

OPTION AGREEMENT

THIS OPTION AGREEMENT (“**Agreement**”) dated as of _____, 20__, is made by and between the CITY OF ROSEVILLE, a municipal corporation (“**City**”), and UNIVERSITY DEVELOPMENT FOUNDATION, a non-profit public benefit corporation formed under the laws of the District of Columbia (“**Optionee**”), who agree as follows:

ARTICLE 1. BACKGROUND AND GENERAL.

1.1. Property History.

1.1.1. Donation of Property to City, with Restrictions. In 1989, Angelo K. Tsakopoulos (“**Tsakopoulos**”) donated to City, by that certain Gift Grant Deed recorded in the Official Records of Placer County at Book 3794, Page 633 (the “**Gift Deed**”), certain real property (the “**Donated Property**”) located in the City of Roseville, Placer County (the “**County**”), State of California (the “**State**”). The Gift Deed provides that: (i) no portion of the Donated Property may be sold during Tsakopoulos’s lifetime without Tsakopoulos’s consent; and (ii) certain portions of the Donated Property shall be used in perpetuity for the benefit of the arts (collectively, the “**Deed Restrictions**”).

1.1.2. Tower Theater. Situated on a portion of the Donated Property is the Tower Theater (as defined below). In the thirty years since Tsakopoulos’s donation of the Donated Property, the City has put portions of the Donated Property to arts and other uses approved by Tsakopoulos, but the City has been unable to establish a viable artistic use or user of the Tower Theater. The City has determined that the ongoing costs of owning and maintaining the Tower Theater exceed the benefits to the City of owning the Tower Theater subject to the Deed Restrictions.

1.1.3. University; Option. The City, Tsakopoulos, and Optionee are all involved in and supportive of long-term efforts to induce a private university to establish a campus in the City of Roseville and/or the surrounding area. The City, Tsakopoulos, and Optionee anticipate that such a university may desire to include the Tower Theater within its campus. The parties are entering into this Agreement for the purpose of giving Optionee and its approved assignees as set forth below the opportunity to investigate and potentially acquire the Tower Theater on the terms and conditions set forth in this Agreement.

1.2. Property Terms.

1.2.1. Real Property. City is the owner of that certain parcel of land and improvements thereon, subject to Deed Restrictions, commonly known as the “**Tower Theater**” located within the City, in Placer County (the “**County**”), State of California (the “**State**”) which land is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the “**Real Property**”).

1.2.2. Option Property. For purposes of this Agreement, the “**Option Property**” means the Real Property, together with all rights and appurtenances pertaining to the Real Property.

1.3. Purpose. Optionee desires to acquire an exclusive, assignable option to purchase the Option Property, for the term and upon the terms and conditions set forth in this Agreement. The purpose of this Agreement is to grant Optionee the exclusive right and option to purchase the Option Property for the term, and upon the terms and conditions set forth herein.

1.4. Definitions. Capitalized terms used in this Agreement shall have the meanings ascribed to them by the section in which such term is first defined. This Agreement includes all exhibits, schedules and other attachments hereto.

1.5. Escrow Holder. Title and escrow services for the transactions contemplated in this Agreement shall be provided by Placer Title Company (“**Escrow Holder**”) located at 2901 K Street, Suite 390, Sacramento, California 95816, Attn: Jenny Vega.

1.6. Effective Date. Promptly following execution of this Agreement by City, Optionee and Tsakopoulos, the parties shall deliver an executed copy of this Agreement to Escrow Holder. The “**Effective Date**” of this Agreement shall be the last to occur of the following: (i) the first date on which each of City, Optionee, and Tsakopoulos have fully signed and initialed this Agreement where indicated; and (ii) the date on which the Roseville City Council passes a resolution approving this Agreement and City’s performance under this Agreement. Immediately following the Effective Date, Escrow Holder shall execute and fill in the Effective Date on the Acceptance by Escrow Holder attached hereto, and shall deliver fully dated, signed and initialed copies of this Agreement to the City, Optionee and Tsakopoulos.

1.7. Leases. Portions of the Option Property are leased to third parties, pursuant to written, month-to-month lease agreements with the City (the “**Leases**”). With the exception of the Tower Barber Salon barbershop located at 415 Vernon Street in Roseville, City shall terminate any and all such lease agreements prior to the Close of Escrow.

