MEMORANDUM OF UNDERSTANDING between The Regents of the University of California, and The Associated Student of the University of California

This MEMORANDUM OF UNDERSTANDING ("MOU"), dated as of April 1, 2010, is by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation ("University") and the ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA, a nonprofit unincorporated association ("ASUC"). The University and the ASUC are referred to collectively as "Parties."

RECATIALS

A. The University, a public trust administered by the corporation known as “The Regents of the University of California,” has, under the California Constitution, full powers of organization and government, and owns and operates the University of California Berkeley ("UCB") campus.

B. The ASUC is a non-profit, unincorporated association which has been recognized by the University since 1887 as the official student government for all students on the UCB campus.

C. The Chancellor of the University of California Berkeley ("Chancellor") is empowered by The Regents of the University of California to authorize student governments on the UCB campus and to impose and collect mandatory fees from students attending UCB.

D. Mandatory student fees have been imposed and collected by the University on many occasions, for both student activities and for student buildings, based upon student referenda. Mandatory student activity fees on the UCB campus were the subject of a Memorandum of Understanding between the University and the ASUC, dated September 4, 1994 (the “1994 MOU”).

E. On March 19, 1998, the ASUC and the University entered into a certain Commercial Activities Agreement ("CAA"), pursuant to which they restructured the manner in which they conduct commercial activities on the UCB campus and the basis on which the ASUC occupies and uses buildings on the UCB campus.

F. The parties have negotiated the preliminary scope and components of a proposed campus project to revitalize the Lower Sproul Plaza area of the UCB campus to create a modern, student-oriented center (the “LSP Project”), with the design and construction aspects of the LSP Project to be financed with mandatory student fees, funds discretionary to the Chancellor, including gifts, and University bonds repayable, in part, from mandatory student fees.

G. The vision for the LSP Project is to revitalize the Lower Sproul Plaza area on the UCB campus and to create a student center that shall be a home for renewal, participation, and performance; a forum for dialogue, diversity, and civic engagement; and a laboratory for learning, living, and demonstrating a sustainable future. The LSP Project will embody the joint vision and investment of each of the Parties.

H. The purpose of this MOU is to document an agreement between the parties regarding the commitment of the Chancellor of the University of California Berkeley as to the permitted uses of LSP Project funds to be generated by a student fee to be proposed in a referendum to be held on April 6, 2010 (the “Referendum”), and to address certain areas in which the parties may have concerns regarding the implementation of the design for, and permitted uses of the LSP Project.
I. The Parties acknowledge that the scope of the LSP Project, as currently envisioned, is intended to fit within a project budget based on preliminary studies. In order to keep the LSP Project within budget, the scope will be subject to further assessment during the planning and design process and may be affected by construction market conditions at the time of bid.

NOW THEREFORE, intending to be legally bound thereby, the Parties agree as follows:

1. **Effect on 1994 MOU and CAA.** The rights and obligations of the Parties under the 1994 MOU shall remain in effect and shall not be affected by this MOU. Upon completion of the LSP Project, Exhibit B of the CAA will be amended to reflect the creation of new, replacement and renovated space. In all other respects, the CAA will remain in effect and shall not be affected by this MOU.

2. **Collection and Management.** If the Referendum results in approval by the students and by the President of the University of the mandatory student fee for the LSP Project, the University will collect and manage the mandatory student fee which is the subject of the Referendum and will, subject to the terms of this MOU, devote the funds resulting from the fee for the purposes described herein.

3. **Project Commitments.** If the Referendum results in student approval of the mandatory student fee for the LSP Project, the Chancellor shall:

   3.1 Submit the proposed LSP Project mandatory student fee to the President of the University for final approval.

   3.2 Commit the campus to provide to the LSP Project funds (including bond proceeds) equal to one half of the cost of those portions of the LSP Project listed in Exhibit A, attached hereto, up to a maximum of $99 Million.

   3.3 Commit to use funds resulting from the Referendum-approved mandatory student fee (including bond proceeds borrowed in reliance on the fee) solely for the LSP Project elements listed in Exhibit B, attached hereto, unless both parties shall agree in a written amendment hereto to a different, or additional use.

