

COVINGTONBEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON**Robert K. Kelner**Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5503
rkelner@cov.com**Via Electronic Mail**

May 1, 2023

Mr. Roy Q. Lockett
Federal Election Commission
Office of Complaints Examination
and Legal Administration
1050 1st Street, NE
Washington, DC 20463**Re: MUR 8105**

Dear Mr. Lockett:

We write on behalf of our client, the University of California, Irvine (“UCI”), in response to the Complaint filed by the Committee to Defeat the President in the above-captioned matter under review.

The Complaint asserts that UCI made an impermissible corporate contribution to Representative Katherine Porter by granting her unpaid leaves of absence during which she continued to live in the house she owns in the University Hills community of Irvine, California, allegedly in violation of 11 C.F.R. §114.2. For the reasons set forth below, the Commission should dismiss the Complaint with no further action.

First, and fatally, the Complaint proffers no evidence that Rep. Porter’s unpaid leaves of absence were granted to aid her campaign or otherwise to influence a federal election. To the contrary, UCI granted the leaves cited in the Complaint¹ (“unpaid leaves of absence” or “leaves”) in each instance *after* she was elected or re-elected to office. It did so based on its determination of the best interests of students, UCI, and the University of California system (“UC”). Its decision was consistent with precedents for granting leave for public service to valued faculty members whose tenure it seeks to retain, as authorized by UC policies. When UCI approved her leaves, it specifically cited government service, not campaign activities, as the purpose.

Second, the decision whether a faculty member may remain in University Hills housing is not a decision that UCI itself even makes when considering whether to grant leave. Rather, it is a function of the agreement between the faculty member and the Irvine Campus Housing Authority (“ICHA”), which is a separate legal entity that administers the University Hills community.

Third, though Rep. Porter was not granted leave to campaign for federal office, the Complaint repeatedly misrepresents the legal standard that would apply if she had been offered

¹ MUR 8105 Compl. (Jan. 20, 2023) at 2; 5, ¶ 20.

COVINGTON

Mr. Roy Q. Luckett

May 1, 2023

Page 2

leave for that purpose, claiming that *any* discretion in the decision to grant leave with benefits results in a contribution. That is not the law. To the contrary, the Commission has concluded in multiple advisory opinions that provision of benefits during leave was permissible when the decision to grant leave involved some degree of discretion, provided that the purpose of the decision was not to influence an election. The Commission's Advisory Opinions 2014-14 (Trammell) and 2014-15 (Brat), in which it determined that a university permissibly exercised its "discretion" to grant leave with benefits to two candidates for federal office, are directly on point and dispositive here, as explained below.

Fourth, the mortgage terms that the Complaint alleges to be the "contribution" were agreed to nearly six years before Rep. Porter even declared herself a candidate for federal office and therefore could not have been a contribution to her distant-future campaign.

Finally, UCI did not decide to extend the terms of her mortgage when it granted her leave, but even if it had, the claim that extending the mortgage terms provided a thing of value to Rep. Porter is based entirely on the speculative premise that her housing arrangement resulted in a financial benefit relative to what *would have* occurred if she had been required to purchase a home on the private market. Given the many encumbrances associated with owning a home in University Hills, there is no basis for this assumption. The terms of Rep. Porter's agreement with ICHA do not even give her ownership of the land on which the house sits. They restrict in various ways her ability to improve the property. And significantly, they allow ICHA to set the price at which she may sell the house, materially constraining her ability to take advantage of any increased equity values on the private market. Any claim that extending this arrangement necessarily resulted in a net financial benefit to Rep. Porter is entirely speculative and therefore cannot be the basis for a finding that extending her longstanding, pre-existing housing terms would have amounted to a contribution.

I. Factual Background

A. Tenured Law Professorship at UCI

Katherine Porter joined the faculty of UCI in 2011 as a professor of law. She has taught consumer law, bankruptcy, secured transactions, transition to practice, role of state attorneys general, business colloquium, and a consumer bankruptcy seminar. Rep. Porter has made many significant contributions to the UCI law school during her tenure. She founded and co-taught a Consumer Protection Clinic that exposed students to innovative legal and policy work related to the National Mortgage Settlement.² She also co-founded the Compliance Lab, an interdisciplinary effort to advance the study and practice of compliance with a unique focus on compliance as a tool for achieving behavioral and organizational change. Rep. Porter also made meaningful contributions to the culture and community of the UCI academic campus. Based on her distinguished record, she earned the rank of tenured law professor, which is an indefinite appointment that can be terminated only for cause or under extraordinary circumstances.

² Katherine Porter Resume, <https://www.law.uci.edu/faculty/full-time/porter/porterCV.pdf>.

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 3

B. Housing in University Hills

As a tenured law professor, Rep. Porter was eligible to purchase a home in the University Hills community, which she did in 2011. The Regents of the University of California created ICHA to develop and maintain University Hills, an affordable for-sale and rental housing community on the UCI campus for eligible full-time employees.³ ICHA, a separate corporate entity from UCI, is governed by its own board of directors, which includes board members from outside of UCI. Housing in University Hills is not available on the open market. Rather, UC faculty are eligible to purchase homes in University Hills, pursuant to ICHA's priorities.

