



REAL PROPERTY PARTNERSHIP PROCESS GUIDE

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CALIFORNIA STATE UNIVERSITY REAL PROPERTY PARTNERSHIP PROJECTS PROCESS GUIDE

Introduction

A real property partnership project is a contractual relationship between a public agency and a private sector entity which provides for utilizing the skills of each sector to deliver a service or facility, with a sharing in the risks and rewards (National Council for Public-Private Partnerships, 2016). Within the California State University (CSU) system, this definition has been expanded and retitled to “real property partnerships” since the contractual relationship may also encompass a partnership with a public or non-profit entity or involve campus auxiliaries. Campus auxiliary organizations are California non-profit corporations which are legally separate entities and are organized and operated solely for the benefit of a campus.

The primary purpose of a real property partnership project is to use or develop campus property to provide resources necessary to support the educational mission of the university. Campuses are increasingly turning to partnerships as an alternative financing and delivery method for the development and management of facilities in order to meet programmatic or support needs that may not be readily achievable under existing CSU programs. Real property partnership projects may also include unlocking the value of campus property through the monetization of this asset to meet such needs.

Purpose of CSU Process Guide

The CSU Process Guide is intended to provide a framework for the successful formulation, approval and implementation of CSU campus real property partnership projects. The CSU Process Guide specifically provides information on the following subjects:

- The review process for real property partnership projects at the CSU.
- The role of the campus, Chancellor’s Office and Land Development Review Committee.
- Best practices to facilitate the review and analysis of real property partnership projects.
- Available resources to campuses for real property partnership projects.

The key element for project success is early, frequent and effective communication between the Chancellor’s Office and each campus on real property partnership projects. This communication should be considered a critical and necessary addition to the review processes identified herein.

Role of the California State University Board of Trustees

The California State University Board of Trustees (Trustees) is responsible for reviewing real property partnership projects to ensure such projects are in the best interests of the CSU. Such review includes, but is not limited to: the project contribution to the educational mission of the university, the major financial terms, and the quality of the developer and of the proposed development project. The Trustees are also responsible for ensuring compliance with the requirements of the California Environmental Quality Act (CEQA).

Role of the Campus

Campus presidents have authority on the use of buildings and grounds, consistent with Section VI of the Standing Orders of the Trustees (Appendix 1), and thus are responsible for real property partnership projects on their respective campus. The campus, by and through its president and his/her designees, is specifically responsible for:

- Identifying the proposed real property partnership project's link to the educational mission of the university.
- Developing the business case for utilizing a real property partnership for a particular project and analyzing the market demand, utilizing external advisors as appropriate to ensure a complete analysis.
- Ensuring that the university will receive "fair market value" for the use of property intended for the project.
- Conducting a due diligence review of the financial viability of the proposed developer(s) to ensure that they have the capability to successfully finance and implement the project.
- Demonstrating that the project represents the highest and best use of university property in consideration of land use planning, campus master planning, and potential alternative uses.
- Demonstrating that the quality of the proposed development is consistent with campus design and/or construction guidelines.
- Developing and implementing a campus and public outreach plan for the proposed project.
- Developing a realistic schedule for the project, given the Trustees approval process and CEQA requirements.
- Providing information identified in CSU Best Management Practices (Appendix 2).
- Working closely with the Chancellor's Office staff which includes: Financing, Treasury & Risk Management (F&T), Office of General Counsel (OGC), and Capital Planning, Design and Construction (CPDC) on providing the above information.

Role of the Chancellor's Office

The Chancellor's Office staff is responsible for assisting the campuses to facilitate the success of real property partnership projects. Examples of such assistance include:

- Identifying and describing the key processes to obtain approval of real property partnership projects.
- Providing consultation and advice, which may include identification of key critical issues to campuses early in the development process.
- Coordinating the review of projects by appropriate departments within the Chancellor's Office and conveying the results of such reviews to the campuses.
- Identifying external resources which can provide professional advice on key areas (e.g., financial, legal, and technical).
- Helping to ensure compliance with CSU policies, as well as applicable statutes, regulations, and other authority.

Chancellor's Office staff also provides recommendations to the Trustees for their review and action on real property partnership projects. These recommendations are based on staff's evaluation of information provided as described in the "Role of Campus" in this CSU Process Guide.

Role of the Land Development Review Committee

The Land Development Review Committee (LDRC) provides advice, guidance and assistance to the campus on real property partnership projects based upon the experience of other CSU campuses and the Chancellor's Office. An affirmative recommendation by the LDRC is a fundamental component of the Chancellor's Office's evaluation of a real property partnership projects. To facilitate the LDRC's review of such projects, periodic meetings are convened. The LDRC is co-chaired by the assistant vice chancellor of F&T and the assistant vice chancellor of CPDC, and is comprised of a representative from the OGC, the director of short term and structured finance, the chief of land use planning and environmental review, the director of real estate development, the chief of facilities planning, the university planner for the campus, and three at-large members from campus finance or auxiliary leadership. Capital planning, design and construction acts as the designated coordinator for the LDRC on real property partnership projects. The director of real estate development or the chief of land use planning and environmental review acts as the lead staff for the LDRC. Regular reports to the executive vice chancellor/chief financial officer shall be provided by the LDRC.

Following consultation with the LDRC, the co-chairs of the LDRC will advise the campus as needed on issues or concerns that require further action. Once all issues have been resolved, the co-chairs of the LDRC will provide direction to the campus on submittal material for the Trustees approval items and advise the campus to work with Chancellor's Office staff to prepare agenda items.

Real Property Partnership Development Process

The campus is expected to confer with the assistant vice chancellor of F&T and/or the assistant vice chancellor of CPDC about a potential real property partnership project early in the concept process, and no later than the early stage of any feasibility study.

In advance of seeking concept and final development approvals from the Trustees, the campus will provide information to the LDRC as indicated below. In addition, the campus will fulfill all other responsibilities further identified in this process guidance.

The process leading to ultimate approval of the project by the Trustees requires early and continuing involvement of the Chancellor's Office. A Request for Information (RFI) may be issued prior to concept approval, if approved by the executive vice chancellor/chief financial officer and if necessary to further assist in the definition of planned land uses.

However, these actions shall not create any binding contractual obligations with respect to the development which commit the CSU to a particular course of action and shall not preclude

consideration of alternatives or mitigation measures in the California Environmental Quality Act compliance process.

The key processes to obtain approval of a real property partnership project are highlighted below.

Concept Phase

- Presentation of the concept and related information by the campus to the LDRC (and to the Housing Proposal Review Committee for housing projects).
- Submission of material by the campus to CPDC at least three (3) weeks prior to the LDRC meeting:
 - The feasibility study of the project, including the goal of the project and planned scope.
 - Site location.
 - Microsoft Project schedule (covering planning, design, construction, and CEQA).
 - The manner in which this concept will further the educational mission of the campus.
 - The manner in which this concept will be the highest and best use of CSU property from an economic point of view.
 - Compatibility with the existing campus master plan and proposed campus master plan (if currently in the preparation stage).
 - The manner in which a change in the approved master plan (if proposed) better meets the educational program needs than the current master planned use.
 - A market demand study which demonstrates the demand for planned land uses.
 - The potential displacement of a current program use and planned relocation plan for the displaced program.
 - The projected financial plan and lease arrangements (if available).
 - The proposed competitive process for the selection of the development team.
 - Other assessment information identified in CSU Best Management Practices (Appendix 2) for the feasibility stage of the project.
- Submittal to the LDRC of an analysis for the concept which compares self-funding the project using Systemwide Revenue Bonds (SRB) as compared to utilizing privately arranged financing. For student housing projects, the real property partnership project vs. non-partnership analysis should include the difference in projected student rental rates between the partnership project and a CSU implemented project, the difference in debt service payments, the difference in Net Operating Income (NOI), and cash flow after debt over the term of the proposed agreement.
- Issuance of a letter from the co-chairs of the LDRC to the campus, which provides a summary of the project, outlines the steps and process leading to approval of the concept, and notes any questions or concerns with the campus concept. The letter will include confirmation of the schedule for the project, including dates for the LDRC meeting on the final development project phase, as well as submissions for Trustees required actions to meet the campus-desired completion schedule and appropriate reference to CEQA, title, or other requirements for due diligence.

- Submission by the campus of a draft board agenda item, PowerPoint presentation and Question & Answers (Q&A) for the Committee on Finance for concept approval. The submittal due dates for Trustees materials are released by the executive vice chancellor/chief financial officer each fall.
- Approval by the Trustees of the concept, which may authorize the chancellor and the campus to release the Request for Qualifications (RFQ) and/or Request for Proposal (RFP), enter into negotiations for agreements necessary to develop the final plan for the real property partnership project, and enter into a due diligence Access and Option Agreement with the developer.

Project Scope and Due Diligence Phase

- Issuance of a RFQ/RFP; selection of the developer for the project; review of the financial plan and an updated market demand study to be submitted from the developer; negotiation with the developer on terms and conditions; and commencement of schematic plans.
- Initiation of CEQA compliance documents (e.g., Environmental Impact Report, Mitigated Negative Declaration).
- Coordination with the Chancellor's Office staff during this phase.

Project Final Approvals

Land Development Review Committee

- Presentation of the final development project by the campus to the LDRC (and jointly to the Housing Proposal Review Committee for housing projects). Submission by the campus of the following to the LDRC at least three (3) weeks prior to the LDRC meeting: an update of the concept presented to the Trustees that describes how the project will further the educational mission of the campus; the results of due diligence studies including an assessment of risks associated with the project; a summary of the important terms and conditions of proposed substantive agreements; a review of the developer's multi-year financial plan; an updated market demand study which outlines the demand for the project; an updated appraisal; information which demonstrates that the CSU is receiving "fair market value" for use of university property; proposed site plan and elevations of the project; and other information identified in CSU Best Management Practices (Appendix 2).
- The LDRC presentation will also include an updated analysis which compares self-funding the final development project using SRB as compared to utilizing privately arranged financing. For student housing projects, the real property partnership project vs. non-partnership analysis should include the difference in projected student rental rates between the partnership project and a CSU implemented project; the difference in debt service payments; the difference in net operating income; and cash flow after debt service for the term of the proposed agreement.

The California State University Board of Trustees

- Completion of Final CEQA documentation, including location and calculation of off-site mitigations (if any) and results of negotiations with local agencies.
- Submission by the campus of a draft board agenda item, PowerPoint presentation, and Q&A for the Committee on Finance relating to final project approval and submission of a draft board agenda item and PowerPoint presentation for the Committee on Campus Planning, Buildings and Grounds relating to the master plan revision and Non-State Capital Outlay Program amendment (if necessary), along with latest schematic plans.
- The campus will seek development agreement approval from the Trustees for the project after terms and conditions have been negotiated by the campus. Campuses are requested to include Chancellor's Office staff in the negotiations with the development agreement. The Office of General Counsel will review and approve the retention of outside legal expertise as needed to support the project.
- Approval by the Trustees of the final plan which will delegate to the chancellor, executive vice chancellor/chief financial officer, and their designees' the authority to execute agreements necessary to implement this development project.

Approval by the Trustees for CEQA documentation is required prior to providing commitments for the use of property.

Project documentation should be provided early enough to the Chancellor's Office to allow sufficient time for review and possible revision prior to submittal to the Trustees.

Project Implementation

A real property partnership project which is located on CSU property shall comply with State University Administrative Manual (SUAM) and all laws, executive orders, and CSU administrative manuals, including, but not limited to, plan review approval and building code enforcement for major capital construction projects.

A real property partnership project (including those administered by an auxiliary) which is located on CSU property and funded in whole or part by public funds is also subject to CSU Contract Law (Cal. Ed. Code 89911). Coordination with CPDC and OGC will take place to determine the applicability of CSU Contract Law to other real property partnership projects located on CSU property without public funding.

The Trustees retains authority for naming of facilities on all CSU facilities and properties. Real property partnership projects shall comply with CSU policies relating to the naming of facilities and properties.

Annually, the campus chief financial officer will submit an update of any real property partnership projects located on CSU property to the executive vice chancellor/chief financial officer that shall include the following information: status of development (indicate if project is being phased); total amount of net ground rent or in-kind value received by the campus or its

auxiliary organization for the prior fiscal year; and confirmation of the educational benefits as previously approved by the Trustees.

Resources

Available resources for real property partnership projects are provided in the appendices which are attached.

AVAILABLE RESOURCES

Appendix 1: Standing Orders of the Board of Trustees of the CSU dated May 2016

Appendix 2: CSU Best Management Practices

Appendix 3: CSU Access and Option Agreement Template for Real Property Partnership Projects

Appendix 4: CSU Ground Lease Template for Real Property Development Partnerships Projects

STANDING ORDERS OF THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

I. PURPOSE

The Standing Orders delegate authority from the Board of Trustees to the Chancellor and others within the California State University.

II. DELEGATION TO THE CHANCELLOR

The Chancellor is the chief executive officer of the California State University and has authority and responsibility to take whatever actions are necessary, consistent with Trustee policy and applicable law, for the appropriate functioning of the institution, which includes:

- a. Establishment and oversight of all academic programs
- b. Issuance of degrees
- c. Operation of educational opportunity programs
- d. Resolution of claims, settlement of litigation and discharge from accountability
- e. Establishment of policies and procedures for acquisition or sale of services, facilities, materials, goods, supplies, and equipment with the authority to sign agreements
- f. Development and oversight of the budget, including the capital outlay program; *approval of capital outlay project scope, budget, and schematic design for projects valued at \$5 million or less; and approval of schematic design for all remodel and utilitarian projects, regardless of cost, unless the design is architecturally significant or includes significant unavoidable environmental impacts.*
- g. Application, receipt and oversight of grants and loans
- h. Deposit, control, investment, and expenditure of funds
- i. Establishment and oversight of campus fees; establishment, adjustment and oversight of systemwide fees
- j. Oversight of construction, and authority to sign all construction documents
- k. Purchase, sale and exchange of any interest in or use of real property
- l. Approval of minor changes to campus master plans
- m. Appointment of personnel, development and enforcement of personnel programs and discipline and termination of personnel
- n. Appointments to various boards and committees
- o. Development of a legislative program

- p. Acceptance of gifts
- q. Permission to use the name of the CSU
- r. Performance of all acts necessary to qualify for and receive benefits from the federal government
- s. Oversight of the systemwide advancement program

This list is not inclusive, and is not intended to limit the necessary actions of the Chancellor as the chief executive officer of the institution. The Chancellor may delegate his or her authority to others within the California State University. The Chancellor may issue executive orders as are necessary or convenient to the performance of his or her office.

The Chancellor shall regularly report to the Board of Trustees concerning the performance of his or her functions.

III. DELEGATION TO THE GENERAL COUNSEL

The General Counsel is the chief legal officer of the California State University and has full authority and responsibility for the legal affairs of the institution, which includes:

- a. Advice to and representation of the California State University, the Trustees, Chancellor, Presidents, and other officers and employees of the California State University in all legal matters of the institution or that may result from their service to, or employment by, the California State University.
- b. Retention of outside counsel to represent the California State University, who are accountable to the General Counsel for their professional work.
- c. Acceptance of service of process for the California State University, the Trustees, Chancellor and Presidents, for any matter arising out of their service to, or employment by, the California State University.
- d. In consultation with the Chancellor and/or appropriate campus Presidents, settlement, termination or other resolution of all claims and litigation, and signing all documents relating to such action(s) on behalf of the California State University, the Trustees, Chancellor, Presidents, and those officers or employees of the California State University for whom the Office of General Counsel also provides representation.

- e. As Secretary of the Board, is the custodian of the official seal, which appears below and may be used, at the discretion of the Chancellor, for any official purpose:



This list is not inclusive, and is not intended to limit the necessary actions of the General Counsel as the chief legal officer of the institution. The General Counsel may delegate his or her authority to other members of his or her legal staff.

The General Counsel shall regularly report to the Board of Trustees concerning the status of litigation of institutional significance and other matters of legal import.

IV. DELEGATION TO THE TREASURER

The Treasurer of the Board is responsible for the fiscal affairs of the California State University, which include:

- a. Implementation of a system of internal controls that plan, organize and direct the performance of actions to protect the California State University's assets, ensure records are accurate, promote operational efficiency, and encourage adherence to policies.
- b. Management of the programs that incur external debt on behalf of the University to ensure projects are financially sound, strategic and essential to the mission of the university to preserve the full faith and credit of the institution.
- c. Placement of investments to obtain the best possible return commensurate with the degree of risk that the University is willing to assume in obtaining that return.

This list is not inclusive, and is not intended to limit the necessary actions of the Treasurer as the chief fiscal officer. The Treasurer may delegate his or her authority to other members of his or her staff.

The Treasurer shall regularly report to the Board of Trustees concerning the performance of these functions.

V. DELEGATION TO THE UNIVERSITY AUDITOR

The University Auditor is responsible for implementing the Board of Trustees' audit program and represents the California State University in all audits conducted by external agencies.

The University Auditor shall regularly report to the Trustees' Committee on Audit concerning the performance of his or her functions.

VI. DELEGATION TO THE PRESIDENTS

The Presidents of the California State University campuses are the chief executive officers for their campuses and have authority and responsibility, with appropriate consultation, to take whatever actions are necessary, consistent with Trustee and Chancellor's policy, and applicable law, for the appropriate functioning of each of their campuses, which includes:

- a. Development of curricular and instructional plans
- b. Academic, administrative and staff appointments
- c. Supervision, discipline and termination of employees
- d. Oversight of business and financial affairs
- e. Oversight of student affairs
- f. Oversight and adjustment of campus fees in accord with applicable policy
- g. Oversight of the campus advancement function, including alumni affairs and community relations
- h. Oversight of and responsibility for campus auxiliary organizations
- i. Use of campus buildings and grounds

This list is not inclusive, and is not intended to limit the necessary actions of the Presidents as the chief executive officers of their campuses. The Presidents may delegate their authority to other officials on their campuses.

The Presidents report to the Chancellor and shall keep him or her regularly informed as to the activities on their campuses.

VII. THE ACADEMIC SENATE

The constitution of the Academic Senate of the California State University has been ratified by the faculties and approved by the Board of Trustees. The Academic Senate is therefore constituted and functions in accord with the provisions of that constitution. Amendments to the Academic Senate constitution become effective when ratified in accord with the requirements of that constitution and approved by the Board of Trustees.

VIII. AMENDMENTS

These Standing Orders may be amended at any regular meeting of the Board of Trustees. Notice and a draft of the proposed amendment is required at the last regular meeting prior to the meeting at which action is taken. This advance notice requirement may be waived by a majority vote for matters that are not controversial and require no further discussion.

**REAL PROPERTY PARTNERSHIP PROCESS GUIDE
CSU BEST MANAGEMENT PRACTICES**

Phase	Topic	Item
Feasibility	Key assessments	<ul style="list-style-type: none"> • Contact the assistant vice chancellor of F&T and the assistant vice chancellor of CPDC to informally discuss the project in the early stage of the feasibility study • Identify campus goals and whether a real property partnership project is the right method to accomplish goals • Analyze and compare self-funding vs. real property partnership project delivery • Prepare market study to identify demand for particular uses • Obtain independent appraisal based upon highest and best use • Identify project site, draft scope, budget (order of magnitude cost of project) and schedule • Identify any existing limitations of site (e.g., easements, CC&Rs) • Indicate relationship to mission of university • Confirm that proposed development is highest and best use of campus property • Retain real estate financial advisory and other consultants to assist in the above • Coordinate with Chancellor's Office on applicability of prevailing wage • Identify any remaining debt related to project site • Indicate relationship to other campus master planning initiatives
Selection of Development Team	Review of Qualifications and Proposals	<ul style="list-style-type: none"> • Integrate relevant elements from draft RFQ/RFP template • Review of draft RFQ/RFP by Chancellor's Office staff prior to its release • Include the following in draft RFQ/RFP: prevailing wage determination, draft terms/conditions, responsible party for maintenance, responsibility for off-site infrastructure fees, entitlement/plan review process (including CSU fee and other fees), CSU building inspection, CEQA costs, selection criteria, and draft ground lease • Consult with potential proposers and obtain feedback during process • Review by selection committee (which will include campus personnel, consultants retained by campus, representatives from CPDC, F&T, and OGC) utilizing selection criteria included in RFQ/RFP • Analysis by campus and its consultants to provide comparison of Statements of Qualifications and Proposals prior to interviews by selection committee

**REAL PROPERTY PARTNERSHIP PROCESS GUIDE
CSU BEST MANAGEMENT PRACTICES**

Phase	Topic	Item
Selection of Development Team (Continued)	Review of Qualifications and Proposals	<ul style="list-style-type: none"> • Detailed vetting of financial capacity, financial plan of proposed development, and success of proposed developer on similar projects • Ask for final and best offers • Reevaluate project if only one proposal is obtained
Development Project	Due Diligence/Final Development Project	<ul style="list-style-type: none"> • Obtain updated independent appraisal if original appraisal is two years or more old • Review updated market demand study submitted from the developer • Obtain multi-year financial plan from developer • Perform proformas to allow a comparison of CSU implementing project vs. real property partnership project • Prepare PPD 2-7 for the project which will include construction and soft costs, CEQA mitigation costs, and CSU management fees • Finalize ground lease (including terms and conditions), including financial benefit to campus • Complete final CEQA documents • Review of schematic plans by campus and Chancellor's Office • Obtain legal description of site • Conduct campus and community outreach
Project Implementation		<ul style="list-style-type: none"> • Ensure implementation of CEQA mitigation measures, including but not limited to off-site mitigation fees • Complete all CSU plan review requirements prior to issuance of permit by Chancellor's Office • Obtain authorization from local government on transfer of entitlement and building official responsibilities to CSU for auxiliary properties • Provide campus inspection oversight by campus building official

**ACCESS AND OPTION AGREEMENT TEMPLATE
FOR REAL PROPERTY PARTNERSHIP PROJECTS**

This ACCESS AND OPTION AGREEMENT (this “**Agreement**”) is entered into as of [redacted], 201[redacted] (the “**Execution Date**”), by and between the Board of Trustees of the California State University, on behalf of California State University, [redacted] (“**Landlord**”), and [redacted], a [redacted] (“**Tenant**”). Landlord and Tenant are sometimes hereinafter referred to as the “**Parties**.”

RECITALS

A. Landlord is the owner of certain unimproved real property in the County of [redacted], State of California, consisting of approximately [redacted] (___) acres and legally described in **Exhibit A** hereto (the “**Premises**”).

B. Tenant and Landlord are currently in the process of negotiating a Ground Lease (the “**Lease**”) pursuant to which Landlord would lease the Premises (together with certain appurtenant rights and easements) to Tenant; for the purpose of constructing thereon and thereafter owning and operating a [redacted] [insert use] and other appurtenant facilities as more particularly described on **Exhibit B** hereto (the “**Improvements**”) In conjunction therewith, Tenant is currently in the process of investigating and evaluating the Premises.

C. As part of its investigation and evaluation, Tenant desires access to the Premises for the purpose of conducting certain due diligence inspections of the Premises.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Due Diligence Option Period: The “**Due Diligence Option Period**” means the period which commences on the Execution Date and ends on the earliest of the following dates:

(a) The date on which the Board of Trustees of the California State University (“**BOT**”) takes action disapproving the proposed development of the Improvements on the Premises.

(b) If the BOT takes action approving the proposed development of the Improvements on the Premises, then the Term of this Agreement shall terminate on the date the Lease is executed.

(c) If the BOT has not taken action on the proposed development of the Improvements on the Premises within one year from the Execution Date, then this Agreement shall terminate on the first anniversary of the Execution Date.

(d) If not theretofore terminated, this Agreement shall immediately terminate upon Tenant’s delivery of written notice to Landlord that Tenant is terminating this Agreement (which termination may be made in Tenant’s sole discretion, with or without cause).

Notwithstanding any such termination, Tenant's obligations under Sections 12, 13, 14 and 15 hereof shall survive any termination of this Agreement.

2. Use of Property During Due Diligence Option Period: During the Due Diligence Option Period, Landlord shall have control over and full use of the Premises, subject to the right of Tenant to perform investigations pursuant to this Agreement. During the Due Diligence Option Period, Landlord shall have the right to retain all income received from the Premises and shall bear all costs relating to the Premises.

3. Grant of Option. During the Due Diligence Option Period, the Tenant shall have the sole right and option to enter into a ground lease for the Premises, and Landlord agrees that during such period it will not enter into a ground lease for the Premises with any other party.

4. Option Payment: Concurrently with the execution of this Agreement, Tenant shall pay to Landlord the "**Option Payment**" in the amount of \$ _____. The Option Payment is fully earned on execution of this Agreement, is the sole property of Landlord, and shall not be reimbursed to Tenant whether or not the Lease is executed or approved.

5. Approvals: During the Due Diligence Option Period, Tenant shall, at its sole cost and expense: (i) undertake all feasibility studies desired by Tenant; (ii) develop a conceptual plan that identifies proposed uses for the Premises and includes sketches depicting the proposed Improvements; (iii) identify the infrastructure improvements (new and upgraded) which will be required for the development of the proposed Improvements; (iv) have prepared, and provide to Landlord, a market study for the uses which would be included in the proposed Improvements; (v) take all steps required to satisfy the requirements of the California Environmental Quality Act as from time to time amended ("**CEQA**") in connection with the BOT's consideration of the proposed development of the Improvements, including the preparation of all required CEQA documentation by a firm which has a valid master enabling agreement in place with the California State University; (vi) prepare the materials required to be submitted to the BOT in connection with its consideration of the Lease in accordance with the Submittal Requirements and Procedure Guide for CSU Capital Projects, first submitting them to Landlord and, after approval by Landlord, revising them as necessary and otherwise preparing them for submittal to the BOT; and (vii) prepare all other submittals required to submit the Lease and the proposed Improvements to the BOT for action, including, without limitation, a construction schedule, development financial plan, budget of all hard and soft costs required for construction of the Improvements, *pro forma* financial projections for the completed Improvements, and other materials requested by Landlord or the BOT. The development financial plan shall contain information and materials sufficient to allow Landlord to validate the financial viability of the proposed Improvements and the consequent ability of the Tenant to make all payments, pay all costs, and fulfill all obligations, of Tenant under the Lease. Appropriate materials would include market studies, absorption projections, financing arrangements and costs, and project budgets for the first five (5) years after completion of the Improvements.