1.8. Roof Replacement. City has disclosed to Optionee that the Tower Theater roof is in a state of disrepair and is in need of replacement. City shall replace the roof at City’s sole cost and expense during the Option Term. The selection of the new roof design and materials shall be made by City, subject to Optionee’s prior written approval. The replacement roof system shall be subject to a transferrable warranty on a commercially reasonable form, for a period of not less than ten (10) years.

1.9. Audio/Video Equipment. City owns certain items of audio/video equipment that have been installed within the Tower Theater (the “**A/V Equipment**”). As of the date of this Agreement, no complete inventory or valuation of the A/V Equipment has been completed by the City. During the Option Term, City and Optionee shall work together in good faith to agree upon a plan for the removal of the A/V Equipment, or the sale of the A/V Equipment to Optionee. Absent such an agreement, City shall have the right, but not the obligation to remove any and all A/V Equipment from the Tower Theater no later than the Close of Escrow, but all

costs and expenses of such removal and all costs and expenses of repairing any damage to the Tower Theater that results from the removal of such A/V Equipment shall be paid by City.

ARTICLE 2. GRANT OF OPTION; TERMS OF PURCHASE AND SALE.

2.1. Grant of Option. City hereby grants Optionee the exclusive option (“**Option**”) to purchase the Option Property, for the Option Term (as hereinafter defined), upon all the terms and conditions set forth in this Agreement.

2.2. Option Consideration. Within five (5) business days following the Effective Date, Optionee shall deposit with Escrow Holder, cash or other immediately available funds in the amount of One Dollar (\$1.00) (the “**Option Consideration**”). Escrow Holder shall hold the Option Consideration pending the close of Escrow or sooner termination of this Agreement.

2.3. Option Term; Exercise.

2.3.1. Option Term. The term of the Option (the “**Option Term**”) shall commence on the Effective Date and expire on January 17, 2022.

2.3.2. Exercise. Optionee shall exercise the Option, if at all, by written notice of exercise (“**Exercise Notice**”) delivered to City any time during the Option Term.

2.4. Purchase and Sale. If Optionee properly exercises the Option, City shall sell the Option Property to Optionee, and Optionee shall purchase the Option Property from City on the remaining terms and conditions specified in this Agreement.

2.4.1. Purchase Price. The “**Purchase Price**” for the Option Property shall be One Dollar (\$1.00). The Purchase Price for the Option Property shall be paid in cash or other immediately available funds, at the Close of Escrow.

ARTICLE 3. ESCROW.

3.1.1. Opening. The purchase and sale of the Option Property shall be consummated through an escrow (“**Escrow**”) opened with Escrow Holder by depositing this Agreement in accordance with Section 1.6.

3.1.2. Instructions. This Agreement constitutes escrow instructions to Escrow Holder. Any supplemental escrow instructions given to Escrow Holder shall be consistent with the terms of this Agreement and shall provide that, as between the parties, the terms of this Agreement shall prevail if there is any inconsistency.

3.1.3. Close of Escrow; Closing Date. “**Closing**,” “**Closing Date**” and the “**Close of Escrow**” each mean the date upon which the deed to the Option Property is recorded with the Placer County Recorder. The Close of Escrow shall occur no later than thirty (30) days after the delivery of an Exercise Notice.

3.1.4. Costs. Charges and expenses incurred in the Escrow are to be borne by the parties as follows:

A. City's Costs. City shall bear one-half of the cost of the title insurance premium attributable to an ALTA Standard Coverage title policy issued at the Close of Escrow, all transfer and similar taxes imposed on the deed (if any) and one-half (1/2) of any Escrow fees and other typical closing costs.

B. Optionee's Costs. Optionee shall bear the remaining one-half of the cost of the title insurance premium attributable to an ALTA Standard Coverage title policy issued at the Close of Escrow, 100% of the increment of the title insurance premium attributed to any ALTA extended owners coverage, and the remaining one-half (1/2) of any Escrow fees and other typical closing costs.

C. Miscellaneous Costs. All other fees and miscellaneous costs not specifically allocated above shall be borne equally by the parties.

D. Legal Fees. Each party shall bear its own legal fees and other non-Escrow expenses.

3.1.5. Prorations and Adjustments. Rents and other receivables affecting the Option Property, and all other items of expense and revenue for the Option Property (collectively, "**Income and Expenses**"), shall be prorated as of the Close of Escrow. Optionee shall pay all real property taxes, special Mello-Roos taxes, any similar taxes and assessments imposed upon the Option Property (collectively, "**Taxes and Assessments**") for periods from and after the Close of Escrow.

