Section 36. Successors and Assigns. Without limiting any provisions herein for lease or sublease of space within the University Center, neither Party may assign this Agreement or any right or obligation set forth herein to any private (non-governmental) party. Either Party may assign this Agreement as provided by law to any successor public educational entity, including, as to Hirt, pursuant to Education Code Sections 35500 et seq. and 35700 et seq. or similar or successor statutes. Each and all of the terms and provisions contained herein shall be binding upon and shall inure to the benefit of the authorized successors in interest to the Parties.

Section 37. Incorporation of Recitals and Exhibits. The recitals stated above, and the exhibits referenced herein and attached hereto, are incorporated herein as operative and effective parts of this Agreement.

Section 38. Entire Agreement. This Agreement contains all of the agreements and understandings of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. This Agreement may not be modified except in writing signed by the Parties. This Agreement initially shall not be effective or binding on either Party until fully executed by both Parties.

Section 39. Time Limits. The Parties may agree in writing that any time limit or time period specified in this Agreement shall be extended. All references in this Agreement to the performance of an act or occurrence of an event within a specific time period or by a specific time limit, if applicable because of an extension pursuant to this Section, shall be interpreted as allowing until the end of the extended period for the performance of such act or the occurrence of such event.

Section 40. Waiver. The failure of either Party at any time to require a performance by the other Party of any provision of this Agreement shall not affect in any way the full right to require such performance at any time thereafter. The waiver of any breach of any provision of this Agreement by a Party shall not be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement.

Section 41. Severability. If any Article, Section, Subsection, paragraph, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by a court of competent jurisdiction to be illegal, null or void or against public policy, the remaining articles, Sections, Subsections, paragraphs, sentences, clauses or phrases herein shall not be affected thereby.

Section 42. Representation by Independent Counsel. The Parties acknowledge that each Party has been represented by independent legal counsel of its own choice throughout all negotiations preceding the execution of this Agreement, and that each Party has executed this Agreement after receiving the advice of its own legal counsel.
Section 43. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 44. **Due Authority.** Each person signing this Agreement represents and warrants that he or she has been duly authorized by the governing board of the Party that person represents to sign this Agreement on behalf of that Party and thereby bind such Party hereto.

_In Witness Of The Foregoing,_ each of the undersigned execute this Agreement on behalf of the Party such person represents.

**William S. Hart Union High School District**
By: [Signature]
Robert C. Lee, Superintendent
Date: [Fill in Date]

**Santa Clarita Community College District**
By: [Signature]
Dianne G. Van Hook, President
Date: Oct 28, 2001

Approved as to form:
By: Bowie, Armeson, Wiles & Giannone
By: [Signature]
Brian W. Smith, Attorneys for the William S. Hart Union High School District

Approved as to form:
By: Atkinson, Andelson, Loya, Ruud & Romo
By: [Signature]
Terry T. Tao, Attorneys for the Santa Clarita Community College District
EXHIBIT "A"

[Rendering of University Center]
EXHIBIT "B"

[Depiction of University Center Site]