6. Grant of License. Landlord hereby grants to Tenant and its agents, employees, consultants, contractors and subcontractors (collectively, its "**Representatives**") a revocable License ("**License**") to enter upon the Premises for the sole and limited purpose of conducting site inspections, asset appraisals, surveys, walk-throughs, certain environmental assessments

(other than environmental assessments which constitute Invasive Due Diligence Activities) and other similar activities in connection with Tenant's proposed lease of the Premises (the "**Due Diligence Activities**"), subject to the terms and conditions herein. Promptly upon mutual execution of this Agreement, Landlord shall make available electronically to Tenant, copies of certain documents relating to the Premises (the "**Due Diligence Materials**").

7. Conditions of and General Limitations on Entry. Before attempting to conduct any Due Diligence Activities, Tenant shall give three business days' advance notice to _____, telephone number: _____, fax: _____, email: _____.

. Due Diligence Activities may be conducted only during the hours from 9:00 a.m. to 5:00 p.m. Pacific time except as otherwise consented to by Landlord. All Due Diligence Activities shall be undertaken at Tenant's sole cost and expense. Landlord reserves the right to have its personnel accompany Tenant and Tenant's Representatives at all times during its Due Diligence Activities at the Premises.

8. Invasive Due Diligence Activities Excluded. Should Tenant or its Representatives desire to conduct environmental assessments other than visual inspections, including but not limited to chipping, cutting, drilling, boring, or removing the Premises or the improvements thereon, including, without limitation, any Phase II Environmental Site Assessment ("**Invasive Due Diligence Activities**"), Landlord may approve or disapprove or condition such activities in Landlord's sole and absolute discretion.

9. Secure Work Areas. In connection with its Due Diligence Activities, Tenant shall (and shall cause its Representatives to) properly secure all work areas to prevent harm to occupants of the Premises and Landlord's tenants, employees, agents and invitees. Tenant shall (and shall cause its Representatives to) keep any equipment used or brought onto the Premises under its complete control at all times, and said equipment shall be used on the Premises at the sole risk of Tenant. Neither Tenant nor its Representatives may store equipment on the Premises when not conducting Due Diligence Activities without Landlord's prior consent.

10. Minimum Disturbance. Tenant shall (and shall cause its Representatives to) perform all Due Diligence Activities in cooperation with Landlord, Landlord's students and faculty, and other Landlord employees, and Landlord's invitees, agents and visitors as well as members of the public, and take all commercially reasonable measures to avoid accident, damage or harm to persons or Premises and unreasonable delay to or interference with the operations of such parties. Tenant shall (and shall cause its Representatives to) take all commercially reasonable measures to conduct the Due Diligence Activities in a manner and at times to minimize any impairment of access or traffic by the aforementioned parties.

11. Compliance with Laws; Permits. Tenant shall (and shall cause its Representatives to) conduct all Due Diligence Activities in compliance with (a) all applicable federal, state and local laws (including, without limitation, environmental laws); and (b) generally accepted professional engineering and industry standards. Tenant, at its sole cost and expense, shall be responsible for obtaining any and all permits and approvals from any governmental authority which may be necessary for it to conduct any Due Diligence Activities at the Premises. Landlord shall cooperate with any reasonable request by Tenant for information or assistance in Tenant's efforts to obtain necessary governmental permits and approvals.

12. Restoration. After conducting any Invasive Due Diligence Activities that may be permitted by Landlord pursuant to the terms and provisions of this Agreement, Tenant shall (and shall cause its Representatives to) promptly restore each affected area of the Premises to substantially its condition prior to such activities, to the extent which any changes resulted from Tenant's Due Diligence Activities, which obligation shall survive the termination of this Agreement. Such restoration shall include, without limitation: (a) returning any excavations to substantially the original grade and condition; (b) removing all of Tenant's equipment from the Premises; (c) backfilling with concrete any boreholes drilled through asphalt; (d) filling and leveling all ditches, ruts and depressions, if any, caused by the Due Diligence Activities; and (e) removing all debris resulting therefrom. To the extent that Tenant fails to restore any or all of the affected portions of the Premises to substantially the same condition as prior to the commencement of the Due Diligence Activities (to the extent changes resulted from Tenant's Due Diligence Activities), after written notice from Landlord and a reasonable opportunity to complete such restoration, Tenant shall reimburse Landlord for any reasonable costs actually incurred by Landlord to do so. This Section shall survive the expiration or termination of this Agreement.

13. Insurance Requirements.

(a) **General Requirements.** Prior to Tenant or its Representatives entering the Premises to conduct any Due Diligence Activities, Tenant shall furnish or cause to be furnished to Landlord, at Tenant's or its Representatives' expense, satisfactory certificates of insurance (and with respect to Representative's insurance policies), listing the Landlord as an additional insured on the policies listed below (except for Worker's Compensation, Employer's Liability and Professional Liability policies), evidencing that Tenant and/or its Representatives who will be present on the relevant Premises have insurance in full force and effect meeting the requirements set forth below.

<u>Type</u>	<u>Limits</u>
Worker's Compensation/Employer's Liability (including, but not limited to USL&H and maritime coverage, to the extent applicable)	Statutory/\$500,000
General Liability	\$1,000,000/occurrence \$5,000,000/aggregate
Automobile Liability	\$1,000,000 Combined Single Limit

(b) **Requirements Relating to Environmental Investigations.** Prior to Tenant or its Representatives conducting any environmental investigation of the Premises, Tenant shall also furnish to the Landlord with respect to the Premises, at Tenant's expense, satisfactory certificates of insurance evidencing that Tenant and/or its Representatives have the following insurance in full force and effect meeting the requirements set forth below and, as to Contractor's Pollution Liability Insurance, Representatives' policy shall name the Landlord as an additional insured:

<u>Type</u>	<u>Limits</u>
Professional Liability	\$1,000,000/occurrence
(including Pollution Coverage)	\$2,000,000/aggregate
Contractor's Pollution Liability	\$2,000,000/occurrence
	\$2,000,000/aggregate

(c) Maintenance of Coverage; Policy Types. Tenant will require that its Representatives maintain the aforesaid coverages while this Agreement is in effect. Any insurance required hereby may be maintained under a blanket policy or an umbrella policy insuring other parties and other locations so long as such policy satisfies the foregoing requirements. Any coverage written on a "claims-made" basis shall be kept in force, either by renewal or the purchase of an extended reporting period, for a minimum period of three years following the termination of this Agreement. Nothing in this Section shall in any way limit Tenant's liability under this Agreement or otherwise. All insurance policies required under this Agreement shall contain a waiver of subrogation in favor of Landlord.

14. No Liens. Tenant will not permit any mechanics', materialmen's or other similar liens or claims to stand against the Premises for labor or material furnished in connection with any Due Diligence Activities performed by Tenant under this Agreement. Upon reasonable and timely written notice of any such lien or claim delivered to Tenant by Landlord, Tenant may bond and contest the validity and the amount of such lien, but Tenant (a) will promptly pay any judgment rendered; (b) will promptly pay all proper costs and charges arising from the Due Diligence Activities and any disputes relating thereto; and (c) will have the lien or claim released at its sole expense. This Section shall survive the expiration or termination of this Agreement.

15. Indemnity. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless Landlord and its affiliates, the BOT, and each of their respective officers, directors, employees, agents, representatives, successors and assigns (collectively, the "**Landlord Parties**") from and against any and all liabilities, claims, suits, actions, judgments, demands, costs, damages, fines, penalties, losses and expenses (including but not limited to reasonable attorneys' fees) incurred or suffered by, or claimed against the Landlord Parties which arise out of the performance of the Due Diligence Activities, whether or not due to negligence or misconduct, or out of Tenant's failure to perform any of its obligations under this Agreement; provided, however, that such obligation to indemnify, defend and hold the Landlord Parties harmless shall not be applicable to the extent (a) any liability, claim, suit, action, demand, judgment, cost, damage, fine, penalty, loss or expense (including but not limited to reasonable attorneys' fees) arising from the mere discovery of an adverse condition on, in, under or about the Premises that was not caused or exacerbated by Tenant or its Representatives or (b) caused by the gross negligence or willful misconduct of any Landlord Party. Landlord shall reasonably cooperate with Tenant in defending or resisting such claims. Tenant's obligations to the parties who benefit under this Section shall not be impaired by Landlord's assignment of its respective rights and/or delegation of its respective duties under this Agreement, and such obligations to Landlord shall continue in full force and effect notwithstanding any such assignment or delegation. This Section shall survive the expiration or termination of this Agreement.

- 16. Disclosures.** As an accommodation to Tenant, and to facilitate Tenant's investigations relating to the Premises, Landlord has delivered or will be delivering to Tenant copies of or access to electronic databases containing certain documents, materials and information relating to the Premises and the Due Diligence Materials. Such deliveries were made (or are being made) by Landlord without any representation or warranty of any kind regarding the accuracy, thoroughness or completeness of such materials, documents or information, and such materials are subject to the terms and conditions of this Agreement.
- 17. Tenant Not Agent.** All Due Diligence Activities or other work undertaken by Tenant at the Premises shall be for its sole account and not as an agent, servant or contractor for Landlord.
- 18. No Obligation to Approve or Comment.** Except as may be set forth in the Lease once it is executed and delivered and to the extent consistent with its obligation to reasonably cooperate with Tenant under this Agreement, Landlord shall have no obligation to provide comments or approvals regarding the Due Diligence Activities; and no comments or approvals provided by Landlord shall in any way be relied on by Tenant or obligate Landlord to undertake responsibility for any portion of the Due Diligence Activities.
- 19. Successors and Assigns; Assignment and Delegation.** This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns; provided, however, that Tenant may not assign its rights or delegate its duties under this Agreement without the prior written consent of Landlord, in Landlord's sole and absolute discretion. Landlord may assign its rights and/or delegate its duties under this Agreement without the consent of Tenant.
- 20. Entire Agreement.** This Agreement represents the full, complete and entire agreement between the Parties with respect to the subject matter hereof. There are no other understandings, oral or written, related to the subject matter of this Agreement.
- 21. Amendments.** This Agreement cannot be changed, modified or amended, in whole or in part, except in writing signed by Landlord and Tenant.
- 22. Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.
- 23. Remedies.** Landlord shall have all rights and remedies at law and in equity for a breach of this Agreement by Tenant.
- 24. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto. Delivery of a signed counterpart by fax or email shall constitute good and sufficient delivery.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Execution Date.

<p>LANDLORD:</p>	<p>California State University _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>TENANT:</p>	<p>_____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>

**GROUND LEASE TEMPLATE FOR
REAL PROPERTY DEVELOPMENT PARTNERSHIP PROJECTS**

THIS GROUND LEASE (the “Lease”) is made and entered into as of _____, 201_ (the “Effective Date”) by and between the Board of Trustees of the California State University, on behalf of California State University, [campus] (“Landlord”), and _____, a _____ (“Tenant”).

RECITALS

WHEREAS, Landlord is the owner of certain unimproved real property in the County of _____, State of California, consisting of approximately _____ () acres and legally described in Exhibit A hereto (the “Premises”);

WHEREAS, Tenant desires to lease the Premises (together with certain appurtenant rights and easements) from Landlord for the purpose of constructing thereon and thereafter owning and operating a [insert use] and other appurtenant facilities as more particularly described on Exhibit B hereto (the “Improvements”); and

WHEREAS, use of the Premises must be for purposes consistent with the mission of the California State University and California State University, [campus] ;

WHEREAS, Tenant has agreed to use the Premises in a manner which is consistent with such mission;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and incorporating by this reference the foregoing Recitals, the parties hereto hereby agree as follows:

**ARTICLE I
DEFINITIONS**

For purposes of this Lease, the following definitions shall apply:

“**Accelerated Trial**” shall mean a trial which complies with the dispute resolution procedures set forth in Section 17.3.

“**Acquisition Notice**” shall have the meaning ascribed to it in Section 12.7.

“**Additional Deposit**” shall have the meaning set forth in Section 2.9.

“**Affiliate**” shall mean any person controlling, controlled by or under common control with the person in question. As used in the foregoing, “control” and its related words means the ability to effectively direct the management decisions of the person in question.

“**Alterations**” shall have the meaning ascribed to it in Section 9.1.

“**Annual Base Rent**” shall mean the initial amount of _____ Thousand Dollars (\$ _____) and thereafter such amount as shall be determined in accordance with Section 4.3.

“**Assessments**” shall mean any and all special assessments or levies or charges made by

any municipal or political subdivision for local improvements.

“**Award**” shall have the meaning ascribed to such term in Section 11.8.

“**BOT**” shall mean the Board of Trustees of the California State University.

“**Building Tenant Lease**” shall mean any agreement between Tenant and any person setting forth the terms and conditions of occupancy of a portion of the Improvements by such person. Building Tenant Leases are subject to the restrictions on subleases set forth in Article XII below.

“**Business Day**” shall mean a day other than a Saturday, Sunday, scheduled federal or state holiday or any other day on which commercial banks in the County are authorized or required by applicable Laws to close.

“**Capital Improvement Fund**” shall have the meaning set forth in Section 6.8.1.

“**Capital Improvement Plan**” shall have the meaning set forth in Section 6.8.4.

“**CEQA**” means the California Environmental Quality Act.

“**City**” shall mean the City of **[campus location]**, California.

“**Commencement of Construction**” shall mean the date on which Tenant has Commenced Construction.

“**Commenced Construction**” shall have the meaning set forth in Section 3.3.4.

“**Comparable Improvements**” shall mean improvements similar in kind and nature to the Improvements which are maintained in a first class manner and operated as a **[permitted use]**.

“**Completion of Construction**” shall have the meaning set forth in Section 3.3.4.

“**Construction Commencement Date**” shall mean **[redacted]**, which date is **[redacted]** months after the Effective Date.

“**Construction Period**” shall mean the number of days required for construction of the Improvements as set forth in a construction schedule included and approved by the BOT as part of the Schematic Design Package submitted to Landlord and the BOT by Tenant during the Due Diligence Option Period. The Construction Period shall commence on the date on which Tenant has Commenced Construction, and end on the last day for Completion of Construction as shown in such construction schedule, extended only as permitted in (a), (b) and (c) of Section 3.3.2.

“**Construction Period Rent**” shall mean the rent payable during Construction Period, and shall be an amount equal to **[50%]** of Annual Base Rent.

“**Construction Requirements**” shall mean all applicable Laws, Landlord’s construction requirements, a copy of which are attached hereto as Exhibit C and incorporated herein, the Design Guidelines, the Final Plans approved by the University and/or the BOT for the Improvements, and the requirements of this Lease applicable to the construction of the

Improvements.

“**Construction Schedule**” shall mean the construction schedule included and approved by the BOT as part of the Schematic Design Package, or approved by delegated authority to the Chancellor, if applicable, as it may be modified with the approval of the BOT and/or the Chancellor, as appropriate.

“**Contractor**” shall have the meaning set forth in Section 3.4.

“**County**” shall mean the County of [**campus location**], State of California.

“**CPI Index**” shall mean the Consumer Price Index [All Urban Consumers] (base year 1982-84 = 100) for the [**campus location index**] published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is changed so that the base is changed from 1982-84 = 100, the CPI Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised. If there is no such replacement, then Landlord and Tenant shall select another price index which is satisfactory to both.

“**Demolition Account**” shall mean the account established pursuant to Section 2.12.4.

“**Design Guidelines**” shall have the meaning set forth in Section 3.2 hereof.

“**Design Professional**” shall mean a qualified professional architect or engineer, licensed in the State of California and in good standing, who may perform architectural or engineering services, including analysis of project requirements, creation and development of the project design, preparation of drawings, and specifications and bidding requirements.

“**Development Financial Plan**” shall have the meaning set forth in Section 3.2 hereof.

“**Effective Date**” shall mean the date set forth in the preamble of this Lease.

“**Event of Default**” shall have the meaning set forth in Section 15.2.

“**Facilities Planning**” shall mean the Facilities Planning and Management Office of the University, or similar University office then applicable as designated by the University. If the University does not have or designate a Facilities Planning and Management Office, then the office of the University President shall be deemed to be the Facilities Planning and Management Office of the University until otherwise designated by the University.

“**Fair Market Rent**” shall mean the fair market rent for the Premises determined pursuant to Article XVIII for the purpose set forth in Section 4.3.2.

“**Final Plans**” shall mean the Construction Documents prepared in accordance with the Design Guidelines attached hereto as **Exhibit D**, which are approved by Landlord as complete in all respects and are ready for use in construction.

“**First Rent Payment Date**” shall mean (a) the Rent Commencement Date if the Rent

Commencement Date falls on the first day of a calendar month, and (b) the first calendar day of the first calendar month following the month in which the Rent Commencement Date occurs if the Rent Commencement Date occurs on a date other than the first calendar day of a calendar month.

“Force Majeure” shall mean a strike, act of God, inability to obtain labor or materials, governmental restriction, enemy action, civil commotion, fire, or similar cause, provided such similar cause is beyond the reasonable control of either Landlord or Tenant.

“Franchisor” shall have the meaning set forth in Section 2.14. **[for hotel leases only]**

“Franchisor Agreement Date” shall have the meaning set forth in Section 2.14.1. **[for hotel leases only]**

“Gross Sales” shall have the meaning set forth in Section 4.11.2. **[if applicable because the Improvements are to be used for retailer hotel purposes]**

“Gross Revenues” shall mean the gross receipts of Tenant derived from all sources pertaining to the rental and operation of the Premises and from the Improvements, or any part thereof, including, without limitation, gross rents (including all amounts received from any tenants, whether denominated as room rents, gross percentage rents, parking revenues, mini-bar sales, meeting room rent, and rent for the use of space of any kind, fees and charges, sales of merchandise, food, beverages, services, gift or merchandise certificates, and all other receipts of all business conducted at, in, about, from or on the Premises, including (i) mail, telephone, and internet orders received or filled at or from the Premises; (ii) all deposits not refunded to customers; (iii) all orders taken in or from the Premises, whether or not the orders are filled elsewhere; (iv) receipts of sales through any mechanical or vending machines or other coin or token operated device; (v) sales by any sublessee, concessionaire, or licensee or otherwise at, on, in, from, or about the Premises; (vi) sales receipts occurring or arising as a result of deliveries or solicitations off the Premises conducted by persons operating from or reporting to, or under the supervision of any employee of Tenant; (vii) forfeited room reservation deposits and other forfeited deposits; (viii) revenues from memberships of any kind, including without limitation health club memberships; and (x) income from e-commerce and internet access, sales and services from the Premises, payments from the proceeds of rent insurance or business interruption insurance, insurance proceeds to the extent such insurance proceeds exceed the actual amount expended on demolition, repair and restoration, interest on all tenant deposits and on reimbursements from tenants, if any, net receipts (but not less than zero) for services or transactions performed for tenants, and all other consideration. Gross revenues shall not include refundable deposits made by tenants, except to the extent such deposits are retained by Tenant; the principal balance of any construction or subsequent financing other than proceeds in excess of the actual costs of constructing and operating the Improvements; gratuities that were collected by Tenant for the benefit of employees of Tenant, to the extent the gratuities are actually remitted to such employees, and any taxes payable thereon, room and sales taxes and bad debt charges. **[if applicable because the Improvements are to be used for retail or hotel purposes]**

“Ground Lease Non-Disturbance Agreement” means that certain Subordination, Non-Disturbance and Attornment Agreement of even date herewith by and between the Landlord and Tenant to be entered into concurrently with the execution of this Lease, and any Subordination, Non-Disturbance and Attornment Agreements entered into with Tenant or any permitted successor Tenant in the future.

“Guaranty” shall have the meaning set forth in Section 2.8.

“Hazardous Substance” shall mean any material or substance (a) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under sections 25115, 25117 or 25122.7, or listed pursuant to section 25140, of the California Health and Safety Code, division 20, chapter 6.5 (Hazardous Waste Control law); (b) defined as a “hazardous substance” under section 26316 of the California Health and Safety Code, division 20, chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (c) defined as a “hazardous material,” “hazardous substance” or “hazardous waste” under section 25501 of the California Health and Safety Code, division 20, chapter 6.95, “Hazardous Substance” under section 25281 of the California Health and Safety Code, division 20, chapter 6.7 (Underground Storage of Hazardous Substances); (d) petroleum; (e) asbestos (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, division 4, chapter 20; (h) designated as a “hazardous substance” pursuant to section 311 of the Clean Water Act (33 U.S.C. § 1251 et seq., 33 U.S.C. § 1321, or listed pursuant to section 307 of the Clean Water Act (33 U.S.C. § 6903); (i) defined as a “hazardous substance” pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance in any reported decision of a federal or California state court, or which may give rise to liability under any federal or California common law theory based on nuisance or strict liability.

“Improvements” shall mean all improvements on the Premises to be constructed under the terms of this Lease and any replacements, reconstruction or restorations thereof during the Term.

“Indemnified Parties” means, with respect to Landlord, California State University [*campus*], the State of California, the Board of Trustees of the California State University, and each of their officers, employees, representatives, agents, and volunteers. Indemnified Parties means, with respect to Tenant, the Tenant and each of its partners, officers, members, employees, representatives, and agents.

“Initial Period” shall mean the period commencing on the Effective Date and ending on the day before the date on which the Commencement of Construction occurs.

“Initial Period Rent” shall mean the rent payable during the Initial Period and shall be the sum of [*25%*] of Annual Base Rent.

“Institutional Lender” shall mean any of the following entities acting on its own or in a fiduciary capacity, so long as such entity (together with any entity directly or indirectly owning or controlling such entity or directly or indirectly owned, controlled by or under common control with such entity) has an aggregate combined net worth of at least \$500 million: (a) a bank, savings and loan association, savings institution, trust company or national banking association,

(b) a charitable foundation, (c) an insurance company, (d) a pension, retirement or profit-sharing trust or fund, (e) an investment company or business development company, as defined in the Investment Company Act of 1940, as amended, (f) a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or any investment advisor registered under the Investment Advisers Act of 1940, as amended, (g) a public employees' pension or retirement system or any other government agency supervising the investment of public funds, or (h) any entity directly or indirectly owning or controlling any of the foregoing or directly or indirectly owned, controlled by or under common control with any of the foregoing.

“**Landlord**” shall have the meaning ascribed to it in the preamble of this Lease and shall include any of Landlord’s successors or assigns.

“**Laws**” shall mean all of the applicable statutes, ordinances, rules, codes, requirements, permits, regulations, or the like, of any governmental authority, whether federal, state, or local, or court.

“**Lease**” shall have the meaning ascribed to it in the introductory clause hereof.

“**Leasehold Mortgagee**” shall have the meaning ascribed to it in Section 14.2.

“**Lender Recognition Agreement**” shall mean an agreement in form and substance satisfactory to the Landlord between the Landlord, Tenant and a Leasehold Mortgagee pursuant to which the Landlord undertakes in favor of the Leasehold Mortgagee that in the event of a default by Tenant the Landlord will recognize the Leasehold Mortgagee as a direct lessee of the Landlord under the terms set forth in this Lease upon completion of a foreclosure or assignment in lieu of foreclosure under the applicable Trust Deed, on the condition that said Leasehold Mortgagee cures all defaults by Tenant under this Lease that are curable by such Leasehold Mortgagee after such foreclosure or acquisition of title.

“**Offer**” shall have the meaning ascribed to it in Section 12.6.

“**Official Records**” shall mean the Official Records of the County Recorder of the County.

“**Partial Taking**” shall have the meaning ascribed to it in Section 11.4 of this Lease.

“**Percentage Rent**” shall have the meaning set forth in Section 4.11.1 [or Section 4.12.1] hereof. [if and as applicable because the Improvements are to be used for retail or hotel purposes]

“**Percentage Rent Rate**” shall have the meaning set forth in Section 4.11.1. [if applicable because the Improvements are to be used for retail or hotel purposes]

“**Permitted Assignee**” shall mean any Person owned or controlled by Tenant or by the Person who owns Tenant.

“**Permitted Capital Expenditure(s)**” shall have the meaning set forth in Section 6.8.1.

“**Permitted Uses**” shall mean the use of the Premises and the Improvements for [hotel and lodging purposes and appurtenant uses such as restaurants, bars, gift shops, meeting rooms]

and incidental and ancillary uses] [senior living facility] [any use permitted by applicable law] [office or commercial or industrial use] [insert use].

“**Person**” shall mean any natural person, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and other entity.

“**Premises**” shall mean real property described in the first recital of this Lease.

“**Quarterly Statement**” shall have the meaning set forth in Section 4.12.2. *[if applicable because the Improvements include retail or hotel uses]*

“**Refusal Offer**” shall have the meaning ascribed to it in Section 12.7.

“**Rent**” means Annual Base Rent, *[Percentage Rent if applicable]*, and all other amounts to be paid by Tenant hereunder.

“**Rent Adjustment Date**” shall mean the *[fifth (5th)]* anniversary of the First Rent Payment Date, and each date which falls on each *[four (4)]* year anniversary thereof.

“**Rent Commencement Date**” shall mean the Effective Date.

“**Reserve Account**” shall have the meaning ascribed to it in Section 6.7. *[for hotel leases]*

“**Right of First Refusal**” shall have the meaning ascribed to it in Section 12.7.

“**Scheduled Completion Date**” shall mean the date on which Completion of Construction is scheduled to occur as set forth in the construction schedule included and approved by the BOT as part of the Schematic Design Package.

“**Schematic Design Package**” shall mean the materials required to be submitted to the BOT for approval pursuant to Section 3.2 hereof.

“**Security Deposit**” shall have the meaning set forth in Section 2.9.

“**Subtenant**” shall mean any lessee or tenant of any space in the Improvements pursuant to an executed Building Tenant Lease.

“**Stoppage of Construction**” shall have the meaning set forth in Section 3.3.4.

“**Subtenant Improvements**” shall mean tenant improvements installed in any portion of the Improvements pursuant to the provision of an executed Building Tenant Lease.

“**Taking**” shall have the meaning ascribed to it in Section 11.2.

“**Taxes**” shall mean property taxes, fees, assessments and charges, water and sewer rates and charges and other similar governmental charges, whether general or special, ordinary or extraordinary, which may be levied, assessed, charged or imposed, or may become a lien or charge upon the Premises or any part or parts thereof, or upon Tenant’s estate created by this Lease, including, without limitation, taxes on land, any buildings, any parking facilities or any

other improvements now or hereafter at any time during the Term located at or on the Premises.

“**Tenant**” shall have the meaning ascribed to it in the preamble of this Lease and shall include any permitted assignee of the original Tenant.

“**Tenant’s Interest**” shall mean Tenant’s entire interest in (a) the Premises, (b) the Improvements, and (c) this Lease.

“**Term**” shall mean the term of this Lease as set forth in Section 2.4 of this Lease.