ICHA sets the prices of housing in University Hills based in part on the replacement cost of the property.⁴ Faculty members who purchase a home in University Hills do not own the land on which their house stands, however. Rather, they are granted a long-term sublease, with the Regents of the University of California retaining ownership of the land, which they essentially rent.⁵ The faculty member may purchase only the improvements on the land.⁶ There are significant restrictions on how and for how much faculty may sell homes in University Hills, pursuant to ICHA rules.⁷ ICHA sets a "maximum resale price" based on the increased cost of construction over the time period that the faculty member has owned the improvements on the land (as calculated by ICHA in its sole discretion).⁸ Faculty members do not have discretion to sell the home over the maximum resale price set by ICHA, regardless of prevailing commercial market conditions.⁹ Moreover, significantly, faculty members cannot sell the home to non-UC employees unless no UC buyer can be found *and* UC does not exercise its option to buy the home, materially reducing the pool of potential buyers even when the private housing market experiences a major increase in demand.¹⁰

Any faculty member who buys in University Hills may obtain a mortgage through a private financial institution or through the Mortgage Origination Program ("MOP") that is run by the University of California Office of Loan Programs.¹¹ This is a UC-wide program that is available to all UC appointees who are members of the Academic Senate or hold an equivalent title and to Senior Management Group employees, including for houses not purchased at University Hills through ICHA.¹² A faculty member who receives a MOP loan and uses it to buy

³ ICHA, <https://icha.uci.edu/> (last visited May 1, 2023).

⁴ ICHA Home Resale Requirements and Resale Restrictions, <https://icha.uci.edu/wp-content/uploads/2017/05/HOME-RESALE-REQUIREMENTS-AND-RESALE-RESTRICTIONS.pdf> (last visited May 1, 2023).

⁵ ICHA Abstract of Lease of Homebuyers, <https://icha.uci.edu/wp-content/uploads/2016/10/Abstract-of-Lease-for-Home-Buyers.pdf>, (last visited May 1, 2023).

⁶ *See id.*

⁷ ICHA Home Resale Requirements and Resale Restrictions, <https://icha.uci.edu/wp-content/uploads/2017/05/HOME-RESALE-REQUIREMENTS-AND-RESALE-RESTRICTIONS.pdf> (last visited May 1, 2023).

⁸ *Id.*

⁹ *See id.*

¹⁰ *Id.*

¹¹ UC Office of Loan Programs, *Mortgage Origination Program (Standard MOP)*, <https://www.ucop.edu/loan-programs/loan-programs/mortgage-origination-program.html> (last visited May 1, 2023).

¹² *See* University of California, Mortgage Origination Program Brochure, <https://www.ucop.edu/loan-programs/files/mopbrochure.pdf> (last visited May 1, 2023).

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 4

outside of University Hills would also be free to retain the loan while on leave. Rep. Porter obtained such a loan through the MOP program in 2011. That same year, she also obtained a long-term ground sub-lease through ICHA and purchased improvements on the land (the house itself). We understand that the terms of her agreement with ICHA were standard terms that are offered to other faculty members who buy homes in University Hills. Pursuant to these standard terms, she remains eligible to stay in University Hills while on leave.¹³

C. Unpaid Leaves of Absence

Rep. Porter filed a statement of candidacy for the 2018 election on March 31, 2017.¹⁴ She was elected to the United States House of Representatives on November 15, 2018.¹⁵ It was not until *after* the election, on December 10, 2018,¹⁶ that Rep. Porter requested an unpaid leave of absence from her position as a professor of law.

The University of California's benefits and privileges policies for Academic Personnel and Programs are publically available on the website of the University of California Office of the President.¹⁷ These policies apply to all academic personnel of the UC system. The UC system benefits and privileges policies for academic personnel and programs permit leaves of absence for a range of reasons, including military service, government service, service to non-profit organizations, innovation and entrepreneurship activities, a visiting appointment at another institution, professional development, medical reasons, and family and health accommodations.¹⁸

The University of California has pre-existing policies that are specifically relevant to Rep. Porter's unpaid leaves of absence: Academic Personnel Manual ("APM") 750 (Leave for Service to Government Agencies) and APM-759 (Leaves of Absence/Other Leaves Without Pay).¹⁹ APM-750 provides that a "[l]eave of absence may be granted to academic appointees for consultation or other services to governmental agencies. When the appointee is compensated for services by the governmental agency, usually these leaves of absence are granted without pay." APM-759 provides that:

¹³ See Exhibit A (Porter Ground Sublease Agreement).

¹⁴ Letter from Kaufman Legal Group to the FEC (March 31, 2017), <https://docquery.fec.gov/pdf/285/201704030300145285/201704030300145285.pdf>.