   3.4 Ensure that all net new building space created by the LSP Project, and all replacement space reprogrammed for student use as a result of the LSP Project, shall be designated either as “Commercial Activity Space” or “Student Activity Space” as those terms are defined in the CAA. Space no longer to be used for student activities or commercial purposes shall no longer be designated as “Commercial Activity Space” or “Student Activity Space.”

   3.5 Authorize and constitute an LSP Project “Program Committee” in compliance with all applicable University regulations and generally applicable policies in effect as of the date hereof, generally on the terms set forth in the student referendum ballot statement, provided that the ASUC may appoint up to six members of the Program Committee. Student appointees shall be confirmed by the Chancellor or his/her designee, provided that such confirmation shall not be unreasonably withheld. The purpose of the Program Committees shall include the statements set forth in Exhibit C.
3.6 Withhold consent to commence construction of that portion of the LSP Project relevant to the portions of the LSP Project described in (a), (b), (c) and (d) below unless the LSP Project shall provide for:

(a) A Multicultural Community Center ("MCC") contiguous with facilities for Multicultural Student Development, Bridges, the Recruitment and Retention Center offices, and the Gender Equity Resource Center, or their respective successors. The MCC shall include an open programmable space with a capacity for at least 150 people, a catering kitchen and student artwork display spaces.
(b) A Graduate Student Center, preferably located in Caesar Chavez Hall, programmable by the Graduate Assembly, with views of Strawberry Creek (or comparable space reasonably acceptable to the GA), such facility to be designed for use as a 24-hour space dedicated to graduate students.
(c) A dedicated 24-hour study area for all students.
(d) Use of Anthony Hall as the headquarters of the Graduate Assembly after completion of the LSP Project.

3.7 Provide, at the request of the ASUC, a written statement setting forth the basis for any decision to reject a recommendation of the Program Committee.

4. Relocation of Student Spaces. Recognizing the provisions of section 6.3 of the 1998 CAA, and provided that the Campus has made a good faith effort to comply with the requirements of that section regarding substitute space, in order to facilitate completion of the LSP Project, the ASUC shall not unreasonably withhold consent to temporarily relocate student government space, ASUC Auxiliary operations, and student activities space to one or more proximate, on or off-campus locations.

5. Fee Committee/Project Related Workgroup. The parties will jointly organize and maintain the following bodies:

5.1 Fee Committee. The LSP Fee Committee (the "Fee Committee") shall be a student committee, advisory to the Chancellor, consisting of 2 undergraduate students appointed by the ASUC President, 2 graduate students appointed by the Graduate Assembly President, 1 student appointed jointly by the ASUC Senate and the Graduate Assembly, 1 student appointed by the Committee on Student Fees, a representative of ASUC Auxiliary, and 3 campus representatives appointed by the Chancellor. The student member appointees shall be confirmed by the Chancellor or his/her designee, provided that such confirmation shall not be unreasonably withheld. The Fee Committee shall be co-chaired by a student and one of the campus representatives, to be selected by the Chancellor or his/her designee. The Fee Committee shall meet at least four times a year (unless deemed otherwise by the chairs). The Fee Committee shall have the responsibility, throughout the duration of the mandatory student fee, to review information on the amount and uses of LSP Project fee revenue, and recommend any changes to future year fee levels or uses.

5.2 Program Committee. A Program Committee is a part of the planning and design process at UCB; it is advisory to UCB Capital Projects; and it will work with an executive architect selected to design the LSP Project, and with other relevant campus staff and consultants.

5.3 Project Related Work Group. The Project Related Work Group shall be advisory to the Program Committee. To ensure that student interests are served throughout the entire process of the LSP project, membership of the Project Related Work Group shall, at the election of the student government, consist of at least 50%, plus one, of students. Student members will be appointed by the ASUC and the GA and must be confirmed by the Chancellor or his/her designee, and will include both undergraduate and graduate students.
6. **Debt Service/Savings.** Notwithstanding the provisions of Section 3, above, the first call on mandatory student fee revenues will be for “Return to Aid” to provide funds for the mandatory financial aid to meet the University of California and campus “return-to-aid” policies, and second will be for debt service payments for the student fee portion of the bonds issued for the LSP Project, until such bonds are retired. For each portion of the LSP Project, all savings from LSP Project costs which come under budget will be credited to the University and to students in proportion to the funding contributions of each.