“**Third Party Delay**” shall mean any unanticipated delay not caused by either of the parties and which prevents either party from achieving conditions set forth in this Lease at no fault of their own, and shall include a delay caused by the occurrence of a Force Majeure Event. Upon to the occurrence of any such delay, the parties shall promptly notify the other party in writing of such delay and shall meet to agree upon the appropriate extension of any deadlines set forth under this Lease as a result of such Delay.

“**Total Taking**” shall have the meaning ascribed to it in Section 11.3.

“**Trust Deed**” shall have the meaning ascribed to it in Section 14.2.

“**University**” shall mean California State University, [**campus**].

“**University Delay**” shall mean delay caused by a University Entity (other than delays consistent with the established time frames for such University Entity to conduct reviews and/or grant or deny discretionary approvals). In no event shall a University Entity’s rejection of an application submitted by Tenant due to Tenant’s failure to comply with any requirement of such University Entity’s approval process be considered University Delay.

“**University Entity**” shall mean the BOT, the University, and any applicable office, department, body or agency of any of the foregoing.

ARTICLE II GRANT AND TERM

2.1 Lease. In consideration of the covenants and agreements to be observed and performed by Tenant, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, subject to: (i) all liens, encumbrances, easements, rights-of-way, covenants, conditions, restrictions, obligations and liabilities as may appear of record as of the Effective Date or as are made of record hereafter in accordance with the terms of this Lease, (ii) all matters which would be revealed or disclosed in an accurate survey or physical inspection of the Premises; (iii) the effect of all current building restrictions and regulations, current and future applicable Laws; (iv) the condition and state of repair of the Premises on the Effective Date; and (v) all taxes, duties, assessments, special assessments, water charges and sewer rents, and any other impositions, accrued or unaccrued, fixed or not fixed, as provided below. Landlord reserves unto itself a nonexclusive easement in, on, over, under and upon the Premises for the purpose, as appropriate, of vehicular and pedestrian access, planting and landscaping, design, construction and installation of infrastructure, and other uses consistent with the development and operation of the Improvements in a manner consistent with this Lease. Landlord grants to Tenant and to any Subtenants and to their respective agents, employees, licensees, and invitees a

non-exclusive easement in, on, and over those streets, roads, and other pathways owned by Landlord and intended for pedestrian or vehicular travel immediately adjacent to the Premises, for the purposes of accessing the Premises and the Improvements.

2.2 Use of the Premises. Tenant shall use the Premises for the Permitted Uses and no others throughout the Term, other than for construction uses during the Construction Period. Use of the Premises for other than the Permitted Uses shall constitute an Event of Default as hereinafter provided.

2.3 Reservation of Oil, Gas and Mineral Rights. Landlord reserves to itself the sole and exclusive right to prospect for, drill for, produce, and take any oil, gas, or other hydrocarbon or mineral substances and accompanying fluids, including all geothermal resources from the Premises from below the depth of five hundred (500) feet from the surface of the Premises, including the rights to slant drill, maintain subsurface pressures, and utilize subsurface storage space for natural substances. This reservation does not include the right of entry or access from or over the surface of the Premises, nor any other right not herein expressly reserved. Landlord covenants that Tenant shall not be disturbed in its quiet enjoyment and peaceful use of the Premises by the aforementioned drilling and production activities, and Landlord agrees to indemnify Tenant and hold it harmless for any loss, expense, claim, liability or damages (including, without limitation, attorneys' fees and charges) proximately caused by or resulting from such activities.

2.4 Term. The Term of this Lease shall commence on the Effective Date and expire, without notice or other action by either party, at 12:00 midnight of the day preceding the fortieth (40th) anniversary of the Effective Date, unless this Lease is sooner terminated or extended pursuant to the terms of this Lease. ***[Note that the length of the lease is negotiable. If a Lessee seeks a longer term, then there should be a rental premium associated with the longer lease term.]***

2.5 Tenant's First Right to Negotiate. At the expiration of the Term, if Landlord elects to continue to operate the Improvements for the Permitted Uses and intends to engage a third party to lease the Premises or to operate the Improvements for such purposes, and if Tenant has otherwise complied with all of the terms and conditions of this Lease, then Tenant shall have a first right to negotiate with Landlord, for a period of three (3) months, to become the new tenant or the operator of the Improvements on terms and conditions acceptable to Landlord and Tenant in their sole discretion. Such three (3) month period shall commence no earlier than twelve (12) months prior to the expiration of the Term.

2.6 Holding Over. This Lease shall expire without further notice at the expiration of the Term, and no holding over after the termination or expiration of this Lease shall be permitted. Any holding over by Tenant after expiration or earlier termination shall not constitute a renewal or extension of this Lease, nor shall it give Tenant any rights in or to the Premises, or any part thereof.

2.7 Early Termination. In addition to the remedies set forth in Article XV, Landlord may terminate this Lease prior to expiration of the Term upon thirty (30) days' prior written notice in the event that:

2.7.1 Commencement of Construction of the Improvements shall not have occurred by the Construction Commencement Date; or

2.7.2 Completion of the Improvements shall not have occurred within one hundred twenty (120) calendar days of the Scheduled Completion Date (subject to extension for Force Majeure or a University Delay); provided, however, that the period for Completion of the Improvements may be extended for up to, but no more than, six (6) months provided that:

2.7.2.1 Tenant provides Landlord notice of such extension no later than four (4) months prior to the Scheduled Completion Date;

2.7.2.2 Landlord is reasonably satisfied that the Work can be completed before the expiration of such extension; and

2.7.2.3 Tenant pays to Landlord the sum of \$ [REDACTED] concurrently with the delivery of the notice referred to in Section 2.7.2.1. Such payment shall be in addition to Annual Base Rent and in addition to the Option Payment, shall not be applied to any other amounts due hereunder, and shall not be refundable under any circumstances.

2.8 Guaranty. It is a condition precedent to Landlord's obligations under this Lease that [REDACTED] duly execute and deliver to Landlord a guaranty ("**Guaranty**") in the form of **Exhibit E** hereto of Tenant's obligations under this Lease for Completion of the Improvements. **[guarantor should be a credit worthy entity with good liquidity]**

2.9 Security Deposit. Upon the Effective Date, Tenant shall provide to Landlord, as security for the faithful performance by Tenant of all of its obligations under this Lease, including, without limitation, the timely Completion of Construction, the sum of [REDACTED] Thousand Dollars (\$__0,000)] (the "**Security Deposit**"), which sum shall be increased by the additional amount of [REDACTED] Thousand Dollars (\$__0,000)] (the "**Additional Deposit**") at least three (3) Business Days prior to the Commencement of Construction. Provided that upon Completion of Construction no Event of Default has occurred and is continuing, the Additional Deposit shall be refunded to Tenant within fifteen (15) Business Days after Completion of Construction. If an Event of Default occurs pursuant to this Lease, then upon notice to Tenant, Landlord may, but shall not be required to, apply all or any part of the Security Deposit for the payment of any Annual Base Rent or other amount payable by Tenant hereunder or to remedy any other default and Tenant shall, upon demand therefor, restore the Security Deposit to its original amount. Any unapplied portion of the Security Deposit shall be returned to Tenant or the last assignee of Tenant's interest hereunder within thirty (30) days following the expiration of the Term. Tenant shall not be entitled to any interest on the Security Deposit. Tenant hereby irrevocably waives and relinquishes any and all rights, benefits or protections, if any, Tenant now has, or in the future may have, under Section 1950.7 of the California Civil Code, any successor statute, and all other provisions of law, now or hereafter in effect, including, but not limited to, any provision of law which (1) establishes the time frame by which a landlord must refund a security deposit under a lease, or (2) provides that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant, or to clean the subject premises. Tenant acknowledges and agrees that any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article above, and that

notwithstanding the provisions of Section 1950.7 of the California Civil Code, any successor statute or any other provision of law, now or hereafter in effect to the contrary, Landlord may claim from the Security Deposit (x) any and all sums expressly identified in this Section above, and (y) any additional sums reasonably necessary to compensate Landlord for and all losses or damages caused by Tenant's default under this Lease, including, but not limited to, all damages or rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code.

2.10 Quiet Enjoyment. So long as Tenant is not in default under this Lease past any applicable notice and cure period, and except for Landlord's actions in the case of an emergency for the purposes of protecting public health or safety, Tenant shall lawfully, peacefully and quietly hold, occupy and enjoy the Premises without disturbance, interruption or hindrance by Landlord, or any person or entity claiming by or through Landlord. Landlord shall in no event be liable in damages or otherwise, nor shall Tenant be released from any obligation hereunder, because of the interruption of any service, or a termination, interruption or disturbance attributable to an event of Force Majeure, or any cause due to any act or neglect of Tenant or its servants, agents, employees, licensees, business invitees, or any person claiming by or through Tenant.

2.11 Condition of Premises. Tenant has accepted possession of the Premises in an "AS-IS" condition without any representation or warranty of Landlord. By the execution of this Lease, Tenant acknowledges that it has completed any and all due diligence that it deems necessary in order to enter into this Lease. Tenant acknowledges that it has had the advice of such independent professional consultants and experts as it deems necessary in connection with its investigation and study of the Premises, and has, to the extent it deemed necessary, independently investigated the condition of the Premises, including the soils, hydrology and seismology thereof, and the Laws relating to the construction and operation of the Improvements, including environmental, zoning and other land use entitlement requirements and procedures, height restrictions, floor area coverage limitations and similar matters, and has not relied upon any statement, representation or warranty of Landlord of any kind or nature in connection with its decision to execute and deliver the Lease and its agreement to perform the obligations of Tenant hereunder except as expressly set forth in this Lease. Landlord makes no warranty as to the suitability of the Premises for Tenant's proposed development, construction or use, as permitted by this Lease. Landlord makes no covenants or warranties respecting the condition of the soil, subsoil or any other condition of the Premises. Tenant acknowledges that the soil on the Premises may or may not be suitable for the purposes intended by Tenant or be of such character and condition so as to require special engineering for construction of the Improvements. Landlord shall not be responsible for any land subsidence, slippage, soil instability or damage resulting therefrom. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements or repairs in, on, under or about the Premises. In addition, Landlord has made no representation or warranty that it will develop any of its other property, whether or not adjoining the Premises, for any specific use. With respect to the foregoing, and by initialing below, Tenant expressly waives the provisions of California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,

WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

It is expressly understood and agreed, however, that Tenant is not releasing, nor waiving any of the provisions of California Civil Code Section 1542 with respect to any of the matters as to which Landlord has made specific representations, warranties and/or covenants in the Lease.

Tenant's initials: _____

2.12 Ownership and Removal of Improvements.

2.12.1 Ownership of Improvements. Except as hereinafter provided, during the Term Tenant shall be the owner of all Improvements and all furnishings, fixtures and personal property of Tenant located thereon. Tenant shall retain all rights to depreciation deductions and tax credits arising from its ownership of said property. Upon expiration or earlier termination of this Lease, all such Improvements and property shall, except as provided in Section 2.12.3 below, automatically vest in, revert to, and become the property of Landlord without compensation to, or requirement of consent or other act of, Tenant, and without the necessity of deed, bill of sale, conveyance or other act or agreement of Tenant, and without any payment of any kind or nature by Landlord to Tenant or to any other person, including any lender and/or other entity who has a lien against all or any portion of Tenant's Interest. Tenant shall thereafter have no further rights thereto or interest therein. Except as permitted by this Lease, Tenant shall not remove any Improvements from the Premises, nor waste nor destroy any Improvements; provided, however, that if Landlord notifies Tenant at least five (5) years prior to the expiration of the Term or any extended Term of its desire that Tenant remove the Improvements on the expiration of the Term or extended Term, then promptly following the expiration date, and within ninety (90) days after the expiration of the Term or extended Term, Tenant shall remove or cause to be removed all the Improvements from the Premises at Tenant's sole cost. If Tenant is required to remove the Improvements on the expiration of the Term or any extended Term, then Tenant shall be entitled to remain in possession of the Premises for the time reasonably necessary to remove the Improvements, and no longer than ninety (90) days after the expiration of the Term or extended Term, and all provisions of this Lease shall apply to the period that Tenant remains in possession except that Tenant need not pay Landlord any rent, taxes, or other expenses in connection with Tenant's continued occupancy. Upon or at any time after the date of the expiration or earlier termination of this Lease, if requested by Landlord, Tenant shall, without charge to Landlord, promptly execute, acknowledge and deliver to Landlord a quitclaim deed and bill of sale which (a) conveys all of Tenant's right, title and interest in and to the Premises; (b) assigns, without representation or warranty and to the extent assignable by the terms of such contracts, all contracts designated by Landlord, relating to the operation, management or maintenance of the Premises or any part thereof; and (c) conveys, without representation or warranty and to the extent assignable by the terms of such contracts, all plans, records, registers, permits, and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Premises, and shall deliver all of the foregoing to Landlord. In order to effectuate the terms of this section, Tenant's contracts with vendors relating to the operation, management or maintenance of the Premises, or any part thereof, shall include provisions permitting the assignment of said contracts to Landlord upon expiration or termination of this Lease.

2.12.2 Removal of Realty Fixtures Not Permitted. Except as provided in Section 2.12.3, Tenant shall not have the right to remove fixtures, and such fixtures shall automatically become the property of Landlord without payment of any kind to Tenant. However, Tenant shall remove fixtures along with the Improvements if required to remove the Improvements pursuant to Section 2.12.1 above.

2.12.3 Tenant's Right to Remove Personal Property. At the expiration or earlier termination of this Lease, provided Tenant is not then in default under this Lease, Tenant may remove any or all of Tenant's personal property and trade fixtures from the Premises and Improvements, so long as (a) such personal property and trade fixtures can be removed without material damage to the Improvements, (b) such personal property and trade fixtures are removed within thirty (30) days following such expiration or earlier termination of this Lease, and (c) all resultant injuries to the Premises and the Improvements are promptly and substantially remedied and Tenant takes reasonable steps necessary to preserve the appearance of the Premises and the Improvements. Upon request of Landlord, Tenant shall remove any and all of Tenant's personal property from the Premises and Improvements upon expiration or earlier termination of this Lease. Any personal property and trade fixtures remaining on the Premises after said thirty (30) day period shall automatically vest and become the sole property of Landlord without any payment by Landlord and without any further action or agreement required in connection therewith, including the necessity of bill of sale, deed, conveyance or other act or agreement of Tenant, and without payment of any kind or nature by Landlord to Tenant or to any other person.

2.12.4 Demolition Account.

- (a) At least five (5) years prior to the expiration of this Lease, Landlord shall notify Tenant if the Improvements are to remain at the expiration of the Lease or be demolished by Tenant upon Lease expiration as set forth in Section 2.12.1. If Landlord notifies Tenant that the Improvements are to be demolished, then the Demolition Account shall be established by Tenant and used to pay for Tenant's obligations to demolish the improvements upon expiration or earlier termination of this Lease. Tenant shall maintain the Improvements until they are demolished in accordance with the requirements of this Lease.
- (b) Within thirty (30) days after delivery of notice that the Improvements are to be demolished at the expiration of the Lease, Tenant shall secure bids from three (3) licensed contractors for the demolition of the Improvements. Tenant shall, on the first day of the second month after the month in which Landlord gives Tenant notice of its election to have the Improvements demolished at the end of the Term, commence making annual payments equal to one fifth (1/5th) of the average of the three (3) bids for the demolition, to cover the cost of Tenant's demolition obligations. Such payments shall be placed in an independent and interest-bearing trust account with an Institutional Lender. Interest earned on the account shall be applied toward the cost of demolition. Tenant shall apply the proceeds in such trust account toward Tenant's demolition obligations, except to the extent insurance proceeds are to be applied to such costs in accordance with the provisions of Section 9.2.2 hereof. The actual amount of money in such trust account shall not limit Tenant's

obligation to demolish the Improvements, nor Tenant's obligation to pay for the entire cost of such demolition. Upon expiration of the Lease and completion of demolition of the Improvements, and restoration of the Premises to a level, unimproved state with all debris removed and all excavations filled in, vacant and free of liens and claims, all amounts in such demolition trust account not expended for such demolition shall be the property of Tenant.

- (c) Tenant's demolition of the Improvements shall be performed in a good and workmanlike manner and in compliance with all Laws.

2.13 Surrender of Premises.

2.13.1 Surrender of Lien Free Title. Unless otherwise provided herein, upon the expiration or earlier termination of this Lease, Tenant shall deliver possession of the Premises, and every part thereof, to Landlord, cure all defaults and shall grant and convey all right, title, and interest in the Improvements (unless demolished), and every part thereof, in good and broom clean condition subject to ordinary wear and tear, free and clear of all liens and encumbrances other than (a) those existing at the Effective Date, (b) those created by Landlord, (c) Building Tenant Leases permitted under the terms of this Lease, and (d) those liens and encumbrances approved in writing by Landlord with the express agreement of Landlord that such may survive the expiration or earlier termination of this Lease. This obligation includes the obligation to discharge all liens and encumbrances which may exist upon early termination of this Lease. Landlord may require that Tenant perform an ASTM Phase II study to assess the property condition upon the expiration or termination of the lease.

2.13.2 Surrender of Fixtures. Tenant's obligation under this Section 2.13 includes the obligation to deliver lien free possession and title to all fixtures attached to the Improvements, as provided in Section 2.12.2.

2.13.3 Failure to Surrender. If Tenant fails to surrender the Premises, or any part thereof, as required hereunder, at the expiration or sooner termination of this Lease, Tenant shall indemnify, defend and hold the Indemnified Parties harmless from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant, founded on or resulting from Tenant's failure to surrender, and any direct damages which the Indemnified Parties may incur.

2.14 Tenant Right to Terminate. *[for hotel leases only] In the event that Tenant does not reach an agreement with a national franchisor of [limited service/full service] hotels such as [Marriot Courtyard, Hilton Garden Inn] or a similar national chain (any such party, a "Franchisor"), on terms and conditions, and in a form, acceptable to Tenant and reasonably acceptable to Landlord, on or before the expiration of [eight (8) months] from the Effective Date (the actual date on which such agreement is reached (which must be on or before the expiration of [eight (8)] months from the Effective Date) is herein called the "Franchisor Agreement Date"), then either Landlord or Tenant shall have the right to terminate this Lease, in which event Tenant shall reimburse Landlord for (i) all out of pocket costs incurred by Landlord in the negotiation, enforcement, operation and documentation of this Lease, plus (ii) the sum of [One Hundred Thousand Dollars (\$100,000.00)]. Upon Landlord's or Tenant's delivering a notice of termination to the other party, this Lease shall terminate and the parties hereto shall have no*

further rights or obligations hereunder except for the payment set forth in this Section 2.14, and the Security Deposit shall be returned to Tenant (after subtraction of any amounts owed to Landlord hereunder).

ARTICLE III CONSTRUCTION OF THE IMPROVEMENTS

3.1 Tenant's Obligation. Tenant shall, at its sole cost and expense, design and construct, or cause to be designed and constructed, the Improvements upon the Premises strictly in accordance with the Construction Requirements, including without limitation the provisions of this Article III. Tenant shall be solely responsible for paying any traffic mitigation, school or park fees, or other assessments or charges which are incurred as a result of the development of the Premises.

3.2 Submittal of Schematic Design Package. Within [redacted] ([redacted]) days from the Effective Date, Tenant shall submit to Landlord for its approval a "**Schematic Design Package**" which shall contain all the information and materials for the Improvements which are required by the Design Guidelines and Submittal Requirements as defined in Section 2.1 of the Submittal Requirements and Procedure Guide for CSU Capital Projects, as such Design Guidelines may be amended, modified, or restated from time to time) and attached hereto as **Exhibit D** (the "**Design Guidelines**") and which shall contain and be consistent with building plans and specifications for first class **[insert type of improvement such as hotel, office, etc.]** in **[the City or County depending on which is the relevant comparison area]** (and which shall include Trustee and statutory requirements required of other similar buildings on a CSU University campus under the authority and responsibility of the Trustees). The Schematic Design Package must include the Construction Schedule for the construction of the Improvements which has been proposed by the Tenant and approved by the Landlord. The Schematic Design Package shall be accompanied by a "**Development Financial Plan**" which shall contain information and materials sufficient to allow the Landlord to validate the viability of the construction of the Improvements and the Tenant's ability to make Annual Base Rent payments as contemplated in this Lease. The Schematic Design Package shall also be accompanied by a survey of the Premises prepared by a licensed surveyor at Tenant's sole cost which clearly delineates the location of the proposed Improvements. Examples of materials may include market analyses, financing arrangements, project budgets and schedules and *pro formas*. The Schematic Design Package must be complete and must be prepared in conformity with the Design Guidelines in order for it to be considered by Landlord, and all submittals must include the complete information necessary for preparation and public notice of an agenda item seeking approval of the Schematic Design Package at a duly noticed meeting of the BOT.

The Improvements shall be designed in such a manner as to be compatible with the University, including without limitation the architectural style and overall design features of the University campus.

Landlord shall approve or disapprove the Schematic Design Package and Development Financial Plan within ninety (90) days of receipt thereof. Any disapproval shall be accompanied by a reasonably detailed description of the changes required to obtain Landlord approval. If such Schematic Design Package and Development Financial Plan are disapproved, Tenant shall revise and resubmit them until they receive Landlord approval.

In the event that Tenant fails to submit the information required by this Section 3.2 in the required format and within the time frame required, then Landlord shall provide notice to Tenant of such failure, and Tenant shall have thirty (30) days from the date of such notice to provide the required information in the required format. If Tenant does not provide the required information within such thirty (30) day period, then Landlord shall have the right to terminate this Lease upon ten (10) days' prior written notice at any time before the submittal of such information.

3.3 Commencement, Prosecution and Completion of Construction.

3.3.1 Commencement. Tenant shall commence construction of the Improvements on or before the Construction Commencement Date. No work shall be undertaken until Tenant shall have procured with due diligence and paid for, so far as the same may be required, from time to time, all permits and authorizations required by the Laws as well as the approvals required by Landlord for construction on University property. In addition, prior to the Commencement of Construction, Tenant shall have provided to Landlord a duly executed "will-serve" letter from the [applicable water supply agency] and the [City or County], indicating that they will, respectively, provide water and sewer service to the Property, and a receipt from the [applicable school districts] showing payment in full of all school facilities fees owed on account of the development of the Property and construction of the Improvements. The parties shall execute a memorandum confirming the Construction Commencement Date; however, failure to execute such memorandum shall not extend the period in which Tenant is required to commence construction. The date by which Tenant is required to commence construction of the Improvements shall be extended day for day (a) during the continuance of any Force Majeure event, provided that no such extension for any single Force Majeure event shall exceed sixty (60) days, nor shall the aggregate extension for all Force Majeure events exceed one hundred eighty (180) days, (b) for each day that Commencement of Construction of the Improvements is delayed due to University Delay, and (c) for the period agreed upon by the parties during the time Commencement of Construction is delayed due to Third Party Delay. No construction shall be commenced until Tenant shall have obtained all permits and authorizations, if any, required from parties other than Landlord for the construction of the Improvements and all permits and approvals required from landlord.

3.3.2 Completion. Tenant shall cause the Completion of Construction to occur within the Construction Period commencing from the date the Tenant has Commenced Construction. The date by which Tenant is required to achieve the Completion of Construction of the Improvements shall be extended day for day only (a) during the continuance of any Force Majeure event, provided that no such extension for any single Force Majeure event shall exceed sixty (60) days, nor shall the aggregate extension for all Force Majeure events exceed one hundred eighty (180) days, (b) for each day that construction of the Improvements is delayed due to University Delay, and (c) for the period agreed upon by the parties during the time commencement is delayed due to Third Party Delay.

3.3.3 Conduct of Construction. After Tenant has Commenced Construction of the Improvements, such construction shall be diligently prosecuted so that the affected portion of the Premises shall not remain in a partly finished condition any longer than is reasonably necessary. In no event shall there be a Stoppage of Construction because of any action of the Tenant for a continuous period in excess of sixty (60) days, which sixty-day period may be extended day for day due to the occurrence of the events described in clauses (a), (b), and (c) of Section 3.3.1 above. In addition, no material excavation shall be made on any portion of the

Premises and no material amount of sand, gravel, soil or other material shall be removed therefrom, other than in connection with the construction or alteration of the Improvements in accordance with the Construction Requirements. It is Tenant's responsibility to design and construct the Improvements in compliance with federal and state laws, codes, rules, regulations, ordinances, and CSU construction standards. Copies of the CSU construction standards are attached hereto as **Exhibit C**. Tenant shall promptly notify both Landlord and the California Division of Oil, Gas and Geothermal Resources in the event that in the course of grading and construction Tenant or its Contractor discover any unrecorded, abandoned oil or gas wells, or in the event that any oil or gas wells, whether abandoned or not, are damaged or uncovered during the course of grading and construction. Tenant shall be solely responsible for complying with all applicable requirements of the California Division of Oil, Gas and Geothermal Resources in the event that remediation, recapping or other work is required with respect to any oil wells on the Property, whether abandoned or not. Tenant shall pay to the University a development fee in the amount of two percent (2%) of all hard and soft construction costs (not including financing costs), to reimburse the university for CSU review for compliance with: CSU seismic requirements, construction code requirements, California Building Code requirements (including access requirements), inspection by CSU and the State Fire Marshall for fire code compliance, and CSU coordination.

3.3.4 Certain Definitions. For purposes of this Lease, (a) Lessee shall be deemed to have "**Commenced Construction**" of the Improvements when (i) all permits, licenses and approvals required in connection therewith have been duly issued, (ii) the Contractor for such Improvements has been given notice by Tenant to proceed with the construction of such Improvements, and (iii) such Contractor has actually commenced preconstruction activities on the Premises; (b) a "**Stoppage of Construction**" shall be deemed to occur at any time during which Tenant or its Contractor is not diligently and continuously prosecuting the construction and completion of the Improvements pursuant to the Construction Requirements; (c) "**Completion of Construction**" shall be deemed to occur when (i) the Improvements have been substantially completed (that is, completed except for minor punch list work), and (ii) Landlord has received from the Design Professional and the Contractor, in form reasonably satisfactory to Landlord, written certification, or other evidence reasonably acceptable to Landlord, that (A) the completed building or other improvements have been substantially completed in compliance with the Construction Requirements, and (B) the completed building or other improvements have been inspected and finally approved by all appropriate governmental authorities and University Entities, and all final certificates of occupancy or similar permits or approvals required as a condition to the occupancy or use of the Improvements for the Permitted Use have been duly issued.