¹⁵ Brent Griffiths, *Porter Ousts Walters in Southern California as Dems flip another seat*, POLITICO (Nov. 15, 2018), <https://www.politico.com/story/2018/11/15/california-elections-results-mimi-walters-katie-porter-995504>.

¹⁶ See Exhibit B at 2 (Porter Letter to Richardson dated December 10, 2018).

¹⁷ University of California Office of the President ("UCOP"), *Academic Personnel and Programs* (last visited May 1, 2023), <https://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/benefits-and-privileges/index.html>.

¹⁸ UCOP, *Academic Personnel and Programs* (last visited May 1, 2023), <https://www.ucop.edu/academic-personnel-programs/academic-personnel-policy/benefits-and-privileges/index.html>.

¹⁹ University of California, *Benefits and Privileges: APM - 750 - Leaves of Absence/Leave for Service to Governmental Agencies*, at 1 (last revised July 1, 2021), <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-750.pdf>; University of California, *Benefits and Privileges: APM - 759 - Leaves of Absence/Other Leaves Without Pay*, at 1 (last revised July 1, 2022), <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-759.pdf>.

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 5

Leaves of absence without pay for other good cause may be granted to academic appointees When a request for a leave without pay involves service or activities with an entity or organization outside the University, the request may be approved when the purpose for the leave is one that *will enhance the academic appointee's contributions to the University after completion of the leave.*²⁰

The UC system has a storied history of faculty taking leave to serve as government officials. Dozens of UC faculty members have taken leaves to serve in our country's highest offices. For example, Janet Yellen of UC Berkeley took an extended unpaid leave of absence for several years to serve on the Federal Reserve Board of Governors and on the Council of Economic Advisers. Similarly, Kimberly Clausing of University of California Los Angeles ("UCLA") took leave to serve as Deputy Assistant Secretary for Tax Analysis at the U.S. Department of the Treasury, Michael Nacht of UC Berkeley took leave to serve as Assistant Secretary of Defense for Global Strategic Affairs, and David Kessler of the University of California San Francisco ("UCSF") took leave to serve as Chief Science Officer of the White House COVID-19 Response Team. Currently, Asmeret Berhe of UC Merced is on leave to serve as Director of the Office of Science for the U.S. Department of Energy, Ann Carlson is on leave from UCLA to serve as acting administrator of the National Highway Traffic Safety Administration, and Representative Raul Ruiz is on leave from UC Riverside to serve as the U.S. representative for California's 25th congressional district. This is an illustrative and not comprehensive list of examples.

Students gain a tremendous academic benefit from the experience and expertise of faculty who serve in the highest levels of government and then return to campus after their government service concludes. The UC system as a whole and UCI in particular have an interest in encouraging faculty to engage in public service and then to return to teach and engage in scholarship at a UC institution. When such faculty return to campus, their presence raises the stature of the institution, enhances the recruitment of faculty and students, and improves the overall quality of education offered. As a result, and as the above lengthy list of examples reflects, generally leave for faculty to serve in high-level government positions is liberally granted. Multi-year periods of leave are also granted for a wide range of other pursuits, including in the private sector.

Granting Rep. Porter leave allows students to benefit from her experience and expertise as a Member of Congress when she returns to teaching. UCI expected that as a tenured professor, she would eventually return to teaching classes and otherwise contributing to the UCI academic community, and granting such leaves of absence encouraged Rep. Porter to return.

Because Rep. Porter's government service has continued for a period of years, requiring multiple leaves of absence, UCI evaluated precedent both at UCI and other universities in the UC system for granting such extended leaves. UCI's peer institutions provided consensus support for an extended period of unpaid leave for Rep. Porter. Specifically, UCI contacted administrators from UC Merced, UCLA, UC Santa Barbara, UC San Diego, UCSF, UC Davis, UC

²⁰ University of California, *Benefits and Privileges: APM - 759 - Leaves of Absence/Other Leaves Without Pay*, at 1 (last revised July 1, 2022), <https://www.ucop.edu/academic-personnel-programs/files/apm/apm-759.pdf> (emphasis added).

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 6

Riverside, UC Santa Cruz, and UC Berkeley, along with administrators from the UC Office of the President, seeking input from the other UC institutions. Those UC administrators' consensus feedback supported providing an extended leave for high-level government service.

Additionally, UCI reviewed whether it had granted extended leaves of absence to other professors at UCI specifically. UCI found that it had granted leaves of absences between three and six years to eight other professors for various purposes: to participate in public service at the National Science Foundation, to take a position at the Federation of American Societies for Experimental Biology, to take a position at the Max Planck Institute for Biogeochemistry, to co-found a private company, to take a position at an investment company, and for medical reasons.

