GAVILAN JOINT COMMUNITY COLLEGE DISTRICT

BOOKSTORE OPERATION AGREEMENT

This Bookstore Operation Agreement ("Agreement") is entered into this 13th day of June, 2007 by and between Gavilan Joint Community College District ("District") and Follett Higher Education Group, Inc. ("Operator") who are collectively referred to as "the Parties." This Agreement is entered into with reference to the following Recitals, all of which are incorporated into this Agreement.

RECITALS

WHEREAS, in or about March, 2007, the District issued a written Request for Proposals ("RFP"), identified as the District's RFP No. 30107 and pursuant to which the District solicited proposals for operation of the bookstore at the District's Gavilan College campus ("the Bookstore"); by this reference, the RFP is incorporated into this Agreement.

WHEREAS, the Operator submitted a written response to the RFP ("the RFP Response"); by this reference, the RFP Response is incorporated into this Agreement.

WHEREAS, the District and the Operator desire to set forth in this Agreement, the terms, conditions and covenants relating to the Operator's operation of the Bookstore.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties, the Parties agree as follows:

1. TERM. The term of this Agreement is five (5) years, commencing on July 1, 2007 ("the Commencement Date") and terminating on June 30, 2012 ("the Termination Date").

1.1 Operator Vacation of Bookstore. As of the Termination Date, at its sole cost and expense, the Operator shall remove from the Bookstore premises all items in the nature of personal property not owned by the District and to leave the Bookstore premises in a neat and broom clean condition (reasonable wear and tear excepted). Except as otherwise directed by the District, prior to the Termination Date, the Operator shall remove alterations, modifications or improvements to the Bookstore premises and restore damage to the Bookstore premises resulting from the removal of such alterations, modifications or improvements. If after the Termination Date any items of a personal property nature not owned by the District remain in or about the Bookstore premises or there are alterations, modifications or improvements to the Bookstore premises not removed by the Operator, without further action of the District or the Operator, all such items shall be deemed the property of the District and the District may thereafter retain or dispose of such items at its sole discretion without liability to the Operator. As of the Termination Date, the
Operator shall turn over to the District all keys and electronic codes for the Bookstore and Bookstore doors.

1.2 **Operator Hold-Over.** If the Operator does not vacate the Bookstore as of the Termination Date, for each day beyond the Termination Date, until the Operator has vacated the Bookstore in accordance with Paragraph 1.1 above, the Operator shall pay to the District the amount of Five Hundred Dollars ($500) per day; provided that any such hold-over shall not be construed as an extension of the Term nor consent of the District to the Operator's hold-over.

2. **BOOKSTORE FACILITY.**

2.1 **District Provided Bookstore Facility.** Except as otherwise provided herein, the District will provide a facility suitable for use as a college bookstore for use by the Operator. The Operator acknowledges that the Bookstore is presently operating in a portion of the building identified as the Student Center Building and more particularly identified in the cross-hatched portion of Exhibit A attached hereto and incorporated herein by this reference. The Operator further acknowledges that prior to the execution of this Agreement, the Operator has been afforded the opportunity to inspect the premises constituting the existing Bookstore facility and that based upon such inspection, the Operator has determined that the existing Bookstore facility is suitable and appropriate for the Operator's operation of the Bookstore as contemplated by this Agreement.

2.1.1 **District Off-Site Centers.** The Operator acknowledges that in addition to the Gavilan College campus, the District offers classroom instruction in off-site centers located in Hollister, California and Morgan Hill, California, and at potential new sites in Hollister, California and Coyote Valley, California (north of Morgan Hill, California). During the two (2) weeks before and the first two (2) weeks of each academic semester and the first week of each summer session and each inter-session, the District will make available an area at the off-site facilities for use by the Operator. The Operator shall staff the areas designated for the Bookstore Operator at the off-sites with Bookstore personnel for at least four (4) hours per day during the two (2) weeks before and the first two (2) weeks of each academic semester and the first week of each summer session and each inter-session. The specific hours during this time that the Bookstore areas at the off-sites will be staffed by Bookstore personnel will be by mutual agreement between the District and the Operator. The Bookstore Operator shall offer students enrolling in courses at the off-sites the opportunity to order textbooks/instructional materials on-line. During the time described hereinabove, the Bookstore personnel shall deliver on-line orders to the off-site students.