3.3.5 Approvals; Cooperation by Landlord. Tenant acknowledges that many of the approvals or consents to be given by Landlord under the Construction Requirements are to be given by, or are subject to approval by, other University Entities. Landlord shall reasonably cooperate with Tenant to obtain any such required approval or consent; provided, however, that Landlord makes no representation as to whether any such approval or consent may be granted or that any consent or approval granted by Landlord shall indicate that the attendant approval or consent from any other University Entity is forthcoming. Landlord shall not be in breach of any obligation under this Lease requiring the consent, approval or other action of another University Entity if such consent, approval or other action has not been given or completed within the applicable period set forth herein or in the other Construction Requirements, provided that

Landlord is then taking all reasonable steps to obtain the required response from the applicable University Entity.

3.3.6 Committed Loan Funds. Tenant shall deposit with Landlord, prior to commencement of construction, a final construction budget for construction of the Improvements which includes all anticipated hard and soft costs to be incurred in connection with such construction, and a written commitment to the Landlord from an Institutional Lender stating it holds or will hold loan funds (and/or funds of Tenant) to be disbursed for the payment of the full and complete anticipated cost of the construction of the Improvements in accordance with such final construction budget. In the alternative, Tenant may provide other evidence of funding acceptable to Landlord.

3.4 Tenant's Contractor. The Improvements shall be originally constructed by, and any subsequent material repairs, alterations, additions or improvements thereto shall be made by, a competent general contractor or contractor and subcontractors each duly licensed by the State of California as designated by Tenant and approved in writing by Landlord (the "**Contractor**"). Tenant shall promptly pay all contractors and materialmen in accordance with its contract(s) for construction of the Improvements with respect to work performed by or for Tenant or materials purchased by or for Tenant so as to prevent a stop notice attaching to the Leasehold. Tenant's contractor shall furnish two surety bonds to Tenant. Each bond shall be in an amount equal to one hundred percent (100%) of the awarded contract price and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." One of the surety bonds shall guarantee faithful performance of the contract by the Contractor and insure that the construction commenced by Tenant will be completed in accordance with approved plans or, at the option of Landlord, that the uncompleted construction will be removed and the Premises restored to a condition satisfactory to Landlord, and the other shall secure payment of all claims for the performance of labor or services on, or the furnishing of materials for the performance of, the construction of the Improvements. Contract bonds shall remain in full force and effect during the term of the contract.

3.5 Compliance with Laws and University Requirements. Tenant shall construct the Improvements in accordance with the applicable Laws of all governmental authorities having jurisdiction over the Premises, construction of the Improvements, or the conduct of Tenant's business there at, including without limitation all Laws promulgated by University Entities. Upon request of Landlord, Tenant shall furnish Landlord with copies of all certificates and approvals resulting in any work or installation done by Tenant that may be required by any governmental authority or by all applicable underwriters and insurers or by any lender in connection with the construction of the Improvements, which copies Tenant shall certify as true, correct and complete. Tenant shall furnish Landlord with a set of "as built" drawings and specifications for all construction and subsequent improvements which accurately reflect the nature and extent of the Improvements. Tenant shall reimburse Landlord for reasonable costs incurred by Landlord for inspection services provided during the course of construction of the Improvements by an inspector designated by Landlord. Such reimbursement shall be made by Tenant within thirty (30) days after Landlord's delivery to Tenant of an invoice which sets forth in reasonable detail the inspection services provided. Qualifications of the inspector designated by Landlord as well as Duties and Responsibilities During Construction shall comply with State

University Administrative Manual (SUAM) Section XII, section 9792, which is incorporated herein by this reference.

3.6 Design Professionals. All proposed Improvements and landscaping constructed or planted on the Premises, and any subsequent major replacements, alterations, additions or improvements to any of the foregoing, shall be approved in writing by Landlord and designed by qualified and duly licensed Design Professionals designated by Tenant and pre-approved in writing by Landlord.

3.7 Encumbrance of Estate. The University shall not be required to subordinate or subject its fee or leasehold interest in the Premises to the lien of any person or entity providing financing to Tenant in connection with the design or construction of the Improvements or the maintenance and operation thereof. All such financing shall be the sole responsibility of Tenant; provided, however, University shall enter into a Lender Recognition Agreement as provided in Section 14.2 below.

3.8 Costs of Construction. Tenant shall bear all costs and expenses associated with construction of the Improvements, which costs and expenses include without limitation: (a) all costs of bringing utilities and infrastructure to the Premises and all utility hook up and connection fees and all distribution facilities, conduits, pipelines and cables; (b) all design, engineering, entitlement, financing and construction costs and expenses (*i.e.*, all “hard” and “soft” costs of construction); (c) all costs, fees and expenses incurred in processing and obtaining all grading, building and like permits required to construct and operate the Improvements; (d) all school district taxes and development or building fees or assessments, each of which may be charged on the basis of the size and type of the Improvements; and (e) fair share of impact fees and the cost of mitigation measures resultant from a mitigated negative declaration, environmental impact report, or other CEQA environmental review and certification.

3.9 Infrastructure. Tenant acknowledges and agrees that the costs of bringing utilities or infrastructure to the Premises shall be the sole responsibility of Tenant.

3.10 Cooperation. Each party hereby covenants and agrees to cooperate and assist the other party from and after the date of this Lease and throughout the term of this Lease in obtaining all approvals and permits that are necessary or desirable in order to develop and construct the Improvements and any other permitted Alterations, including, without limitation, joining in applications, filings and submittals for use, building, grading, and construction permits, and participation in and support of the other party’s position in hearings, proceedings and meetings relating to any such permits or other governmental applications, submittals or approvals; provided, however, that the party that is not performing such construction shall not be obligated to incur any expenses or liabilities in cooperating with the other party’s permitted construction activities other than *de minimis* expenses such as the cost of postage, photocopying, telephone calls and the like.

3.11 Reports. Not less than quarterly commencing from the date of commencement of construction of the Improvements (and any subsequent material construction or reconstruction on the Premises), Tenant shall provide Landlord with written construction status reports in the form of AIA No. G702, augmented by oral reports when so requested by Landlord.

3.12 Insurance. Tenant shall deliver to Landlord prior to commencement of construction certificates of insurance evidencing coverage for “builder’s risk” as specified in Section 10.2, and evidence of worker’s compensation insurance covering all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against Landlord, the Premises or the Improvements. Tenant shall maintain, keep in force and pay all premiums required to maintain and keep in force all required insurance at all times during which construction work is in progress.

3.13 No Responsibility. Any approvals by Landlord with respect to any Improvements shall not make Landlord responsible for the Improvements with respect to which approval is given, or the construction thereof. Tenant shall indemnify, protect, defend (with legal counsel reasonably acceptable to Landlord), and hold Landlord harmless from and against all liability and all claims of liability (including, without limitation, reasonable attorneys’ fees and costs) arising during the Term for damage or injury to persons or property or for death of persons arising from, out of, or in connection with such Improvements or construction.

3.14 Notice of Non-Responsibility. At least thirty (30) days prior to commencement of construction of any Improvements, Tenant shall deliver written notice of non-responsibility to Landlord. Landlord may, from time to time, cause to be recorded and posted on the Premises, a notice of non-responsibility in compliance with California Civil Code Section 8444 (or any successor statute). Landlord shall not be liable for any mechanics lien or other encumbrances placed on the Premises due to the construction or development thereon. During the course of construction, Tenant shall obtain customary mechanics’ lien waivers and releases. Upon completion of the construction of any Improvements, Tenant shall record a notice of completion in accordance with applicable law. Promptly after the Improvements have been completed, Tenant shall (or shall cause its general contractor to) record a notice of completion as defined and provided for in California Civil Code Section 8182.

3.15 Liens. Tenant shall at all times hold Landlord free and harmless and indemnify Landlord against all claims for labor or materials in connection with all construction work, operations, Improvements, alterations, or repairs on or to the Premises, and the costs of defending against such claims, including reasonable attorneys’ fees and costs. If any construction work, Improvements, alterations or repairs are made to the Premises by Tenant or by any party other than Landlord, and a lien or notice of lien is filed, Tenant shall within five (5) Business Days of such filing either: (i) take all actions necessary to record a valid release of lien, or (ii) file with Landlord a bond, cash, or other security acceptable to Landlord sufficient to pay in full all claims of all persons seeking relief under the lien. Copies of duly executed conditional and final waivers of mechanics’ lien rights shall be provided to Landlord concurrently with their delivery to the construction lender or, if there is no such lender, then on a monthly basis on the last day of each month for releases executed during such month.

If Tenant (or any contractor or subcontractor, as applicable) does not cause to be recorded the bond described in California Civil Code Section 8424, or otherwise protect the Premises and Improvements under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic’s, materialman’s, contractor’s or subcontractor’s lien claim, and if Tenant fails to stay the execution of judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay or prevent the execution of, any such judgment

or lien or both. Upon any such payment by Landlord, Tenant shall immediately, upon receipt of written request therefor made by Landlord, reimburse Landlord for all sums paid by Landlord under this paragraph, together with all Landlord's reasonable attorneys' fees and costs, plus interest at the maximum allowable legal rate then in effect in California, from the date of payment until the date of reimbursement.

3.16 Assignment. Tenant shall obtain the written agreement of the Contractor that, at Landlord's election and in the event that Tenant fails to perform its contract(s) with the Contractor, the Contractor will recognize Landlord as the assignee of the contract(s) under the same terms and conditions as pertained in Tenant's contract with the Contractor.

3.17 Standard of Work. All of the work with respect to the Improvements shall be designed, constructed and performed in a good, first class and workmanlike manner.

3.18 Indemnification. All contracts and subcontracts involving work on the Improvements shall specifically provide that the Contractor(s) agree to indemnify, defend and hold Landlord harmless from all claims, costs, liability or loss arising from personal injury, death or property damage resulting from the negligent or willful acts, errors, or omissions of the Contractor(s).

3.19 Tenant Indemnity. With respect to the development and construction activities undertaken by Tenant on the Premises pursuant to this Lease, Tenant asserts that it is aware of the requirements of Labor Code Section 1770 et seq., concerning the payment of prevailing wages. Tenant acknowledges that Tenant shall be independently responsible for reviewing and understanding the applicable law and regulations with respect to the payment of prevailing wages and complying therewith. In addition to any other Tenant indemnifications of Landlord and all University Entities identified in this Lease, Tenant shall indemnify, defend, and hold Landlord and all University Entities harmless from and against any claims, injury, liability, loss, damage, fine, penalty, fee, cost or expenses (including reasonable attorneys' fees, expert witness fees, and court costs), whether asserted, levied, or claimed by any governmental entity or by a private party, arising from, or which are in any way related to, the failure of Tenant, its officers, employees, agents, volunteers, Contractors or subcontractors, to pay prevailing wages in accordance with applicable Laws.

ARTICLE IV LEASE CONSIDERATION

4.1 Construction of Improvements. Tenant agrees to construct the Improvements strictly in accordance with the terms and conditions set forth in Article III.

4.2 Annual Base Rent. The Annual Base Rent (at the applicable rate) shall commence to accrue hereunder on the Rent Commencement Date. Tenant shall pay the Annual Base Rent to Landlord in twelve (12) equal monthly installments on or before the first (1st) day of each month commencing with the First Rent Payment Date. Annual Base Rent for any partial month period shall be prorated and paid with the first monthly payment based on a thirty (30) day month and actual days elapsed. No invoice shall be provided nor shall any invoice be required from Landlord in order for Tenant to be obligated under this Section. Annual Base Rent during the Initial Period shall be payable at the Initial Period Rent rate, and Annual Base Rent during the Construction Period shall be paid at the Construction Period Rent rate.

4.3 Adjustment of Annual Base Rent.

4.3.1 CPI Adjustment. On each Rent Adjustment Date, the amount of the then current Annual Base Rent shall be adjusted in the manner hereinafter set forth. On each Rent Adjustment Date, the Annual Base Rent shall increase (but not decrease) to reflect the change in the CPI Index between the Rent Commencement Date and the first Rent Adjustment Date (with respect to the first such Rent Adjustment Date) or between the immediately preceding Rent Adjustment Date and the current Rent Adjustment Date with respect to each subsequent Rent Adjustment Date. In each instance, Monthly Base Rent shall be multiplied by a fraction, the numerator of which is the CPI Index published most recently before the current Rent Adjustment Date, and the denominator of which is the CPI Index published most recently before the Rent Commencement Date or the immediately preceding Rent Adjustment Date, as the case may be.

4.3.2 Optional Appraisal Adjustment. Either party may institute this optional appraisal adjustment for the Annual Base Rent as of a Rent Adjustment Date in lieu of the increase provided for in Section 4.3.1 above by giving written notice to the other party at least six (6) months prior to the ninth (9th) anniversary of the Effective Date and every four years thereafter, at least six (6) months prior to such anniversary date. In such event, the Annual Base Rent as of the next Rent Adjustment Date shall be equal to the Fair Market Rent for the Premises (on an annual basis) as of said Rent Adjustment Date determined pursuant to Article XVIII unless the parties can otherwise agree in writing on the Fair Market Rent for the Premises; provided, however, that in no event may the Annual Base Rent determined pursuant to this Section 4.3.2 be less than the Annual Base Rent owed as of the day prior to the Rent Adjustment Date, nor greater than the Annual Base Rent which would have resulted if the Annual Base Rent had been increased at each Adjustment Date as provided in Section 4.3.1. If the Annual Base Rent has not been determined pursuant to this Section 4.3.2 by the Rent Adjustment Date, then as of the Rent Adjustment Date, the increase pursuant to Section 4.3.1 will be effective. Once the Annual Base Rent has been determined pursuant to this Section 4.3.2 or Section 4.3.1, it shall be retroactive to the Rent Adjustment Date, and any additional rent shall be paid by Tenant to Landlord within ten (10) days of the determination of the Annual Base Rent, and any overpayment by Tenant to Landlord may be credited by Tenant against the next installment(s) of Annual Base Rent.

4.4 Place of Payment of Rental. All rental payments shall be made in lawful money of the United States of America and shall be paid to Landlord at Landlord's address as set forth in Section 19.1 or to such other parties and/or to such other address as Landlord may from time to time designate in writing to Tenant.

4.5 Net Lease; No Rent Abatement or Reduction. The rental set forth in this Article IV is established on the assumption that this Lease is and shall constitute an absolutely "net, net, net" lease and that Landlord will not have to pay any expense or incur any liabilities of any kind in any way relating to, or in connection with, the Premises or the Improvements during or attributable to the Term, except as otherwise provided in this Lease. Accordingly, Tenant will promptly pay all costs of every kind and description relating to or arising out of the Premises or the Improvements or the use thereof during the Term, including, without limitation, all utility costs, repair or maintenance costs, improvement costs, annual or special assessments allocated to the Premises, and all school district fees/assessments, whether levied against Landlord or Tenant. Except as expressly provided to the contrary in this Lease, Tenant shall not be entitled to any abatement, set off or reduction in Annual Base Rent due under this Lease. It is the purpose and

intention of the parties to this Lease that the Annual Base Rent due hereunder be absolutely net to the Landlord and that this Lease shall yield, net to Landlord, the Annual Base Rent provided in this Lease.

4.6 Other Payments. Tenant agrees to pay, as additional Rent for the Premises, within ten (10) days after Landlord's demand therefor, all other amounts and sums which Tenant is obligated to pay or reimburse to Landlord under the provisions of this Lease in addition to Annual Base Rent.

4.7 Interest. Any Annual Base Rent or additional Rent or other amount payable by Tenant to Landlord under this Lease which is not paid when due shall bear interest at the rate of ten percent (10%) per annum until paid.

4.8 Late Charges. Tenant acknowledges that the late payment of any Annual Base Rent or additional Rent will cause Landlord to lose the use of such money and incur costs and expenses not contemplated under this Lease, including, without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, if any installment of Annual Base Rent or additional Rent is not paid within ten (10) calendar days after the due date for such Rent payment, then Tenant shall thereafter pay to Landlord on demand a late charge equal to three and one-half percent (3.5%) of the amount of any installment of Annual Base Rent or additional Rent not paid on the due date plus interest as provided in Section 4.7 of this Lease. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant.

4.9 Net Proceeds From Refinancings, Sales and Assignments. In addition to the Annual Base Rent and other amounts payable by Tenant hereunder, Landlord shall receive from Tenant:

4.9.1 Three percent (3%) of the net proceeds (after repayment of the then-existing debt and subtraction from gross proceeds of all reasonable costs of refinancing) from the Tenant's initial refinancing and subsequent refinancing of existing debt on the Improvements or Tenant's interest in the Lease. Refinancings shall be subject to the terms and conditions of Article XIV; and

4.9.2 Three percent (3%) of net proceeds (after repayment of the then-existing debt and subtraction from gross proceeds of all reasonable costs of sale or assignment) from the Tenant's sale or assignment of the Improvements and Tenant's interest in this Lease. Sales and Assignments shall be subject to the requirements of Article XII.

4.9.3 In the event that the Improvements are constructed for all cash with **no** financing, then in making the foregoing calculations of net proceeds, in lieu of subtracting from the gross proceeds of sale, assignment or financing the amount of the then-existing debt, and in addition to subtracting therefrom the reasonable costs of sale, assignment or financing, the parties shall subtract from the gross proceeds the "all-in" documented (to the reasonable satisfaction of Landlord) hard and soft costs of the initial construction of the Improvements.

4.10 Unrelated Business Income. All payments to the Landlord shall constitute rents from real property as such terms are defined in Section 856 (d) of the Internal Revenue

Code of 1954, and therefore do not include unrelated business income. If in the opinion of Landlord's counsel, there shall be any significant risk that any individual payment or type of payment made by Tenant under the Lease would be taxable to Landlord, Landlord may by written notice to Tenant modify the Lease so that no payments will, in the opinion of Landlord's counsel, give rise to unrelated business income. The modifications shall not result in any additional financial burden to Tenant.

4.11 Percentage Rent. [for retail leases only]

4.11.1 *In addition to the Annual Base Rent and additional Rent payable hereunder, Tenant shall pay to Landlord, at the time and in the manner herein specified, the dollar amount by which the "Percentage Rent Rate" of [redacted] percent ([redacted] %) of Tenant's Gross Sales (as such term is defined below), exceeds the Annual Base Rent paid by Tenant to Landlord during each calendar year (or portion thereof) of the Term ("Percentage Rent"). Percentage Rent shall be computed and payable quarterly. Within ten (10) days after the end of each calendar quarter (i.e., the three month periods ending on each March 31, June 30, September 30 and December 31), Tenant shall deliver to Landlord a statement certified by Tenant as true and correct and setting forth its Gross Sales for such calendar quarter and shall pay to Landlord the amount by which the Percentage Rent Rate of such Gross Sales exceeds the Annual Base Rent for such quarter. The receipt by Landlord of a statement of Tenant's Gross Sales shall not constitute an admission by Landlord of its correctness. For the purpose of computing Percentage Rent, Tenant's Gross Sales for any period during which Tenant does not continuously and uninterruptedly conduct its business shall be deemed to be Tenant's Gross Sales for the corresponding period during the last calendar year in which Tenant operated continuously and uninterruptedly. Within thirty (30) days after the close of each calendar year during the Term, an accounting of Tenant's Gross Sales during said calendar year and the amounts paid to Landlord as Annual Base Rent and as Percentage Rent during such calendar year shall be made by Tenant and, upon such accounting, an adjustment shall be made with respect to said Percentage Rent as follows: If Tenant shall have paid to Landlord an amount greater than Tenant is required to pay under the terms hereof, Tenant shall be entitled to a credit against Tenant's next payment of Annual Base Rent in the amount of such excess Percentage Rent paid, or, if Tenant shall have paid an amount less than the Percentage Rent required to be paid hereunder, Tenant shall pay to Landlord such difference within five (5) business days after such determination.*

4.11.2 *"Gross Sales" shall include (as of the date of the transaction) the entire amount of the sale price of all goods and merchandise sold (including gift and merchandise certificates when redeemed), leased, rented or licensed and the charges for all services and all other receipts in, upon or from any part of the Premises, whether (wholly or partially) for cash or credit, and shall include sales from vending machines (including but not limited to mechanical and electronic machines, except telephone and postage stamp machines); equipment leased; uncollected and uncollectible credit accounts and bank checks and charges for bank credit cards; all deposits not refunded to purchasers; orders taken at the Premises, although the orders may be filled elsewhere, and orders filled at the Premises, although the orders may have been taken elsewhere (including, but not limited to, orders which are accepted or transmitted by means of electronic, telephonic, video, computer or other electronic or technology based system); and all monies or other things of value which Tenant is entitled to receive. The following shall be excluded from Gross Sales, provided such exclusions are specifically itemized: (a) sales, use, excise, retailer's, occupation or*

similar taxes imposed in a specific amount, or percentage upon, or determined by, the amount of sales; (b) interest, service, finance or sales carrying charges paid by customers for extension of credit on sales, if not included in the merchandise sale price; (c) returns to shippers and manufacturers; (d) sales not in the ordinary course of Tenant's business, of machinery or equipment which Tenant has the right to remove from the Premises; and (e) the value of any exchange or transfer of merchandise between stores of Tenant if it is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at, or from the Premises. Further, refunds to customers, to the extent that such refunds relate to a prior inclusion of the same transaction, shall be deducted from Gross Sales, provided that such deductions are specifically itemized.

4.11.2 Recordation of Sales. *Tenant shall record all sales in accordance with generally accepted accounting practices (showing all of its sales separately from its other stores) and shall maintain sufficient original records which accurately summarize all transactions relating to the Premises (including the sales of any subtenant, licensee or concessionaire). Original records shall include, but not be limited to, sales documents, sequentially numbered tapes and readout totals of cash registers or point of sale devices, sales returns and allowance detail, cash receipts, payroll journals, accounts receivable, disbursement journals, bank statements, deposit slips, inventory records, purchase orders, receiving records, sales journals or daily sales reports, orders accepted by means of electronic, telephonic, video, computer or another electronic or other technology based system, state sales and use tax returns (and all documentation used to prepare the returns), and a complete general ledger. Tenant shall also maintain documentation and itemization of specific sales exclusions. Tenant shall preserve its records (properly totaled) at the Premises and make such records available to Landlord at the Premises, upon demand, for a period of at least three (3) years after the year in which the sales occurred (provided, however, that if any audit is begun by Landlord or if there is a dispute regarding Tenant's Gross Sales, Tenant's records shall be retained by Tenant until a final resolution of the audit or dispute). If the Gross Sales are understated by three percent (3%) or more, Tenant shall pay Landlord's cost of inspection and audit. If Gross Sales are understated from those reported by (i) five percent (5%) or more in any one (1) Lease Year, or (ii) three percent (3%) or more for any two (2) Lease Years out of any five (5) Lease Years, then Landlord shall have the right at its sole option, to terminate this Lease.*

4.12 Percentage Rent *[for Hotel Leases only].*

4.12.1 Percentage Rent Defined. *Percentage Rent shall equal [five percent (5%)] of Gross Revenues ("Percentage Rent"). Percentage Rent shall be calculated on a quarterly basis. The first calculation shall occur at the end of the calendar quarter during which the Completion of Construction occurs. Thereafter, the calculation shall be made at the end of each subsequent calendar quarter during the Term.*

4.12.2 Percentage Rent Quarterly and Annual Statements. *Within ten (10) days following the last day of each calendar quarter, and within ten (10) days following the expiration or sooner termination of this Lease, Tenant shall furnish to Landlord a statement in writing ("Quarterly Statement"), prepared by its chief financial officer showing (i) Tenant's Gross Revenues attributable to the preceding calendar quarter (and partial calendar quarter with respect to the first calculation) and the calculation of Percentage Rate based thereon, and (ii) Tenant's payments to Landlord during the preceding calendar quarter for Annual Base Rent. Tenant shall, concurrently with the delivery of the Quarterly*

Statement, pay to Landlord an amount equal to the difference between the amount of Annual Base Rent payable for such calendar quarter and the Percentage Rent shown on such Quarterly Statement. Within thirty (30) days after the close of each calendar year during the Term, an accounting of Tenant's Gross Revenues during said calendar year and the amounts paid to Landlord as Annual Base Rent and as Percentage Rent during such calendar year shall be made by Tenant and, upon such accounting, an adjustment shall be made with respect to said Percentage Rent as follows: If Tenant shall have paid to Landlord an amount greater than Tenant is required to pay under the terms hereof, Tenant shall be entitled to a credit against Tenant's next payment of Annual Base Rent in the amount of such excess Percentage Rent paid, or, if Tenant shall have paid an amount less than the Percentage Rent required to be paid hereunder, Tenant shall pay to Landlord such difference within five (5) business days after such determination.

4.12.3 Recordation of Gross Revenues. *Tenant shall record all business conducted on the Premises in accordance with generally accepted accounting practices and shall maintain sufficient original records which accurately summarize all transactions relating to the Premises (including the revenues received from any subtenant, licensee or concessionaire). Original records shall include, but not be limited to, sales documents, sequentially numbered tapes and readout totals of cash registers or point of sale devices, sales returns and allowance detail, cash receipts, payroll journals, accounts receivable, disbursement journals, bank statements, deposit slips, inventory records, purchase orders, receiving records, sales journals or daily sales reports, revenues accepted by means of electronic, telephonic, video, computer or another electronic or other technology based system, state sales and use tax returns (and all documentation used to prepare the returns), and a complete general ledger. Tenant shall also maintain documentation and itemization of specific revenue exclusions. Tenant shall preserve its records (properly totaled) at the Premises and make such records available to Landlord at the Premises, upon demand, for a period of at least three (3) years after the year in which the revenues were received (provided, however, that if any audit is begun by Landlord or if there is a dispute regarding Tenant's Gross Revenues, Tenant's records shall be retained by Tenant until a final resolution of the audit or dispute). If the Gross Revenues are understated by three percent (3%) or more, Tenant shall pay Landlord's cost of inspection and audit. If Gross Revenues are understated from those reported by (i) five percent (5%) or more in any one (1) Lease Year, or (ii) three percent (3%) or more for any two (2) Lease Years out of any five (5) Lease Years, then Landlord shall have the right at its sole option, to terminate this Lease upon ninety (90) days' prior written notice.*

ARTICLE V USE

5.1 Use of Premises. Tenant shall use the Premises solely for the construction, maintenance and operation of the Improvements (and any Alterations thereto approved pursuant to Section 9.1) for the Permitted Use. Tenant shall ensure that the Improvements shall at all times be constructed, maintained and operated only in a manner consistent with the Construction Requirements and that the Improvements shall be of a type and quality consistent with the uses contemplated by the Campus Master Plan. The use of the Improvements may, at Tenant's option, include entering into Building Tenant Leases [**if a hotel, add for the restaurant/bar and/or retail space within the Improvements**] so long as all uses by Tenant and by any Subtenant are subject to all applicable Laws. Tenant shall make available to Landlord contact information with respect to the Subtenants which from time to time lease space in the

Improvements. To the extent it is commercially reasonable to do so, Tenant shall consider providing internships for University students, shall consider participating in University career day presentations, and shall consider other forms of collaboration with the University community.

