

The Regents of the University of California

COMMITTEE ON FINANCE

September 18, 2002

The Committee on Finance met on the above date at UCSF–Laurel Heights, San Francisco.

Members present: Regents Atkinson, Hopkinson, Lee, Ligot-Gordon, Montoya, Moores, Parsky, and Preuss

In attendance: Regents Blum, Davies, Johnson, Kozberg, Marcus, Pattiz, Sainick, and Terrazas, Regents-designate Bodine, Murray, and Seigler, Faculty Representatives Binion and Pitts, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Doby, and Hershman, Chancellors Berdahl, Bishop, Cicerone, Córdova, Dynes, Greenwood, Tomlinson-Keasey, Vanderhoef, and Yang, Executive Vice Chancellor Blackman representing Chancellor Carnesale, and Recording Secretary Bryan

The meeting convened at 11:25 a.m. with Committee Chair Hopkinson presiding.

1. **APPROVAL OF MINUTES**

Upon motion duly made and seconded, the minutes of the meetings of May 16 and July 18, 2002 were approved.

2. **INDEMNIFICATION OF INDEPENDENT MANAGEMENT COMMITTEE MEMBER OF UNIVERSITY COMMUNITY LAND COMPANY, LLC, MERCED CAMPUS**

The President recommended that The Regents agree to indemnify and defend the independent (fifth) member of the University Community Land Company, LLC Management Committee as to all claims and liability that may arise or occur in the course and scope of the performance of his or her duties in connection with the University Community Land Company, LLC, the limited liability company established to further the charitable, scientific, and educational purposes of the Merced campus, to the same extent as afforded individual Regents, provided the indemnification and defense shall be secondary to any entitlement the individual may have to indemnification and defense from insurance carried by the Company and shall be limited in duration in a manner determined by the President.

It was recalled that at its meeting in January 2002, The Regents authorized the establishment of the University Community Land Company, LLC (Company). The Company is comprised of two members, the Virginia Smith Trust (VST) and the University of California (University), and is governed by a five-person Management

Committee consisting of two individuals appointed by VST, two individuals appointed by the President of the University in consultation with the Chairman of the Board of Regents, and a fifth (independent) individual jointly selected by the University and VST. All significant actions of the Company require consent of The Regents, though the Management Committee will undertake the day-to-day operations.

The goal of the Company is to ensure that adequate housing, commercial uses, and public services will be available to support the Merced campus, consistent with the Regents' goal of developing a supporting university community contiguous to the campus. The University and VST formed the Company to accomplish this goal while minimizing duplication of effort between the University and VST, providing a more effective negotiating entity for dealing with local, State, and federal agencies, and financing the University Community infrastructure in a comprehensive and efficient fashion. The task of developing the University community is important and potentially controversial. As a result, the individuals on the Management Committee could be sued for actions that they take with respect to the Company's activities. The Company could obtain general liability and directors' and officers' liability insurance. However, such insurance increasingly does not provide adequate coverage for legal defense for all actions that may arise. The two individuals appointed by the University and the two individuals appointed by the VST have assurances that the University and VST, respectively, will indemnify and defend them for decisions made in connection with the Company. However, the fifth member of the Management Committee, who serves a three-year term, is likely to be providing the service as a member of the community and will lack any such protection. The individual currently serving in this position is concerned about this circumstance. Accordingly, the University has been asked if it will indemnify and defend the independent Management Committee member for claims and causes of action against the Management Committee and/or the Company which may arise out of actions taken on behalf of the Company. In most circumstances, if there is a legal challenge to actions of the Management Committee that names individual Management Committee members as defendants, the defense of the fifth member of the Management Committee is likely to be identical to the defense of the University employees on the Committee.

In January 1988, The Regents adopted a policy on defense and indemnification of individual Regents in civil proceedings. In January 1994, The Regents agreed to indemnify non-University members of the governing committee of Continuing Education of the Bar for actions arising out of their duties on that committee. Recently, The Regents agreed to indemnify campus foundation trustees for actions taken with respect to foundation investments. This action will provide protection for the independent member of the Management Committee limited to the circumstances in which the party acted, or failed to act, in good faith, in a manner such party believed to be in the best interest of the Company, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Defense and indemnification pursuant to this action will be limited to circumstances covered by the California Tort Claims Act and subject to the same procedures applicable to Regents in the policy adopted on January 14, 1988. It will be secondary to any entitlement that the Management Committee independent member would have to indemnification and defense from insurance carried by the Company. Finally, it will be limited in duration as determined by the President depending on the financial capacity of the Company to provide direct indemnification of the independent member.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

3. **REPORT ON NEW LITIGATION**

General Counsel Holst presented his **Report on New Litigation**. By this reference the report is made a part of the official record of the meeting.

The Committee adjourned at 11:25 a.m.

Attest:

Secretary