2.2 **District Provided Utility Services.** The District will provide the following utility services for use in connection with Bookstore operations: electrical power, water, heating, ventilating and air conditioning, routine pest control, building exterior and building common area janitorial services and telephone services. The foregoing notwithstanding, the District shall not
be liable to the Operator if utility services are interrupted, eliminated or reduced for any reason other than the District's non-payment of utility service charges. Further, if the District reasonably determines that there is waste or abuse of any District provided utility service, the District may discontinue providing such utility service without liability to the Operator.

2.3 Maintenance of Bookstore Facility.

2.3.1 Operator Responsibilities. The Operator is responsible for maintenance of the interior portions of the Bookstore premises in good order, condition and repair, provided, however, that the Operator shall not modify, alter or otherwise improve any portion of the Bookstore premises without the prior consent of the District which may be withheld, conditioned or restricted in the sole reasonable discretion of the District.

2.3.2 District Responsibilities. The District is responsible for maintenance of building systems serving the Bookstore premises, structural elements of the Bookstore premises and common areas of the Building in which the Bookstore premises are situated in good order, condition and repair. The Operator's payment obligations under this Agreement shall not be reduced, limited or deferred by any District activities relating to the District's maintenance obligations hereunder nor the failure of the District to undertake maintenance obligations hereunder unless such failure persists for an unreasonable period of time after the Operator's written notice to the District of the need to undertake maintenance obligations described hereinabove.

2.3.3 District Right to Relocate the Bookstore. During the Term of this Agreement, the District may, at its sole and exclusive discretion, elect to relocate the Bookstore to a different portion of the Student Center Building or to a facility in another Building on the Gavilan College campus.

2.3.4 District Notice of Relocation. If the District elects to re-locate the Bookstore, the District will provide advanced written to the Operator of at least sixty (60) days prior to the effective date of the relocation of the Bookstore.

2.3.5 Relocated Bookstore Facility. Any alternative facility for the Bookstore shall consist of space for retail operations, inventory storage and support functions similar in size and scope to the existing Bookstore facility. Services provided by the District in such alternative Bookstore facility will be similar to the services provided by the District to the existing Bookstore facility. The foregoing notwithstanding, the District shall not be responsible for making improvements to the alternative Bookstore facility, except as expressly set forth herein.

2.3.6 Relocation Costs. The Operator is solely responsible for arranging for relocation of the Bookstore, Bookstore furniture, furnishings and equipment, inventory and Bookstore personnel to the alternate location designated by the District; all costs, fees or expenses of such relocations shall borne solely and exclusively by the Operator.
2.3.7 **Operator Improvements to Alternate Facility.** If the District elects to relocate the Bookstore, the Operator shall be responsible for completing interior improvements valued at eighty thousand dollars ($80,000). Improvements to be completed by the Operator pursuant to the foregoing may include improvements to the alternate facility or additional or renovated furnishings and trade fixtures. The foregoing notwithstanding, the Operator shall not make any improvements or modify existing Bookstore furniture, furnishings or equipment without the prior approval or consent of the District. If the improvements to be completed by the Operator consist of modifications, improvements or other alterations to the alternative Bookstore facility, the Operator shall have plans and specifications prepared by a licensed architect under California law, provided that the District shall have the right to review and approve of the scope of modifications, improvements or alterations depicted in any such plans or specifications. Construction of any modifications, improvements or alterations approved by the District shall be performed by the District in accordance with laws, rules and regulations applicable to the District's construction of works of improvements, including without limitation engaging in the competitive bidding process. Notwithstanding the District's review/approval of plans and specifications and the District's retention of a construction contractor to construct the modifications, improvements or alterations, the District shall have no liability to the Operator for the timely completion of plans, specifications or construction activities nor for the sufficiency, adequacy or quality of the plans, specifications or construction work-product.

3. **Bookstore Operations.**

3.1 **General.** The District and the Operator acknowledge that all overriding objective in operating the Bookstore under this Agreement is the development and implementation of a tailor-made comprehensive program of services and product lines to meet the academic requirements of Gavilan College and its students, faculty and staff. The District and the Operator acknowledge that mutual cooperation between the District, Gavilan College faculty and the Operator to identify adds, deletions or modifications to services and products offered in the Bookstore is essential to achieving this objective; by executing this Agreement, the Operator and the District commit to themselves and their respective personnel to such mutual cooperation.