5.2 Changed Use. Should the use of all or any portion of the Premises or the Improvements materially change at any time during the Term of this Lease in a manner which is inconsistent with the requirements set forth in this Lease, and should this change not be approved in writing by Landlord, such change in use shall constitute a default hereunder and, subject to Section 15.2 (regarding notice and opportunity to cure such default), Landlord may immediately terminate this Lease upon delivery of notice to Tenant. Upon delivery of such notice, all right, title and interest to the Premises, including the Improvements, shall vest solely in Landlord, without further cost or expense to Landlord, subject only to rights of Lenders as provided in Article XIV.

5.3 Waste; Nuisance. Tenant shall not use or permit any other person to use the Premises, or any part thereof, nor allow any person access for any use, which constitutes a waste, nuisance or unreasonable annoyance to Landlord. Tenant further agrees at all times during the Term, at its sole cost and expense, to do all things necessary to maintain the Premises in good, clean and sanitary condition and repair.

5.4 Environmental Requirements. Tenant shall not use, nor permit the use by any other person of any Hazardous Substance in the construction, use, operation or renovation of the Improvements in violation of any applicable Law or in quantities requiring reporting or notice to any applicable governmental authority or agency, including, without limitation, any use, storage, handling, release, emission, discharge, disposal, generation, abatement, disposition or transportation of any Hazardous Substance from, on or otherwise relating to the Premises. Tenant shall, at its own cost and expense, comply, and cause each of its subtenants, tenants of space within the Improvements, licensees and/or concessionaires to comply, with all applicable Laws relating to any Hazardous Substance, including, without limitation, obtaining and filing all applicable notices, permits, licenses and similar authorizations. Should Tenant use or permit the use by any other person of any Hazardous Substance in quantities requiring reporting or notice to any applicable governmental authority or agency, Tenant shall provide or cause such other person to provide any required notice to the appropriate governmental authority or agency and simultaneously send a copy of such notice to Landlord. Tenant shall establish and maintain a policy to assure and monitor continued compliance by Tenant and all others occupying space in the Improvements with all such Laws. Tenant shall not use nor shall Tenant permit any other person (including, without limitation, any Subtenant) to use, the Premises, or any part thereof, for or in a manner which results in any release, emission, disposal, use or storage of any Hazardous Substance in violation of, or in excess of reportable quantities pursuant to, applicable Laws.

5.5 Environmental Remediation and Indemnification.

5.5.1 Hazardous Substances. If Tenant discovers Hazardous Substances on the Premises which do not comply with the requirements set forth in Section 5.4, it shall immediately report the discovery in writing to Landlord, and the parties will meet and confer in an attempt to resolve the problem. If Hazardous Substances are released onto the Premises during the Term as the result of Landlord's negligent or willful acts, Landlord will remediate the

presence of such Hazardous Substances in compliance with applicable Laws to the extent necessary to permit construction of the Improvements and use of the Premises for the uses permitted hereunder to proceed. Tenant shall not be responsible for the remediation of Hazardous Substances released onto the Premises by any University Entity (including any Hazardous Substances which migrate from lands owned by a University Entity) except to the extent that Tenant exacerbates the problem due to its action or omission with regards to such release. It shall be the responsibility of Tenant to remediate all other Hazardous Substance conditions on the Premises; provided that Tenant shall not be required to remediate any condition as to which the applicable governmental agency and Landlord has expressly approved leaving such condition in place without remediation, which approval by Landlord shall not be unreasonably withheld.

5.5.2 Tenant Indemnification. Tenant shall indemnify, defend, protect and hold the Indemnified Parties, harmless from and against any and all liability, claims, damage, penalties, actions, cost or expense of any kind or nature, including, without limitation, damage to property and injury (including death) to any person, arising directly or indirectly from any breach of Section 5.5.1 by Tenant. The foregoing indemnity includes, without limitation, remediation of any kind and disposal of any Hazardous Substance, and any indemnified party's reasonable consultants' fees and charges, attorneys' fees and charges (including the cost of Landlord's in-house counsel), investigation costs and expenses and other similar costs and expenses incurred by any indemnified party. The obligation of Tenant under this Section 5.5.2 shall survive the expiration or earlier termination of this Lease.

5.6 Compliance with Government Regulations. Subject to Tenant's right to contest in accordance with Section 5.8, Tenant shall, at its sole cost and expense, at all times during the Term, conform to, and cause all persons using or occupying any part of the Premises other than Landlord or any of its Affiliates or Indemnified Parties to comply with, all Laws from time to time applicable thereto, including, without limitation, all Laws relating or applicable to the Premises, or their use and ownership. Tenant covenants and agrees to indemnify, defend and hold the Indemnified Parties harmless from any penalties, damages or charges imposed as a result of any violation of Laws applicable to the construction of the Improvements and to the use and occupancy of the Premises, whether occasioned by neglect, omission or willful act of Tenant or by any person upon the Premises by license or invitation of Tenant or holding or occupying the same or any part thereof under or by right of Tenant but excluding Landlord or any of its Affiliates or Indemnified Parties

5.7 Evidence of Compliance with Laws. Tenant shall deliver to Landlord, upon Landlord's request, and at Tenant's expense, copies of documents and such other evidences as are normally and customarily issued by governmental authorities with jurisdiction over the Premises to demonstrate proof of compliance with all Laws pertaining to permits and authorizations relating to the Premises generally and to the Improvements specifically.

5.8 Right to Contest.

5.8.1 Tenant Conduct of Proceedings. At Tenant's sole cost and expense, Tenant, by appropriate legal proceedings brought in good faith and diligently prosecuted in its name, may contest the validity or applicability to the Premises, or any part thereof, of any Laws; provided, however, that if any such contest or proceeding is, with Landlord's prior written consent, maintained in the names of both Tenant and Landlord, Tenant shall indemnify, defend

and hold harmless the Indemnified Parties of Landlord, and protect the Premises from Tenant's failure to observe or comply with the contested Laws during the contest.

5.8.2 Landlord Conduct of Proceedings. At Landlord's sole cost and expense, Landlord, by appropriate legal proceedings brought about in good faith, reserves the right to contest the applicability to the Premises or validity of any Laws; provided, however, that if any such contest or proceeding is, with Tenant's prior written consent, maintained in the names of both Tenant and Landlord, Landlord shall indemnify, defend and hold harmless the Indemnified Parties of Tenant and protect the Premises from the failure to observe or comply with the contested Laws during the contest. Within five (5) days of receipt of notice of action or proceeding claiming the applicability of, or seeking to impose, any legal requirement on the Premises or the development of the Premises, Landlord shall give Tenant written notice of such claims.

5.9 Landlord's Rules and Regulations. Tenant agrees to be bound by and comply with all policies, procedures and regulations promulgated by Landlord and University and reasonably applied uniformly and in a non-discriminatory manner, pertaining generally to the use of those portions of Landlord's real property leased for non-public purposes and to activities taking place on Landlord's real property, including, but not limited to, those relating to health, safety and traffic enforcement. Those policies, procedures and regulations shall include, but not be limited to, those set forth in **Exhibit E** hereto.

5.10 Advertising and Signs. Tenant shall not place or allow to be placed any sign on any portion of the Premises that does not conform to the approved signage and graphic program set forth in the Construction Requirements. Tenant shall not place, construct or maintain on the glass panes or supports of the windows of the Improvements, the doors, or the exterior walls or roofs thereof or any interior portions thereof that may be visible from the exterior of the Improvements, any signs, advertisements, names, insignia, trademarks, descriptive material, or any other similar item, except for such items which have been authorized, either specifically or generally in writing by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned. Landlord, at Tenant's cost, may remove any item placed, constructed, or maintained that does not comply with the provisions of this Section 5.10. Tenant shall not place, construct or maintain, or allow to be placed, constructed or maintained, on the Premises any advertising media, including, without limitation, searchlights, flashing lights, loudspeakers, phonographs, or other similar visual or audio media. Tenant shall not solicit business in, on, or about the exterior of the Improvements. Any sign that Tenant has the right to place, construct and maintain shall comply with all applicable Laws, and Tenant shall obtain any approval required by such Laws.

5.11 University Name. Tenant shall not have or acquire any property right or interest in the name of the University or to "California State University, **[campus name]**," or "**[campus acronym]**," or any related name or any permutation thereof that may imply any connection of Tenant or the Improvements with the University.

5.12 Operator. **[for hotel leases only]** Landlord shall have the right to review and approve the selection of any entity which is the operator or manager of the hotel included in the Improvements (if other than Tenant) and any franchisor of the Improvements, and of any agreement with any franchisor. Any franchise agreement shall provide that Landlord may assume the franchise agreement upon any termination of the Lease during the Term. Tenant's

entering into a franchise agreement with *[name of franchisor]* pursuant to which the Improvements are operated as a “*[type of hotel such as Hilton Garden Inn, Courtyard by Marriott]*” is hereby approved, subject to Landlord approval of the form of franchise agreement and, without limiting the foregoing, the provisions thereof which are applicable upon a Tenant Event of Default.

ARTICLE VI OPERATION AND MAINTENANCE

6.1 Standards of Operation. Tenant shall continuously (except for reasonable interruption during repairs, maintenance or renovations and due to events of Force Majeure) and diligently during the Term operate, or cause the Improvements to be operated, in a first class manner and as otherwise required by this Lease.

6.2 Maintenance. At all times during the Term, Tenant shall, at its sole cost and expense, keep and maintain all parts of the Premises and the Improvements in a condition of Comparable Improvements located in the vicinity of the University, subject to ordinary wear and tear. Such obligations shall include, without limitation, the obligation to maintain all Improvements in a clean, sanitary, neat, tidy, orderly and attractive condition. Tenant is required to obtain Landlord’s approval prior to construction or installation of emergency repairs or repairs and replacements, unless the work does not exceed *[Fifty Thousand Dollars (\$50,000)]* in cost to Tenant and does not alter the external appearance of the Improvements in a manner materially inconsistent with the Construction Requirements.

6.3 Management and Operation of the Premises. Tenant shall be responsible for overall management and control of the Premises as a first class property. Tenant shall perform its obligations under this Section 6.3, or cause them to be performed, in a manner which demonstrates managerial skill, knowledge, judgment and practice which is standard for the management of Comparable Improvements located in the vicinity of the University. Tenant acknowledges Landlord’s concern that, because the Improvements are located in the University’s campus, they must be operated, maintained and managed in first class condition, and that Landlord, in agreeing to the terms of this Lease, is relying on the expertise, experience and reputation of Tenant, and its constituent partners, officers and directors, to cause the Improvements to be operated, maintained, and managed in said first class condition. Tenant shall perform or cause to be performed, at its expense, management services which are customarily provided at similar projects located in the vicinity of the University. These services shall include, but are not limited to, the following:

- (a) use of commercially reasonable best efforts to manage, operate and maintain the Premises;
- (b) supervision, hiring and discharge of all personnel employed at the Premises as employees of or under the exclusive control of Tenant, including use of reasonable care in the selection of such employees;
- (c) procurement and maintenance of adequate workers’ compensation insurance covering all of the aforesaid employees, preparation, maintenance, and filing of all legally required statements and reports pertaining to labor employed in or about the Premises, and provision of all

bookkeeping and clerical services with respect to all personnel employed at the Premises;

- (d) payment of all [*for hotels, transient occupancy taxes and other*] taxes and charges applicable to the use of the Premises;
- (e) arrangement of contracts for electricity, gas, water, steam, telephone, cleaning, window cleaning, vermin extermination, elevator, escalator and boiler maintenance, air conditioning maintenance, master television antennae, electronic security and any other services as are customarily provided in similar projects located in the vicinity of the University and as Tenant deems advisable, and arrangement for purchase of all materials and supplies necessary to maintain and operate the Premises;
- (f) arrangement for the provision of services and facilities of any maintenance engineering department that Tenant or its affiliates may have in connection with the operation of all mechanical installations;
- (g) rendering of statements of income and expense on a monthly and yearly basis, and in connection therewith maintenance of customary [*hospitality or other*] industry reporting systems and provision of reports required by Tenant, this Lease and governmental agencies; and
- (h) if Tenant should hire a manager for the Premises, such manager shall be experienced in the management and operation of projects similar to the Improvements. No such agreement with a manager to provide the services described in this Section 6.3 shall release Tenant from any obligation which Tenant has under this Lease.

6.4 Specific Tenant Obligations. Without limiting the provisions of Section 6.3 above, Tenant shall:

- (a) assure that any contractor performing work on the Premises maintains insurance in accordance with prudent practice prevailing in the industry for Comparable Improvements, including, without limitation, workers' compensation insurance, employees' liability insurance and insurance against liability for injury to persons and property arising out of such contractor's operations, any subcontractors' operations and the use of owned, non owned or hired automotive equipment in the pursuit of all such operations;
- (b) assure that any contractor performing work on the Premises shall provide insurance coverage in amounts not less than those specified in Article X of this Lease;
- (c) supervise, or caused to be supervised by its manager, all matters coming within terms of this Article VI, including, without limitation, direct observation, inspection and supervision of all repairs, decorations, alterations and Improvements during the progress thereof; and

- (d) obtain the necessary receipts, releases, waivers, discharges and assurances to keep the Premises free from mechanics' and materialmen's liens and other claims.

6.5 Requirements of Government Agencies. At all times during the Term, Tenant at its own cost and expense, shall:

- (a) make (subject to Article IX and all other applicable terms and provisions of this Lease) all alterations, additions or repairs to the Premises and every part thereof, required by Laws now or hereafter in effect; and
- (b) indemnify, defend and hold the Indemnified Parties and the Premises, and every part of the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

6.6 Meetings to Discuss Maintenance of Improvements. At least annually, a senior member of the facilities management personnel of both parties will meet to discuss plans for the long-term maintenance of the Improvements constructed by Tenant on the Premises, and each party will consider in good faith the suggestions of the other party with respect to the ongoing maintenance of the Improvements.

6.7 Replacement Reserve Fund. *[for hotel leases]* On the day on which the Improvements first open for business to the public, Tenant shall establish a Replacement Reserve Fund (the "**Reserve Account**") to which Tenant will contribute monthly a sum equal to three percent (3%) of its Gross Revenues. Once the Reserve Account is established pursuant to the foregoing, Tenant shall contribute to the Reserve Account on the first (1st) day of each calendar month an amount based on gross receipts for the second preceding month. By way of example, the contribution for March 1 will equal three percent (3%) of Gross Revenues in January. Any dispute over whether Tenant has materially failed to maintain the Premises as aforesaid may be submitted by either party to arbitration and mediation pursuant to Article XVII. Funds from this Reserve Account may be used by Tenant for major repair or replacement of portions of the Improvements and may not be used for ongoing day to day or customary maintenance of the Improvements or for financing or employee costs. The written consent of Landlord shall be required prior to withdrawal of funds from the Reserve Account, which consent shall not be unreasonably withheld, delayed or conditioned. Upon expiration or earlier termination of this Lease other than as a result of an Event of Default, any funds in the Reserve Account not then required to remedy any failure of Tenant to maintain the Premises in the manner and to the standard set forth in this Lease shall be immediately returned to Tenant. In the event that this Lease is terminated early as a result of an Event of Default, the Reserve Account shall remain with the Premises and become the property of Landlord.

6.7.1 Form of Deposits in Reserve Account. Tenant may make its Reserve Account deposits in the form of interest bearing certificates of deposit which shall be specifically identified for the uses specified by this Section 6.7. Interest earned on said deposit and certificates shall be retained in the Reserve Account and used for renovation and replacement under this Section 6.7.

6.7.2 Evidence of Deposits. Tenant shall provide to the Landlord, from time to time, at the written request of the Landlord, documentary evidence which clearly establishes that Tenant is, and has been, maintaining the Reserve Account.

6.7.3 Report of Expenditures. Tenant shall provide Landlord, upon request but not more often than twice annually, a report of the following:

- (a) a detailed statement of the renovations and replacements made during the year, as then covered by such report and the amount of expenditures therefor; and
- (b) the amount of money from the gross receipts for said month or year, as the case may be, deposited in the Reserve Account or expended pursuant to this Section 6.7.

6.7.4 Landlord's Use of Reserve Account. In the event that Landlord exercises its rights under Section 15.11, Landlord may elect to use funds from the Reserve Account in order to take such actions permitted under Section 15.11.

6.8 Capital Improvement Fund. [for leases for other than hotel use]

6.8.1 Establishment of Fund. Commencing with the month during which the fifth (5th) anniversary of the Completion of Construction occurs, and continuing until five (5) years prior to the expiration of the Term of this Lease, Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 6.8.1 designated to pay for Permitted Capital Expenditures (as defined below) for the Improvements. Tenant and Landlord agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the initial Improvements ("**Permitted Capital Expenditure(s)**"). The Capital Improvement Fund shall not be used to fund any portion of the cost of the initial Improvements. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary maintenance expenditures or maintenance, repairs or replacements that keep the Improvements in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied or constitute qualifying aesthetic improvements. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Tenant. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant's reasonable discretion and subject to Landlord's approval as provided for in Section 6.8.4, below. Tenant shall furnish to Landlord applicable invoices, evidence of payment and other back-up materials concerning the use of amounts from the Capital Improvement Fund.

6.8.2 Depository. The Capital Improvement Fund shall be held in an account established with an Institutional Lender. Tenant shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 6.8.2 with capital improvement reserves required by Tenant's Leasehold Mortgagee, as long as such capital improvement reserves are in all material respects administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 6.8.2.

6.8.3 Amount of Deposit. Commencing on the fifteenth (15th) day of the month during which the fifth (5th) anniversary of the Completion of Construction occurs, and continuing on or before the fifteenth (15th) day of each month thereafter until five (5) years prior to the expiration of the Term, Tenant shall make a monthly deposit to the Capital Improvement Fund in an amount equal to **three percent (3%)** of the monthly installment of Annual Base Rent for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, and shall be treated as a credit against the Capital Improvement Fund deposits required to be made by Tenant pursuant to this Section 6.8.3.

6.8.4 Disbursements From Capital Improvement Fund. Disbursements shall be made from the Capital Improvement Fund only for costs which satisfy the requirements of this Section 6.8.4. For the purpose of obtaining the Landlord's prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Landlord on an annual calendar year basis a capital expenditure plan for the upcoming three (3) year period which details the amount and purpose of anticipated Capital Improvement Fund expenditures ("**Capital Improvement Plan**"). Landlord shall approve or disapprove such Capital Improvement Plan within thirty (30) days of receipt, which approval shall not be unreasonably withheld, conditioned or delayed. Any expenditure set forth in the approved Capital Improvement Plan shall be considered pre-approved by Landlord (but only up to the amount of such expenditure set forth in the Capital Improvement Plan) for the duration of the upcoming year. Tenant shall have the right during the course of each year to submit to the Landlord for its approval revisions to the then current Capital Improvement Plan, or individual expenditures not noted on the previously submitted Capital Improvement Plan. In the event of an unexpected emergency that necessitates a Permitted Capital Expenditure not contemplated by the Capital Improvement Plan, the Tenant may complete such work using the funds from the Capital Improvement Fund with contemporaneous or prior (if possible) written notice to the Landlord and provide applicable documentation to the Landlord thereafter for Landlord approval. If the Landlord reasonably disapproves the emergency expenditure, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the Landlord of its decision.

6.8.5 Expenditure of Funds. All amounts then-existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than four (4) years prior to the expiration of the Term unless Landlord has notified Tenant pursuant to Section 2.12.4(a) that it requires that the Improvements be demolished, in which case no expenditures are required to be made after the date of such notice, and any remaining amounts in the Capital Improvement Fund may be transferred to the Demolition Account.

6.8.6 Expenditure of Other Tenant Funds. Notwithstanding anything above to the contrary, if Tenant incurs expenditures that constitute Permitted Capital Expenditures but which are not funded out of the Capital Improvement Fund because sufficient funds are not then available in such fund, then Tenant may credit the Permitted Capital Expenditures so funded by Tenant out of its own funds against future Capital Improvement Fund contribution obligations of

Tenant; provided, that such credit must be applied, if at all, within four (4) years after such Permitted Capital Expenditure is incurred by the Tenant.

6.9 Vending. Tenant shall have the right to enter into all contracts for the provision of vending services in the Improvements and may allow each Building Tenant the right to enter into such contract with respect to such tenant's own space in the Improvements.

ARTICLE VII TAXES AND ASSESSMENTS

7.1 Taxes. Tenant will pay all Taxes and Assessments prior to the delinquency date thereof. Tenant's obligation to pay Taxes and Assessments includes, without limitation, the obligation to pay all real estate taxes, taxes upon or measured by rents, personal property taxes, privilege taxes, gross receipts taxes, excise taxes, parking taxes, business and occupation taxes, gross sales taxes, transient occupancy taxes, occupational license taxes, water charges, sewer charges, or environmental taxes or assessments of any kind and nature whatsoever, levied by the State of California, the government of the United States, or any agency or subdivision thereof, or any other governmental body or assessment district, during the Term, whether or not now customary or within the contemplation of the parties hereto and regardless of whether the same shall be foreseen or unforeseen, similar or dissimilar to any of the foregoing. Landlord specifically calls to Tenant's attention the fact that this Lease may create a possessory interest subject to property taxation, and Tenant may be subject to property tax levied on such interest. Landlord specifically calls to Tenant's attention the fact that the County Assessor of the County may value the possessory interest created by this lease, or any subleases. Under California Revenue and Taxation Code Section 107, a property interest tax may be levied on that possessory interest. The Tenant is obligated to pay this property tax, and failure to do so may be considered a default hereunder. If the right is given to pay any of the Taxes, Assessments or other impositions which Tenant is herein obligated to pay either in one sum or in installments, Tenant may elect either mode of payment.

7.2 Landlord Indemnified and Held Harmless. Tenant agrees to indemnify and hold the Landlord Indemnified Parties harmless from the payment of all Taxes and Assessments. Subject to the provisions of Section 7.3, Tenant will prevent any Tax or Assessment from becoming a delinquency lien upon the Premises or any part thereof. Landlord shall in no way be obligated to pay such delinquent Taxes and Assessments, but Tenant authorizes Landlord to make such payment, and, if Landlord makes such payment, it will become immediately due and payable to Landlord by Tenant and shall bear interest and late charges at the rates provided for in Sections 4.7 and 4.8 of this Lease.

7.3 Tenant's Right to Contest. Tenant shall have the right, at its own expense, to contest the amount or validity of any Tax or Assessment by appropriate proceedings diligently conducted in good faith which shall operate to prevent the collection of any such Tax or Assessment so contested or the sale of the Premises or any part thereof to satisfy the same. As a condition precedent to Tenant's contesting any Tax or Assessment, Tenant shall (a) comply with all Laws respecting such contest, (b) give Landlord prior written notice of Tenant's intent to so contest said amount or validity, and (c) in order to protect Landlord from any sale or foreclosure against the Premises or any part thereof, provide a good and sufficient surety bond or other security deemed appropriate by Landlord in the amount of such Tax or Assessment plus estimated penalties which may be imposed. Tenant shall bear any and all costs, liability or

damage, including attorneys' fees and costs arising out of such contest. Nothing in this section relieves, modifies or extends Tenant's covenant to pay any such Tax or Assessment at the time and in the manner provided in this Article VII.

7.4 Landlord's Cooperation in Tenant's Contest. Provided Landlord incurs no cost or liability in doing so, Landlord shall cooperate with Tenant in any proceedings brought by Tenant to contest the validity or the amount of any Taxes or Assessments or to recover any Taxes or Assessments paid by Tenant. If the provisions of any Law at the time in effect shall require that such proceedings be brought by or in the name of Landlord, then provided Landlord incurs no cost or liability in doing so, Landlord shall join any such proceedings or permit the same to be brought in its name. If any such proceedings shall be brought by Tenant, Tenant shall indemnify the Indemnified Parties and hold the Indemnified Parties harmless against any and all costs or liability of any kind that may be imposed upon the Indemnified Parties in connection therewith, including reasonable attorneys' fees incurred by the Indemnified Parties.

7.5 Excluded Taxes. Tenant's obligation to pay Taxes and Assessments levied and assessed against the Premises or any part thereof shall exclude business, income or profits taxes levied or assessed solely against Landlord by federal, state or other governmental agencies, unless such tax or assessment is levied in lieu of Taxes or Assessments which would have been otherwise payable by Tenant under this Lease.

7.6 Prorations. Taxes and Assessments shall be prorated at the beginning and end of the Term to reflect periods during tax fiscal years at the commencement and expiration (or sooner termination) of this Lease for which said taxes are paid during which this Lease is not in effect.

7.7 Personal Property Taxes. Tenant shall pay, or cause to be paid, before delinquency, all taxes levied against, or on account of, all fixtures, equipment and personal property located in or upon the Premises.

7.8 Separate Assessment. Landlord and Tenant shall cooperate to the extent necessary to obtain a separate assessment and tax bill for the Premises.

7.9 Replacement Taxes. If at any time during the Term the basis of real property taxation prevailing at the commencement of such Term shall be altered so that in addition to, or in lieu of, or as a substitute for, the whole or any part of the real property taxes now levied, assessed or imposed there shall be levied, assessed or imposed upon or against Landlord a tax on rents, a license fee measured by rents, a so-called "value added tax," or any other tax in lieu of or fee resulting from a revision of the present real property tax laws, then and in any such event the same shall be included and deemed within the meaning and purview of this Article VII and Tenant shall be responsible for that portion of any such tax or fee equal to the amount that would have been levied, assessed or imposed on Landlord assuming only the Premises constituted Landlord's real property.

ARTICLE VIII UTILITIES

8.1 Construction of Utilities. Tenant shall construct or shall arrange for the construction of such utilities as are necessary to serve the Improvements in accordance with the

Final Plans. Tenant acknowledges and agrees that all utilities and facilities to be located on the Premises (other than temporary items used during construction) shall be placed below the grade of the surface of the ground. Prior to approval of the Schematic Design Package, Landlord may require increases in the capacity or size of all or any part of the utility systems proposed by Tenant in order to accommodate existing or future demand in the general location of the Premises. In such event, Landlord shall pay the incremental increase, but only such incremental increase, in the cost of the construction occasioned by Landlord's increasing the capacity or size of a utility system.