3.1.6. Deliveries to Escrow by City. Prior to Closing, City shall deliver into Escrow the following items to be delivered and/or recorded at Closing:

A. Grant Deed. A duly executed and acknowledged grant deed conveying the Option Property to Optionee, in the form attached hereto as **Exhibit B**.

B. Nonforeign Certification. A sworn Affidavit stating under penalty of perjury that City is not a "foreign person" as such term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or such other evidence as Optionee and Escrow Holder may require showing that Optionee is not required to withhold taxes from the Purchase Price under Section 1445(a) of the Code.

C. California Franchise Tax Withholding. Evidence reasonably satisfactory to Optionee and Escrow Holder that City is exempt from the provisions of Section 18662 of the California Revenue and Taxation Code and that neither Optionee nor Escrow Holder is required to withhold any amounts from the Purchase Price pursuant thereto.

D. Miscellaneous. Such other documents and instructions as may be reasonably required by the Escrow Holder or Optionee in order to close Escrow in accordance with the terms of this Agreement.

3.1.7. Deliveries to Escrow by Optionee. Prior to the Closing, Optionee shall deliver into Escrow the following items to be delivered and/or recorded at Closing:

A. Closing Payments. The Purchase Price for the Option Property, and Optionee's share, if any, of any then-known prorations, fees and costs, in immediately available funds.

B. Miscellaneous. Such other documents and instructions as may be reasonably required by the Escrow Holder or City in order to close Escrow in accordance with the terms of this Agreement.

3.1.8. Deliveries to Escrow by Tsakopoulos. Prior to the Closing, Tsakopoulos, or his heirs, successors or assigns, shall deliver into Escrow the following items to be delivered and/or recorded at Closing:

A. Consent and Modification of Restrictions. One or more written instruments, in recordable form and approved by the City Attorney, confirming and evidencing Tsakopoulos's consent to the sale of the Option Property to Optionee or its assignee and confirming and evidencing the modification of the Deed Restrictions to allow the use of the Option Property for educational purposes.

ARTICLE 4. CONDITIONS TO CLOSING.

4.1. Optionee's Conditions to Escrow Closings. If Optionee timely exercises the Option, Optionee's obligation to purchase the Option Property and close the Escrow is subject to the fulfillment of each and every one of the conditions in this Section 4.1, each of which is expressly stated to be a condition precedent with respect to the particular property. Except where a different time period is specifically set forth, satisfaction of each condition shall occur no later than the Close of Escrow. If any of such conditions are not satisfied or waived by Optionee by the date for satisfaction, then Optionee shall have the right to terminate this Agreement by giving written notice to City, in which case the parties shall have no further obligation to each other, except for those obligations which are expressly stated to survive the Close of Escrow. Notwithstanding anything in this Agreement to the contrary, however, once Optionee delivers the Exercise Notice, Optionee shall not have the right to terminate this Agreement in the event that an Escrow fails to close solely as the result of the breach by Optionee of an obligation under this Agreement.

4.1.1. Feasibility. Optionee shall have the right to conduct such tests, investigations, studies and examinations with respect to the Option Property and such other matters as Optionee, in its sole and absolute discretion, deems appropriate to its determination of whether or not to exercise the Option and purchase the Option Property throughout the Option Term. Feasibility issues include all issues which Optionee determines to be relevant and material to its determination to purchase the Option Property, including, without limitation, political, planning, zoning and entitlement matters, geology, environmental, economic and marketing issues.

A. Feasibility Approval. If and when Optionee delivers the Exercise Notice, the Exercise Notice shall serve as written notice to City that Optionee has conducted its feasibility review, approved the results of such review and wishes to proceed with this

transaction. Optionee shall not be obligated to purchase the Option Property unless and until Optionee delivers the Exercise Notice.

B. Documents and Materials. No later than the thirtieth (30th) day following the Effective Date, City shall furnish Optionee with an inventory list of the documents, studies and materials related to Option Property (collectively, “**Documents and Materials**”) that City will make available to Optionee in an electronic data room, along with access to the data room containing such Documents and Materials. The inventory list, once provided by City, will be attached as **Schedule 4.1.1** hereto and incorporated herein. City makes no representation concerning the adequacy or accuracy of any of the Documents and Materials. These materials have been furnished solely for the purpose of assisting Optionee in conducting its due diligence, a part of which is Optionee’s independent determination as to the reliability and completeness of the information contained therein.