7. **Interim Operations and Facilities.** Notwithstanding any other provision herein, the parties affirm that (a) the provisions of sections 6.2, 6.3, and 6.4 of the CAA shall remain fully operative, including those related to building use, replacement space, maintenance of ASUC Commercial Activities revenues and student government operations (b) and the LSP project be designed and phased in a manner to minimize the negative economic impact on ASUC; provided however nothing in this Memorandum of Understanding shall be construed to obligate the University to provide funding in excess of $99 million and associated interest costs. This $99 million does not include the $10 million of Life Safety Fee. Nonetheless, commencing as of the date hereof and prior to sending to the Office of the President for final approval, the UCB and the ASUC will, in good faith, negotiate an agreement to establish appropriate levels of conformance with these provisions of the CAA, including Commercial Activities revenue replacement, which may come from project bonds, in order to permit the LSP Project to move forward on schedule. In addition, these negotiations will include establishing a single point of contact from each Party for the administration of Lower Sproul Plaza activities and establish the cost and terms for ASUC’s use of space in Hearst Gymnasium.

8. **Term.** Sections 2, 3.3, 5.1, 6, 8-17 and Exhibit B of this MOU shall remain in effect after the completion and occupation of the construction and renovation. All other sections shall terminate as of such completion.

9. **Disputes.** Prior to institution of legal action, the parties shall attempt for a period of at least 30 days to resolve any dispute arising hereunder through informal consultation between official representatives of the parties, and in the absence of agreement, such dispute shall be the subject of a meeting between the Presidents of the ASUC and GA and the Chancellor.

10. **Notices.** Any notice, consent or other communication required or permitted under this MOU shall be in writing and shall be delivered by hand, sent by overnight couriers, or sent by prepaid registered or certified mail with return receipt requested, and shall be deemed to have been given on the earliest of (a) receipt, (b) one (1) business day after delivery to an overnight courier for expedited delivery service, or (c) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this Section).

    If to the University:
    Office of the Vice Chancellor, Administration California Hall University of California Berkeley, CA 94720

    with a copy to:

    University of California Office of the General Counsel 1111 Franklin Street, 8th Floor
    Oakland, CA 94607-5200
If to the ASUC:

Office of the President Associated Students of the University of California 200 Eshleman Hall University of California Berkeley, CA 94720

11. **Binding on Successors.** The terms, covenants and conditions contained in this MOU shall bind and inure to the benefit of the Parties and, except as otherwise provided herein, their respective successors and assigns.

12. **Severability.** If any provision of this MOU or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this MOU shall be valid and be enforced to the fullest extent permitted by law.

13. **Time of the Essence.** Time is hereby expressly declared to be of the essence of this MOU and of each and every term, covenant, agreement, condition and provision hereof.

14. **Headings.** Headings in this MOU are for convenience only and are not to be construed as a part of this MOU or in any way limiting or amplifying the provisions hereof.

15. **MOU Construed as a Whole.** The language in all parts of this MOU shall in all cases to be construed as a whole according to its fair meaning and not strictly for or against any Party.

16. **Entire Agreement/Amendment.** This instrument, including the exhibits hereto, contains the entire agreement between the Parties with respect to the subject matter hereof and, except as provided in sections 1 and 7, above, supersedes all prior offers and negotiations, oral and written. This MOU may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the Parties.

17. **Waiver.** The waiver by either Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of a like nature or otherwise.
IN WITNESS WHEREOF, the foregoing has been agreed to, as of the date first above written, by:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,

By: ____________________________

Robert J. Birgeneau, Chancellor, University of California, Berkeley

THE ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA

By: ____________________________

Will Smelko, President (2009-10), Associated Students of the University of California, Berkeley
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EXHIBIT A – Description of Lower Sproul Project Elements to be One Half Supported by UC Berkeley Campus Funds, up to a maximum of $99 million:

