**SAMPLE**

**CONSULT YOUR COUNSEL**

**OPTION TO PURCHASE/ DEFERRED BARGAIN SALE AGREEMENT**

**IN CONNECTION WITH A CHARITABLE GIFT ANNUITY**

This Option to Purchase/Deferred Bargain Sale Agreement in Connection With a Charitable Gift Annuity (the “Agreement”), dated xxxxxxxxxxxxxx, for reference purposes only, is entered into by and between the Charity/Optionee/University, (the “ University”), and the Donor/Optionor/Seller, (the “Seller”).

**Recitals**

A. Seller is the owner of real property located in the city of, county of, state of, as more particularly described on Exhibit A attached to this Agreement (the “Property”).

B. On the terms, conditions and provisions set forth in this Agreement, the University desires to purchase, and Seller desires to sell to the University, the Property for charitable purposes.

C. The University is a tax exempt, non-profit charitable corporation and is included in the list of organizations described in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder (the “Code”).

D. Seller believes that the purchase price for the Property which is specified in this Agreement is substantially below the fair market value of the Property. Seller intends that the difference between the purchase price and the fair market value shall be a charitable contribution to the University (less the value of the charitable gift annuity to Seller).

E. The University is willing to issue a Charitable Gift Annuity upon the terms and conditions set forth below

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

**Agreement**

1. **Option to Purchase and Sale** Seller agrees to grant to the University an option to purchase, and the University accepts this option to purchase from Seller, the Property on the terms and subject to the conditions set forth in this Agreement. The “Effective Date” of this Agreement shall be the first date upon which both Seller and the University have executed this Agreement.

2. **Option to Purchase Price** The option to purchase price (“Purchase Price”) for the Property shall be xxxxxxxxxxxxxxxxxxxxxx Dollars ($ ).

(a) Purchase Price The University shall pay to the Seller through a Bargain Sale purchase, based on a combination of cash and a charitable contribution. A Bargain Sale occurs when a seller sells a property for less than current appraised value (based on an IRS 561 appraisal to be performed by an MAI appraiser “Appraised Value”) to an IRS 561 approved organization (i.e. a not for profit entity, etc.) and is then able to use the difference between the Appraised Value and the Cash Amount received as a tax deduction through a charitable contribution (less the value of the charitable gift annuity to the Seller). The amount of monies owed by the Seller through mortgage indebtedness on the Property shall not exceed xxxxxxxxxxxxxxx Dollars.

(b) Cash Amount xxxxxxxxxxxxxxxxxxxxxxxx Dollars ($ ) (maximum amount paid by the University. The Cash Amount will remain xxxxxxxxxxxxxxxxx Dollars ($ ) regardless if the charitable deduction increases or decreases.

(c) Charitable Contribution Amount (Tax Deduction) . To be calculated by reducing the Appraised Value by the Cash Amount (less the value of the charitable gift annuity to Seller). Based upon the appraised fair market value of xxxxxxxxxxxxxxxxxx Dollars, the charitable contribution would be xxxxxxxxxxxxxxxxxxxxx Dollars (less the value of the charitable gift annuity to Seller). The University provides no assurance as to the charitable deduction since that is a matter between the Internal Revenue Service and the Seller.

(d) Earnest Money Deposit As evidence of good faith, the University will deposit in an escrow account to be maintained by a mutually acceptable attorney, title insurance company, as escrow agent, the sum of xxxxxxxxxxxxxxxxxxx Dollars (the “Earnest Money”) which will be credited toward the purchase price.

3. **Payment of Purchase Price** On the day of Close of Escrow (as defined in Section 4(b) below), the University shall deposit with xxxxxxxxxxxxxxxxxxxxxxxxx, (“Escrow Holder”) the Purchase Price in immediately available funds, which shall be paid to Seller at Close of Escrow.

4. **Escrow**

(a) Opening of Escrow Within five (5) business days after the Effective Date, Seller shall open escrow (“Escrow”) with Escrow Holder. The University and Seller agree to execute and deliver to Escrow Holder, in a timely manner, all escrow instructions necessary to consummate the transaction contemplated by this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

(b) Close of Escrow For the purpose of this Agreement, the “Close of Escrow” shall be defined as the date that the Warranty Deed (as defined in Section 6, below) in the form attached hereto as Exhibit B, is recorded in the xxxxxxxxxxxxxxxxxxxx. The Close of Escrow shall occur on a date mutually acceptable to Seller and the University, but in no event later than xxxxxxxxxxxxxxxxx, unless extended by the mutual written consent of the parties hereto.