C. Right of Entry. Optionee and Optionee’s agents, employees, consultants, contractors, and authorized agents (collectively, “**Optionee’s Due Diligence Parties**”) shall have the right to enter on the Option Property from the Effective Date to the end of the Option Term or sooner termination of this Agreement to make such tests, surveys and other studies of the real property as Optionee deems appropriate.

(1) Optionee shall bear the entire cost of all tests and studies performed by Optionee or at Optionee’s direction. Optionee shall promptly furnish City with copies of all such tests and studies, and if Optionee terminates this Agreement, full ownership rights to such tests and studies, without any cost to City.

(2) Prior to entry onto the Option Property by Optionee or Optionee’s consultants and other contractors, Optionee shall furnish City with a copy of a policy of commercial general liability insurance issued by an insurance company licensed to issue commercial general liability policies in the State, having limits of no less than \$1 Million and naming City as an additional insured, covering Optionee’s entry on the Property, and Optionee’s obligations under this section.

(3) Optionee shall give City reasonable advance notice of any entry on the Option Property by Optionee or any of the Optionee’s Due Diligence Parties and shall conduct such entry in compliance with all applicable laws and otherwise in a manner reasonably acceptable to City. Optionee shall defend, indemnify, and hold City and the real property harmless from any and all costs, expenses, claims, losses, liabilities and demands arising from such entry onto the Option Property.

4.1.2. Title; Title Policy. At the close of Escrow, City shall convey the Option Property to Optionee by grant deed, subject only to the Permitted Exceptions (defined below), and, shall cause the Escrow Holder’s underwriter to issue the Optionee’s Title Policy (described below) with respect to the Option Property.

A. Preliminary Report; Optionee’s Title Notice. With respect to existing encumbrances on the Option Property, City shall cause Escrow Holder to deliver to Optionee and City a preliminary title report and legible copies of all documents referred to

therein covering the Option Property (collectively, the “**Preliminary Report**”) no later than ten (10) days following the Effective Date. At any time, and from time to time, until 5:00 p.m. on date that is fifteen (15) business days prior to the end of the Option Term (the “**Title Review Period**”) Optionee may give City one or more written notices (each, an “**Optionee’s Title Notice**”) of Optionee’s approval or disapproval of each and every item or exception set forth in the Preliminary Report as amended from time to time. Optionee’s failure to give the Optionee’s Title Notice by the end of Title Review Period shall be deemed to be Optionee’s approval of title to the Option Property as shown in the Preliminary Report as amended from time to time during the Title Review Period. Notwithstanding the foregoing, Optionee shall automatically be deemed to object to, and City shall automatically be deemed to agree to remove any deeds of trust, monetary judgments, or monetary liens other than the following: (a) nondelinquent general taxes and assessments; and (b) nondelinquent special taxes or assessments such as so-called Mello-Roos taxes.

B. City’s Title Notice. In the event that an Optionee’s Title Notice disapproves any exception, City shall have until the fifth (5th) business day following receipt of Optionee’s Title Notice (“**City’s Initial Title Response Period**”), to give Optionee written notice (“**City’s Title Notice**”) of those disapproved title matters, if any, which City is unwilling or unable to remove. The failure of City to give City’s Title Notice by the end of City’s Initial Title Response Period shall constitute City’s refusal to remove all items objected to in the Optionee’s Title Notice. City shall have until the Close of Escrow to remove those exceptions which City agrees to remove.

C. Permitted Exceptions. Those exceptions which Optionee approves pursuant to this section, and the documents which are to be recorded pursuant to the terms of this Agreement, are called the “**Permitted Exceptions**.”

D. Optionee’s Title Policy. The title insurance policy issued at the Close of Escrow (the “**Optionee’s Title Policy**”) shall be an ALTA Standard Coverage Owner’s policy of title insurance, with liability in the amount of the applicable Purchase Price (or such greater amount as the Title Company shall agree to) insuring title in Optionee to the Option Property, subject only to: (i) the Permitted Exceptions; (ii) the printed exceptions and exclusions common to ALTA Standard Coverage policies; and (iii) the other matters affecting title provided for elsewhere in this Agreement.

4.1.3. City’s Performance. City shall have timely performed all of its material obligations under this Agreement, including, without limitation, the completion of the roof replacement required in Section 1.8.

4.1.4. Representations and Warranties True. Each and every one of City’s representations and warranties contained in this Agreement shall be true and correct in every material respect.