II. Analysis

The Federal Election Campaign Act ("FECA") and associated Commission regulations prohibit a corporation, including a nonprofit corporation, from making any contribution to a candidate in connection with a federal election.²¹ A contribution means "any gift, subscription, loan, advance, or deposit of money or anything of value made . . . *for the purpose of influencing any election for Federal office.*"²² 11 C.F.R. § 113.1(g)(6)(iii) permits, however, compensation to an employee who is a federal candidate that meets the following three criteria: (A) the compensation results from bona fide employment that is genuinely independent of the candidacy; (B) the compensation is exclusively in consideration of services provided by the employee as part of this employment; and (C) the compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

The Commission has concluded that employment arrangements offered to a candidate were permissible even if the arrangements were offered in part as a matter of discretion, where the employer's decision was based on past practices and other bona fide employment reasons rather than for the purpose of influencing a federal election.²³ The Complaint asserts that these opinions are not applicable to incumbent candidates.²⁴ But there is no such limitation in those opinions, nor would it make sense for them to be so limited because, if anything, the risk that benefits are campaign related is much higher for someone who serves only as a candidate and holds no official position. In the case of an incumbent public official, there need not be a presumption that any compensation or benefits are campaign related.

Because UCI's decisions to grant unpaid leaves of absence to Rep. Porter, after she was elected or re-elected to federal office, were made for non-campaign related reasons that were consistent with UCI's policies and the prior practice of both UCI and the UC system as a whole, and for the other reasons described in greater detail below, no contribution was made by UCI to her federal political committee when the unpaid leaves cited in the Complaint were granted.

²¹ See 52 U.S.C. § 30118(a); 11 C.F.R. §100.134(l), § 114.2.

²² 52 U.S.C. § 30101(8)(A) (emphasis added).

²³ A.O. 2014-14 (Trammell); A.O. 2014-15 (Brat); A.O. 2004-08 (American Sugar Cane League); A.O. 1992-03 (Reynolds Metal).

²⁴ MUR 8105 Compl. at 11, ¶ 44.

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 7

A. UCI's Approval of Rep. Porter's Unpaid Leaves Was Not "for the Purpose of Influencing any Election for Federal Office"

UCI granted Rep. Porter's requests for unpaid leave pursuant to precedent and pre-existing UC policies, in recognition of the importance and value of her public service and to help ensure that she will return to the faculty and share her experience and expertise as a Member of Congress with the UCI community. UCI and the UC system grant extended unpaid leaves for a wide variety of private and public sector engagements. Although UCI exercises some discretion when considering requests for leave, Commission precedents in both advisory opinions and enforcement actions allow for such discretion, where the decision is not made for the purpose of influencing an election and is consistent with pre-existing employment policies and practices.²⁵

The advisory opinions that the Complaint cites deal with benefits offered to employees for the purpose of allowing them to engage in campaigns for federal office.²⁶ By contrast, in this matter, Rep. Porter did not request leave and UCI did not approve leave until *after* each relevant election. Further, the purpose of the leave was for government service and not for campaign activities.²⁷ In evaluating Rep. Porter's extended leaves of absence, UCI reviewed whether it had granted other faculty members similar leave. UCI found that it had granted leaves of absence between three and six years to eight other professors for various purposes, including for federal government positions.²⁸ Accordingly, UCI determined that granting Rep. Porter extended leave would be consistent with its past precedent for other faculty members. As noted above, UCI also determined that similar precedents existed across the UC system, consulting with

²⁵ See A.O. 2014-14 (Trammell) (candidate was "entitled to take a leave of absence by virtue of [his] position as a full-time professor at the College, provided it be in the best interest of both [him] and the College."); A.O. 2014-15 (Brat) (same); see also A.O. 2004-08 (American Sugar Cane League) (concluding that employer made no prohibited contribution by providing an employee with a severance package, reasoning that although employer had no written policy or standard formula, severance benefits were provided based on: (1) the position held, (2) the length of time employed, and (3) an evaluation of job performance and payment "would be tied exclusively to services rendered in [the candidate's] bona fide employment."); see also A.O. 2011-27 (New Mexico Voices for Children) (concluding that because a severance payment "would result from [a candidate's] bona fide employment . . . that is genuinely independent of his candidacy and the payment would be made exclusively in consideration of services provided by [the candidate] as part of his employment" and was comparable to severance payments provided to similarly qualified former employees, it would not be a prohibited contribution); MUR 5260 (finding no reason to believe that Washington University in St. Louis violated the corporate political contribution prohibition when it provided compensation for a teaching fellowship to a U.S. Senate candidate and reasoning that the compensation paid to the Senate candidate was comparable to compensation paid to similarly qualified persons for the same work over the same period of time and that the evidence strongly suggests that Washington University provided compensation to the Senate candidate irrespective of his candidacy).

²⁶ A.O. 2014-14 (Trammell); A.O. 2014-15 (Brat); A.O. 2004-08 (American Sugar Cane League); A.O. 2000-01 (Taveras); A.O. 1992-03 (Reynolds Metal).

²⁷ See Exhibit B at 1 (Porter 2019 Leave Approval), Exhibit C (Porter 2020 Leave Approval), Exhibit D (Porter 2021 – 2022 Leave Approval).

