

AGENCY AGREEMENT

 **DRAFT**

This Agency Agreement is dated, for reference purposes only, _____, 2012, and is entered into by and between the West Campus Point Homeowners Association, a nonprofit Corporation, (“Association”) and _____ (“Owner”).

RECITALS

A. Association is a Homeowners Association as defined by California Civil Code section 1351(a) created for the purpose of maintaining, operating, and managing the Common Interest Development known as “West Campus Point” located upon property within the University of California Santa Barbara campus in Santa Barbara County.

B. The Association’s responsibilities for the maintenance, operation, and management of West Campus Point are set forth in that Declaration of Covenants, Conditions, and Restrictions (“CC&R’s”) recorded with the Santa Barbara County Recorder’s Office on December 11, 1986, as Instrument Number 1986-081389.

C. Owner leases a Residential Lot at West Campus Point identified as: _____ Said Residential Lot is developed with a single family residential structure (“Owner’s Unit”).

D. Pursuant to the CC&R’s, the Association’s Board of Directors has elected to proceed with certain maintenance and repair work to the exterior of the residential structures located at West Campus Point, including the exterior of the Owner’s Unit. The maintenance and repair work which the Association has elected to perform is the responsibility of the Association under the CC&R’s. Said work is more particularly described in that Memorandum of Understanding entered into between the Association and the Regents of the University of California dated _____, 2012 (“Repair Work”).

E. Pursuant to the CC&R’s, maintenance, repair, and replacement of the doors and windows serving the residential structures at West Campus Point is the responsibility of the Owner.

F. Notwithstanding the foregoing, Owner desires, in connection with the Repair Work, that the doors and windows serving its Unit be removed and replaced.

WHEREFORE, upon the following terms and conditions, the Association agrees to coordinate with the Repair Work the replacement of those doors and windows serving the Owner’s Unit as directed below.

AGREEMENT

1. The specific doors and windows serving the Owner's Unit, which are to be removed and replaced, are identified in Exhibit "A" attached hereto ("Designated Doors and Windows").

2. The type and specifications of the Designated Doors and Windows to be installed in the Owner's Unit are described in Exhibit "A" attached hereto.

3. The exterior and interior color and finish of the Designated Doors and Windows to be installed are described in Exhibit "A" attached hereto.

4. The hardware specifications for the Designated Doors and Windows to be installed are described in Exhibit "A" attached hereto.

5. The material and labor cost to remove and install the Designated Doors and Windows is set forth in Exhibit "A" attached hereto. While the Association believes the costs set forth in Exhibit "A" are correct, the Association does not represent or guarantee the accuracy of the material and labor costs set forth in Exhibit "A." The information was provided to the Association by others.

6. Whether such sums are more or less than that set forth in Exhibit "A," Owner is responsible for payment of all material and labor costs to remove and replace the Designated Doors and Windows.

7. Pursuant to the terms of the below Trust Agreement, on or before _____, 2012, Owner shall cause to be tendered to the Association the cost to remove and replace the Designated Doors and Windows as set forth in Exhibit "A." If the Owner fails to do so, the Association shall have no obligation to remove and replace the Designated Doors and Windows pursuant to the terms of this Agency Agreement.

8. In order to minimize cost and time, the removal and replacement of the Designated Doors and Windows will be coordinated with the Repair Work. The removal and replacement of the Designated Doors and Windows will commence on or after July 1, 2012, and be completed no later than March 24, 2014.

9. Owner will do all things, and execute all documents, as reasonably necessary for the removal and replacement of the Designated Doors and Windows. Additionally, upon at least twenty-four (24) hours' advance written notice posted on the front door of the Owner's Unit by the Association, Owner shall provide access to the Unit as reasonably necessary for removal and replacement of the Designated Doors and Windows, including, but not limited to, cost estimating and confirming dimensions, type and quantity.

10. Pursuant to this Agency Agreement, the Association is authorized by Owner to enter into a contract with a material supplier for the purchase of the Designated Doors and Windows for Owner's Unit. Additionally, the Association is authorized by

Owner to enter into a contract with a contractor who is properly licensed under the laws of the State of California to perform the removal and installation of the Designated Doors and Windows for Owner's Unit. Such contractor shall carry a policy of liability insurance with limits of liability not less than \$100,000 and, if required, workers compensation insurance. The contracts above described may include the purchase of windows and doors, and installation thereof, for other residential Units at West Campus Point.

