

Letter of Intent

[Date]

To: [Campus/Auxiliary]

Re: [Project Name]

Dear :

We are pleased to submit the following proposal outlining the basic business terms and conditions under which [Campus/Auxiliary] (“Lessor”), on behalf of California State University, [Campus] (“[Campus abbreviation]”), and [Developer] (“Lessee”) are prepared to negotiate in good faith, an Option and Access Agreement as well as a Lease Agreement for the development of a [type of project] (“Project”) as per the Request for Proposals issued by [Campus/Auxiliary], dated XX (“RFP”), and as identified below, on a site which [Developer] would ground lease/sublease (“Lease”) from [Campus/Auxiliary]:

Lessor / Owner	[Campus/Auxiliary]
Lessee	[Developer]
Site Location	[Description with street intersection names] (“Project Site”).
Parcel Size	Approximately XX acres, subject to survey and validation of acreage.
Development Program	The final Project is expected to be of similar size, scope, architectural quality and program to that submitted by [Developer] in response to the RFP, except as mutually agreed by the parties. The current Project program shall include the following: <ul style="list-style-type: none">• XX rooms• XX SF• XX parking spaces•

Any modifications to the Project program summarized above shall be mutually agreed upon by both parties.

Development Costs	The Project will be constructed, or caused to be constructed, by [Developer] on an open book basis. The project is assumed to use [prevailing/non-prevailing] wage rates. [Developer] shall be responsible for all costs associated with the development and operation of the Project.
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Actual development costs and associated equity investment by the Lessee shall be verified by [Developer], [Campus/Auxiliary], and shall be used as the basis for calculating Participation Rent/Profit Sharing as defined herein. Development costs shall be subject to limited caps on project management fees and other controllable costs, which shall be

based on prevailing market benchmarks as determined by all parties.

Earnest Money Deposit

[Developer] shall provide payment to [Campus/Auxiliary] in the amount of XX concurrent with the execution of this Letter of Intent, as an earnest money deposit for the Project (“Earnest Money Deposit”). The Earnest Money Deposit will be held by Lessor in escrow as security for Lessee’s obligations. The Earnest Money Deposit shall be refunded to Lessee, applied to prepaid rent, as the parties may agree, upon execution of the Lease or the termination of this Agreement for any reason other than: (i) Lessee’s termination for convenience or (ii) Lessee’s failure to execute and deliver the Lease within 30 days after the Trustees have unconditionally approved the Trustee Submission Package. Upon execution of the Lease, Lessor will continue to hold the Earnest Money Deposit as a security deposit until completion of construction of the Project, whereupon the unused balance of the security deposit will be released to Lessee.

Guarantees

The Lessee shall provide and/or require the following guarantees in connection with the Project:

- A. 100% payment and performance bonds during the construction of the Project.
- B. Lessee’s construction lender shall commit to Lessor that, if Lessee defaults in its obligations to complete the Project, and if Lessee’s construction lender fails to itself exercise its step in rights to complete construction, the Lessor shall have the right to complete construction using the proceeds of the construction loan. In such event, after completion, Lessee’s construction lender shall have the right to appoint a qualified operator (to be defined in the Lease) to operate the Project as though Lessee defaulted under the Lease after completion. Particular rights to be documented in a Landlord Recognition Agreement to be negotiated between Lessor and Lessee’s construction lender.
- C. An agreement by Lessee’s design builder that Lessor has the right to assume the design build agreement in the event that it elects to complete the Project as contemplated in B above.

Sources of Funding

[Developer] shall be responsible for securing all debt and/or equity sources of funding for the development of the Project and all obligations associated with such funding sources. All funding sources, commitments and availability shall be documented by the Lessee to the satisfaction of [Campus/Auxiliary] pursuant to an approval procedure to be set forth in the Lease.

Anticipated Uses

[Description of building program.]

Term of Lease

The term of the Lease shall be XX years beginning on XX. Any lease extension(s) shall require the mutual agreement of both parties [or

shall be XX extension(s) for XX years depending on what was stated in the RFP].