3.2 **Textbooks/Instructional Materials.** The Operator shall maintain adequate quantities of textbooks and other instructional materials necessary for courses offered at Gavilan College. In conjunction with Gavilan College faculty, the Operator will establish procedures for meetings with Gavilan College faculty to: (a) identify textbooks/instructional materials to be available for purchase in the Bookstore, (b) quantities of each identified textbook/instructional material, and the date(s) for delivery of the same to the Bookstore. Notwithstanding the Operator's obligation to maintain textbooks/instructional materials, the selection of textbooks/instructional
materials is in the sole and exclusive discretion of Gavilan College faculty. Any change to the ISBN order number must have Gavilan College Faculty approval. To the extent that any instructional materials are not in the nature of a published textbook, the Operator will cooperate with Gavilan College faculty in the reproduction and distribution of such instructional materials, subject to applicable copyright limitations. The Operator shall implement a procedure to ensure instant re-ordering of out-of-stock textbooks/instructional materials; to ensure timely availability of out-of-stock textbooks/instructional materials, the Operator shall have such materials delivered by overnight courier service.

3.2.1 Computerized Textbook/Instructional Materials Management. The Operator shall implement a computerized textbooks/instructional materials publication and order tracing system using the latest commercially available software. Minimum requirements of such software are: (a) constant updating of published college level textbooks/instructional materials for use by the Operator and Gavilan College faculty, (b) on-line, web based ordering from used textbooks/instructional materials wholesalers; (c) issuance of purchase orders for requisitioned textbooks/instructional materials for tracking and monitoring purposes, (d) generation of reports of the status of textbooks/instructional materials orders, Bookstore sales and other data relating to Bookstore operations, and (e) generation of student buy-back lists, including pricing of items on the buy-back list.

3.2.2 Purchase of Used Textbooks:

3.2.2.1 Operator Exclusive Right to Purchase Used Textbooks. The Operator shall establish a buy-back program for used textbooks and will have the exclusive right to buy-back used textbooks. The Operator shall maintain prominently displayed signs in the Bookstore communicating the buy-back policy for used textbooks, as described generally in Paragraph 3.2.2.2.

3.2.2.2 Buy-Back Policies. The Operator's buy-back program for used textbooks shall include the following: (a) during regular sessions, full refund for returned textbooks within fifteen (15) days of the opening day of classes, (b) if textbooks returned more than fifteen (15) days after the opening of classes, full refund if returned within two (2) business days of the date of purchase, (c) during summer sessions and inter-sessions, full refunds for textbooks returned within one (1) week of the date of purchase, (d) no textbook refunds will be processed during the last week of classes of any academic session or during examination periods, (e) new textbooks must be cleaned and unmarked and (f) all refunds must be accompanied by valid Bookstore receipt for the returned item. The foregoing policies may be modified by mutual agreement of the District and the Operator.
3.3 **Academic, Reference, Trade and General Books.** The Bookstore will maintain general book and trade/reference book department to serve Gavilan College students, faculty and staff.

3.3.1 **Academic, Reference and Trade Books.** The Operator will have discretion to select academic, reference and trade books available for sale in the bookstore. The foregoing notwithstanding, the Operator will make an effort to maintain adequate stock of academic, reference and trade books which relate to credit/non-credit courses offered at Gavilan College.

3.3.2 **Special Order Department.** The Operator shall make available a special order department for Gavilan College students, faculty and staff to place orders for books not stocked by the Bookstore. Delivery of special order books to the Bookstore will be overnight 48 hour courier service without additional cost to the purchaser.

3.3.3 **General Interest Books.** The Operator shall stock the Bookstore with general interest books, including genres and titles typically offered in commercial retail bookstores. Titles shall include fiction and non-fiction, hardbound and softbound and current best sellers.

3.4 **Magazines.** The Operator will maintain a magazine section in the Bookstore offering general/special interest magazines. The magazine section shall not include any adult-oriented magazines as determined by Gavilan College.