11. The Designated Doors and Windows are to be installed in a good and workmanlike manner in accordance with industry standards and in compliance with all applicable laws, ordinances, and codes. The Association shall hire a Construction Manager who shall confirm in writing that the Designated Doors and Windows have been removed and installed as required by this Agency Agreement. It is agreed that the Association may reasonably rely upon such written confirmation.

12. It is understood and acknowledged between the Association and Owner that the Association is acting as the Owner's agent for purposes of engaging a contractor to remove and install the Designated Doors and Windows pursuant to the terms of this Agency Agreement. The Association is not a licensed contractor and is not receiving any monetary compensation for its services pursuant to the terms of this Agency Agreement. Rather, the Association is engaging the services of a material supplier and contractor, in the name of the Association, as an accommodation to the Owner in order to facilitate coordination of the work necessary to remove and replace the Designated Doors and Windows during the course of the Repair Work.

13. Except for the removal and replacement of the Designated Doors and Windows pursuant to the terms of this Agency Agreement, responsibility for maintenance, repair, and replacement of the doors and windows serving the Owner's Unit, including but not limited to the Designated Doors and Windows, remains unchanged from that set forth in the CC&R's.

14. In consideration of the Association entering into this Agency Agreement, Owner, to the fullest extent permitted by law, shall defend, indemnify, save, and hold harmless the Association from and against all claims, liabilities, demands, damages, losses, costs, expenses, attorney fees, fines, and judgments (collectively "Claims") arising by reason of the Association acting as Owner's Agent pursuant to the terms of this Agency Agreement, or Owner's breach of this Agreement, as well as Claims arising by reason of the removal and replacement of the Designated Doors and Windows in Owner's Unit. Owner expressly so agrees to assume such indemnity obligations without limit and without regard to the cause or causes thereof and whether or not said Claims arise in whole or in part from acts or omissions (including the joint or concurrent, active or passive negligence) of the Association, its employees, and agents, but excluding the sole and exclusive negligence or willful misconduct of the Association.

15. Upon written notification from the Association to Owner, which shall include supporting documentation, Owner shall reimburse the Association for any out-of-

pocket expenses it incurs in performing its responsibilities pursuant to the terms of this Agency Agreement.

16. The agency relationship created by this Agency Agreement shall commence on the date this Agency Agreement is executed by all parties and shall terminate upon installation of the Designated Doors and Windows in compliance with the terms set forth above, or March 24, 2014, whichever event occurs first. However, the obligation to indemnify as set forth in paragraph 14 above shall survive the termination of this Agency Agreement.

TRUST AGREEMENT

17. This Trust Agreement is entered into by the above-named parties simultaneously with the aforementioned Agency Agreement. The terms used in the above Agency Agreement have the same meaning when used in this Trust Agreement. The Agency Agreement and Trust Agreement shall, to the extent reasonably possible, be interpreted to be consistent one with the other.

18. On or before _____, 2012, Owner shall cause to be delivered to the Association the sum of \$ _____ as and for the material and labor costs to remove and replace the Designated Doors and Windows (“Owner’s Proceeds”).

19. The Association shall hold the Owner’s Proceeds in trust for the benefit of the Owner. The Proceeds shall be held and disbursed by the Association in accordance with the terms of this Trust Agreement.

20. The Association shall deposit Owner’s Proceeds in an account or accounts insured by the FDIC. Any interest accruing on said account(s) shall be paid to the Association. The Owner’s Proceeds may be comingled with funds received from other West Campus Point Residential Lot Lessees to be used for the removal and replacement of doors and windows in such other owners’ units.

21. Except for earned interest, if any, on the Owner’s Proceeds, the Association shall receive no other compensation for its services under this Trust Agreement.

22. Upon written confirmation from the Construction Manager as set forth in paragraph 11 above, that the Designated Doors and Windows in the Owner’s Unit have been installed in accordance with the terms of the Agency Agreement, the Association shall then pay to the material supplier of the Designated Doors and Windows installed in the Owner’s Unit the cost of such Doors and Windows. Additionally, upon such confirmation, the Association shall pay the contractor the cost to remove and replace the Designated Doors and Windows. If the Owner’s Proceeds held in trust by the Association are insufficient to cover the said material and labor costs, upon written notification, Owner shall immediately tender to the Association an amount equal to the deficiency, which shall then be paid by the Association to the material supplier/contractor. If, after payment of the material and labor costs to remove and install the

Designated Doors and Windows, the Owner's Proceeds have not been exhausted, the balance remaining shall be refunded to the Owner.

