

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

This ACCESS AND OPTION AGREEMENT (this “**Agreement**”) is entered into as of _____, 201____ (the “**Execution Date**”), by and between the Board of Trustees of the California State University, on behalf of California State University, [campus] (“**Landlord**”), and _____, a _____ (“**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 _____, State of California, consisting of approximately _____ (____) 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 _____ [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.

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| LANDLORD: | California State University [REDACTED] By: _____ Name: _____ Title: _____ |
| TENANT: | [REDACTED] By: _____ Name: _____ Title: _____ |