²⁸ See *supra* 5-6.

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 8

administrators at peer universities in the UC system, who provided consensus feedback supporting providing an extended leave for high-level government service.²⁹

B. Some Discretion May Be Applied in Determining Whether to Grant University Leaves of Absence

The Complaint focuses repeatedly on the suggestion that the decision to grant leave is vested in UCI's Vice Provost and that she exercised some discretion in deciding whether to grant leaves of absence under UC policies, asserting that under Commission precedents *any* discretion results in a contribution.³⁰ Specifically, the Complaint cites to the Commission's opinion in *American Sugar Cane League*, asserting that "[t]he Advisory Opinion . . . held that payments may not be 'irrespective of the candidacy' if the decision to grant a request for partial leave is solely in the discretion of the company and based on factors not exclusively tied to services provided by the employee."³¹ That was not the Commission's holding in *American Sugar Cane League* and is not how the Commission has defined the legal standard in other advisory opinions concerning payment of compensation or benefits during a federal campaign. This is irrelevant here because the leaves were granted not for an employee to campaign for office but rather for an elected official's period of public service, but even on its own terms, the Complaint mischaracterizes the Commission's precedents.

In finding that the American Sugar Cane League had made no corporate contribution, the Commission explicitly recognized that some discretion by the board was permitted in making the decision, noting that the decision whether to grant severance benefits was "discretionary in part" but that the decision focused "on factors related solely to the employee's services."³²

The facts in this case are akin to, and even more compelling than, those in *Trammell* and *Brat*,³³ in which the Commission again found no violation where a college official exercised some discretion in granting leave with benefits to two employees who were campaigning for federal office. In those opinions, the Commission considered requests submitted by opposing federal candidates, both of whom were employed as professors at Randolph-Macon College. Under the college's unpaid leave policy, the college would pay its share of a tenured professor's benefits – including medical, life, and disability insurance and tuition reduction, exchange, and

²⁹ We are aware that *Fox News* published a number of internal communications regarding Ms. Porter's leave that were released pursuant to the California Public Records Act.²⁹ In one article, *Fox News* reported that the then-Dean of UCI's law school, L. Song Richardson, told Vice Provost Diane O'Dowd that "to have an elected member of the United States Congress who can advocate on behalf of Orange County, including UCI, surely has significant benefits for the campus." Jessica Chasmar, *Katie Porter extended leave approved after UC Irvine dean warned rejection could reflect 'badly' on school*, FOX NEWS (Nov. 4, 2022), <https://www.foxnews.com/politics/katie-porters-extended-leave-approved-uc-irvine-dean-warned-rejection-reflect-badly-school>. Apart from the fact that the law school dean was not the ultimate decision maker concerning granting of leave, we note that this comment focused not on any campaign for office or intent to elect a candidate, but rather on the fact that Ms. Porter was already "an elected Member of the United States Congress," and that her comment was made *after* Rep. Porter's election, as the request for leave came after the election.

³⁰ MUR 8105 Compl. at 2-3, 7, ¶ 32-33; 9-11, ¶ 41-42, 46.

³¹ *Id.* at 9, ¶ 41.

³² A.O. 2004-08, at 5 (*American Sugar Cane League*).

³³ A.O. 2014-14 (*Trammell*); A.O. 2014-15 (*Brat*).

COVINGTON

Mr. Roy Q. Luckett

May 1, 2023

Page 9

remission benefits – for the entirety of their candidacies. Notwithstanding the Complaint’s repeated claims that the Commission has viewed any discretion in granting a leave with benefits to be a prohibited contribution,³⁴ the Commission in fact expressly noted that Randolph-Macon College “*exercise[d] its discretion* when considering requests for leave” and “payments for continued benefits [were] issued pro forma once the request is granted.”³⁵ The Commission concluded that “the College policy of liberally granting sabbaticals (including to both major party candidates in the same federal election) and generally approving continuation of benefits, including for those on sabbaticals for non-political purposes,” made the arrangement permissible.³⁶

Unlike *American Sugar Cane League*, the *Trammell* and *Brat* opinions are directly on point and dispositive. UCI granted Rep. Porter’s requests for unpaid leave pursuant to its pre-existing policies for purposes unrelated to a federal election. UCI affords such leave to tenured faculty for a variety of reasons involving both governmental and non-governmental activities of faculty members. The UC system also liberally grants unpaid leaves of absence for faculty to serve in academic development activities like serving in high-level government positions so that students, the University, and the UC system may benefit from the faculty members’ experience and expertise when they return to the faculty. And even more compelling than *Trammell* and *Brat*, Rep. Porter’s leaves were granted *after* she was elected to office, not before, confirming UCI’s intent to support her public service rather than her campaign for office.

The *Trammell* and *Brat* opinions are the only advisory opinions fully on point because they are the only opinions that involve a decision to grant leave, as distinct from cases in which an employer made a decision to provide salary or fringe benefits. What makes this matter different from all of the other opinions the Complaint relies upon is that those are all situations in which the employer made a decision actually to pay money to the employee running for office. Here, there is no such decision, and in fact, the *only* decision by UCI is to grant leave.