3.5 **General Merchandise.** The Operator shall offer for sale items of a general merchandise nature suitable and appropriate for a college campus environment. Without further action of the District, the Operator may offer for sale the following items of general merchandise: apparel (without Gavilan College logos), health and beauty supplies, sporting goods and audio-visual items (i.e., audio compact discs). The Operator will be licensed to produce apparel items for sale in the Bookstore bearing the Gavilan College logo. The Operator will not be charged a royalty for use of the Gavilan College logo on apparel items, provided, however, the District shall have the right of prior approval of each apparel item bearing the Gavilan College logo prior to such item being offered for sale at the Bookstore. The Operator may offer for sale snack items which are: (a) pre-packaged and (b) non-perishable. The Operator acknowledges that the District and Gavilan College have pre-existing agreements or new agreements with vending machine operators and food service operators which preclude the offer for sale of prepared food items and drinks by others at Gavilan College, the Operator agrees that any restriction on the sale of food items at the Bookstore consistent with the limitations established by such other agreements shall not be deemed the breach or default by the District of its obligations hereunder.

3.6 **Classroom/Office Supplies.** The Operator will offer items in the nature of classroom/office supplies, including without limitation: stationary materials/supplies, electronic goods, including computers, calculators, personal digital assistants, etc., and supplies for electronic goods. As requested by Gavilan College faculty, the Operator shall offer special materials for courses offered at Gavilan College.
3.7 **Services.** The Operator shall offer the following services in the Bookstore to Gavilan College students, faculty and staff: postage stamp purchases, event ticket sales (on-campus and off-campus), Valley Transit Authority transit passes, incoming and outgoing fax services, reproduction (self-service and retail service), photo (35 mm and APS) film development, cap and gown rentals, and ATM machine.

3.7.1 **Faculty and Staff Discounts.** The Operator shall offer all faculty and staff a 10% discount on all purchases over $1.00, excluding textbooks, sale merchandise, and academically discounted software. In addition, the Operator shall offer all Gavilan College departments a 20% discount on purchases of supplies over $1.00, excluding textbooks, sale merchandise, and academically discounted software.

3.8 Section 3.5, 3.6 and 3.7 above does not prohibit occasional sales by student groups or student government organizations that do not materially impact store sales.

3.9 **Days/Hours of Bookstore Operation.** The Bookstore shall be open for operation as set forth herein. The Operator acknowledges that operation of the Bookstore during the days/hours set forth herein is a material obligation of the Operator under this Agreement. At all times during operation of the Bookstore, the Operator is responsible for maintaining adequate personnel to operate the Bookstore and serve Bookstore customers.

3.9.1 **Regular Sessions.** During regular Gavilan College academic sessions, the Bookstore shall be in operation Monday through Saturday with the exception of Gavilan College holiday days. Hours of operation, except for the first two weeks and the last week of regular sessions, shall be 8:00 A.M. to 8:00 P.M. Monday through Friday and on Saturdays 8:00 a.m. through noon. During the first two weeks of each regular session, the hours of operation shall be 7:00 A.M. to 8:00 P.M. Monday through Friday and on Saturday 7:00 a.m. – 1:00 p.m. In addition, for a one week period after conclusion of each regular session, the Bookstore will be in operation from 9:00 A.M. to 7:00 P.M. Monday through Friday and on Saturday 9:00 a.m. – noon.

3.9.2 **Summer Sessions.** During Gavilan College Summer sessions, the Bookstore shall be in operation Mondays through Fridays with the exception of Gavilan College holiday days. Hours of operation, except for the first two weeks of each summer session shall be 8:00 A.M. to 3:00 P.M. During the first two weeks of each summer session, the hours of operation shall be 7:00 A.M. to 5:00 P.M. In addition for a one week period after conclusion of each summer session, the Bookstore will be in operation from 9:00 A.M to 5:00 P.M.

3.9.3 **Inter-Sessions.** During Gavilan College inter-sessions, the Bookstore will be in operation Mondays through Fridays with the exception of Gavilan College holiday days. Hours of operation, except for the first two weeks of each inter-session shall be 8:00
A.M. to 3:00 P.M. During the first two weeks of each inter-session, the hours of operation shall be 7:00 A.M. to 5:00 P.M. In addition for a one week period after conclusion of each inter-session, the Bookstore will be in operation from 9:00 A.M. to 5:00 P.M.

3.9.4 Modifications to Days/Hours of Operation. Upon mutual agreement of the Operator and the District, the foregoing days/hours of Bookstore operation may be modified, provided, however, that the District may decline to grant consent to modification of the days/hours of Bookstore operation, in its sole exclusive discretion.

