

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into effective December 31, 2011, between and among West Campus Point Homeowners Association (“Association”), and the Regents of the University of California (“University”), collectively referred to herein as the “Parties,” each for itself and each of its respective officers, agents, employees, attorneys, heirs, executors, administrators, successors, assigns, trust funds, consultants, subcontractors and suppliers, regardless of tier (the “Related Entities”).

I. Recitals

A. In 1986, University completed construction of what was then referred to as the West Campus Point Planned Unit Development Project (“West Campus Point”) located on the site shown on Exhibit A attached hereto (“Site”), and commenced sales of ownership interests in the homes comprising West Campus Point, subject to re-sale and other restrictions established by deed. West Campus Point was and is, in part, an asset of the University, designed to attract and secure faculty by offering housing ownership at less than market value.

B. Subsequent to the sale of ownership interests in homes in West Campus Point to private University-affiliated owners, certain water intrusion problems and other defects were discovered in the homes and on the Site. The University commenced litigation against the general contractor and certain of its subcontractors that had performed work on West Campus Point, seeking recovery for the costs associated with the construction problems and defects; the litigation was subsequently settled. Remediation work was completed on the units in 1988.

C. On or about 1996, the University undertook substantial repairs to the West Campus Point homes and the Site, for the purpose of remedying the water intrusion problems and other defects. Upon completion of such repairs the University asserted it

had no further repair obligations with respect to the West Campus Point homes or other improvements on the Site with respect to any claims for construction defect or design defect.

D. However, since then, homeowners at West Campus Point have continued to experience or have subsequently discovered additional water intrusion problems and other defects in the West Campus Point homes and the Site.

E. The University asserts that it does not have any legal obligation to remediate the water intrusion problems at West Campus Point. In the interest of working toward an amicable resolution, Association has refrained from commencing litigation on this issue.

F. The purpose of the MOU is to address and reduce water intrusion in the West Campus Point homes as maintenance of the homes in good condition is important to protect assets of the University, the Association and the Members.

G. Notwithstanding that the University claims it has no legal obligation to do so, in the interest of maintaining its asset in the form of a viable and affordable housing stock for future faculty members and in the interest of preserving the University's original financial investment in West Campus Point, and recognizing that further deterioration of West Campus Point would inevitably result in demolition, debris removal and landfill costs in excess of \$2.5 million, the University desires (subject to appropriate approvals) to provide financing to the Association such that Association can undertake certain specified repairs to the West Campus Point homes.

H. Association desires to own, manage, supervise and execute the Remediation Plan.

I. The Parties now wish to set forth the terms of their agreement with respect to the Remediation Plan financing, funding and any and all claims, which may now exist between the Parties, relating to or concerning construction defects, design defects and/or

damages resulting there from, including but not limited to remediation of the water intrusion and drainage problems and resulting damages at the West Campus Point.

WHEREFORE, the parties hereto agree as follows:

II. Definitions

- A. "ARB" shall mean the Architectural Review Board as referenced in Article I.1 of the Declaration and Covenants, Conditions and Restrictions ("CC&R") of West Campus Point Planned Unit Development ("Development").
- B. "Association" shall mean the West Campus Point Homeowners Association as defined in the CC&R.
- C. Not used.
- D. "Members" shall have the meaning identified in the CC&R.
- E. "Remediation Plan" shall mean the Work identified in Article 2.
- F. "University" shall mean the Regents of the University of California and its respective officers, agents, employees, attorneys, heirs, executors, administrators, successors, assigns, trust funds, consultants, subcontractors and suppliers, regardless of tier.
- G. "University Loan" shall mean monies loaned by the University of California to the West Campus Point Homeowners Association (\$4,587,805.00) pursuant to Article 4.
- H. "University Borrowed Funds" shall mean monies borrowed by the University to facilitate the University Loan to the Association as described in Article 4. The University Borrowed Funds shall not be considered University funds or public funds for any purpose.