The Complaint suggests that UCI also decided to continue Rep. Porter’s housing benefit, calling it a “second discretionary decision.”³⁷ The decision whether a faculty member may remain in University Hills is not a decision that UCI makes in considering leaves of absence. Rather, whether a faculty member may remain in University Hills is a function of the agreement between the faculty member and ICHA. We understand that the ICHA agreements are standardized, allowing any UCI employee, including those on leave, to utilize University Hills housing.

Even though there is some discretion involved in granting unpaid leaves of absence, the discretion here is governed by precedents of the UC system. This was not a unique case of granting multi-year leave. The University applied its policies in a way that is consistent with past practice and with input and discussion among relevant senior administrators.

The Complaint suggests that inappropriate parties participated in the decision to grant Rep. Porter leave, stating that there was “research and a memo (by a donor to Porter’s campaign

³⁴ See MUR 8105 Compl. at 2-3, 7, ¶ 32-33; 9-11, ¶ 41-42, 46.

³⁵ A.O. 2014-14, at 3 (*Trammell*); A.O. 2014-15, 3 (*Brat*) (emphasis added).

³⁶ A.O. 2014-14, at 4 (*Trammell*); A.O. 2014-15, at 4 (*Brat*).

³⁷ MUR 8105 Compl. at 3, ¶ 10 (“[e]ven for ‘unpaid leave’ employees, it is not clear whether they are automatically entitled to remain at University Hills or if this is a second discretionary decision.”).

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 10

in 2018) outlining the case for extending Porter's leave.” The person whom the Complaint describes as a “donor” is the Vice Dean of the UCI School of Law, Christopher Whytock. Mr. Whytock was an appropriate university official to have been involved in the discussion regarding Rep. Porter’s leaves of absence, and he happened to also make a contribution of \$500 to Porter for Congress in 2018. Because Rep. Porter represents the district where UCI is located, there are undoubtedly many individuals at UCI who are her constituents and who also contributed to her campaign. This is irrelevant to the analysis of the allegations in the Complaint.

C. The Complaint Does Not and Cannot Establish That Continuing Rep. Porter’s Housing Arrangement Provided “Anything of Value”

Commission regulations prohibit corporations from making certain ongoing payments for health insurance, life insurance, and retirement for employees on unpaid leave in order to participate in campaigns for federal candidates.³⁸ The Complaint does not assert that UCI made a payment of salary or ongoing financial benefits like contributions to a retirement fund, insurance, or other forms of paid compensation that the Commission has specifically addressed through regulation or advisory opinions. Instead, the Complaint’s novel theory is that a contribution occurred because while on leave Rep. Porter continues to pay the same mortgage payment that she had been paying under a mortgage agreement entered into in 2011, six years before she became a candidate for federal office.³⁹

Rep. Porter’s agreement with ICHA to live in University Hills and fixed MOP loan⁴⁰ began in June of 2011, around the same time she became a UCI employee, pursuant to terms that are available to all other eligible faculty. Whatever financial benefit she received, if any, was given years ago when she became an employee and long before she was a candidate for federal office. Further, UCI is not making any ongoing payments to Rep. Porter in connection the University Hills housing benefit. In fact, because ICHA is a separate legal entity, and her eligibility to live in University Hills is governed by preexisting agreements with ICHA, UCI is making no determination of its own regarding her eligibility to continue living in University Hills.

Yet the Complaint insists that Rep. Porter is receiving a current benefit from UCI, citing what it asserts are the median home prices in Irvine, California, in comparison with the value of Rep. Porter’s University Hills home in University Hills.⁴¹ The Complaint does not establish whether a comparison of Rep. Porter’s home in particular to the median off-campus home in

³⁸ Regulations specifically prohibit corporations and unions from paying “the employer's share of the cost of fringe benefits, such as health and life insurance and retirement, for employees or members on leave-without-pay *to participate in political campaigns of Federal candidates.*” 11 C.F.R. § 114.12(c)(1) (emphasis added). In adopting this general rule, however, the Commission has clarified that this prohibition “does not apply to the payment of fringe benefits for employees on annual leave or other leave which the employee has the right to take as a result of a contract and which may be used by the employee for any purpose.” Fed. Election Comm’n, Communication from the Chairman, at 117 (Jan. 12, 1977).

³⁹ See MUR 8105 Compl. at 11, ¶ 46.

⁴⁰ Faculty may use MOP loans to purchase homes off campus on the same terms as faculty members who buy homes in University Hills. No special benefit was afforded to Ms. Porter as a candidate for federal office by granting her a loan through this program.

⁴¹ MUR 8105 Compl. at 3, ¶ 5; 4, ¶ 9; 5, ¶ 14-15.