Lease Payments

Lessee shall pay Lessor, in legal currency of the United States, Lease rent as follows:

A. **Prepaid Rent** – The Lessee shall pay the Lessor Prepaid Rent as follows:

1. XX

B. **Base Rent** – Debt service payments shall be subordinate to Base Rent. Base Rent shall be paid monthly from all available cash from ordinary operations, as follows:

1. **Initial Period Rent Payments** – Beginning with the signing of the lease and extending to the commencement of construction, Initial Period Rent Payments shall be due and payable as follows:

a. XX per annum, paid monthly.

2. **Construction Period Base Rent Payments** – Beginning with the commencement of construction of the Project and during the term of construction, Construction Period Base Rent Payments shall be due and payable as follows:

a. XX per annum, paid monthly.

3. **Operating Period Base Rent Payments** – Beginning with the completion of the Project, Operating Period Base Rent Payments shall be due and payable as follows:

a. XX% of the Gross Revenues (as such term is defined in the Lease), paid monthly.

C. **Participation Rent/Profit Sharing** –The Lessee shall pay the Lessor Participation Rent/Profit Sharing in addition to Base Rent as follows:

1. XX% of [].

2. Participation Rent/Profit Sharing shall be calculated and paid annually within 90 days of the end of each calendar year as follows:

D. **Capital Event Participation** – Upon the sale or “cash out” refinance of the Project or individual elements of the Project by the Lessee (i.e., a refinance which results in funding new loan funds in excess of amounts required to pay off existing loans and

the costs of the refinancing transaction, as more particularly set forth in the Lease) the Lessee shall pay the Lessor a Capital Event Participation share as follows:

1. XX% of the net proceeds from the Capital Event.
2. Capital Event Participation shall be paid within 5 days of the financial closing of a Capital Event.

Prohibited Uses

The following Project uses shall be prohibited:

A.

Project Fees Due

[Developer] shall provide payment of XX to [CAMPUS/AUXILIARY] within 3 business days after the execution of the Access and Option Agreement. The Project Fees shall only be refundable in the event that:

- A. [CAMPUS/AUXILIARY] opts to discontinue or is unable to secure approval of the Project as contemplated herein.

Real Estate Entitlements

[Developer] will work with [CAMPUS/AUXILIARY] and [CAMPUS] in order to process all entitlements and mitigation measures necessary for the development of the Project. This includes all regulatory entities, including but not limited to, [CAMPUS], the California State University system, the City and/or County, or other regulatory agencies. As part of the pre-development, entitlement and eventual construction process [Developer] will be responsible to pay all costs associated with but not limited to the following, as applicable:

- Environmental reports/consulting
- Independent soils report
- CEQA/traffic reports/mitigation measures
- Design, subconsultants engineering, etc.
- Plan check
- ADA accessibility plan check
- State Fire Marshal plan check and inspection
- Deputy inspector and testing and/or soils inspections
- Campus Building Inspector
- LA County Health permitting
- Liquor License Transfer
- Los Angeles Department of Water & Power
- Southern California Gas Company
- Other Utilities
- All other fees associated with the pre-development, entitlement and eventual construction of the Project

Common Area Maintenance	Services and costs for maintenance of all grounds and facilities, including security, within the Project Site shall be the sole responsibility of the Lessee.
Utilities	The Lessee shall be responsible for ensuring all utilities are provided to the Project on individual meters separate from the [CAMPUS] campus. The Lessee shall be responsible for all utility costs associated with the Project.
Taxes, Fees or Special Assessments	The Lessee shall be responsible for the payment of all taxes, fees or special assessments upon Lease of the Project Site, including but not limited to any property taxes, possessory interest taxes, business related taxes, fees or licenses, common area maintenance expenses, or any other tax, fee or assessment on the property.
Assignment, Sublet, or Sale	Lessor shall have the right to review and approve any assignment, sublet or sale of the Project or individual elements of the Project. Lessor's review and approval shall not be unreasonably withheld.
Transfer & Recording Fees	Lessee shall be responsible for the payment of all transfer and/or recording taxes or fees (or taxes or fees of similar nature) that may be imposed by virtue of the Lease or recordation of a memorandum of Lease.
Sharing of Benefits from Tax Incentive or Other Unanticipated Funding Sources	The parties agree to mutually share in any financial benefits provided by any tax incentives or third-party funding sources secured for the Project, as may be further described in the Lease.
Financial Information	<p>If not previously provided, prior to execution of the Access and Option Agreement, Lessee shall deliver to Lessor its unaudited financial statements for the current partial year and audited financial statements for the past three (3) years. In addition, [Developer] shall provide its development project financing history for the past Ten (10) years, including financing amounts, sources of funds and names of debt and equity partners participating in such projects.</p> <p>Additionally, Lessee shall furnish Lessor with information demonstrating that the principal equity provider possesses both the requisite financial capacity and experience to carry out its commitments related to the Project.</p>
Access and Option Agreement	<p>The parties agree to enter into an Access and Option Agreement, which, will be prepared by Lessor's counsel and entered into by the parties within thirty (30) days of the execution of the Letter of Intent. The Access and Option Agreement shall define the Due Diligence Option Period and the requirements of the Lessee to advance the Project during the Due Diligence Option Period in order to obtain all necessary approvals for the Project.</p> <p>A sample of the Access and Option Agreement was attached to the RFP; the Lessee shall review the sample agreement and provide comments to [CAMPUS/AUXILIARY] and [CAMPUS].</p>