III. Terms and Conditions

1. The Recitals and Definitions set out in Articles I. and II above are incorporated in this Article by this reference.

2. The Association has represented that its Remediation Plan shall include: (i) repair and replacement of roof, deck, and drainage systems; (ii) new surface envelope for the vertical surfaces; (iii) trellis repair and termite damage repair and, if funds allow, tenting of structures for wood destroying pests and organisms; (iv) installation of a system to keep water away from windows and doors in the courtyards and patios; (v) replacement of landscaping damaged in the execution of the Remediation Plan; (vi) mold remediation where evidence of mold is found in those areas which are part of the work; (vii) all other work which is reasonably necessary and customary in order to accomplish in a good and workmanlike manner the Remediation Plan as identified in Article 2(i)-(vii) above; (viii) one annual inspection per year by a licensed general contractor for a period of 10 years following completion of the Remediation Plan at the rate of \$2,500 per inspection and; (ix), if funds allow after completion of those items described in 2 (i) through 2 (vii) above including a retention for the inspections set forth in 2 (viii), interior water damage repair where such damage is a consequence of exterior water intrusion. The Association has represented that the purpose of the annual inspection will be to determine if any deficiencies exist with the work that was performed pursuant to the Remediation Plan, as well as to determine whether additional corrective action or maintenance is needed for such work.

3. Not used.

4. The University will provide funding to the Association in an amount of Seven Million One Hundred Thirty-Five Thousand Dollars (\$7.135 million) (the “Funding”) to facilitate the Remediation Plan. The Funding will be accomplished via a one time contribution by the University of \$2,547,195.00 to protect the University asset and a

loan secured by the University in the sum of \$4,587,805.00 to allow the Association to protect its asset. The loan secured by the University in the sum of \$4,587,805.00 shall hereinafter be referred to as the "University Borrowed Funds". The University Borrowed Funds, in the sum of \$4,587,805, shall be lent by the University to the Association and shall hereinafter be referred to as the "University Loan". The Funding disbursement instructions, interest rate, payback terms and amortization projection schedule in the form of a Term Sheet are attached hereto as Exhibit "B".

5. In the event that the Funding exceeds the amount necessary to complete the Remediation Plan, any "excess funds" will be returned to the University and shall be used to reduce the University Loan, with repayment first being applied to accrued interest and any remaining balance being applied to principal reduction.

6. University will recoup all costs related to the University Loan, including the principal sum and accrued interest, via the following sources: (1) all Remediation Fees paid by the Association to the University pursuant to Exhibit "B" attached hereto; (2) all sums paid by the Owners to the University pursuant to the "Increment to Current \$10 Individual Residential Lot Lease Monthly Payment" as described in item 8 of Exhibit B (the current individual Residential Lot Lease is \$10 per month) and as described on Exhibit B page 3 (Step 2 – New Remediation Fee and Land Lease Annual Increase); and (3), upon any resale of a unit by the University as described in Exhibit B, page 3 . On or before February 1 of each year following the effective date of this MOU, the University shall provide to the HOA Board of Directors a status report on the University Borrowed Funds, University Loan and any other loans pertinent to the Remediation Project. The report shall include the number of units sold at WCP that were subject to the loan repayment program, the price at which those units were sold, the amount of principal and interest included in the sale price under Article XII paragraph,2,(b)(E) of the CC&R's, which paragraph must be incorporated into the CC&R's by an amendment thereto, the amount of principal remaining to be paid on the University Loan, and the amount, if any,

of accrued and unpaid interest on the University Loan. Until the University Loan is paid in full, together with all accrued interest, all principal and interest on the University Loan included in the determination of the sale price of units sold by the University, as described above in this paragraph, shall be used to pay down the University Loan.