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 11

Irvine is even an apples-to-apples comparison of comparable homes. Moreover, it ignores the fact that, as described above, by purchasing through ICHA, Rep. Porter took on significant encumbrances that constrain her ability to sell her home at market rates—encumbrances that the median-priced off-campus home in Irvine would be entirely free from.

Rep. Porter does not even own the land her house stands on. The Regents of the University of California own the land, and Rep. Porter subleases the land. Rep. Porter owns only the improvements on the land. This obviously contrasts dramatically with the usual terms of homeownership that would have obtained if Rep. Porter had purchased a home on the private market, in which case she would have owned the land and reaped the benefit of any appreciation in the value of the land, which in California can be considerable.

Additionally, ICHA imposes significant restrictions on what improvements all faculty, including Rep. Porter, may make to the land during the sublease. Specifically, the faculty member may not make any improvement on the property without providing notice to ICHA and may not demolish any structure on the land without obtaining approval from ICHA. Further, ICHA effectively sets the resale price of the improvements on the property by setting a maximum resale value. Accordingly, Rep. Porter cannot necessarily sell the property for the market rate. What's more, because Rep. Porter does not own the land, she does not receive the full value of any increase in equity that may occur in the residential real estate market. By buying on campus and living in the University Hills academic community, Rep. Porter gave up the opportunity to buy equity in another house in Irvine, California or elsewhere in the vicinity. The Complaint does not acknowledge the possibility that Rep. Porter could have acquired greater equity if she had bought a home on the free market in 2011 rather than in University Hills. The increases in home values in Irvine, California that the Complaint cites show what Rep. Porter forfeited, *not* what she gained.

Moreover, it is not accurate that Rep. Porter's only alternative to on-campus housing in 2011 was a house priced at the "median" level in Irvine, California. She could have bought a home at a lower price than the median in Irvine and taken advantage of the growth in the housing market, perhaps at an even higher rate than the increase in value of improvements on land she did not own in University Hills. Even now, and even assuming that median-priced houses in Irvine are comparable to her own, whether she would gain or lose by selling her University Hills home and buying one on the private market for the same value (as determined by ICHA), but without the same encumbrances, is speculative and essentially unknowable.

In sum, unlike the Commission's prior advisory opinions concerning the provision of specific, quantifiable benefits or salary during a leave of absence to campaign for office, or specific severance payments, the Complaint does not establish that granting of leave, and the continuation of her existing mortgage terms and housing arrangement with ICHA, resulted in any net financial benefit to Rep. Porter.

* * *

Rep. Porter entered into the housing arrangement with ICHA related to University Hills six years before she was even running for federal office, and the financial value of that arrangement remains highly speculative. The leaves of absence were requested and granted

COVINGTON

Mr. Roy Q. Lockett

May 1, 2023

Page 12

after she was elected and re-elected to Congress, therefore bearing no connection to her campaigns for office. Furthermore, UCI decides whether to grant unpaid leaves of absence, whether for her or anyone else, pursuant to pre-existing policies that apply to all eligible faculty. UCI did not decide whether or how to alter Rep. Porter's pre-existing housing arrangement with ICHA. The decision to grant Rep. Porter's unpaid leave of absence was made with permissible discretion based on the value of her government service to UCI and the UC system, as well as UC system precedents.

Accordingly, for the reasons stated above, we respectfully request that the Commission dismiss the Complaint with no further action.

Respectfully submitted,



Robert K. Kelner
Alexandra K. Langton
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
*Counsel for University of California,
Irvine*

Attachments

Exhibit A

IRVINE CAMPUS HOUSING AUTHORITY

University Hills
Buyer Disclosure Statement for Single Family Attached and Detached Resales in Phases I - IX

(For Buyers of Series 100, 150, 200, 300, 600, 700, 750, 800, 850, 920, 930 and 940 Homes)

NOTICE: THIS BUYER DISCLOSURE STATEMENT AND THE DOCUMENTS PROVIDED WITH IT CONTAIN IMPORTANT INFORMATION CONCERNING UNIVERSITY HILLS AND THE HOMES OFFERED FOR SALE THEREIN. YOU SHOULD REVIEW THIS STATEMENT AND THE RELATED DOCUMENTS CAREFULLY BEFORE EXECUTING THE RESIDENTIAL PURCHASE AGREEMENT FOR A HOME IN UNIVERSITY HILLS.