5. **Charitable Gift Annuity Defined**

(a) In consideration of the conveyance of the Property, the University shall issue the Charitable Gift Annuity, payable monthly, in the form attached hereto as Exhibit C, based on: (1) the respective dates of birth of the following annuitants: donor, whose date of birth is xxxxxxxxx; and donor, whose date of birth is xxxxxxxxxx; (2) the annuity rate recommended by the American Council on Gift Annuities for the month in which Closing occurs; and (3) the face amount of the Annuity which shall be equal to xxxxxxxxxxxxx Dollars ($ ).

(b) The monthly annuity payments shall commence as of the first day of the second month following the date of Closing. For example, if the closing occurs on January 31, 2019, the commencement date of the Annuity shall be March 1, 2019.

6. **Conditions of Title**  The Property shall be conveyed to the University by Seller by a Warranty Deed, subject only to (a) a lien to secure payment of real estate taxes and assessments, not delinquent; (b) such other title matters affecting the Property created by or with the written consent of the University; ( c) all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property; (d) all matters which would be apparent from an inspection, or disclosed by the Survey; and (e) exceptions which are approved and/or accepted by the University in accordance with Section 8(d) of this Agreement, (collectively approved Conditions of Title).

7. **The University’s Title Certificate** Title shall be evidenced by Certificate of Title equal to the Cash Purchase Price, showing title to the Property vested in the University, subject only to the Approved Conditions of Certificate of Title (“Title Certificate”). The University shall pay the cost of the Certificate of Title.

8. **Conditions to Close of Escrow** The University’s obligations to close and consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions:

(a) Option to Purchase Period. For the period of time commencing on the Effective Date and ending on xxxxxxxxxxxxxxxxxxxxxxxxxx, (“Option to Purchase Period”), Seller agrees that the University will have the right to market the sale of the property to a prospective third-party buyer. Seller agrees that the University may engage a real estate agent to market the Property on behalf of the University. Seller acknowledges that the University wishes to enter into an agreement of sale with a third-party buyer for the Property. Seller agrees that the University may enter into an agreement of sale with a third-party buyer which sale will be subject to and contingent upon the University exercising its Option to Purchase the Property hereunder.

(b) Inspection Period. Between the Effective Date and the Close of Escrow, the University and the University’s employees, agents, contractors, subcontractors and consultants (collectively, “the University’s Representatives”) shall have the right to enter upon the Property, at reasonable times during ordinary business hours upon prior written notice to Seller to perform such inspections, investigations, tests and studies. Following any such tests or inspections, the University agrees to promptly return any portions of the Property damaged or altered by the University during such tests or inspections to substantially the same condition which existed prior to such test or inspection.

Seller shall make available for inspection by the University and its designees, agents and representatives, the following documents (the “Property Documents”), to the extent applicable, within seven (7) days after execution of this Agreement;

(i) Plats and surveys;

(ii) Records, files, reports, instruments, contracts, agreements, and other documents which affect the ownership, condition or operation of the Property, including, but not limited to, any and all utility contracts, service contracts, construction contracts, permits and licenses applicable to the Property, maintenance records, and insurance policies applicable to the Property; and any and all condominium documents, including the declaration of the condominium, bylaws, and any notices of violations or delinquencies that pertain to the Property.

(iii) Notices of violations ( zoning, environmental, etc.) related to the Property, as well as any claims for damages or injuries which occurred on or relate in any way to the Property;

(iv) Real estate and utility bills;

(v) Environmental studies, reports, notices, analyses and tests;

(vi) Title insurance and title abstracts; and,

(vii) Such other documents as the University may reasonably request.

The University shall have ten (10) days after receipt of the Property Documents to examine them and, also, the Property. During said period (the “Inspection Period”), the University shall have the right, exercisable in its sole and absolute discretion, to terminate this Agreement by written notice to Seller. In such event, this Agreement shall be null and void and neither party shall have any further obligation to the other.

Notwithstanding the foregoing, the University additionally shall have the right to terminate this Agreement without liability subsequent to the Inspection Period if environmental tests reveal hazardous conditions, environmental perils, or contamination.

(c) University Approval or Disapproval. Prior to the expiration of the Option to Purchase Period, the University shall deliver to Seller at least thirty (30) days written notice of its approval or disapproval to purchase the Property. **Seller agrees that the University has no obligation to exercise its Option to Purchase and the University may terminate this Agreement at any time during the Option to Purchase Period. If the University terminates this Agreement, the University shall have no further obligations hereunder, including but not limited to the Annuity described in Section 5 above.**

If this Agreement is terminated pursuant to this subsection, the University shall deliver to Seller (y) the Documents and Materials delivered to the University by Seller, and (z) at no cost and without warranty as to correctness, copies of all reports, studies, maps and engineering studies that were generated by third parties for the University with respect to the Property, including, but not limited to, all environmental reports, surveys, marketing reports, geotechnical reports, lot studies and improvement plans;

If this Agreement is terminated pursuant to this subsection, Seller will refund the Earnest Money to the University that the University has deposited under Section 2(d) above.