7. Except as stated in paragraph 6 above, neither the Association nor its members have any obligation to repay the Funding nor interest accruing thereon. The only funds to be paid by the Association in consideration of the Funding, which is inclusive of the University Loan, will be those funds paid by the Association in payment of the Remediation Fee, as set forth in Exhibit "B" attached hereto. Funds received upon resale of a Unit by the University as described in paragraph 6 above shall be credited against the University Loan. For those units owned by the University, and consistent with the goal to retire the University Loan as soon as reasonably practicable, the University shall have the absolute discretion and authority to determine, establish and implement any future purchase price of each such unit for future purchasers of West Campus Point units, provided the price does not violate Article XII, paragraphs (2) (a) & (b) of the Declaration of Covenants, Conditions and Restrictions of West Campus Point Planned Unit Development recorded with the Santa Barbara County Recorder's office on December 11, 1986 as Instrument Number 1986-081389 and any amendments thereto.

8. Association agrees that it shall only use the Funding proceeds for completion of the work identified in the Remediation Plan as set forth in Article 2 and that it shall comply with the University Loan repayment terms as set forth in Articles 4 and 6 above and Exhibit B hereto.

9. The University makes no representation or warranty with respect to whether any portion of the Funding hereunder may be characterized as imputed income to the Members or the Association by the United States Internal Revenue Service or the California Franchise Tax Board or that any payments may be treated as tax deductible. The University shall assume no obligation or liability in this regard.

10. Not used.

11. Association represents that Association has hired, or will hire prior to commencement of the Remediation Plan, a Construction Manager and other design professionals to provide professional estimating, construction management, and other services. These entities have, or will prior to commencement of the Remediation Plan advise as to: Remediation Plan delivery method and adequacy of design documents and construction practices; procurement of design and construction bids and contracts for the Remediation Plan; and the appropriateness of the Funding for the Remediation Plan. Association acknowledges that, other than the potential prevailing wage liability identified in Article 12 herein, the University will not add additional sums to the Funding to complete the Remediation Plan.

12. Association and the University have determined that under the circumstances herein identified, neither the fact that the construction shall take place upon leaseholds of the Association and Members on land owned by the University, nor the fact that the repairs shall be facilitated by loans from the University, require the payment of prevailing wages. However, Association and University acknowledge that the law in this area is currently in flux. Should a final ruling on this issue by an appropriate final adjudicating authority determine that prevailing wages do apply, the University shall increase the Funding accordingly for all actual incurred increased prevailing wage costs, as requested by the Association. In the event that additional Funding is required for prevailing wages, the University shall increase the University Borrowed Funds and the University Loan as necessary to cover the cost increase and the Association consents thereto. The additional sum shall be repaid from monies received by the University from: (1) Resale of a unit by the University; (2) The Residential Lot Lease increase and; (2) The Remediation Fee, all as described in Article 6 above. However, in no event shall the following terms change from that stated in paragraph 7 of Exhibit "B":

(1) The \$30.00 base amount of the Remediation Fee; (2) The annual increase to the Remediation Fee and; (3) The 40 year term of the Remediation Fee.

13. Not used.

14. At no additional cost to Association or Members, the University will provide sufficiently reasonable space to allow the Association, Members and/or contractors performing the work on the Remediation Plan to place on the property formerly known as "Devereux," during the course of construction, personal storage units for the storage of personal effects, construction equipment, materials, and supplies. Additionally, construction workers working on the Remediation Plan may park their automobiles on the property formerly known as Devereux during those periods that they are working on the Remediation Plan.

15 The University will provide an inspector for the Remediation Plan who shall, at his/her discretion, inspect the work, during the course of construction, to confirm it is in compliance with all applicable building codes and regulations. Said inspector will also issue all pertinent building permits in accordance with Article 26. The cost of the inspector shall not exceed \$63,000, and will be borne by the Remediation Plan and is included in the Remediation Plan Budget and within the amount of the Funding. The University shall have no liability to the Association whatsoever with respect to either the permitting or inspection and the Association agrees that any liability for defective design or construction or any failures to meet requirements by standard in the industry, code or other laws shall be borne directly by the Association and their contractor(s), construction manager(s), architect(s) and other Association agents.

16. Not Used.

17. Association represents to University that Association may change or substitute Remediation Plan elements and materials for aesthetic purposes on the condition that such changes do not compromise remediation outcomes contemplated by

the Remediation Plan and such substitutions do not compromise the Remediation Plan Budget.