4.2. City’s Conditions to Close of Escrow. City’s obligation to sell the Option Property and to close Escrow is subject to the fulfillment of each and every one of the conditions in this Section 4.2. Except where a different time period is specifically set forth, satisfaction of each condition shall occur no later than the Close of Escrow for the portion of the Option

Property being transferred through that Escrow. If any of such conditions are not satisfied or waived by City by the date for satisfaction, then City shall have the right to terminate this Agreement by giving written notice to Optionee, whereupon the parties shall have no further obligation to each other except for Optionee's obligations under Section 4.1.1. City shall not have the right to terminate this Agreement, however, where the failure of a condition resulted solely from the breach by City of an obligation under this Agreement.

4.2.1. Timely Delivery of Exercise Notice. Optionee shall have timely delivered the Exercise Notice pursuant to Section 2.3.2.

4.2.2. Closing Payments. No later than the end of the Option Term, Optionee shall have delivered into Escrow the balance of the Purchase Price of the Option Property, and Optionee's share, if any, of any then-known prorations, fees and costs, in immediately available funds.

4.2.3. Optionee's Performance. Optionee shall have timely performed all of its material obligations under this Agreement.

4.2.4. Representations and Warranties True. Each and every one of Optionee's representations and warranties contained in this Agreement shall be true and correct in every material respect.

ARTICLE 5. DISCLOSURES, DISCLAIMERS, REPRESENTATIONS AND WARRANTIES; DEFAULT BY CITY.

5.1. Representations and Warranties in General.

5.1.1. Knowledge Representations. Warranties or representations of City modified by a phrase such as "to the best knowledge" shall mean that the warranty or representation is given to the extent the subject matter is within the actual present knowledge of the Economic Development Director, or designee. The person identified in this Section 5.1.1 is the person within City who is most likely to possess whatever substantial information City may have regarding the subject matter of City's representations and warranties.

5.1.2. Exceptions; Exception Matters. The following shall be deemed exceptions to the representations and warranties of City contained in this Agreement: (i) all items specifically appearing in the Documents and Materials, as well as those matters set forth in this Agreement and its schedules and exhibits; (ii) matters actually discovered by Optionee prior to the execution and delivery of this Agreement by Optionee; and (iii) matters disclosed to Optionee in writing prior to Optionee's execution and delivery of this Agreement (collectively, the "**Exception Matters**"). If Optionee obtained actual knowledge of any Exception Matter before the execution hereof, but nonetheless elects to execute this Agreement, Optionee shall consummate the acquisition of the Option Property subject to such Exception Matter and City shall have no liability with respect to such Exception Matter, notwithstanding any contrary provision, representation or warranty contained in this Agreement.

5.1.3. Restatement. Except as otherwise provided in Section 5.3, the representations made by City in Section 5.2 shall be deemed to be restated by City immediately prior to the Close of Escrow.

5.1.4. Survival. The representations made by City in Section 5.2 shall survive for a period of one (1) year following the Close of Escrow.

5.2. Representations and Warranties by City. City acknowledges that the execution of this Agreement by Optionee is made in material reliance by Optionee on each and every one of the representations and warranties made by City in this Section 5.2. City hereby represents and warrants to Optionee that:

5.2.1. Authority. City has the right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the person(s) executing this Agreement on behalf of City have the right, power and authority to do so. Subject to approval by the City Council, this Agreement constitutes the legal, valid and binding obligation of City enforceable against City in accordance with its terms. This Agreement does not violate any provision of any applicable law or any agreement or document to which City is a party or to which City is bound. City is a municipal corporation, organized as a charter city under the laws of the State of California.

5.2.2. No Grants. City has not granted to any party other than Optionee any option, contract or other agreement with respect to a purchase or sale of the Option Property, or any portion thereof or any interest therein, and with the exception of the Leases and the Permitted Exceptions, there are no other agreements or options which could create an obligation to another party.

5.2.3. No Condemnation. City has no knowledge of any condemnation proceedings relating to the Option Property.

5.2.4. No Default. To the best knowledge of City, City is not in default under, and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a default under, any contract, transaction, agreement, covenant, condition, restriction, lease, easement, encumbrance or instrument pertaining to the Option Property.

5.2.5. No Environmental Conditions. To City's knowledge and belief, the Option Property is free of "contamination" from any "hazardous waste," any "hazardous substance," and any "oil, petroleum products, and their by-products," as such terms are defined by any federal, state, county or local law, ordinance, regulation or requirement applicable to any portion of the Option Property and including any regulations promulgated thereunder, as the same exist as of the Effective Date (collectively, "**Hazardous Substances**"). "Contamination" means the presence of Hazardous Substances at the Option Property that requires remediation or cleanup under any applicable law. The City has not used any Hazardous Substances on, from or affecting the Option Property in any manner that violates any applicable law, and to City's actual knowledge, no prior owner or user of the Option Property has used such substances on, from, or affecting the Option Property in any manner which violates any applicable law.