8.2 Cost of Utilities. All costs associated with bringing required utilities from the point of origin to the point of connection at the Improvements, including, without limitation, related professional, engineering and consultant fees, service charges, meters, and the costs of connections, including, without limitation, any hook-up fees or increased capacity charges assessed by any utility company, water district and/or government agency, shall be paid by Tenant except as provided above in Section 8.1 with respect to the common infrastructure facilities. Tenant shall be responsible for paying all costs associated with bringing required utilities from the point of origin to the point of connection at the Improvements (including, without limitation, a sewer assessment charge) regardless of whether a utility company, water district, and/or government agency imposes any related assessment on the University campus as a whole or on Tenant directly. If any such charge is imposed on the University campus as a whole, the University shall allocate these charges equitably among all utility users on the campus, including Tenant, based on relative usage. In making such allocation, University agrees to not treat the Tenant in a discriminatory manner. In no event shall Tenant be charged twice for the same assessment.

8.3 Utility Easements. University has the right to grant to others (or itself) in the future non-exclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Tenant's use of the Premises. Any interference arising as a result of construction of improvements related to such utility systems and facilities shall be temporary, and all work on the Premises and/or such easement areas shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises and/or such easement areas. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises and/or such easement areas, or any portion thereof, including but not limited to, pavement, curbs and sidewalks, Landlord shall promptly repair the same, or cause the same to be promptly repaired, at no cost or expense to Tenant.

ARTICLE IX ALTERATIONS, DAMAGE OR DESTRUCTION

9.1 Alteration of Improvements. Tenant may make alterations and additions to the Improvements ("Alterations") which affect only the interior, non-structural elements of the Improvements or which are otherwise consented to by Landlord in writing. Tenant warrants that all Alterations shall be constructed in accordance with and shall comply with all applicable Laws and building codes. With respect to any Alterations which require Landlord's prior written consent, Tenant shall submit to Landlord, prior to commencement of any such Alterations, and at Tenant's sole cost, any building plans and all permits and authorizations of all municipal departments and governmental agencies, including any University Entity, as may have jurisdiction over the Alterations. Landlord reserves the right to grant or withhold its consent

required in this Section 9.1 for any Alteration that requires Landlord's prior written consent in its sole and absolute discretion. However, without limiting the generality of the foregoing, Landlord may disapprove any proposed Alteration which requires Landlord's prior written consent which is not in harmony with: (a) the design of existing or proposed structures in adjacent areas of the University campus, (b) any provision of the campus master plan, (c) any regulation or ordinance of the State of California, the City or the County or the federal government of the United States of America if any such regulation or ordinance is applicable to the Premises, or (d) then current good engineering practice.

9.2 Damage or Destruction of Improvements.

9.2.1 Reconstruction After Casualty. If, during the Term, the Improvements are wholly or partially damaged or destroyed (whether or not such casualty is covered by insurance, or required to be covered by insurance under the terms of this Lease), Tenant shall promptly give written notice of such damage or destruction to Landlord. Except as provided in Section 9.2.2 or 9.2.3, such damage or destruction shall not terminate this Lease, and Tenant shall promptly repair and restore the Improvements to substantially the same floor area, size, type, quality and nature as existed immediately prior to such damage or destruction unless Landlord gives its prior written approval to do otherwise pursuant to Section 9.1. Tenant shall utilize any available insurance proceeds to fund the costs of such repair and restoration and to the extent insurance proceeds do not cover such costs, all further costs shall be at Tenant's sole cost and expense. Such repair and restoration shall be commenced promptly and prosecuted with due diligence. If the Improvements are not repaired and restored and if this Lease is terminated, each with the consent of Landlord or as provided in Section 9.2.2 or 9.2.3, then any insurance proceeds shall be applied as follows and in the following order of priorities.

- (a) first, insurance proceeds shall be applied towards demolition and removal expenses which may be incurred by Tenant, or, upon Tenant's failure, Landlord. Tenant hereby acknowledges its obligation to demolish and remove Improvements upon Landlord's demand in the event of a termination of the Lease as described in Section 9.2.2, and that such demolition and removal shall be accomplished at Tenant's sole cost to the extent that available insurance proceeds are insufficient for such purpose;
- (b) second, insurance proceeds shall be applied to payment of the principal amount, and accrued interest then owing to a Leasehold Mortgagee, to the extent that such principal or accrued interest is not in default as of the date this Lease is terminated; and
- (c) third, all remaining insurance proceeds shall be allocated between Landlord and Tenant as follows:
 - (1) the Tenant shall be allocated a portion of such remaining insurance proceeds equal to a fraction thereof, where the numerator of such fraction is the number of complete months remaining under the current term of the Lease including all available extension periods under Section 2.4 and whose denominator is the total number of complete

months in the Lease term including all such available extension periods; and

- (2) the Landlord shall be allocated all remaining insurance proceeds not allocated to the Tenant pursuant to subparagraph (1) above.

9.2.2 Damage or Destruction in Last Five Years of the Term. During the last five (5) years of the Term, Tenant may elect not to repair or restore the Improvements as otherwise required by Section 9.2.1 if such damage or destruction is more than fifty percent (50%). Similarly, during the last two (2) years of the Term, Tenant may elect not to repair or restore the Improvements as otherwise required by Section 9.2.1 if such damage or destruction is more than twenty percent (20%) of the then replacement value of the Improvements. If Tenant makes such an election not to repair or restore the Improvements, Tenant shall automatically and unconditionally pay all insurance proceeds to Landlord, which shall be applied as set forth in Section 9.2.1 above, and to the extent that the insurance proceeds do not cover the then replacement cost of the Improvements, Tenant shall pay Landlord the balance not covered by such insurance proceeds. Landlord may, following such termination, elect to direct Tenant to use the insurance proceeds plus, as necessary, any portion of the balance to be paid by Tenant to Landlord to demolish the Improvements, remove all debris and grade and clean the Premises in which case Landlord shall retain all remaining insurance proceeds, if any, plus the remaining portion of Tenant's contribution of the balance not covered by insurance proceeds.

9.2.3 Reconstruction at Option of Tenant on Partially Insured Loss. In the event that damage contemplated by Section 9.2 occurs and the insured portion of the repairs is less than sixty percent (60%) of the costs of the repairs, then Tenant may elect not to repair or restore the Improvements as otherwise required by Section 9.2.1.

9.3 Work of Improvement. All construction and other work of making any Alterations or repairing any damage or destruction to the Improvements shall be undertaken in a lien-free and good and workmanlike manner, in strict conformity to the Construction Requirements (to the extent applicable), including without limitation the requirements of Article III; provided, however, for this purpose all references to the "Improvements" in Article III shall be read to mean the applicable Improvements, and the dates for commencing and completing the applicable work shall be as set forth in the Final Plans for the applicable Improvements, as approved by the BOT.

ARTICLE X INSURANCE

10.1 Commercial General Liability Insurance. Tenant shall, at its sole cost and expense, procure and maintain during the entire Term of this Lease comprehensive general liability insurance including, without limitation, insurance against claims for damages to property or injuries to persons which may arise in connection with the construction and use of the premises by Tenant, its agents, representatives, employees, subcontractors and Building Tenants, with not less than the limits and of the types set forth below:

- (a) business auto liability: for autos owned, hired, scheduled or non-owned with a combined single limit no less than Two Million Dollars (\$2,000,000) per occurrence;
- (b) commercial general liability \$2,000,000 per occurrence for initial Improvements with a budgeted “all-in” construction cost of up to Five Million Dollars (\$5,000,000), and commercial general liability of \$5,000,000 per occurrence for initial Improvements with a budgeted “all-in” construction cost of Five Million Dollars (\$5,000,000) or more;
- (c) general aggregate covering the Premises only (bodily injury, property) of \$5,000,000 that is dedicated specifically for the Premises, and general aggregate coverage of \$10,000,000 if applicable across multiple properties;
- (d) employers’ liability \$1,000,000 per occurrence; and
- (e) workers’ compensation insurance as required by the State of California.

The limits of liability of the insurance coverage specified in this Section 10.1 may be provided by any combination of primary and excess liability insurance policies. The minimum policy limits specified in this Section 10.1 shall be subject to increase from time to time at the reasonable direction of Landlord; *provided, however*, that such increases shall not exceed the amount of coverage generally carried in connection with projects and business operations of a similar nature in the Southern California area. Any deductibles or self-insured retentions must be declared to Landlord and will not exceed commercially reasonable levels. Notwithstanding anything to the contrary, the minimum policy limits specified in this Section shall be subject to increase from time to time at the reasonable direction of Landlord. Liability insurance in place during the construction of the Initial Improvements shall include construction defect coverage with a minimum of ten (10) years coverage for defects which are reported under the policy for the products and completed operations of the initial Improvements.

10.2 Property Insurance During Construction. During construction of any Improvements on the Premises, Tenant shall obtain and maintain builder’s risk insurance against “all risk” of physical loss, including, without limitation, the perils of flood, collapse and transit, covering the total cost of work performed, equipment, supplies and materials furnished on a replacement cost basis. Tenant shall also maintain insurance covering the cost of delay in completion of said construction caused by the “all risk” perils referred to above, which shall cover not less than the rent due to Landlord hereunder and the rent which reasonably would have been due to Landlord if the Improvements had been completed, and shall cover not less than twelve (12) months of such payments of rent under this Lease. Landlord, University, the BOT, and the officers, employees, and agents of each of them are to be named by endorsement as loss payee. All contractors shall be included as additional insureds under such policies or under policies maintained by Tenant’s general contractor or Tenant shall furnish separate certificates and endorsements for each subcontractor to the Landlord for review and approval. All coverages for contractors shall be subject to all of the requirements stated herein.

10.3 Property Insurance After Construction. Upon completion of construction of the Improvements, Tenant shall obtain and maintain insurance continuously during the Term

against loss or damage by fire and such other risks as may be included in standard property insurance (formerly known as “all risk”), including, without limitation, fire, lightning, riot and civil commotion, vandalism and malicious mischief, and loss or damage from explosion of boilers, generators, transformers, heating apparatus and air conditioning systems. Tenant shall also obtain and maintain earthquake insurance if such insurance is available at commercially reasonable rates with commercially reasonable deductibles to Tenant. Such insurance shall be in amounts not less than the full, undepreciated replacement cost of such Improvements plus loss of rent to the Landlord. Such insurance policies shall indemnify the policyholder for losses on a “replacement cost valuation” basis, and shall provide for reappraisal of the replacement cost not less than every three (3) years during the Term. The Leasehold Mortgagee shall be an insured mortgagee and Landlord, the Board of Trustees of the California State University, and the officers, employees, and agents of each of them shall be named by endorsement as loss payee.

10.4 Escrow of Casualty Insurance Proceeds. All proceeds paid under insurance policies maintained with respect to a casualty affecting the Premises shall be paid to an account maintained by a third party escrow company to be disbursed (a) in the course of completion of the repairs and/or reconstruction to the damaged Improvements, pursuant to funds requests executed by both Landlord and Tenant to pay for goods and/or services provided in connection with such repairs and/or reconstruction, including, if applicable, Annual Base Rent payments to Landlord (it being understood and agreed that Tenant’s requests for funds, and Landlord’s prompt execution of such funds requests, shall not unreasonably be submitted or denied), and (b) thereafter, outright to Tenant as Tenant’s property. The requirements in the loan documents of any Leasehold Mortgage regarding use of such insurance proceeds shall prevail over this Section 10.4 provided such proceeds are to be used for repair and/or reconstruction to the damaged Improvements. Nothing in this Section 10.4 shall require use of insurance proceeds to repair or replace damaged Improvements where only demolition or removal is required pursuant to Section 9.2.1 above.

10.5 Workers’ Compensation Insurance. Tenant shall maintain workers’ compensation and/or employers’ liability insurance in a form and amount covering Tenant’s full liability as required under applicable California state law.

10.6 Tenant Not Relieved. It is expressly understood that the coverage required herein shall not in any way limit the liability of Tenant.

10.7 Additional Insureds. Coverages referred to in this Article X shall name Landlord, State of California, the Trustees of the California State University, their officers, employees, representatives, agents, and volunteers as additional insureds and shall not exclude Landlord, State of California, the Trustees of the California State University, their officers, employees, representatives, agents, and volunteers from coverage with respect to the negligent acts or omissions of Tenant, its officers, agents, employees, or any person or persons under its direction and control. Each policy shall further make provision for thirty (30) days advance written notice to Landlord of any proposed modification, change or cancellation of any of the above insurance coverages.

10.8 Basis of Insurance. The insurance required to be carried by this Article X is to be written on an “occurrence” basis.

10.9 Proceeds. The proceeds from any insurance covering damage to property shall be applied as set forth in Section 9.2 and Section 10.4 above.

10.10 Waiver of Subrogation Rights. Each policy of insurance procured pursuant to this Article X shall contain either (a) a waiver by the insurer of the right of subrogation against either party hereto for negligence of such party, or (b) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss described in the insurance policy. Tenant hereby waives any and all rights of recovery against Landlord, the BOT, University and its employees, faculty and students, for loss or damage to Tenant or its property or the property of others arising from any cause insured against under the policies required to be carried by this Article X. In consideration of Tenant's property insurer's waiver of all rights of subrogation against Landlord and against Landlord's agents and representatives, Landlord agrees likewise to waive, or arrange for its property insurers to waive, any right of subrogation against Tenant by reason of loss of or damage to real or personal property of either Landlord or Tenant.

10.11 Compliance with Requirements of Carriers. Tenant shall at all times observe and comply with the requirements of all policies of insurance in force with respect to the Premises, or any party thereof, and Tenant shall so perform and satisfy the requirements of the companies writing such policies so that, at all times, companies of good standing reasonably satisfactory to Landlord shall be willing to write or to continue such insurance. Insurance shall be placed with insurers authorized to do business in California by the state's insurance department and which have a current A.M. Best rating of no less than A:VI, unless otherwise acceptable to Landlord. Notwithstanding the foregoing, if the insurer is not authorized to do business in California by the state's insurance department, the insurer must have a current A.M. Best rating of no less than A:X, unless otherwise acceptable to Landlord. Tenant shall, in the event of any violation or attempted violation, of the provisions of this Section 10.11 by any Building Tenant, licensee or other user of any portion of the Premises take steps immediately upon knowledge of such violation or attempted violation to remedy or prevent the same.

10.12 Non Contributing. All insurance required to be carried by this Article X shall be non contributing with any insurance carried by any of the named or additional insureds under said policies.

10.13 Termination Notice/Form of Policies. In no event will such insurance be terminated or otherwise allowed to lapse prior to termination of this Lease, or such longer period as may be specified herein. Tenant may provide the insurance required by this Article X in whole or in part through a policy or policies covering other liabilities and properties of Tenant, provided that any such policy or policies shall allocate to the Premises the full amount of insurance required hereunder.

10.14 Evidence of Insurance. Tenant shall provide Landlord with certificates or other evidence of insurance satisfactory to Landlord evidencing the maintenance of insurance required to be carried by this Article X. Should any policy of insurance expire or be canceled and Tenant fails immediately to procure replacement insurance as required by Article X, Landlord shall have the right, but not the obligation, to procure such insurance and to receive payment from Tenant for the full cost thereof. If Landlord or University is damaged by the failure to provide or maintain the required insurance, the Tenant shall pay Landlord or University for all such damages.

10.15 Settlement of Claims. Provided Tenant is not in default under this Lease, nor has there occurred any event which, with the giving of notice or the passage of time or both, could result in Tenant being in default under this Lease, if any portion of the Improvements shall be damaged or destroyed by an insured peril or otherwise, Tenant shall have the right to settle, adjust or compromise any claim.

10.16 Review of Insurance Requirements. Tenant and Landlord shall review the insurance requirements set forth in this Article five (5) years after execution of this Lease, and every five years thereafter, and make any necessary adjustments to ensure Tenant's insurance coverage is consistent with industry standards.

ARTICLE XI CONDEMNATION

11.1 Lease Governs. In the event of any Taking during the Term, the rights and obligations of the parties with respect to such appropriation and any Award in connection therewith shall be provided in this Article XI.

11.2 Taking Defined. "Taking" shall mean any acquisition of or damage to all or any portion of the Premises, or any interest therein or right accruing thereto, pursuant to or in anticipation of the exercise of the power of condemnation or eminent domain, or by reason of the temporary requisition of the use or occupancy of the Premises, or any part thereof, by any governmental or quasi governmental authority, civil or military, or any other agency empowered by law to take property in the State of California under the power of eminent domain.

11.3 Total Taking Defined. A "Total Taking" shall mean either (a) a Taking of all of the Premises other than for temporary purposes or (b) a Taking of so much of the Premises as to render, in Tenant's reasonable judgment, the balance of the Premises unsuitable for the operation of a [*insert Permitted Uses*].

11.4 Partial Taking Defined. A "Partial Taking" shall mean a Taking which does not constitute a Total Taking.

11.5 Termination of Lease. In the event of a Total Taking, this Lease shall terminate effective on the date of surrender of possession of the Premises, or so much thereof or interest therein as has been taken, to the condemning authority. Tenant shall continue to pay all rent due hereunder and, in all respects, keep, observe and perform all of the terms, covenants, agreements and conditions of this Lease to be kept, observed and performed by Tenant until the date of such termination.

11.6 Partial Taking; Rental Abatement. In the event of a Partial Taking, this Lease shall remain in full force and effect with respect to that portion of the Premises not so taken, and a fair and equitable proportion of the Base Rent shall be abated according to the nature and extent of the Partial Taking, and the duration and extent of the interruption of Tenant's operations due to such taking and restoration of the Improvements. Any dispute between Landlord and Tenant concerning the proportion of rent to be abated under this Section 11.6 shall be resolved by mediation and arbitration in accordance with Article XVII.

11.7 Partial Taking; Restoration. In the event of a Partial Taking, Tenant will, at its sole cost and expense, whether or not the condemnation award on account of such taking shall be

sufficient for the purpose, promptly commence and proceed with due diligence (subject to Force Majeure) to effect restoration of the Improvements on the remaining portion of the Premises as nearly as possible to their value, condition and character immediately prior to such Taking, in accordance with the provisions of Article IX which shall apply to such restoration.

11.8 Distribution of Award. All awards and damages received on account of any Taking, whether partial or total (including all amounts in respect to both the Premises, improvements constructed thereon, and personal property located thereon or thereat), including interest received, if any, whether such award or damages are paid in respect to the Taking of the fee or leasehold interest in the Premises (hereinafter collectively referred to as the “Award”), shall be paid promptly by the person(s) receiving the same to an escrow agent mutually acceptable to Landlord and Tenant, to be released as hereinafter provided upon appropriate instruction from the parties hereto.

11.9 Allocation of Award; Partial Taking. Any Award in a Partial Taking shall be distributed by the aforementioned escrow agent in the following order of priority:

- (a) first to Landlord, Tenant and any Leasehold Mortgagees, as herein provided, as reimbursement for all costs and expenses incurred by each of them in the collection of the Award, including fees and expenses incurred in the condemnation proceeding;
- (b) second, to Tenant, as reimbursement for the cost and expense of restoration of the Improvements, as such costs and expenses are incurred by Tenant; and
- (c) third, to any Leasehold Mortgagees, in the order of their respective priorities (but not in payment of any defaulted interest or penalties).

The balance of the Award, if any, shall be deposited by the escrow agent into a court of competent jurisdiction to be equitably allocated between Landlord and Tenant based on the respective interests of Landlord and Tenant in the balance of said Award as determined by said court after taking into account the interests of Landlord and Tenant previously compensated in the distributions provided for in paragraphs (b) and (c) above.

11.10 Allocation of Award; Temporary Taking. In the event of a Taking for temporary use or occupancy, this Lease shall continue in full force and effect without reduction or abatement of any rent payable hereunder, and Tenant shall be entitled to claim, recover and retain any Award made on account of such temporary Taking; provided, however, that if the period of such temporary Taking extends beyond the Term, such Award shall be apportioned between Landlord and Tenant as of the date of expiration of the Term.

11.11 Allocation of Award; Total Taking. Any Award in a Total Taking shall be distributed by the aforementioned escrow agent in the following priority:

- (a) first, to Landlord, Tenant and any Leasehold Mortgagees, as herein provided, as reimbursement for all costs and expenses incurred by each of them in the collection of the Award, including fees and expenses incurred in the condemnation proceeding;

- (b) second, to any Leasehold Mortgagees, in the order of their respective priorities, such sum as is necessary to satisfy and discharge the liens thereof; and
- (c) the balance of the Award, if any, shall be deposited by said escrow agent into a court of competent jurisdiction to be equitably allocated among Landlord and Tenant based on the respective interests of Landlord and Tenant in the balance of such Award as determined by the court after taking into account the interests of Landlord and Tenant previously compensated in the distribution provided for in paragraphs (a) and (b) above.

The determination of the value of Tenant's interest in the Premises shall be made as if the Lease were to continue in full force and effect until the expiration of the Term including all available extensions of the Term under Section 2.5.

11.12 Conduct of Proceedings. Subject to the rights of Landlord and any Leasehold Mortgagee to participate therein, Tenant and Landlord shall jointly commence, appear in and prosecute any action or proceeding involving a Taking of the Premises, or any part thereof or interest therein, by condemnation or under the power of eminent domain, or otherwise and shall jointly make any compromise or settlement in connection therewith. If the parties disagree concerning such action or proceeding and there shall exist an Event of Default under this Lease, Landlord shall be entitled at its option to commence, appear in and prosecute on its own and in its own name any such action or proceeding and Landlord shall also be entitled to make on its own any compromise or settlement in connection therewith, subject to the rights of Landlord and any Leasehold Mortgagees to participate therein.

11.13 Notice. Upon any party receiving notice of or becoming aware of any condemnation proceedings, or threats thereof, such party shall promptly give written notice to the other party in the manner specified in Section 19.1.

ARTICLE XII ASSIGNMENT, SUBLETTING AND BUILDING TENANT LEASES

12.1 Assignment. Tenant may as provided in Article XIV below with respect to the financing of the construction of the Improvements, and any refinancing thereof, assign all of Tenant's Interest to a Leasehold Mortgagee as security for financing of the construction of any of the Improvements, or any refinancing thereof. Such assignment shall be permitted only with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Landlord's approval or denial shall be provided to Tenant within twenty (20) Business Days of Tenant's written request, which shall contain the information regarding the assignee delineated in the next paragraph. If Landlord does not respond to the request within twenty (20) Business Days, the request shall be deemed approved. All assignments shall be subject to the following conditions:

- (a) Except with respect to partial assignments of Tenant's Interest made in connection with Building Leases pursuant to Sections 12.3 and 12.4 below or an assignment of Tenant's Interest to a Permitted Assignee, no other

purported assignment of Tenant's Interest or any portion thereof, whether voluntarily, involuntarily or by operation of law, shall be permitted nor shall be valid without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall approve or disapprove a requested assignment of Tenant's Interest of any portion thereof within twenty (20) Business Days of a written request to approve the assignment provided that the written request contains at least the following information: (a) the identity of the proposed assignee, (b) reasonable and adequate information and documentation regarding the proposed assignee's (i) financial strength (including, without limitation, current financial statements) and (ii) reputation and experience in conducting operations of like-kind to the uses permitted under this Lease, and representations and warranties from the proposed assignee that (x) it is not included on the List of Specially Designated Nationals and Blocked Persons maintained by OFAC, and that it does not reside in, and is not organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns, or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, and (y) that it has not made a general assignment for the benefit of creditors; filed any voluntary petition in bankruptcy; suffered the filing of an involuntary petition by its creditors; suffered the appointment of a receiver to take possession of substantially all of its assets; suffered the attachment or other judicial seizure of substantially all of its assets; admitted its inability to pay its debts as they come due; or made an offer of settlement, extension or composition to its creditors general.

- (b) If Landlord does not respond to the request within twenty (20) Business Days, the request shall be deemed approved.
- (c) Any attempt to assign without Landlord's prior written approval shall be voidable by Landlord; provided, however, the consent of Landlord shall not be required for the assignment of Tenant's Interest to a Permitted Assignee if written notice thereof is provided to Landlord within five (5) days of such assignment and such Permitted Assignee assumes the obligations of Tenant under this Lease in writing.
- (d) Any assignment of Tenant's Interest, other than to a Permitted Assignee of Tenant, shall be subject to Landlord's right of first offer as set forth in Section 12.6 below and the Right of First Refusal in Section 12.7 below.
- (e) In the event of any assignment of the Tenant's complete or partial interest in the Lease including but not limited to the sale or assignment of the

Improvements and any Alterations permitted under this Lease including an assignment approved by Landlord, the assignee shall take its assigned interest subject to the terms of the Lease and, as a condition to the validity of such assignment, shall covenant that the Lease shall be faithfully performed by the assignee as the Tenant. In the event of an approved assignment of all of Tenant's Interest, then after the date of said assignment, Tenant shall have no liability for any obligations of the Tenant under this Lease arising after the date of the assignment.

- (f) Any assignment of only a portion of Tenant's Interest, even if approved by Landlord or otherwise permitted under the terms of this Lease, shall in no event relieve Tenant from the full and faithful performance of Tenant's obligations hereunder.
- (g) Tenant shall pay for Landlord's reasonable expenses in reviewing any proposed assignment of Tenant's Interest, including the allocated costs of legal counsel and auditors, in an amount not to exceed [**Ten Thousand Dollars (\$10,000)**].
- (h) The consent by Landlord to any transfer, hypothecation, assignment or subleasing shall not constitute a waiver of the necessity for such consent to any subsequent assignment, transfer, hypothecation or subleasing.
- (i) If at the time of any assignment there is no Security Deposit, then the assignee shall provide to Landlord, as security for the faithful performance by Tenant of all of its obligations under this Lease, the sum of [**Three Hundred and Fifty Thousand Dollars (\$350,000)**] as a Security Deposit, to be held in an account established in accordance with the provisions of Section 2.9 hereof.

12.2 Transfers of Interests in Tenant. The transfer of any controlling interest in Tenant (other than to a Permitted Assignee) shall be deemed an assignment within the meaning of this Article XII. Any transaction by which Tenant or any manager, majority shareholder, or general partner of Tenant undergoes a merger or other reorganization, including, without limitation, a sale of all or substantially all of its assets, wherein the stakeholders of Tenant or of Tenant's member, majority shareholder, or general partner, as applicable, immediately before the merger or reorganization do not retain control of the surviving corporation, limited partnership, limited liability company, or other entity, shall be deemed a transfer of this Lease for purposes of this Article XII unless the resulting Tenant is a Permitted Assignee. Notwithstanding anything to the contrary contained herein, if Tenant is a publicly traded company, any sale or other transfer of any of the stock of, or other ownership interests in, Tenant shall not be deemed an assignment within the meaning of this Article XII unless said sale or other transfer is made by a person or entity (or related groups of persons or entities) owning a controlling interest in Tenant and results in a change in the person(s) or entity/entities having control of Tenant. As used in this Section 12.2, the term "control" and related words shall have the meaning set forth in Article 1.