3.10 Sales Policies.

3.10.1 Payment Methods. The Bookstore Operator shall accept the following for Bookstore purchases: Master Card, Visa, American Express and Discover credit cards, debit cards, personal checks (with sufficient personal identification), Gavilan College checks and warrants, cash, money orders and travelers checks.

3.10.2 District Charges. The Bookstore Operator will establish a charge system for purchases by the District and the various departments of the District which generally provides for purchases of items offered in the Bookstore on a charge basis, with monthly charge billings and payment due from the District on undisputed charge amounts within thirty (30) days of the Operator's rendition of a billing for charges to the District.

3.10.3 Pricing Policies. The Operator acknowledges that successful operation of the Bookstore is dependent, in part, on competitive pricing. Pricing for new textbooks/instructional materials shall be no greater than a twenty-eight percent (28%) gross profit (i.e., net costs divided by .72). Pricing for used textbooks/instructional materials shall not exceed seventy-five percent (75%) of the current pricing for similar or identical new textbooks/instructional materials. Pricing for all other items and services offered in the Bookstore shall be comparable with prices for similar or identical items in Gilroy, California. If the District reasonably determines that items/services offered in the Bookstore are greater or less than the standards described above, the Operator shall adjust pricing of items to conform with the above-described standards.

3.11 Bookstore Personnel.

3.11.1 General. The Operator is solely responsible for the recruitment and retention of personnel necessary to operate the Bookstore. The Bookstore is solely responsible to the District and third parties for the acts, omissions and other conduct of the Bookstore personnel as well as the consequences thereof. All persons engaged by the Operator to operate the Bookstore shall be direct employees of the Operator or be qualified independent contractors under written agreement with the Operator.

3.11.2 Employment Policies. The Operator shall comply with all applicable laws, rules and regulations relating to the recruitment, hiring and promotion of employees. The Operator acknowledges that the District and Gavilan College require that all contractors and vendors
to the District and Gavilan College, including the Operator is prohibited from engaging in preferential or discriminatory practices relating to recruitment, hiring and promotion of employees. The Operator shall not engage in any such preferential or discriminatory practices.

3.11.3 **Employee Conduct.** All personnel employed by the Operator, whether as employees or independent contractors, for Bookstore operations shall receive sufficient training by the Operator to be competent to perform tasks assigned and shall generally conform to the conduct expected of Gavilan College employees.

3.11.4 **Gavilan College Student Opportunities.** To the extent consistent with the employment policies described above and to the extent consistent with professional management and operation of the Bookstore, the Operator shall endeavor to hire currently enrolled Gavilan College students for Bookstore operations.

3.11.5 **District Right of Approval of Bookstore Manager.** The individual employed by the Operator as the Bookstore Manager is subject to the prior approval of the District. Prior to designating an individual as the Bookstore Manager, the Operator shall provide the District with such individual's resume or other written materials describing the background, experience and capabilities of the individual to serve as the Bookstore Manager. If the Bookstore Manager approved by the District is replaced at any time during the Term, the District shall have the right to approve the replacement Bookstore Manager. The right of the District to approve shall not be deemed the District's selection of an individual as the Bookstore Manager nor the District's exercise of control over the Operator's selection of the Bookstore Manager. Further, notwithstanding the District's right of approval of the Bookstore Manager, the Operator remains liable to the District and third parties for the acts, omissions and other conduct of the Bookstore Manager.

4. **Operator Compensation to the District.**

4.1 **Annual Payments.** For each calendar year of the Term, the Operator shall make an Annual Payment to the District in the amount of One Hundred Thousand Dollars ($100,000) ("the Annual Payment"). The Annual Payment shall be made in equal quarterly installments, with each quarterly installment due on the first day of each quarter during the Term.