23. The Association shall keep complete and accurate records of all monies received from the Owner pursuant to the terms of this Trust Agreement, including deposits, transfers, disbursements, and other transactions involving the Owner's Proceeds. Upon reasonable written notice being given to the Association by Owner, the records shall be available for inspection by Owner during normal business hours.

24. Except as stated in paragraphs 11 and 22 above, neither the Association nor its Board Members shall have a duty or responsibility to confirm that the Designated Doors and Windows have been installed in accordance with the terms of the Agency Agreement, nor is the Association or its Board Members qualified to make such a determination.

25. The Association shall have no duty or responsibility to take any action or make any inquiry into whether or not appropriate action has been taken to protect against claims of mechanics, contractors, subcontractors, material suppliers, equipment suppliers, laborers, or others who might have a lien claim or claims against the Owner's Unit and/or the Owner's Proceeds held by the Association in trust.

26. The Association shall not be required to procure a fidelity bond as a consequence of this Trust Agreement.

27. This Trust Agreement shall commence upon execution of this Agreement by all parties. This Trust Agreement shall terminate upon installation of the Designated Doors and Windows, full payment, and distribution of the Owner's Proceeds in accordance with the terms set forth above, or March 24, 2014, whichever event occurs first.

28. If, at the time this Trust Agreement terminates, the Association is still holding all or part of the Owner's Proceeds, said Proceeds shall be distributed to the Owner.

FOR PURPOSES OF PARAGRAPHS 29 THROUGH 34, THE FOLLOWING GENERAL PROVISIONS ARE APPLICABLE TO THE AGENCY & TRUST AGREEMENTS

29. The Agency Agreement and Trust Agreement shall hereinafter be referred to collectively as the "Agreements."

30. Failure of either party to insist upon the performance of any of the terms set forth in the Agreements, or to declare a forfeiture or termination in the event of non-performance by the other party, shall not constitute a waiver of performance required in such Agreements.

31. In the event that an Owner sells or otherwise transfers its interest in its Residential Lot Lease for its Unit during the term of the Agreements, the Association shall have no responsibility to return any portion of the Owner's Proceeds except as

provided in the Trust Agreement. Additionally, upon any transfer of its interest, Owner shall obtain the written consent of the new owner of its Unit to be bound to the terms of the Agency Agreement to the same extent as if the new owner had executed the Agency Agreement. If Owner fails to do so, Owner shall continue to be responsible for the performance of its obligations under the Agency Agreement. Upon submittal of a written and signed agreement acceptable to the Association, stating that the new owner has agreed to assume the obligations of the Owner under the Agency Agreement, the Association shall release Owner from any further obligations under the Agency Agreement. Notwithstanding a transfer of the Owner's interest in the Residential Lot Lease for its Unit, the terms of the Trust Agreement shall continue to be binding and fully enforceable upon the Owner.

31. No amendment or modification of the Agreements or these General Provisions as set forth shall be valid, or of any force or effect, unless the same is in a writing signed by the parties hereto.

32. Any disputes, claims, or counterclaims arising from or relating to the Agreements shall be subject to, and shall be finally and exclusively resolved by, binding arbitration pursuant to California Code of Civil Procedure, section 1280 et. seq. The Arbitrator shall be required to make its decision in accordance with the applicable provisions of California law.

33. In any action, proceeding, or arbitration between the parties hereto arising out of the Agreements, the prevailing party shall be entitled to collect its reasonable attorney fees and costs from the non-prevailing party.

34. The Agreements, including the General Provisions set forth above, constitute a complete and integrated agreement and set forth the entire agreement between the parties with respect to such matters.

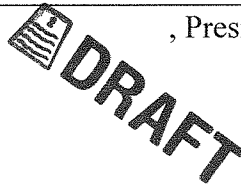
West Campus Point Homeowners Association

Dated: _____, 2012

By _____, President

Dated: _____, 2012

, Owner

A large, diagonal stamp with the word "DRAFT" in bold, capital letters, accompanied by a small icon of a document with a checkmark.