12.3 Building Tenant Leases. Tenant shall have the right to enter into Building Tenant Leases with any Person without the consent of Landlord provided that the Building Tenant Lease complies with the requirements of this Lease. So long as any such Building

Tenant Lease is in full force and effect, any Subtenant shall not be made a party to any action or proceeding to enforce any rights of Landlord, nor shall such Subtenant's possession or right of possession be disturbed or in any way interfered with, nor shall the leasehold estate of any such Subtenant be terminated by reason of any default by Tenant under this Lease.

12.4 Requests for SNDAs from Subtenants. If any Subtenant enters into or intends to enter into a Building Tenant Lease permitted by Section 12.3 and such Subtenant requests that Landlord enter into an SNDA Agreement, Landlord will execute an SNDA Agreement in the form attached hereto as **Exhibit G** within fifteen (15) Business Days of written request from Tenant.

12.5 Subtenant's Option to Purchase. In no event shall any Building Tenant Lease include an option or other right for a Subtenant to acquire all or any part of the Tenant Interest, unless such option or other provision has been approved in writing by Landlord in its sole and absolute discretion. Any approval by Landlord of a Building Tenant Lease providing for a Subtenant's purchase of all or a portion of the Tenant Interest shall not constitute a waiver of Landlord's right to disapprove of the assignment of this Lease pursuant to such option or other right if a material adverse condition in connection with the proposed assignee or use of the Premises has occurred at any time prior to such assignment.

12.6 Right of First Offer. If Tenant wishes to sell, assign or transfer all of Tenant's Interest, Tenant will first offer Tenant's Interest to Landlord pursuant to a written offer (the "**Offer**") setting forth all of the terms and conditions on which Tenant is willing to sell Tenant's Interest. Landlord shall have until thirty (30) days from the date of its receipt of the Offer to elect to accept the Offer and purchase Tenant's Interest on the terms and conditions set forth in said Offer (except that a formal purchase and sale agreement shall be prepared by Tenant after said election to document all terms and conditions and subject to Landlord's reasonable approval). If Landlord does not exercise its right to acquire Tenant's Interest by notifying Tenant in writing of its election to do so within said thirty (30) day period or if Landlord notifies Tenant in writing before the expiration of that period that it does not elect to accept the offer, then Tenant may, for a period of six (6) months following the expiration of said thirty (30) day period or receipt of Landlord's notice not to accept the offer, whichever is earlier, sell Tenant's Interest at a purchase price no less than that set forth in the Offer provided that Tenant first gives Landlord the right of first refusal pursuant to Section 12.7 below. Nothing in this Section 12.6 shall serve to circumvent Landlord's approval rights to any assignment or partial assignment of Tenant's Interest under Section 12.1.

12.7 Landlord's Right of First Refusal. Tenant hereby grants to Landlord the right to purchase all of the Tenant's Interest on the following terms and conditions (the "**Right of First Refusal**"):

- (a) If Tenant should at any time receive a bona fide offer to purchase all or any portion of Tenant's Interest, (the "**Refusal Offer**") from a third party and Tenant desires to accept such offer, Tenant shall deliver to Landlord a notice (the "**Acquisition Notice**") setting forth the name of the prospective purchaser and the terms and conditions of such Refusal Offer.
- (b) Landlord shall have sixty (60) days from receipt of the Acquisition Notice to exercise its Right of First Refusal by delivering notice thereof to

Tenant. Delivery of such notice shall obligate Landlord to purchase Tenant's Interest (or the applicable portion thereof) on the date which is one hundred twenty (120) days after receipt of the Acquisition Notice (or any earlier date requested by Landlord) and on the terms and conditions set forth in the Acquisition Notice except there shall be no due diligence or inspection period or condition. In the event Landlord shall not elect to exercise its Right of First Refusal or fails to timely deliver notice within the sixty (60) day period, Landlord shall conclusively be deemed to have waived its Right of First Refusal as to the transaction described in the Acquisition Notice in question and Tenant may thereupon proceed to sell the Tenant's Interest (or portion thereof) on the terms and conditions and to the party specified in the Acquisition Notice in question, and in the event the Tenant's Interest (or portion thereof) is sold as set forth in the Acquisition Notice in question, the Right of First Refusal shall not be applicable to any future sales, and this Lease shall remain in full force and effect. Modifications may be made in the offer outlined in the Acquisition Notice without the necessity of resubmitting the offer to Tenant, provided that the purchase price is not reduced, the payment terms are not changed, and provided that the closing date is not extended for a period in excess of one hundred eighty (180) days.

- (c) In the event that Landlord exercises its right of First Refusal and thereafter defaults in the purchase, such default shall be deemed to be a default by Landlord under this Lease and, in addition to Tenant's remedies on account of Landlord's default, Landlord shall thereafter forfeit the Right of First Refusal in this Section 12.7.
- (d) Nothing in this Section 12.7 shall serve to circumvent Landlord's approval rights to any assignment or partial assignment of Tenant's Interest under Section 12.1, or serve to circumvent or limit Landlord's right to sell the Premises and assign the Lease to the purchaser of the Premises.

ARTICLE XIII LIENS AND ENCUMBRANCES

13.1 Covenant Against Encumbrances. Except as provided in Article XIV, Tenant shall not, and shall have no right to, encumber Landlord's interest in the Premises, and Tenant covenants to keep the Premises and each and every part thereof at all times free and clear of any and all liens and encumbrances of any kind whatsoever arising out of Tenant's acts or omissions or those acts or omissions of its agents and Building Tenants, including, without limitation, those liens and encumbrances created by Tenant's acts or omissions, and those created by the performance of any work of improvement, alteration, maintenance, replacement or repair, or labor or furnishing of any material, supplies or equipment in connection therewith. Should Tenant fail to discharge or cause to be discharged any claim of lien within thirty (30) days after service on Tenant, then, on written notice from Landlord, Landlord may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and manner as Landlord may deem appropriate. In such event, Tenant shall immediately reimburse Landlord for the full amount paid by Landlord in connection with such lien or claim of lien, including any attorneys' fees or costs, or other costs expended by Landlord, together with interest and late charges at the rates

provided in Sections 4.7 and 4.8 from the date of payment by Landlord to date of repayment by Tenant.

13.2 Hold Harmless. Tenant covenants and agrees to indemnify, defend and hold the Indemnified Parties of Landlord and the Premises, and all parts thereof, free and harmless from any liens, claims, demands, costs, damages or liability, except for the rights of Leasehold Mortgagees as provided in Article XIV, arising out of the conduct of activities by Tenant, its agents and/or Building Tenants on the Premises. Tenant agrees to pay reasonable attorneys' fees (including fees for Landlord's in-house counsel), costs, charges and other expenses which the Indemnified Parties may incur in negotiating, settling, defending, and otherwise protecting the Indemnified Parties and the Premises, and every part thereof, from and against such liens or claims.

13.3 Non Subordination. The Landlord's reversionary interest in the Premises and Landlord's interest in this Lease shall be superior and prior in interest to any loans, mortgages, deeds of trust, other leases, liens and encumbrances that may hereafter be placed on the Premises, or any part thereof, by, against or as a result of the acts of Tenant or anyone deriving any interest in the Premises, or any part thereof or interest therein, through Tenant. Any loan, mortgage, deed of trust, lease, lien or encumbrance placed by Tenant on the Premises or the Improvements, or any part thereof or interest therein, shall not adversely affect Landlord's interests under this Lease or Landlord's interests in the Premises. Tenant agrees, without any cost or expense to Landlord, to execute any instrument which is necessary or is reasonably requested by Landlord to further confirm the non-subordination of Landlord's reversionary interest in the Premises and Landlord's interest in this Lease. Nothing in the foregoing shall obviate the provisions of Section 14.2 to provide a Lender Recognition Agreement.

13.4 Mechanics' and Similar Liens. Ten (10) days prior to the commencement of any "work of improvement" (as defined in California Civil Code Section 8050) on the Premises, Tenant shall provide Landlord with written notice of the intention to commence such "work of improvement" and Landlord shall have the right to enter the Premises in order to post a notice of non-responsibility in accordance with California Civil Code Section 8444. If it is not practicable to provide such notice before commencing work, such written notice shall be immediately given upon commencement. Tenant shall pay or cause to be paid the total cost and expense of all "work of improvement" on the Improvements. No such payment shall be construed as rent under this Lease. Tenant shall not permit any mechanic's, materialmen's, contractor's, subcontractor's or other lien, arising out of Tenant's use or occupancy of the Premises, or any part thereof, to stand against the Premises, or any part thereof. If any such lien shall be filed against the Premises, or any part thereof, Tenant shall cause the same to be discharged within ten (10) days after actual notice of such filing, by payment, deposit or bond. Notwithstanding the prior sentence, if Tenant seeks to extend the pendency of such lien in order to negotiate with the holder thereof, then Tenant is authorized to conduct such negotiations for a period not to exceed one hundred twenty (120) days from the date of the filing of such lien, if Tenant shall have given Landlord prior written notice of its intention to negotiate. Within the ten (10) day period referred to above, and provided that Tenant shall furnish the release bond required by California Civil Code Section 8424, or any comparable statute hereafter enacted providing a bond freeing the Premises and every part thereof, or take such other action as shall be reasonably acceptable to Landlord to protect the Premises from the effect of such lien. The satisfaction and discharge of any such lien shall not, in any case, be delayed to the date execution is had upon any judgment, rendered thereon, and such delay shall be a default of Tenant hereunder. Tenant shall indemnify,

defend and hold the Indemnified Parties of Landlord harmless against all loss, cost, expense and damage, including attorneys' fees and charges, resulting from any such contest.

ARTICLE XIV HYPOTHECATION

14.1 Lease as Security. This Lease shall be a prior lien against the Improvements and any encumbrance on the Premises with respect to any loans, mortgages, deeds of trust, other leases, liens and encumbrances that may hereafter be permitted to be placed on the Improvements and the Premises under the terms of this Lease and the Ground Lease Non-Disturbance Agreement.

14.2 Financing. Tenant may seek to obtain a loan to finance the Improvements and to refinance the Improvements from time to time during the Term. For such purpose only, Tenant shall have the right, with Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, to assign all or part of Tenant's interest under this Lease, as security to any Institutional Lender (a "**Leasehold Mortgagee**") which has advanced such funds to Tenant pursuant to a promissory note and a trust deed or mortgage (collectively, the "**Trust Deed**"). Landlord's written approval or denial shall be provided to Tenant within twenty (20) Business Days of Tenant's written request, which shall contain the information regarding the assignee's financial strength, reputation and experience delineated in Section 12.1. If Landlord does not respond to the request within twenty (20) Business Days, the request shall be deemed approved.

In the event Tenant assigns all or any portion of Tenant's Interest to secure a loan permitted under this Section 14.2, then the following shall apply:

- (a) Landlord will enter into a Lender Recognition Agreement with the Leasehold Mortgagee;
- (b) The Landlord shall not be required to sign any Trust Deed or the Note, or otherwise become obligated thereunder;
- (c) No such lien, charge or encumbrance shall constitute a lien or encumbrance upon the Landlord's fee title in the Premises or their reversionary interest in the Improvements;
- (d) Any interest in the Premises which the Trust Deed establishes in a trustee, and any lien which it creates, shall expire on or before the date of expiration of this Lease;
- (e) The Trust Deed imposes no financial obligations on the Landlord, contingent or otherwise;
- (f) The Trust Deed shall neither subordinate nor affect the Landlord's right to convey, mortgage, encumber or otherwise hypothecate in any way the Landlord's fee or leasehold title (respectively) or reversionary interest in the Improvements or the Premises;

- (g) Except as otherwise provided herein, no Leasehold Mortgagee or anyone claiming by, through or under such Leasehold Mortgagee shall, by virtue of such claim, acquire any greater rights than Tenant then had under this Lease;
- (h) The Trust Deed shall be subject to all conditions, covenants and restrictions of this Lease and to all rights of Landlord hereunder;
- (i) The Landlord will accept performance under this Lease by any Leasehold Mortgagee as though the same had been performed by Tenant;
- (j) The time available to a Leasehold Mortgagee to initiate foreclosure proceedings, to proceed with foreclosure proceedings, or to obtain possession of the leasehold interest shall be deemed extended by the number of days of delay occasioned by judicial restriction or application or operation of law against any such initiation or occasion by other circumstances beyond such Leasehold Mortgagee's control;
- (k) If two or more Leasehold Mortgagees exercise their rights under this Lease, the Leasehold Mortgagee who would be senior in priority if there were a foreclosure shall prevail;
- (l) This Lease shall not be materially modified, amended or surrendered (except upon termination pursuant to this Lease) without the prior written consent of each Leasehold Mortgagee;
- (m) The Trust Deed shall provide that, prior to the institution of any proceedings to foreclose the Trust Deed or of negotiations to accept an assignment in lieu of the foreclosure of the Trust Deed, the holder or beneficiary thereof shall notify Landlord in writing that such proceedings or negotiations are to be commenced, and Landlord shall have the right, but not the obligation, within sixty (60) days after receiving of such notice to purchase the Trust Deed and the indebtedness which it secures at a purchase price equal to the full amount then owing under said Trust Deed, including accrued interest, reasonable attorneys' fee for the holder or beneficiary, and applicable statutory costs and allowances if any foreclosure proceedings shall have commenced. All loan agreements in connection with any Improvements, including but not limited to construction loans, long term loans and refinancing permitted by the terms of this Lease shall contain the written agreement of the Leasehold Mortgagee that Landlord shall be notified by the Leasehold Mortgagee within thirty (30) days of any default by Tenant on any such loan and shall be given the opportunity to correct the default and assume the loan(s) prior to initiation of foreclosure actions other than the filing of a notice of default pursuant to the California Civil Code Section 2924;
- (n) Tenant shall give Landlord written notice of any Trust Deed prior to the execution and/or recording of same by Tenant, and shall accompany such

notice with a true copy of such Trust Deed and the Note secured thereby;
and

- (o) All insurance proceeds arising from damage or destruction of the Improvements shall be available for restoration thereof to the extent Tenant is obligated under the terms of this Lease to restore the Improvements following such damage or destruction.
- (p) No loan may be in an amount which exceeds seventy-five percent (75%) of the fair market value of the Improvements at the time the loan is entered into.

14.3 Assignment by Leasehold Mortgagee. The written consent of Landlord shall not be required for any assignment of this Lease to a Leasehold Mortgagee or to any other entity or person who purchased the leasehold estate hereunder at any judicial or non-judicial foreclosure sale held pursuant to the terms of a Trust Deed or to a Leasehold Mortgagee, or an Affiliate thereof, who acquired the leasehold estate hereunder through a deed or assignment in lieu of foreclosure, provided that in any such event such other entity or person forthwith gives notice to Landlord in writing of any such assignment or transfer, setting forth the name and address of the transferee, the effective date of such assignment, and the express agreement of the transferee assuming and agreeing to perform all of the obligations under this Lease required of Tenant to be performed, except those covenants which, by their terms, cannot be performed by any person other than the original Tenant, together with a copy of the document by which such assignment was made. In the event a Leasehold Mortgagee, or an Affiliate thereof, acquired the leasehold estate hereunder through foreclosure or deed or assignment in lieu of foreclosure, such entity shall have the right to assign or transfer this Lease to any person or entity with the prior written consent of Landlord, which consent shall be based on Landlord's exclusive determination that Landlord's programmatic and financial interests in consenting to such assignment or transfer are not impaired. Without limitation, Landlord may withhold such consent to assignment if it determines in its sole and absolute discretion that the proposed assignee and its intended use of the Premises are not or would be inconsistent with the mission of the University. The liability of such Leasehold Mortgagee, or such Affiliate thereof, under this Lease will cease upon a Landlord approved assignment or transfer of this Lease (which assignment or transfer shall contain an express assumption by any transferee of all Lease obligations).

14.4 Notice of Leasehold Mortgagee. Concurrently with the execution of any Trust Deed, Tenant shall furnish to Landlord the name and address of each Leasehold Mortgagee secured thereby. Landlord shall thereafter mail each such Leasehold Mortgagee a duplicate copy of any and all notices of default which Landlord may from time to time give or serve upon Tenant under the terms of this Lease.

14.5 Request for Notice of Defaults. Upon the recording of a Trust Deed, Tenant shall, at Tenant's expense, cause to be recorded in the Official Records, a written request, executed and acknowledged by Landlord, for a copy of all notices of default and all notices of sale under such Trust Deed, as provided by the laws of the State of California. Tenant shall include in the body of the recorded Trust Deed itself a request for notice having the effect described above.

14.6 Notice of Defaults to Leasehold Mortgagee. If Landlord has received notice from Tenant of the current names and addresses of one or more Leasehold Mortgagees secured by a Trust Deed in the manner specified in this Lease, Landlord shall not take any action to terminate this Lease because of any default or breach hereunder by Tenant if any such Leasehold Mortgagee under such Trust Deed, within the time periods set forth below after service of written notice to such Leasehold Mortgagee by Landlord of Landlord's intention to terminate this Lease for such default or breach:

- (a) Shall cure, within thirty (30) days of receipt of such notice such default or breach, if the same can be cured by the payment or expenditure of money required to be paid under the terms of this Lease; or
- (b) Shall cure, within sixty (60) days of receipt of such notice such default or breach, if the same cannot be cured by the payment of money, or such longer period of time as reasonably required if such cure cannot be affected until the Leasehold Mortgagee obtains possession of the Premises; and
- (c) In the case of a default or breach which cannot be cured unless and until the Leasehold Mortgagee has obtained possession, shall take possession of the Premises within one hundred twenty (120) days of receipt of such notice (including possession by receiver) and thereafter diligently proceed to cure such default or breach; and
- (d) If such default or breach is not curable under the foregoing subparagraphs (a) through (c), Leasehold Mortgagee shall within thirty (30) days of receipt of such notice institute and thereafter diligently prosecute judicial or non-judicial foreclosure proceedings or otherwise acquire Tenant's Interest hereunder with due diligence, and keep and perform all of the covenants and conditions of this Lease reasonably capable of being performed by Leasehold Mortgagee during such period, including those requiring the payment or expenditure of money by Tenant, until such time as Tenant's leasehold shall be sold by foreclosure pursuant to the Trust Deed or shall be released or reconveyed thereunder.

In the event that any Leasehold Mortgagee fails or refuses to comply with the conditions of this Section 14.6, then and thereupon, Landlord shall be released from the covenant of forbearance herein contained with respect to such Leasehold Mortgagee.

14.7 New Lease for Leasehold Mortgagee. If this Lease shall terminate prior to the expiration of the Term at any time a Leasehold Mortgagee is entitled to cure defaults hereunder, or as a result of rejection of this Lease by a bankruptcy trustee, then, for a period of sixty (60) days measured from the date of notice to such Leasehold Mortgagee of the termination of this Lease, such Leasehold Mortgagee shall have the right to elect to receive from Landlord a new lease of the Premises, but the term of the new lease shall not extend beyond the Term. The Leasehold Mortgagee's right to elect to receive said new lease shall be upon the following terms and conditions:

- (a) The new lease shall have, as the fixed date for the date of expiration thereof, the same date as the fixed date for the expiration of the Term and shall otherwise be on the terms and conditions set forth in this Lease. Such new lease shall be subject to all existing rights of Building Tenants, and all of the terms, covenants, conditions, restrictions and provisions of this Lease.
- (b) At the time of the execution of the new lease, Landlord shall be paid all sums, if any, owing to Landlord under this Lease at the time of termination of this Lease, as well as all sums, if any, which would have become payable by Tenant to Landlord to the date of execution of the new lease, had this Lease not terminated, and which remain unpaid at the time of the execution of the new lease; provided, however, that such Leasehold Mortgagee shall have a credit for all such sums paid to Landlord on account of the Premises after such termination and before the effectiveness of the new lease.
- (c) The Leasehold Mortgagee shall have cured all defaults arising under this Lease and reasonably susceptible of cure by the Leasehold Mortgagee.
- (d) The new lease may, at the option of Leasehold Mortgagee, be executed by a nominee of such Leasehold Mortgagee without the Leasehold Mortgagee assuming the burdens and obligations of Tenant thereunder beyond the period of the Leasehold Mortgagee's occupancy, subject to the prior written consent of Landlord, which consent shall be based on Landlord's exclusive determination that (a) Landlord's programmatic and financial interests in granting the new lease and permitting execution by the nominee are not impaired (including without limitation as the same relates to the mission of the University) and (b) that such nominee is able to perform the obligations under the new lease as fully as the Leasehold Mortgagee would have been able to perform had the lease been entered into with the Leasehold Mortgagee.
- (e) The Leasehold Mortgagee shall have the right to assign or transfer the new lease to any person or entity with the prior written consent of Landlord, which consent shall be based on Landlord's exclusive determination that Landlord's programmatic and financial interests in granting the new lease are not impaired (including without limitation as the same relates to the mission of the University as set forth in Section 14.3 above). The liability of the Leasehold Mortgagee under the new lease shall cease upon an assignment of such new lease (which assignment shall contain an express assumption by any transferee of all Lease obligations).
- (f) Anything to the contrary expressed or implied elsewhere in this Lease notwithstanding, any mortgage, deed of trust, or other lien, charge or encumbrance created by any Leasehold Mortgagee and approved by Landlord shall be subordinate to the new lease.

- (g) If a new lease is issued pursuant to this Section 14.7, Landlord shall enter into a subordination, non-disturbance and attornment agreement with the new lessee in form and substance on the same material terms as the Ground Lease Non-Disturbance Agreement.

14.8 Reimbursement of Landlord Costs. Tenant shall reimburse Landlord for all of its costs and expenses, including fees and expenses of both internal and outside counsel, and consultants' fees and costs, incurred in connection with the review of requests for, and documents and materials related to, any financing of the Improvements.

ARTICLE XV DEFAULT

15.1 Waiver. A waiver by Landlord of any term, condition, or covenant of this Lease shall not constitute a subsequent waiver of the same or any other term, condition or covenant of this Lease, nor of the strict and prompt performance thereof by Tenant. Landlord's delay, failure or omission to reenter the Premises, or to exercise any right, power, privilege, option or remedy arising from any default, shall not impair such right, power, privilege, option or remedy which Landlord has, nor be construed as Landlord's waiver or relinquishment of any such right, power, privilege or option, or its acquiescence to a default. Landlord shall not be required to give notice in order to restore or revive either (a) time as of the essence hereof, nor (b) any other covenant or condition, after Landlord has waived a default in one or more instances. No right, power, privilege, option, or remedy of Landlord shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. Each and all of the rights, powers, privileges, options or remedies given Landlord by this Lease are cumulative and no one of them is exclusive of the other or exclusive of any remedies provided by law, and the exercise of one right, power, privilege, option or remedy by Landlord shall not impair Landlord's right to any other.

15.2 Default by Tenant. Without intending to limit Landlord's right to declare a default of this Lease for any other reason, the occurrence of any of the following shall, at Landlord's election, constitute an "**Event of Default**" under this Lease:

- (a) The vacation or abandonment of the Premises or the Improvements by Tenant for a period of thirty (30) days;
- (b) Tenant's failure to pay to Landlord any amount due and payable hereunder within five (5) days of receipt by Tenant of written notice of default given by Landlord;
- (c) Tenant's failure to timely commence construction or timely achieve Completion of Construction;
- (d) A Stoppage of Construction for more than sixty (60) Business Days within any seventy (70) Business Day period;
- (e) Tenant's failure to meet the target dates set forth in the Construction Schedule by, in each case, ten (10) or more Business Days, and Tenant's failure to make up the necessary time to bring construction into conformance with the target dates set forth in the Construction Schedule within thirty (30) days after notice from Landlord;

- (f) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, when such failure continues to the later to occur of (a) thirty (30) days after written notice thereof by Landlord to Tenant or (b) thirty (30) days after an arbitration has determined that there has been a default if such default is properly a matter of arbitration and same has been submitted to arbitration pursuant to the terms of this Lease; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion within a period not to exceed ninety (90) days additional; or
- (g) The making by Tenant of any general assignment for the benefit of creditors, or the filing of a petition to have Tenant adjudicated as bankrupt, or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days; or the appointment of a trustee or receiver to take possession of substantially all of Tenant's interest in this Lease, when possession is not restored to Tenant within ninety (90) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located on the Premises or of Tenant's interest in this Lease, when such seizure is not discharged within ninety (90) days.

15.3 Remedies by Landlord. Subject to the provisions of this Lease regarding rights of Leasehold Mortgagee, upon the occurrence of an Event of Default, Landlord may resort, cumulatively or in the alternative to the following remedies as well as to any one or more other remedies provided by law or equity:

15.4 Non-monetary Remedies.

15.4.1 Termination. Landlord may, upon Tenant's default, at Landlord's election, terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all of Tenant's rights in the Premises, and every part thereof, shall terminate. Landlord shall not be deemed to have terminated this Lease unless Landlord shall have so declared in writing to Tenant, nor shall Landlord be deemed to have accepted or consented to an abandonment by Tenant by performing acts intended to maintain or preserve the Premises or the Improvements, making efforts to relet the Premises or appointing a receiver to protect Landlord's interest under this Lease. Immediately after notice of termination, Tenant shall surrender and vacate the Premises and all Improvements in a broom clean condition considering ordinary wear and tear, and Landlord may reenter and take possession of the Premises and all Improvements and eject all parties in possession or eject some and not others or eject none; provided that no Building Tenants who are in possession of any portion of the Premises pursuant to Building Tenant Leases entered into in compliance with this Lease, who are not in default and who agree to attorn to Landlord shall not be ejected. In the event of any termination of this Lease, Tenant's right, title and interest in development documents related to the Improvements shall automatically and without additional compensation to Tenant become the property and vest in Landlord. Upon any termination of this Lease, Tenant shall execute such documents as Landlord

may request to memorialize the termination and to release Landlord and the Premises from the terms and conditions of this Lease. Said documents shall include agreements which assign contracts between Tenant and vendors relating to the operation, management or maintenance of the Premises, or any part thereof, to Landlord.

15.4.2 Reentry Without Termination. Landlord may at Landlord's election re-enter the Premises and, without terminating this Lease, at any time and from time to time re-let the Premises and Improvements, or any part or parts of them, for the account and in the name of Tenant or otherwise. Landlord may, at Landlord's election, eject all persons or eject some and not others or eject none; provided that no Building Tenants who are not then in default and who agree to attorn to Landlord, shall be ejected. Any re-letting may be for the remainder of the Term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises or the Improvements or both. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination.