☐ Demolition and replacement of Eshleman Hall (which may, subject to the campus naming policy, be called the Student Government Center), designed to target a LEED Gold or better rating, including space for student government, student activities groups, ASUC Auxiliary Operations and space for a Multicultural Community Center reasonably satisfactory in size and configuration to the ASUC

☐ Renovation of certain interior portions of MLK Student Center, Caesar Chavez Center (including therein, at the option of the GA, a graduate student center) and Anthony Hall reasonably satisfactory in size and configuration to the ASUC

☐ Design and construction of an addition to the west side of MLK Student Center within the current building footprint

☐ Design and construction of new steps at the Northeast and Northwest corners of Lower Sproul Plaza

☐ Rain garden

☐ Project related surge costs
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EXHIBIT B – Description of Lower Sproul Plaza Project Elements Permitted to be Funded with Student Fee Revenue:

☐ Distribution of financial aid to eligible students in an amount not to exceed one third of the amount of Student Fee Revenue collected each year
☐ Demolition and replacement of Eshleman Hall (which may, subject to the campus naming policy, be called the Eshleman Student Government Center), designed to achieve a LEED Gold or better rating, including space for student government, student activities groups, ASUC Auxiliary Operations and space for a Multicultural Community Center reasonably satisfactory in size and configuration to the ASUC
☐ Renovation of certain interior portions of MLK Student Center, Caesar Chavez Center (including, at the option of the GA, a graduate student center) and Anthony Hall (to be LEED gold or better) reasonably satisfactory in size and configuration to the ASUC
☐ Construction of a shell and core addition to the south side of MLK Student Center along Bancroft Way designed for use by retail tenants
☐ Design and construction of an addition to the west side of MLK Student Center, within the current building footprint
☐ Costs to relocate the Career Center to 2440 Bancroft Way and rent for at least 10 years
☐ Lease of Hearst Gym Space (or other comparable space reasonably satisfactory to the ASUC) for student activities, to be reduced or eliminated when the LSP project performance space is completed and available for use
☐ Designation and installation of storage facilities to be allocated by the ASUC, such space accessible from the MLK Student Center
☐ Design and construction of a rain garden
☐ Design and construction of new steps at the Northeast and Northwest corners of Lower Sproul Plaza
☐ To the extent permitted by applicable University policy, on-going funding for the LSR Fee Committee, which will have the primary role of advising the Chancellor with respect to the LSR fee and its uses
☐ Annual facility operation (including, without limitation, 24-hour security) and maintenance (OMP) and capital renewal reserve contributions for the Student Government Center (Eshleman Hall replacement), MLK Student Center, including the south and west additions, and Cesar Chavez Center, to begin as each element of the project is completed, and contributions to an OMP and capital renewal fund functioning as an endowment (on terms reasonably agreeable to the GA) for Anthony Hall
☐ Costs to retain an architect to provide informal advice solely to the ASUC and/or the Program Related Work Group during design and construction of the LSP Project
☐ Capital and OMP costs associated with the intended 24-hour nature of portions of the LSP Project
☐ Project related surge costs
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EXHIBIT C – The Program Committee shall have the additional charge to make best efforts to incorporate the following design aspects into the LSP Project:

☐ MCC at 5275 ASF
☐ Grad Student Center at 2000 ASF, designed so as to afford comfortable private meeting, teleconference and practice talk rooms connected to a main socialization and event lounge with natural lighting.
☐ Cal Corps Public Service Center
☐ 24 hour study lounge and an open air café for all students
☐ Senate chamber suitable for both GA and Senate meetings
☐ Commercial space which could accommodate student run business
☐ LSP dance space reasonable suitable to meet student need
☐ Outside (LS Plaza) wireless access readiness and indoor (Eshleman, MLK and CC) high density wireless access
☐ Transit center and commuter lounge on Bancroft
☐ Family friendly/child accessible space
☐ Student org office and meeting space
☐ Safety/security aspects promoting 24-hour use of LSP
☐ Renovate Anthony Hall to be as energy efficient as is reasonably practical, including abatement of lead and asbestos in its window panes, upgrading its data connection to 1 gbit bandwidth, adding a kitchenette, implementing security enhancements affording safe 24-hour operation, and landscaping with native plant and water conserving surroundings