18. As it deems necessary, the Association may engage professionals to advise it and prosecute the work including, but not limited to, accountants, tax consultants, attorneys, construction managers, architects, engineers, contractors and subcontractors of the Association's own choosing. The Association advises that it may draw upon the Funding to compensate such individuals and entities for their services related to the Remediation Plan consistent with the Remediation Plan Budget.

19. Association will manage, supervise and execute the Remediation Plan, including, but not limited to all hiring and contracts, all time lines, all materials purchases, all "sign-offs" for Remediation Plan completions, all necessary insurance coverage, all communications with Members and the resolution of any Member complaints arising from the performance of the Remediation Plan.

20. Association has represented that it will require that its construction manager provide a bi-weekly progress report to Association with a two-week look ahead schedule.

21. Association will be the party of record on all contracts. In any case in which the contract is not successfully completed or in which the repair, replacement or remediation fails or is compromised, Association will be responsible for determining and executing any actions necessary to best protect the interests of Association. The University will have no obligation in this regard.

22. Association will adjust its reserve program to provide for the maintenance, repair and replacement, as necessary, of all Remediation Plan elements subject to any Association CC&R provisions related to maintenance, replacement and repair consistent with California Civil Code section 1365.

23. With respect to those items of work included in the Remediation Plan that are the Association's responsibility to maintain and repair as required by the Association's CC&R's and California Civil Code section 1364, the Association will annually inspect such items as described in Article 2 above and will provide any necessary upkeep, repairs, and/or replacements, even when such upkeep, repairs and/or replacement would otherwise occur in advance of any regularly scheduled actions.

24. Subject to any limitations imposed by the CC&R's, all units in the West Campus Point complex, excluding Units 917 & 918, shall be included in the Remediation Plan.

The Association agrees to indemnify and hold harmless the University with respect to claims arising from construction defects or design defects on any of the units or common areas of the Development brought by any Member(s) arising or which could have arisen prior to the effective date of this MOU. Excluded from the Association's obligation to indemnify, as set forth above, is any obligation to provide indemnity for any claim arising as a result of construction or design defects which concerned or relate to units 917 and 918.

25. The Association agrees that all Remediation Plan elements previously approved by the ARB for the repair and remediation of units 917/918 shall be deemed approved for this Remediation Plan without further application(s). Any element not substantially different from those previously approved for units 917/918 will not require approval by the ARB.

26. The University shall issue any properly requested building permits or certificates of occupancy necessary to complete the Remediation Plan, which issuance shall not be unreasonably withheld. The Association agrees to comply with any reasonable and customary University mandated permitting or Certificate of Occupancy procedures related to the Remediation Plan.

27. It is the intent of the Association to begin construction within 90 days of the execution by all parties to this MOU and to complete the work by no later than March 31, 2014. It is also the intent of the Association to utilize a multi-prime construction delivery model. The University assumes no obligations with respect to the Remediation Plan delivery model selected. The University also assumes no obligation with respect to the construction schedule, other than representing that the Funding shall be made available for that full period, provided all terms of the University Loan are met, as identified in paragraph 4 and Exhibit "B."

28. When the Remediation Plan is completed, Association's construction manager shall certify that the Remediation Plan is complete and meets the requirements set out in the Remediation Plan. Upon receipt of such certification and the completion of all necessary inspections, the University Building Official will issue a Certificate of which shall not be unreasonably withheld.

29. Association will continue to take full responsibility for all future maintenance and replacement of the common areas of the West Campus Point, including the roof, drainage system, and the building envelope as required by the CC&R's. The Association will not seek any future recourse or additional funding or financing from the University with respect to any other claim for construction defects or design defects now or in the future. Nothing herein shall be construed to waive claims unrelated to the design and construction of the West Campus Point, such as those concerning the Utility Services Agreement or a dispute between the Association and the University in its capacity as an owner of a particular unit. Additionally, nothing herein shall be construed to waive claims, unrelated to the design, construction and/or maintenance (or lack thereof) of the West Campus Point Development, which arise under the West Campus Point Planned Unit Development Common Area Lease, West Campus Point Residential Lot Lease and/or the Utilities Services.