15.4.3 Tenant's Personal Property. Landlord may, at Landlord's election, use Tenant's personal property and fixtures or any of such property and fixtures without compensation and without liability for use or damage, or Landlord may store them for the account and at the cost of Tenant. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

15.5 Monetary Remedies for Tenant's Default.

15.5.1 Termination. Termination under Section 15.4.1 shall not relieve Tenant from the payment of any sum then due to Landlord.

15.5.2 Reentry Without Termination. Landlord's reentry without termination under Section 15.4.2 shall not relieve Tenant from payment to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the proceeds of any reletting or assignment.

15.5.3 Recovery of Damage. In addition to any other remedies Landlord may have, it may recover from Tenant all damages it may reasonably incur by reason of Tenant's Default, including, without limitation, the cost of recovering the Premises and reasonable attorneys' fees and expenses and all other amounts recoverable pursuant to section 1951.2 of the California Civil Code. Landlord shall be obligated to take all reasonable steps to mitigate its damages. The amounts recoverable pursuant to section 1951.2 of the California Civil Code are as follows:

- (a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
- (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in clauses (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted to charge by law. As used in clause (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

15.6 Landlord May Require Strict Performance. Landlord may require strict performance of all covenants and obligations herein as the same shall accrue or become due, including, but not limited to, the right to recover rent and charges equivalent to rent without terminating this Lease and have the right of action therefor without awaiting the end of the Term.

15.7 Landlord May Obtain Possession. Nothing contained herein shall affect, change or waive any rights of Landlord to obtain equitable relief when such relief is otherwise appropriate, or to obtain the relief provided by California Code of Civil Procedure sections 1159, *et seq.*, relating to actions for unlawful detainer, forcible entry and forcible detainer. If Landlord obtains possession of the Premises under a judgment pursuant to Section 1174 of the Code of Civil Procedure, or if Landlord by written notice declares this Lease to be terminated because of a breach of this Lease, then Landlord may repossess and enjoy the Premises, together with all additions alterations and improvements thereto, including the Improvements thereon. Any lawful reentry as provided for herein shall be allowed by Tenant without hindrance, and Landlord shall not be liable in damages or guilty of trespass because of any such lawful reentry.

15.8 No Waiver. Landlord's election to perform any obligation of Tenant on Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant's default, and Tenant shall promptly reimburse, defend and indemnify the Indemnified Parties against all liability, loss, cost and expense arising therefrom.

15.9 Remedies of Tenant. Tenant shall have, subject to Landlord's right to arbitration under Article XVII, such remedies as are provided by law with respect to a breach or alleged default by Landlord.

15.10 Entry of Premises by Landlord. A representative of Landlord may enter the Premises, including the Improvements, during normal business hours upon reasonable prior written notice for the purpose of inspection, subject to Tenant's reasonable requirements as to security on the Premises. Landlord shall give Tenant prior notice of such entry, and, except in the case of an emergency, Landlord shall be accompanied by a representative of Tenant.

15.11 Failure of Tenant to Perform Required Acts. Subject to Tenant's right to contest as provided elsewhere in this Lease, if Tenant fails, refuses, or neglects during the Term to do any of the things required to be done by Tenant, Landlord shall have the right, but not the obligation, to do the same, but at the cost of and for the account of Tenant. Unless Landlord

reasonably believes that its interests may be adversely affected by such delay, Landlord shall in no case take such action sooner than thirty (30) days after giving Tenant written notice of such failure, refusal or neglect. Tenant shall pay to Landlord on demand any sum expended by Landlord under this Section 15.11 together with interest thereon at the rate provided in Section 4.8. Nothing contained in this Section 15.11 shall impair the rights of Landlord with regard to defaults or remedies under the remaining portion of this Article XV. ***[the following is applicable to hotel leases]*** *If a Reserve Account has been established pursuant to Section 6.7, Landlord may elect to use such funds from the Reserve Account to take any action permitted under this Section 15.11. If pursuant to this Section 15.11, Landlord uses funds from the Reserve Account for matters other than those proscribed uses of the Reserve Account set forth in Section 6.7, then within ten (10) days of demand from Landlord, Tenant will replenish the Reserve Account.*

ARTICLE XVI CERTAIN COVENANTS AND REPRESENTATIONS OF TENANT

16.1 Non Discrimination. During the term of this Lease, Tenant and its subcontractors shall not deny the benefits of this Lease to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Tenant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

16.2 Fair Employment and Housing Act. During the term of this Lease, Tenant and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated there under (California Code of Regulations, Title 2, Sections 7285.0 et seq.), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5). Tenant shall permit access by representatives of the Department of Fair Employment and Housing and the Landlord upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Landlord shall require to ascertain compliance with this clause.

16.3 Subcontracts. All of Tenant's contracts with subcontractors regarding or involving Tenant's Interest shall contain provisions similar to those contained in Sections 16.1 and 16.2 above.

ARTICLE XVII MEDIATION AND ARBITRATION; CHOICE OF FORUM

17.1 Disputes Subject to Mediation and Arbitration. The provisions of this Article 17 shall in no way limit the following even though it may be before, after, or during the pendency of any Accelerated Trial: (a) the right of Landlord to obtain a judgment for unlawful detainer, ejectment or the like from a court of competent jurisdiction; or (b) the right of any party to exercise self-help remedies; or (c) the right of any party to obtain equitable, provisional or ancillary remedies (such as, but not limited to, temporary restraining orders or preliminary or permanent injunctions) from a court of competent jurisdiction. The parties agree that the Superior Court of the State of California, in and for the County, shall have exclusive jurisdiction

over all such matters. The exercise of any such right or remedy by a party shall not waive the right of that party to resort to an Accelerated Trial.

17.2 Initial Mediation. With respect to any dispute between the parties, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. Within five (5) days of the request of any party, the requesting party shall attempt to employ the services of a third person mutually acceptable to the parties to conduct such mediation within five (5) days of his appointment. If the parties are unable to agree on such third person, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute may be referred to arbitration in accordance with the following section.

17.3 Accelerated Trial. Except as set forth in Sections 17.1 and 17.2 above, if either Landlord or Tenant claim that the other is in default or breach of any obligation under this Lease, written notice of such claim shall, in accordance with this Lease, be served upon the other party. Landlord, within ten (10) Business Days of receipt of such claim from Tenant, or concurrently with delivery of written notice to Tenant that a dispute exists as to the claim, or such part of it as the notifying party designates, may elect to resolve such dispute by Accelerated Trial pursuant this Section. If Landlord so elects to resolve the dispute, and if the dispute cannot informally be resolved between the parties, Landlord and Tenant agree to resolve such dispute(s) by accelerated trial (“**Accelerated Trial**”) as follows:

17.3.1 Complaint. The aggrieved party shall file a complaint in the Superior Court of the State of California for the County, specifying the disputed claim as the cause of action upon which the complaint is filed. The complaint shall state that the complainant waives trial by jury.

17.3.2 Answer. Provided that service of the complaint is accompanied by written notice that failure to respond within ten (10) days could result in a default judgment being entered, the defendant must answer the complaint within ten (10) Business Days after service (and such period shall not be extended), for failure of which a default judgment may be entered against it. The answer shall state that the respondent waives trial by jury.

17.3.3 Service of Process. The summons and complaint may be served personally or by U.S. Postal Service Express Mail, return receipt requested, to the addresses provided in this Lease, or in such other manner as provided by law. Service of the answer and other filings shall be made by telephone facsimile transmission with an original simultaneously sent by U.S. Postal Service Express Mail, or in such other manner as provided by law.

17.3.4 Temporary Judge. Not later than five (5) Business Days after service and filing of the answer, the parties shall stipulate that the case shall be heard and determined for all purposes by a retired judge of the Superior Court for the County where the case was filed, appointed and sitting without a jury as a temporary judge pursuant to California Constitution Article VI, Section 21. In the event that the parties cannot agree within fifteen (15) days after service and filing of the answer on the retired judge to be appointed as temporary judge, one shall be appointed, upon the request of either party, by the Presiding Judge of the Superior Court for the County where the case was filed.

17.3.5 Retention of Rights. Notwithstanding their stipulation to a temporary judge to try the case and the waiver by both parties to trial by jury, the parties retain all other rights for discovery, to make motions, to summon and present witness and to present evidence, to cause a record of the case to be made, to require findings and conclusions, to seek a new trial and to otherwise enjoy and obtain all rights and privileges of a party to a lawsuit in a court of record, even though not enumerated herein, that they otherwise would have under the laws of the State of California (and the rules of court thereof) had they not stipulated to a temporary judge; including the right to appeal the judgment of the trial court, to obtain stays, orders, review and other relief from the appellate court and Supreme Court.

17.3.6 Conference. As soon as possible after the appointment of the temporary judge but in no event later than ten (10) days thereafter, the parties shall meet with the judge to arrange a schedule for discovery and pre-trial motions, which schedule shall be designed to bring the matter to trial at the earliest reasonable and feasible date, but in no event later than one hundred twenty (120) days after the conference. The parties agree that the judge shall have considerable latitude in shortening statutory time periods so as to accommodate the desired schedule. Such schedule shall then be established by judicial order.

17.3.7 Enforcement of the Schedule. The parties acknowledge and agree that it is in each of their best interests to resolve the disputes subject to this Section in the shortest reasonable and feasible time. Therefore, the parties agree that the judge shall firmly but fairly enforce the schedule, using whatever tools are provided by law, including, without limitation, contempt citations and the imposition of sanctions.

17.3.8 Limited to Certain Disputes. The parties acknowledge and agree that the provisions of this Section for Accelerated Trial are limited to those certain disputes at the election of Landlord that Landlord expressly agrees would be so resolved. All other disputes between the parties shall be resolved in the manner otherwise available at law or in equity and Accelerated Trial of an issue in the manner set forth in this Section shall not preclude any party from bringing a separate action in any court of competent jurisdiction on a related issue. The terms of this Section also shall not limit or preclude either party's right to bring an action against one who is not a party to this Lease.

17.3.9 Fees and Costs. Landlord and Tenant each shall pay one-half of the fees of the temporary judge and a court reporter.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE CERTAIN DISPUTES ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE ACCELERATED TRIAL PROVISION ABOVE DECIDED BY NEUTRAL REFEREE AS PROVIDED BY CALIFORNIA LAW AND, EXCEPT AS PROVIDED IN SECTION 17.1 AND 17.3.8 ABOVE, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. IF YOU REFUSE TO SUBMIT TO ACCELERATED TRIAL WHEN REQUIRED BY THIS LEASE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO SUBMIT UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ACCELERATED TRIAL PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING.

Landlord's Initials: _____

Tenant's Initials: _____

ARTICLE XVIII DETERMINATION OF FAIR MARKET RENT

18.1 Determination of Fair Market Rent for Premises. Whenever it is necessary pursuant to Section 4.3.2 to determine the Fair Market Rent for the Premises, then the parties shall negotiate and attempt to agree upon, within thirty (30) days of either party's request for determination of such Fair Market Rent, either (i) the Fair Market Rent of the Premises or (b) a single appraiser to determine said Fair Market Rent. If the parties are unable to agree upon either the Fair Market Rent of the Premises or a single appraiser to determine said Fair Market Rent within such thirty (30) day period, then such Fair Market Rent shall be determined pursuant to the provisions of Section 18.2.

18.2 Determination by Appraisal. If the Fair Market Rent of the Premises is to be determined hereunder, the parties shall each appoint an appraiser, by notice delivered to the other. If either Landlord or Tenant selects its appraiser and the other does not within ten (10) business days after receipt of the other party's designation of an appraiser, then the appraiser selected by the party selecting the appraiser shall act as the sole appraiser in determining fair market rent. If both parties have designated an appraiser within said ten (10) day period, each of said appraisers shall, within forty-five (45) days of selection of the last of such appraisers to be selected, independently determine the fair market rent of the Premises and if the two determinations of Fair Market Rent are within ten percent (10%) of each other (using the higher determination as a reference), the two determinations shall be averaged and such average shall be the Fair Market Rent of the Premises. If the two appraisers disagree by an amount greater than 10% (using the higher determination as a reference), the two appraisers shall select a third appraiser who shall, within 45 days of his or her selection, independently and without knowledge of the two appraisals previously made, determine the Fair Market Rent of the Premises. Thereupon, the fair market rent of the Leased Land shall be the average of the two appraisals which are closest in rent and the third appraisal shall be disregarded unless one appraisal is the

arithmetic mean of the other two in which event such mean appraisal shall be fair market rent of the Leased Land. If it is necessary in accordance with the foregoing provisions for the two appraisers selected by Landlord and Tenant to appoint a third appraiser and the two appraisers cannot agree on the third appraiser, within 30 days from the rendering of the two initial appraisals, either party may apply to have the third appraiser selected by the Presiding Judge of the Superior Court of the State of California in the County.

18.3 Methodology of Appraisal. With respect to any appraisal pursuant to this Article XVIII, the Fair Market Rent of the Premises shall be determined without regard to the existence of any Improvements or utilities located thereon and as limited for use by the terms of any zoning or restrictions in this Lease including those imposed by University Entities. Each appraiser shall consider only those appraisal practices, approaches, methods and techniques that are relevant and that conform to the then recognized Standards of Practices and Code of Ethics of the American Institute of Real Estate Appraisers or successor organization. Landlord and Tenant shall each have the right to submit testimony, oral and written, in support of their respective opinions of Fair Market Rent of the Premises, and such submission shall take place within fifteen (15) days after appointment of the appraiser. If there is only one appraiser, each party shall pay fifty percent (50%) of the cost of the appraisal. If there are two or more appraisers, each party shall pay the cost of the appraiser selected by it and the cost of the third appraiser, if any, shall be paid fifty percent (50%) by each party. Landlord and Tenant shall agree on the methodology to be used by the appraisers in determining their appraisals prior to engaging them to perform the appraisals. If Landlord and Tenant do not agree on such methodology within ten (10) days after the end of the thirty (30) day period referenced in Section 18.1, then the methodology selected by Landlord shall be used by the appraisers.

18.4 Qualification of the Appraisers. Each appraiser designated under Section 18.2 shall serve as an independent valuation expert rather than an advocate for the position of or consultant to Landlord or Tenant, and shall meet the following minimum qualifications:

- (a) Shall qualify as an expert in the valuation of property used or intended to be used for the purposes set forth in this Lease;
- (b) Shall be a member of the American Institute of Real Estate Appraisers (MAI);
- (c) Shall be an independent person, not currently or previously an employee, agent or business associate of Landlord or Tenant, or of any financial institutions with legal interests in the Premises; and
- (d) Shall have at least 10 years of experience appraising commercial property in the County, California.

ARTICLE XIX MISCELLANEOUS

19.1 Notices. All notices, demands, or other communications that either party desires or is required or permitted to give or make to the other party under or pursuant to this Lease (collectively referred to as “notices”) shall be made or given in writing and shall either be (i) personally served, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by a

nationally recognized overnight delivery service or courier (such as Federal Express or xxxx). All notices shall be addressed to or personally served on the parties as follows:

If to Landlord, to: California State University, [REDACTED]
[REDACTED]
[REDACTED], California
Attention: Office of the President

and to: The California State University
Office of General Counsel
401 Golden Shore, 4th Floor
Long Beach, California 90802-42
Attention: General Counsel

If to Tenant: [REDACTED]
[REDACTED], CA

Any notice sent to Tenant hereunder shall be simultaneously sent to each Leasehold Mortgagee, provided that Landlord has been given such notice as is required by Section 14.4, by registered or certified mail, return receipt requested, at the address or addresses previously provided by Tenant. Any notice that contains a request for Landlord's consent shall clearly state that consent is being requested in such notice and, if applicable, that failure to respond within the applicable time period (which time period shall be stated in such notice) may be deemed consent. Service of any such notice or demand so made by mail shall be deemed complete as of (i) if personally served, on the day of actual delivery, or (ii) if mailed, the date as shown by the addressee's registry or certification receipt. The address to which notices and demands shall be delivered or sent may be changed from time to time by notice served as herein provided by either party upon the other party. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

19.2 Brokerage Commissions. Each party represents to the other that it has not entered into any agreement or incurred any obligation which might result in the obligation to pay a brokerage commission or finder's fee with respect to this transaction. Each party agrees to indemnify, defend and hold harmless the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnified party as the result of any agreement or act of the indemnifying party giving rise to a claim for such commission or other obligation.

19.3 Estoppel Certificates. Tenant or Landlord, as the case may be, will execute, acknowledge and deliver to the other, within fifteen (15) days of request, its certificate certifying (a) that this Lease is unmodified and in full force and effect, (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates, if any, to which the rent has been paid, (c) that there are no existing offsets or defenses against the enforcement of any term hereof on the part of tenant to be performed or complied with (or, if so, specifying the same), (d) if any notice has been given to either party of any default which has not been cured. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under a Trust Deed and/or (e) any other

matters that Landlord or Tenant, as applicable, reasonable requests. Failure by either party to execute or deliver an estoppel certificate in the required time period shall constitute an acknowledgement by the party not producing the certificate that the statements included in the estoppel certificate are true and correct without exception.

19.4 Indemnification.

19.4.1 Tenant's Indemnification. Tenant shall indemnify, defend and hold harmless the Indemnified Parties of Landlord, the Premises, and the leasehold interest from and against any claims, damages, costs, expenses, including reasonable costs and expenses of attorneys, or liabilities arising out of or in any way connected with this Lease, including, without limitation, claims, damages, expenses or liabilities for loss or damage to any property or for death or injury to any person or persons, in proportion to and to the extent such liens, claims, expenses and liabilities result from the willful or negligent acts, errors or omissions of Tenant, its Building Tenants, and their respective officers, agents, contractors, employees and invitees.

19.4.2 Landlord's Indemnification. Landlord shall indemnify, defend and hold harmless the Indemnified Parties of Tenant from and against any claims, damages, costs, expenses, including reasonable costs and expenses of attorneys, or liabilities arising out of or in any way connected with this Lease, including, without limitation, claims, damages, expenses or liabilities for loss or damage to any property or for death or injury to any person or persons, in proportion to and to the extent such liens, claims, expenses and liabilities result from the willful or negligent acts, errors or omissions of Landlord, its officers, agents, employees and invitees.

19.5 Waiver of Subrogation. Landlord and Tenant each hereby waive any right of recovery against the other due to loss of or damage to the property of either of them when such loss of or damage to property arises out of the acts of God or any of the perils insured under a standard fire and extended perils policy of insurance, whether or not such perils have been insured, self-insured or non-insured.

19.6 Non-merger of Fee and Leasehold Estates. If under any circumstances both Landlord's and Tenant's estates in the Premises, or any portions thereof, become vested in the same owner, this Lease nevertheless shall not be extinguished by application of the doctrine of merger except at the express election of the owner and with the express written consent of the beneficiary or beneficiaries under all Trust Deeds affecting the Premises and Tenant's leasehold estate.

19.7 Time of the Essence. Time limits in this Lease are to be strictly observed. Time is of the essence in the performance of each and every obligation and covenant of the parties hereto.

19.8 Joint and Several Obligations. If either Landlord or Tenant consists of more than one person, the obligations of the persons constituting such party is joint and several. For purposes of this paragraph, "person" includes natural persons, entities, or any combination of natural persons and entities.

19.9 Captions. The captions and section headings used herein are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.

19.10 Construction. For purposes of this Agreement, words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include corporations and associations, including public bodies and the term “agent” shall refer to a person’s employees, contractors, and representatives.

19.11 Governing Law. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Landlord or Tenant.

19.12 Entire Agreement. This Lease contains all covenants, terms, provisions and agreements between Landlord and Tenant relating in any manner to the construction, rental, use and occupancy of the Premises and other matters set forth in this Lease. No prior agreement or understanding with respect to the same shall be valid or of any force or effect, and no covenant, term, provision or agreement of this Lease can be altered, changed, modified or added to, except in writing, signed by Landlord and Tenant. No representation, inducement, understanding, or anything of any nature whatsoever made, stated, or represented on behalf of either party hereto, either orally or in writing, has induced the other party to enter into this Lease except as set forth in this Lease.

19.13 Right to Request Injunction. In the event of any violation or threatened violation by either party of any of the terms, covenants, and conditions herein contained, in addition to the other remedies herein provided, each party shall have the right to petition for injunctive relief against such violation or threatened violation in a court of competent jurisdiction.

19.14 Severability. If any clause, sentence or other portions of this Lease shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

19.15 BOT Action. Tenant acknowledges that many of the approvals or consents to be given by Landlord hereunder are subject to approval by the BOT through formal action of the BOT at a regularly or specially called meeting. Landlord makes no representation as to whether any such approval or consent may be granted or that any consent or approval granted by Landlord shall indicate that the attendant approval or consent from the BOT is forthcoming. Landlord shall not be in breach of any obligation under this Lease requiring the consent, approval or other action of the BOT if such consent, approval or other action has not been given or completed within the applicable period set forth herein. Notwithstanding the foregoing, the parties hereto understand and agree that nothing contained in this paragraph shall change or alter the standards for approval, as set forth elsewhere in this Lease, or any action that Tenant proposes to take.

19.16 Cooperation in Execution, Delivery and Recordation of Documents. Landlord and Tenant agree to cooperate in the execution, delivery and recordation of such documents and agreements requested by either party as are reasonably necessary in order to carry out the purposes of this Lease and to execute and deliver all documents and instruments reasonably

necessary to terminate all interests granted herein upon their termination or expiration as provided herein.

19.17 Representations and Warranties of Tenant. As a material inducement to Landlord to enter into this Lease, Tenant represents and warrants the following:

19.17.1 Power and Authority. That it is a limited partnership (or general partnership, or limited liability company) duly organized, validly existing and in good standing under the laws of the State of California, and, is duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Lease and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by Tenant of Tenant's obligations hereunder will not violate or constitute an Event of Default under the terms and provisions of any agreement, law or court order to which Tenant is a party or by which Tenant is bound the remedy for which default would have a material adverse effect on Tenant's ability to perform its obligations hereunder.

19.17.2 Authorization; Valid Obligations. That all actions required to be taken by or on behalf of Tenant to authorize it to execute, deliver and perform its obligations under this Lease have been taken, and that this Lease is a valid and binding obligation of Tenant enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

19.17.3 Executing Parties. That the persons executing this Lease on behalf of Tenant have full power and authority to bind Tenant to the terms hereof.

19.17.4 Patriot Act. That Tenant is not included on the List of Specially Designated Nationals and Blocked Persons maintained by OFAC, and does not reside in, and is not organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

19.17.5 No Bankruptcy. Tenant has not made a general assignment for the benefit of creditors; filed any voluntary petition in bankruptcy; suffered the filing of an involuntary petition by its creditors; suffered the appointment of a receiver to take possession of substantially all of its assets; suffered the attachment or other judicial seizure of substantially all of its assets; admitted its inability to pay its debts as they come due; or made an offer of settlement, extension or composition to its creditors general.

19.18 Representations and Warranties of Landlord. As a material inducement to Tenant to enter into this Lease, Landlord represents and warrants the following:

19.18.1 Power and Authority. That it is a campus of the California State University, which is the state of California acting in its higher education capacity, duly organized, validly existing and in good standing under the laws of the State of California, and, is

duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Lease and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by Landlord of Landlord's obligations hereunder will not violate or constitute an Event of Default under the terms and provisions of any agreement, law or court order to which Landlord is a party or by which Landlord is bound the remedy for which default would have a material adverse effect on Landlord's ability to perform its obligations hereunder.

19.18.2 Authorization; Valid Obligations. That all actions required to be taken by or on behalf of Landlord to authorize it to execute, deliver and perform its obligations under this Lease have been taken, and that this Lease is a valid and binding obligation of Landlord enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

19.18.3 Executing Parties. That the persons executing this Lease on behalf of Landlord have full power and authority to bind Landlord to the terms hereof.

19.19 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or of partnership or of joint venture, or of any association between Landlord and Tenant, and none of the provisions contained in this Lease or any acts of the parties shall be deemed to create any relationship other than lessor and lessee between Landlord and Tenant, nor shall this Lease be construed, except as expressly provided, to authorize either to act as agent for the other.

19.20 Attorneys' Fees and Costs. If any party to this Lease commences an action or proceeding against any other party to this Lease to interpret or enforce any of the terms of this Lease or because of the breach of the other party to any of the terms hereof, each party shall pay its own attorneys' fees and other costs and expenses incurred in connection with the prosecution or defense of such action or proceeding, whether or not the action or proceeding is prosecuted to a final judgment. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

19.21 Survival of Covenants. All covenants which, by their terms, are not to be performed before the expiration or earlier termination of this Lease shall survive the expiration or earlier termination hereof.

19.22 Binding Effect. The provisions of this Lease shall bind or benefit the heirs, executors, administrators, successors and assigns of the original parties to this Lease.

19.23 Execution in Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original of such Lease, but all of which shall constitute one and the same instrument.

19.24 Memorandum of Lease. Concurrently with the execution of this Lease, the parties shall execute and acknowledge a Memorandum of Lease, which Memorandum of Lease shall be filed in the Official Records.

19.25 Liquor License. *Tenant intends to obtain one or more licenses from the Department of Alcoholic Beverage Control of the State of California to serve beer, wine and spirits at the Improvements. Landlord shall use commercially reasonable efforts to support Tenant's application for such license; provided, however, the scope and content of such license shall be subject to the reasonable approval of Landlord. Tenant shall not interfere with or oppose in any way efforts by Landlord, or other tenants, lessees, or licensees of Landlord, to obtain alcoholic licenses for service of alcoholic beverages at venues located at the University. [only if applicable]*

19.26 Naming Rights. The BOT, and only the BOT, has the authority to name all CSU facilities and all improvements constructed on property owned by CSU, such as the Premises. The Premises shall at all times comply with CSU policies, as from time to time amended, regarding the naming of facilities located on property owned by CSU. Tenant may not adopt, create, or permit to be attached to the Premises or any Improvements thereon, any name other than the street address of the Premises, except (i) in accordance with all applicable CSU naming policies, and (ii) with the approval of the BOT.

[Signatures Continue on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date indicated next to their signatures below.

LANDLORD:

CALIFORNIA STATE UNIVERSITY _____

Date Signed:

By: _____
_____, President

CALIFORNIA STATE UNIVERSITY

Date Signed:

By: _____
Elvyra F. San Juan, Assistant Vice
Chancellor, Capital Planning, Design and
Construction

TENANT:

_____, a _____ [limited liability company]

Date Signed:

By: _____
[Name and Title]

List of Exhibits:

- A -- Legal Description of Premises
- B -- Description of Improvements
- C -- Construction Requirements
- D -- Design Guidelines
- E -- Guaranty
- F -- University Rules
- G -- SNDA

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