4.2 **Percentage of Revenue Payments.** In addition to the Annual Payments due pursuant to Paragraph 4.1 above, the Operator shall make annual payments of the Percentage of Revenue due for the Fiscal Year based on Four Percent (4%) of gross revenue up to one million dollars ($1,000,000) and Six Percent (6%) of gross revenue over one million ($1,000,000). Within thirty (30) days of the end of each Fiscal Year of the Term, the Operator shall prepare and submit to the District a detailed statement of Gross Revenues realized for the Fiscal Year along with a calculation of the Percentage of Revenue due the District for that Fiscal Year. The Operator shall make a lump sum payment of the Percentage of Revenue due for each Fiscal Year of the Term concurrently with its submission of
the statement of Fiscal Year Gross Revenues. The Operator acknowledges that notwithstanding the expiration of the Term, it is obligated to submit the statement of Gross Revenue for the last Fiscal Year of the Term and to make payment of the Percentage of Revenue for the last Fiscal Year of the Term, within thirty (30) days of the Termination Date. For purposes of this provision, each Fiscal Year shall commence on the date of the month of the Commencement Date and shall end the twelfth (12th) month thereafter.

4.2.1 Significant Enrollment Drop. If there is a significant enrollment drop at the District of more than 10% from the prior year, the Operator and the District mutually agree to review the annual and percentages of revenue payments due pursuant to Paragraph 4.1 and 4.2 above.

4.3 Associated Student Body ("ASB") Annual Contribution. Each year during the Term, the Operator shall make a contribution to the Gavilan College ASB in the amount of Fifteen Thousand Dollars ($15,000). The ASB Annual Contribution shall be made on the first day of the Term and on the first day of each twelve (12) month period thereafter.

4.4 Book Voucher Scholarship Contribution. Each year during the Term, the Operator shall make a contribution to a Gavilan College Book Voucher Scholarship in the amount of Ten Thousand Dollars ($10,000). The annual Book Voucher Scholarship contribution shall be made in two equal installments on the first day of each academic semester at Gavilan College. Bookstore Voucher Scholarships will be awarded in the name of the Operator to one or more Gavilan College students in accordance with criteria established by the Gavilan College Financial Aid office and the Gavilan College ASB.

4.5 Bookstore Books and Records. The Operator shall maintain current, complete and accurate books and records pertaining to Bookstore operations. All such books and records shall be maintained on computerized systems utilizing commercially available software and shall be maintained in accordance with generally accepted accounting principles applied in a consistent manner. All books and records maintained by the Operator hereunder shall be available to the District for inspection, review and reproduction; the Operator acknowledges that the availability of Bookstore books and records for District inspection, review or reproduction is a material obligation of the Operator under this Agreement. The District reserves the right to audit the books and records maintained by the Operator relating to Bookstore operations. The District shall be solely responsible for the costs of such audit, unless the results of such audit show that the Gross Revenue in any twelve (12) month period of the Term is understated by the Operator by five percent (5%) or more, the Operator shall be responsible for payment of all audit costs.

4.6 District Remedies for Late Payments.

4.6.1 Service Charge. If the Operator fails to make payment of any sum due under this Agreement to the District for the amount due and when due, the Operator shall pay to the District an service charge equal to ten percent (10%) of the amount due. The Operator
acknowledges and agrees that the late payment of any sum due from the Operator to the District will cause the District to sustain losses and damages not contemplated by this Agreement and which will be extremely difficult to ascertain and that such service charge represents a fair estimate of the losses and damages which the District will sustain by reason of late payment by the Operator. The Operator further agrees that such service charge shall not be deemed or construed to be a waiver of the Operator’s default with respect to such overdue payment nor prevent the District from exercising any other right or remedy, whether arising under this Agreement or by operation of law, arising out of such late payment.

4.6.2 Attorneys Fees. If the District retains legal counsel to initiate collection procedures, including without limitation, legal proceedings to collect late payments due from the Operator or service charges due from the Operator on account of overdue payments, the Operator shall pay, as costs, all reasonable legal fees and other related expenses arising out of or related in any manner to such collection procedures, including legal proceedings.

5. Insurance and Indemnity.

5.1 Operator Insurance. At all times during the Term, the Operator shall obtain and maintain the following policies of insurance described in this Paragraph 5.

5.1.1 General Requirements. All insurance policies required by this Paragraph 5 shall be issued by insurance carriers authorized to issue insurance in the State of California and who hold an A.M. Best rating of A- or better. If at any time during the Term an insurer issuing a required policy of insurance has an A.M. Best rating less than A-, the District may in its sole discretion require the Operator to obtain a replacement policy of insurance issued by an insurance carrier with an A.M. Best rating of A- or better.