30. Except for the obligations of the parties set forth in this MOU and in consideration of each party's performance of the covenants set forth herein, the University and the Association each for itself and its related entities, absolutely discharge and release each other from any and all claims, demands, debts, damages, liabilities, obligations, attorney fee claims, costs, expenses, liens, actions, and causes of action arising out of or related to any actual or alleged defects, errors, or omissions regarding the design, construction, maintenance, repair, replacement, or physical condition of West Campus Point, any unit thereon, or any other improvements on the Site, known or unknown. This release of claims includes, but is not limited to, a release of any and all claims related to water intrusion from any source, or to defects in landscaping, drainage, doors, and windows, or electrical, mechanical, plumbing, or structural systems in the West Campus Point homes or other improvements on the Site. With respect to these items, each Party hereto expressly waives the provisions of section 1542 of the Civil Code of the State of California and understands that said section provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

31. Each Party hereto has had the opportunity to receive independent legal advice from its attorney with respect to the advisability of making the agreement provided for herein, with respect to the advisability of executing this MOU.

32. Each Party hereto warrants that it has read this MOU and understands the contents thereof, and it has the right and exclusive authority to execute this MOU.

33. This MOU is solely for the benefit of the University and Association. This MOU is not intended to and does not create any cause of action, claim, waiver or defense in favor of any related entity or other party who is not a signatory to this MOU, including, without limitation, any non-signatory member of Association.

34. Each Party has cooperated in the drafting of this MOU. Hence, in any construction to be made of this MOU, the same shall not be construed against any Party on the ground that said Party drafted this MOU.

35. This MOU results from a compromise between the University and Association. It shall never be treated at any time by any person or entity as an admission of liability or responsibility arising out of any action or inaction of the University, Association, and/or its Members.

36. This MOU constitutes a single, fully integrated written contract, expresses the entire agreement of the parties hereto with respect to the matters contained herein and supersedes all negotiations, prior discussions and preliminary agreements. This MOU may not be amended or modified except by way of a writing signed by the party to be charged.

37. Each of the parties hereto agrees to take such further action and to execute and deliver such additional documents as any other party may reasonably request in order to effectuate or perfect the terms of this MOU.

38. This MOU may be executed in one or more counterparts, each of which will be deemed an original.

39. This MOU shall be construed in accordance with the laws of the State of California.

40. As used herein, the singular shall constitute the plural and the plural shall constitute the singular where appropriate.

41. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, may require.

42. Each party hereto represents, warrants and agrees that he has the full right and authority to enter into this MOU and to fully bind himself/herself/itself to the terms and obligations of this MOU and that the execution and consummation of this MOU will

45. It is anticipated that this MOU may be executed by the parties prior to completion and attachment of Exhibit "B", the adoption of the Amendment described in paragraph 6 above, and the Association Member's authorizing the Association's Board of Directors to approve the Remediation Fee which Fee will be described in Exhibit "B". Therefore, the terms of this MOU will only become binding upon the parties subsequent to: (1) Each party executing this MOU; (2) Each party agreeing to that set forth in Exhibit "B" which agreement shall be acknowledged by the signature of each party on said Exhibit; and (3) A Secretary's Certificate signed by the Secretary of the Association confirming the Members have approved said Amendment and Remediation Fee. If, within 90 days of this MOU being executed by all parties, the parties have not signed Exhibit "B" acknowledging their approval of the terms set forth therein, and/or a Secretaries' Certificate in conformance with that stated above has not been provided to the University then, notwithstanding the fact that each party has executed this MOU, this MOU will be deemed null, void, and of no further force or effect.

REGENTS OF UNIVERSITY OF CALIFORNIA

By: _____
Name: _____
Title: _____
Date: _____

WEST CAMPUS POINT HOMEOWNERS ASSOCIATION

By: _____
Name: _____
Title: _____
Date: _____