5.2.6. Pending Transactions, Suits or Proceedings. City has not been served with, and to City's actual knowledge there is no, litigation or arbitration pending or threatened in writing against City before any court of administrative agency against City's performance hereunder.

5.2.7. Leases and Contracts. Except as otherwise set forth in this Agreement or disclosed in the Documents and Materials, there are no leases or other contracts entered into by City (as owner of the Option Property) that will bind the Option Property or Optionee from and after the Close of Escrow.

5.2.8. Not a Foreign Person. City is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and City is not, nor is any person who owns a controlling interest in or otherwise controls City: (i) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "**OFAC Laws and Regulations**"); or (ii) a person either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "**Executive Orders**"). Neither City nor any of its principals or affiliates is (iii) a person or entity with which Optionee is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, or that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders, or (iv) is affiliated or associated with a person or entity listed in the preceding clause (iii). To the best knowledge of City, neither City nor any of its principals or affiliates, nor any brokers or other agents acting in any capacity in connection with the transactions contemplated herein (v) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (vi) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein, "**Anti-Terrorism Law**" means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

5.3. Discovery of Inaccuracy.

5.3.1. Notice. If, after the date of this Agreement, either party discovers any inaccuracy in any representation or warranty under this Agreement, whether made by that party or the other party, the discovering party shall promptly notify the other party in a written notice setting forth the particular representation or warranty which is inaccurate, and the nature of the inaccuracy discovered. For the avoidance of doubt, Exception Matters under Section 5.1.2 are automatically excluded from City's representations and warranties, and as a result, do not constitute inaccuracies for purposes of this Section 5.3.

5.3.2. Discovery Prior to Close of Escrow. If Optionee discovers any inaccuracy in any representation or warranty of City under this Agreement prior to the Close of Escrow,

Optionee shall have the right to terminate this Agreement within 10 calendar days of learning of such inaccuracy by giving notice to City. If Optionee fails to exercise its right to terminate this Agreement under this Section 5.3.2, Optionee shall be deemed to have accepted such inaccuracy, such inaccuracy shall thereupon become an exception to City's representations and warranties for all purposes under this Agreement and City shall have no post-Closing or other liability with respect to such inaccuracy.

5.4. Optionee's Remedies for City's Default. If the Close of Escrow does not occur solely as the result of the default of City, Optionee shall be entitled to either: (a) terminate this Agreement, in which event Optionee shall be entitled to an immediate return of all of the Option Consideration actually paid to City, and neither party shall have any further obligations under this Agreement, except as otherwise specified herein, or (b) Optionee may pursue the remedy of specific performance under this Agreement.

5.5. Hazardous Substances Indemnification. City shall, at City's sole expense and with counsel reasonably acceptable to Optionee, indemnify, defend, and hold harmless Optionee and Optionee's shareholders, directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses arising out of or resulting from the presence of any Hazardous Substances on or under the Option Property existing prior to Close of Escrow or caused by City. The obligations of City under this paragraph shall not apply to hazardous substances existing on or under the Option Property prior to the City's original acceptance of the Gift Deed in 1989 and the obligations contained in this section 5.5 shall survive the Close of Escrow, and shall not be limited by the survival period set forth in Section 5.1.4.

ARTICLE 6. MISCELLANEOUS.

6.1. No Brokers or Commissions. Neither party has had any contact or dealings regarding the subject matter of this transaction through any licensed real estate broker or other person who can claim a commission or finder's fee as a procuring cause of the sale contemplated herein. Each party agrees to defend and indemnify the other against any claim for commission or other compensation based upon dealings with such party.