5.1.2 Commercial General Liability Insurance. The Operator shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Operator’s operations under this Agreement and for which the Operator may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Operator’s employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained: (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iii) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages, including claims arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance; (vi) completed operations and (vii) product liability. The District shall be an additional named insured on the Operator’s Commercial General Liability insurance.
policy. The minimum coverage amounts of the Operator's Commercial General Liability insurance policy shall be Two Million Dollars ($2,000,000) per occurrence and Four Million Dollars ($4,000,000) aggregate.

5.1.3 **Workers Compensation Insurance; Employers Liability Insurance.** The Operator shall purchase and maintain Workers' Compensation Insurance as will protect the Operator from claims under applicable workers' or workmen's compensation, disability benefit and other similar employee benefit acts. Operator shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Operator. The Employer's Liability Insurance required of Operator hereunder may be obtained by Operator as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Operator hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions. Coverage amounts under the Workers Compensation Insurance shall be in accordance with applicable law. The minimum coverage amount under the Employers Liability insurance policy shall be Two Million Dollars ($2,000,000).

5.1.4 **Casualty Insurance.** The Operator shall maintain in effect one or more policies of casualty insurance covering: (a) all improvement in, on or about the Bookstore premises and (b) trade fixtures, merchandise and other personal property from time-to-time in, on or about the Bookstore premises. Such policy(ies) shall include coverage and protection against any peril included in the definition of "fire and extended coverage," malicious mischief, theft, sprinkler leakage, earthquake sprinkler leakage, and flood damage. Proceeds of such insurance shall be used to repair or replace damaged/destroyed property.

5.1.5 **District Insurance.** The District will obtain casualty insurance covering common areas of the Building in which the Bookstore premises are situated and which will provide coverage and protection against any peril included in the definition of "fire and extended coverage," malicious mischief, theft, sprinkler leakage, earthquake sprinkler leakage, and flood damage. Proceeds of such insurance shall be used to repair or replace damaged/destroyed property. In lieu of a commercially obtained policy of casualty insurance, the District may obtain a policy of insurance pursuant to a Joint Powers Authority or to self-insure against such risks.

5.1.6 **Waivers of Subrogation.** The District and the Operator waive any and all rights of recovery against the other and the other's directors, trustees, officers, shareholders, partners, employees, agents and representatives, on account of loss of damage of such waiving party or its property or the property of others under the possession, custody or control of the waiving party, to the extent that such loss
or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage.

5.2 **Operator Indemnity of the District.** Unless arising solely out of the active negligence, gross negligence or willful misconduct the District, the Operator shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys fees and costs which arise, in whole or in part, from this Agreement, or the acts, omissions or other conduct of the Operator or its officers, directors, employees, agents, independent contractors or representatives. The Operator's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; and (vi) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of the Operator or its officers, directors, employees, agents, independent contractors or representatives. For purposes of the preceding, the Indemnified Parties are the District and its Board of Trustees, officers, employees, agents and representatives. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Operator's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Operator shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Operator shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Operator shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Operator's obligations hereunder shall survive notwithstanding expiration of the Term or the earlier termination of this Agreement.

6. **Termination.**

6.1 **District Termination for Operator Default.** If the Operator is in default of any material obligations of the Operator under this Agreement, upon written notice from the District to the Operator of such default, the Operator shall, within seven (7) days of such notice cure such default, unless the nature of the default is such that it cannot be cured within said seven (7) day period, the Operator shall diligently prosecute such cure to completion. If the Operator fails or refuses to cure any default within the time set forth above, without further action of the District or the Operator, this Agreement shall be deemed terminated as of the last day of the cure period. In addition to material obligations of the Operator set forth elsewhere in this Agreement, the following shall be deemed the Operator’s default of material obligations hereunder: (a) the failure to maintain Bookstore operations during the days/hours set forth herein; (b) the failure
to make any payment of any sum due hereunder in the full amount due and when due; (c) the violation of any applicable law, rule, regulation or ordinance; (d) the making of a general assignment for the benefit of creditors; or (e) the appointment of a receiver or trustee to take possession of, or the attachment, execution or other judicial seizure of all or substantially all of the Operator's assets in the Bookstore premises.

6.2 Operator Liability Following Default. Notwithstanding termination of this Agreement for the Operator's default of material obligations pursuant to Paragraph 6.1 above, the Operator shall remain liable to the District for all damages, losses, costs and other expenses incurred by the District as a result of the Operator's default of material obligations.