Lease Agreement

The obligation of the Lessee and Lessor shall be evidenced by a written Lease prepared by the Lessor’s counsel. The parties agree to negotiate in good faith for a period of ninety (90) days after the delivery of the Lease by the Lessor to the Lessee. There may be one thirty (30) day extension by mutual consent of the parties. In such case where the parties have agreed to a thirty (30) day extension, the Due Diligence Option Period, as defined in the Access and Option Agreement, will be extended by an additional thirty (30) days. Said Lease shall contemplate an As-Is, Where-Is lease of the Project Site, at closing, the full assignment of all licenses, permits, and approvals to Lessee (if applicable). The Lease shall include such additional provisions as Lessor and Lessee shall agree to.

Government Approvals

[CAMPUS] intends to assist in all necessary governmental approvals for the Project as contemplated herein, provided the project development agreement, master plan, schematics, and any other necessary documents are approved by the California State University Board of Trustees (“Trustees”). Approval by the Trustees of the final development plan shall be required. The parties intend to use their best efforts to obtain any governmental approvals so as to meet the timeline agreed upon by the parties to allow [Developer] to begin construction. [CAMPUS] and [Developer] will cooperate in obtaining any other governmental approvals necessary for construction and occupancy of the Project, as necessary.

CEQA Compliance

[Developer] acknowledges that it shall 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 Trustees’ consideration of the proposed Project, 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. The cost of all CEQA documentation shall be borne by [Developer]. It is understood that Trustees’ approval will be required for the final development plan, including final terms of the Lease Agreement and CEQA documentation, and that such approvals are not guaranteed.

Project Educational Benefits

[CAMPUS] serves XX students, faculty, staff and visitors every day. The [Project] will support the future academic success and vitality of the University by:

- XX;
- XX

Closing Date

The closing on the Lease will occur upon the satisfactory review of the Lessee’s guarantors by the Lessor, achievement of all applicable Project approvals, the conclusion of negotiations of the Lease Agreement., and approval of the Lease by the [Auxiliary] Board of Directors.

This letter is not binding upon either party and, notwithstanding any past, present, or future written or oral indications of negotiation or agreement to some or all matters under negotiation, the parties shall not be

Letter of Intent between [Campus/Auxiliary] and [Developer]
Project Name
Date

bound each to the other until the terms contained herein have been incorporated into a fully executed Lease or other form(s) of an agreement subject to approval of the [CAMPUS/AUXILIARY] Board of Directors and the Trustees, as well as approval of all CEQA documentation. If you are in agreement with the terms set forth above, please sign this letter in the space provided below on or before [XX].

Sincerely,

XX
[Developer]

AGREED & ACCEPTED by

[CAMPUS/AUXILIARY]

Name: _____

Title: _____

Date: _____

AGREED & ACCEPTED by [DEVELOPER]

Name: _____

Title: _____

Date: _____

Exhibit A – Site Plan

Letter of Intent between [Campus/Auxiliary] and [Developer]
Project Name
Date

EXHIBIT A

SITE PLAN

[to be attached]