6.2. Notices. Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services, each of which is hereinafter called an "**Express Courier**," shall be considered to be personal service) or by electronic mail (provided that no out-of-office or other automatically generated notice of failed or delayed receipt is generated), and upon receipt, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

OPTIONEE:

University Development Foundation
Attn: Kyriakos Tsakopoulos
5309 Retreat Way
Carmichael, CA 95608
Telephone: 916-599-0026

Email: kyriakos@udfcommunity.com

CITY:

City of Roseville
Attn: City Clerk
311 Vernon St
Roseville, CA 95678
Telephone: (916) 774-5325
Email: cityclerk@roseville.ca.us

With a copy to:

City Attorney's Office
Attn: Joseph Mandell, Esq.
311 Vernon St
Roseville, CA 95678
Telephone: (916) 774-5325
Email: JMandell@roseville.ca.us

TSAKOPOULOS:

c/o Boutin Jones, Inc.
Attn: Michael J. Kuzmich, Esq.
555 Capitol Mall, Suite 1500
Sacramento, CA 95814
Telephone: (916) 321-4444
Email: mkuzmich@boutinjones.com

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

6.3. Legal; Interpretation. The headings and captions of articles and sections used in this Agreement are for convenience only, and this Agreement shall be interpreted without reference to any headings or captions. Similarly, the presence or absence of language in prior drafts of this document shall not be used to interpret any provision hereof. This Agreement has been prepared and revised by attorneys for both parties, so any rule of law or construction that ambiguities are to be construed against the party responsible shall not apply. This Agreement shall be governed by the laws of the State of California. Venue for any dispute arising hereunder shall be Placer County, California.

6.4. Successors Bound. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Optionee and City; subject, however, to the limitation on assignment expressed in Section 6.5.

6.5. Assignment; Transfer. Except as otherwise expressly provided in this Section 6.5, Optionee shall not assign, transfer or convey any of its rights and/or obligations under this

Agreement and/or with respect to the Option Property without the prior written consent of City. Notwithstanding the restriction in the first sentence of this Section 6.5, Optionee shall have the right, upon written notice to City at least five (5) business days prior to the Close of the Escrow and subject to acceptance of the assignment by the applicable assignee, to assign its rights and interest under this Agreement to (i) an educational institution that qualifies as a tax exempt organization under the U.S. Internal Revenue Code or (ii) Tsakopoulos. Any attempted assignment to a person or entity other than in accordance with this Section 6.5 shall be void. No assignment of this Agreement by Optionee shall relieve the original Optionee from any of its obligations, liabilities or responsibilities under this Agreement. No proposed assignee shall be obligated to accept any assignment.

6.6. Time Periods. In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be deemed to be automatically extended to the next day which is not a Saturday, Sunday or holiday.

6.7. Time of Essence. Time is of the essence of this Agreement and of the Escrow provided for herein.

6.8. Attorneys' Fees. In the event any of the parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the Court or Arbitrator. Without limiting the generality of the foregoing: (a) the prevailing party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of the other party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification or termination of the automatic stay); and (b) the prevailing party shall be entitled, in addition to and separately from the amounts recoverable under clause "(a)," to the payment by the losing party of the prevailing party's reasonable attorneys' fees, court costs and litigation expenses incurred in connection with any appellate review of the judgment rendered or of any other ruling in such action or proceeding, and any proceeding to enforce a judgment in such action and proceeding. It is the intent of the parties that the provisions of clause "(b)" be distinct and severable from the other rights of the parties under this Agreement, shall survive the entry of judgment in any action or proceeding and shall not be merged into such judgment.

6.9. Integration. This Agreement and the Exhibits hereto contain the entire agreement of the parties hereto, and supersede any prior written or oral agreements between them concerning the subject matter contained herein, including, without limitation, any letters of intent or letters of interest between the parties. **THERE ARE NO REPRESENTATIONS, AGREEMENTS, ARRANGEMENTS OR UNDERSTANDINGS, ORAL OR WRITTEN, RELATING TO THE SUBJECT MATTER WHICH ARE NOT FULLY EXPRESSED HEREIN.**

6.10. Additional Documents. From time to time prior to and after each Close of Escrow, each party shall execute and deliver such instruments of transfer and other documents as may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

6.11. Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations and undertakings of each party hereunder shall be construed as dependent upon and given in consideration of those of the other party and shall survive the Close of Escrow and delivery of the deed for the period set forth in Section 5.1.4 above.

6.12. Risk of Loss; Possession. Risk of loss shall remain with City until Closing. Possession of the Option Property and the risk of loss shall pass to Optionee at Closing.

6.13. Condemnation. In the event that a substantial portion of the Option Property shall be taken in condemnation or under the right of eminent domain after the Effective Date, or in the event that a substantial portion of the Option Property is damaged or destroyed after the Effective Date, Optionee, may either: (a) terminate this Agreement; or (b) proceed to close this transaction, in which case Optionee shall be entitled to the entire portion of the award and/or insurance proceeds which are attributable to the portion of the Option Property allocable to the portion thereof acquired by Optionee.