(d) Title. Pursuant to the terms and conditions of this subsection, the University shall have the right to approve any and all matters of and exceptions to title of the Real Property. The University shall have thirty (30) calendar days following receipt of the Title Documents to give Seller (“the University’s Title Notice”) of the University’s approval or disapproval of the Title Documents. Notwithstanding the foregoing, Seller agrees to remove on the Close of Escrow any mortgages or liens whereby Seller is the borrower which are currently recorded against the Property.

(e) Title Certificate. As of the Close of Escrow, Title Agent shall have committed to issue the Certificate of Title to the University.

9. **Representations and Warranties** Seller hereby provides the following warranties, and representations, all of which shall be true as of Close of Escrow, shall survive Close of Escrow, and shall not be extinguished by conveyance of title:

(a) Title. Seller has fee simple and absolute (record and marketable) title to the Property, subject only to restrictions, rights-of-way, easements, and leases as appear of record. The Property, as of Close of Escrow, shall not be encumbered by or subject to any unrecorded restrictions; unrecorded rights of occupancy or leases; unrecorded rights of passage or access (ingress or egress); or, encroachments. The title shall be free and clear of all encumbrances, hypothecations, mortgages, deeds of trust, judgments, and liens, etc. as well as free and clear of any claims and conditions giving rise to any cloud on title, including, but not limited to, dower or curtesy claims; unrecorded liens (e.g., mechanics’ liens, materialman’s lien, and/or inchoate liens); lis pendens; claims of adverse possession; and/or claims of easements by prescription.

(b) Contracts and Agreements; No Leases. There are no contracts or agreements which may be binding on the University, as Seller’s successor in title, which are not terminable by Seller or by Seller’s successor in interest (including the University) upon not more than thirty (30) days advance notice, affecting the ownership or operation of the Property. The Property is not subject to any lease or agreement that provides a right of possession to a third party.

(c) Litigation, Etc.. There are no litigation, administrative proceedings, eminent domain proceedings, or other in rem proceedings, pending, threatened, or asserted against or involving the Property.

(d) Utilities. All utility installation and connection charges and all utility deposits have been paid in full.

(e) Environmental. There are no hazardous or toxic substances (including, but not limited to, microbial matter, e.g. mold, asbestos, petrochemicals) or other environmental hazards at, in, or under the Property which would give rise to fines, remediation expenses, damages, or liability under federal or state environmental statutes or at common law. Seller shall indemnify, defend, and hold harmless (including, but not limited to payment of legal fees, litigation expenses, and court costs) the University from and against all such hazardous conditions, environmental perils, contamination and liabilities.

10. **No Further Encumbrances** Except as may have been otherwise expressly provided herein, Seller shall not further encumber the Property.

11. **Insurance** Seller shall not cancel or reduce the amount of coverage of any insurance policies covering the Property.

12. **Maintenance and Risk of Loss** Seller shall maintain the Property in its present condition. Seller shall bear risk of loss from fire or other casualties until Close of Escrow. In the event of damage by fire or other casualty, the University shall have the option of rescinding this Agreement, whereupon it shall be null and void.

13. **Assignment** This Agreement shall be binding upon the Parties, their respective heirs, representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto.

14. **Notices** All notices required by this Agreement shall be in writing and deemed given when delivered in person, or three days after the day of mailing by certified mail, return receipt requested, or two days after delivery to a nationally recognized overnight courier, to the person and address noted below or to such other person or address as a party may designate in writing from time to time:

If to: The University

If to: Seller

15. **Entire Agreement** This Agreement, and the attachments hereto, represent the final and entire agreement between the University and the Seller with respect to the Property and, except as set forth herein, there are no promises, representations or understandings between the University and the Seller of any kind with respect to the Property. Any amendment or modification of this Agreement must be made in writing and agreed to in writing by the University and the Seller.

16. **Governing Law** This Agreement shall be governed by and construed in accordance with the laws of xxxxxxxxxxxxxxxxxx without regard to conflicts of laws principles thereof.

17. **Disclosure** The Annuity to be issued in connection with this Agreement will not be issued by an insurance company. The Annuity to be issued in connection with this Agreement is not insurance under the laws of the xxxxxxxxxxxxxx and is neither subject to regulation by the xxxxxxxxxxxxxxxxxxxx nor protected by xxxxxxxxxxxxxxxxxxxx.

IN WITNESS WHEREOF, each party hereto has executed this Agreement by its duly authorized officers effective as of the day and year first above written.

**The University**

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

Attest:

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**Seller**

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_