6.3 Operator Termination for District Default. If the District in default of a material obligation of the District under this Agreement, upon written notice from the Operator to the District of such default, the District shall, within seven (7) days of such notice cure such default, unless the nature of the default is such that it cannot be cured within said seven (7) day period, the District shall diligently prosecute such cure to completion. If the District fails or refuses to cure any default within the time set forth above, without further action of the District or the Operator, this Agreement shall be deemed terminated as of the last day of the cure period.

6.4 Termination for Convenience. The District may terminate this agreement with or without cause be giving the Bookstore Operator at least 120 days prior written notice of termination.

7. Miscellaneous.

7.1 Governing Law. This Agreement shall be governed and interpreted in pursuant to the laws of the State of California and in accordance with its fair meaning and not strictly for or against the District or Operator. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

7.2 Time. Time is of the essence to this Agreement.

7.3 Successors: Non-Assignability. This Agreement and all terms hereof are binding upon and inure to the benefit of the respective successors of Operator and the District. Neither Operator nor District shall assign rights or obligations hereunder without the prior consent of the other, which consent may be withheld or granted in sole discretion of the Party requested to grant such consent.

7.4 Attorneys Fees. Unless otherwise expressly set forth in this Agreement, the District and the Operator shall each bear their own attorneys fees and other legal costs arising out of or related in any manner to this Agreement.

7.5 Notices. Notices which either Party are required or desire to serve on the other shall be effective only if transmitted by prepaid postage United States Mail, Certified, Return Receipt Requested. Notices transmitted pursuant to the foregoing shall be deemed received the third business day after deposit in the mail. Notices hereunder shall be addressed as follows:
If to the District:
Joseph Keeler, Vice President of Administrative Services
Gavilan College
5055 Santa Teresa Boulevard
Gilroy, CA 95020

If to Operator:
Thomas A. Christopher, President
Follett Higher Education Group, Inc.
1818 Swift Drive
Oak Brook, IL 60523

7.6 **District Cumulative Rights and Remedies.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District shall be deemed a waiver of any right or remedy afforded hereunder or acquiesce or approval of any breach or default of the Operator.

7.7 **Dispute Resolution.** Claims, disputes or disagreements between the District and the Operator arising out of or related in any manner to this Agreement or the rights/obligations under this Agreement shall be resolved in accordance with this Paragraph 7.6.

7.7.1 **Mandatory Mediation.** All claims, disputes and other matters in controversy between the Operator and the District arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation conducted under the auspices of the American Arbitration Association ("AAA") and the Commercial Mediation Rules of the AAA in effect at the time that a Demand For Mediation is filed. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to either the District or the Operator commencing arbitration proceedings pursuant to the following Paragraph.

7.7.2 **Binding Arbitration.** All claims, disputes or other matters in controversy between Operator and District arising out of or pertaining to this Agreement which are not fully resolved through the mandatory mediation set forth above shall be settled and resolved by binding arbitration conducted under the auspices of the AAA Commercial Arbitration Rules in effect at the time of the filing of a Demand for Arbitration. Arbitration proceedings shall be conducted in the AAA San Jose office.

7.7.3 **Operator Continuation of Bookstore Operations.** Notwithstanding pending disputes, disagreements or other matters in controversy between the District and the Operator relating to this Agreement, pending the full and final resolution of all such pending disputes, disagreements or other matters in controversy, the Operator shall continue Bookstore operations in accordance with the terms of this Agreement.
7.8 **Entire Agreement.** This Agreement sets forth the entire understanding and agreement of the Parties relating to the subject matter hereof. In the event of conflict or inconsistency between this Agreement or any provision hereof and the RFP or the RFP Response or any portions thereof, this Agreement and the provisions hereof shall govern and control. This Agreement supersedes and replaces all prior agreements, understandings and negotiations between the Parties concerning the subject matter hereof, whether verbal or written. This Agreement and the provisions hereof shall not be modified or amended except by written instrument duly executed by authorized representatives of the District and the Operator.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date set forth above.

"District":
Gavilan Joint Community College District

By: [Signature]
Joseph D. Keeler
Vice President of Administrative Services

"Operator":
Follett Higher Education Group, Inc.

By: [Signature]
Title: President