6.14. No Merger. All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the Close of Escrow and shall not be merged in any deed or other documents.

6.15. Counterparts; Facsimile and PDF Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute a single document. Signatures transmitted by facsimile and signatures transmitted by e-mailing a "PDF" signature shall be binding.

6.16. List of Schedules and Exhibits. The following schedule and exhibit are a part of this Agreement:

SCHEDULES:

Schedule 4.1.1 Documents and Materials

EXHIBITS.

Exhibit A Legal Description of the Option Property

Exhibit B Form of Grant Deed

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Option Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 20____, and OPTIONEE has caused this Option Agreement to be executed.

OPTIONEE:

UNIVERSITY DEVELOPMENT
FOUNDATION, a non-profit public benefit
corporation

By: _____
Name: Kyriakos Tsakopoulos
Its: President

CITY:

CITY OF ROSEVILLE, a municipal corporation

By: _____
DOMINICK CASEY
City Manager

ATTEST

By: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

By: _____
MICHELLE SHEIDENBERGER
City Attorney

JOINDER AND CONSENT

The undersigned, Angelo K. Tsakopoulos, hereby acknowledges the statements made herein and consents to the sale of the Option Property to Optionee or its assignee (consistent with Section 6.5 of the foregoing Agreement), on the terms and conditions set forth in the foregoing Agreement, and agrees that, at the Close of Escrow, he will deliver one or more written instruments, in recordable form and approved by the City Attorney, confirming and evidencing his consent to the sale of the Option Property to Optionee or its assignee and confirming and evidencing the modification of the Deed Restrictions to allow use of the Option Property for

educational purposes, in addition to the allowed use for the benefit of the arts. The consent granted herein is irrevocable and, together with the obligations undertaken in this paragraph, is binding on the undersigned's heirs, successors and assigns.

ANGELO K. TSAKOPOULOS

ACCEPTANCE BY ESCROW HOLDER

The undersigned Escrow Holder hereby acknowledges that on the date set forth below, the undersigned received a fully executed duplicate original of the foregoing Option Agreement by and between City and University Development Foundation, affecting the Option Property. Subject to Escrow Holder's receipt of acceptable escrow instructions, Escrow Holder agrees to act as the Escrow Holder under this Agreement, and to comply with these instructions. Escrow Holder has assigned Escrow No. _____ to this transaction for that purpose.

PLACER TITLE COMPANY

BY: _____

EFFECTIVE DATE: _____, 20__

Schedule 4.1.1

Documents and Materials

**[TO BE PROVIDED BY CITY AND ATTACHED WITHIN 5 DAYS OF THE
EFFECTIVE DATE]**

EXHIBIT A

Legal Description of the Option Property

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,
COUNTY OF PLACER, CITY OF ROSEVILLE, DESCRIBED AS FOLLOWS:

PARCEL 2 OF "PARCEL MAP FOR ROSEVILLE CIVIC PLAZA SUBDIVISION NO.
000019," FILED FOR RECORD SEPTEMBER 29, 2005, IN BOOK 32 OF PARCEL MAPS,
PAGE 99, PLACER COUNTY RECORDS.

APN: 013-0123-026-000

EXHIBIT B

Form of Grant Deed

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

APN:

(Space above this line for Recorder's use)

GRANT DEED

Documentary Transfer Tax is \$ _____

___ Computed on the full value of the property conveyed; OR

___ Computed on the full value less liens & encumbrances remaining at time of sale.

___ unincorporated area, or X City of Roseville

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF ROSEVILLE ("Grantor"),

HEREBY GRANTS TO:

_____,

The following real property:

As set forth in Exhibit A attached hereto and made a part hereof.

subject to all matters of record, including, without limitation, that certain Gift Grant Deed recorded in the Official Records of Placer County at Book 3794, Page 633, which imposes certain restrictions on the use and conveyance of the subject property as set forth in such instrument.

Executed as of _____, 20__.

[Signature on following page]

GRANTOR:

CITY OF ROSEVILLE, a municipal corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____) ss.

On _____, before me, _____
 _____ (here insert name and title of officer), personally appeared _____
 _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose
 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
 executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
 on the instrument the person (s), or the entity(ies) upon behalf of which the person(s) acted,
 executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing is true and correct.

WITNESS my hand and official seal.

[Seal]

EXHIBIT A
REAL PROPERTY DESCRIPTION

[To be inserted]