Published August, 2010

TABLE OF CONTENTS

	<u>Page</u>
I. GENERAL DEVELOPMENT INFORMATION	1
A. Developer	1
B. Builder/Architect	2
C. Description of University Hills	2
D. Future Development	3
II. DEVELOPMENT OWNERSHIP STRUCTURE AND ASSESSMENTS	3
A. Leasehold Interest in Land	3
B. Ownership of Common Facilities and Streets	4
III. ELIGIBILITY TO PURCHASE A HOME	5
A. The Priority System	5
B. Sales Facilitator	5
IV. MATERIAL RESTRICTIONS ON RESALE	6
A. Resale Offering Procedure	6
B. Resale Price Limitation	6
C. Shared Appreciation	6
D. Ownership Eligibility	6
V. GENERAL DISCLOSURE ITEMS	6
A. Assessments for Operation and Maintenance of Common Facilities	6
B. Assessments for Exterior Maintenance of Series 200 Townhomes in Phases I-III	7
C. Property Taxes	7
D. Income Tax Consideration	8
E. Parties Affiliated with ICHA	8
F. Title Matters	9
G. Rental Rights in ICHA	9
H. Post-Tension Slab Construction	9
I. Geologic and Soil Conditions	10
1. Geologic Conditions	10
2. Expansive Soil	10
J. Common Area Landscaping	10
K. Mineral Rights	10
L. Aircraft Noise	10
M. Bonita Canyon Personal Communications System ("PCS") Facility	11
N. Coyote Canyon Sanitary Landfill	11
O. Gabrielino Community Park	11
P. Anteater Recreation Center	11

TABLE OF CONTENTS (cont.)

	<u>Page</u>
Q. UCI Observatory.....	11
R. University Hills Phase X.....	11
S. University Hills Community Center.....	12
T. Regional and Local Roads Near Campus.....	12
U. Roads on the Campus.....	12
V. University Hills Streets and Parking.....	12
W. School Information.....	12
X. Emergency Services.....	13
Y. Home Business License.....	13
Z. Prohibition on Firearms.....	13
AA. No Trespassing on Adjacent UCI Land.....	13
BB. Construction Within University Hills.....	13
CC. Views Not Guaranteed.....	13
DD. Proposition 65.....	13
EE. Notice of Sex Offender Data Base.....	14
FF. Natural Hazard Disclosure Statement.....	14
GG. Real Estate Transfer Disclosure Statement.....	14
VI. SPECIAL ASPECTS OF INDIVIDUAL SERIES/HOME TYPES.....	14
A. Special Aspects of Series 100 and 300 Single-Family Homes in Phases I-IV.....	14
1. Exterior and Landscape Maintenance.....	14
B. Special Aspects of Series 150 Patio Homes in Phases IV, V, VI - 1&2.....	14
1. Sideyard Easements.....	14
2. Exterior and Landscape Maintenance.....	14
3. University Hills Community Center.....	14
C. Special Aspects of 200 Series Townhomes in Phases I-III.....	15
1. Exterior Building Maintenance.....	15
2. Landscape and Exterior Hardscape Maintenance.....	15
D. Special Aspects of Series 600 & 700 Paired Homes in Phase VII - 1&2.....	15
1. Attributes of Ownership of a Paired Home.....	15
2. Common Driveways.....	15
3. Common Walls ("Party Walls").....	15
4. Emergency Access Stairways (if applicable).....	16
5. Exterior Maintenance.....	16
6. Landscape Maintenance.....	16
E. Special Aspects of Series 750 Homes in Phase VII - 3,4,5.....	16
1. Sideyard Easement.....	16
2. Drainage Easement.....	16
3. Exterior Maintenance.....	17
4. Landscape Maintenance.....	17
5. Tierney University House.....	17
F. Special Aspects of Series 800 and 850 Homes in Phase VIII.....	17
1. Exterior Maintenance.....	17
2. Landscape Maintenance.....	18
G. Special Aspects of Series 920, 930 and 940 Homes in Phase IX.....	18
1. Exterior Maintenance.....	18
2. Landscape Maintenance.....	18
3. Water District Easements.....	18

TABLE OF CONTENTS (cont.)

	<u>Page</u>
4. Road Noise.....	18
5. University Hills Community Center.....	18
H. Special Aspects of the Series 920 Homes.....	19
1. Walls.....	19
2. Parking Limitations on Mayer Court Affecting Lots 56, 57 & 58.....	19
3. Fire Sprinklers in Lot 57.....	19
I. Special Aspects of the Series 930 Homes	19
1. Walls.....	19
2. Landscape Easement.....	19
3. Alley Lighting Easement.....	20
4. Parking Limitations in Alleys and Mistral Lane.....	20
5. Mailboxes.....	20
6. Fire Sprinklers.....	20
J. Special Aspects of the Series 940 Homes	20
1. Tierney University House	20
2. Fuel Modification Zones	21
3. Orange County Fire Authority Access Easement	21
VII. OUTLINE OF LEGAL DOCUMENTS.....	21
A. Ground Sublease.....	21
1. Term	21
2. Rental Payment and Shared Appreciation.....	21
3. Principal Residence Requirements	22
4. Regulation of Improvements to Property	22
5. Resale Offering Procedure	22
6. University's Option To Purchase in Cases of Changed Circumstances.....	23
7. Resale Price Limitations.....	23
8. Nonsubordination and Financing Provisions.....	23
9. Default by ICHA	24
10. Default by Homeowner	24
B. University Hills Property Use and Maintenance Regulations.....	24
1. Homeowners' Representative Board "HRB"	24
2. Restrictions Respecting Construction and Improvements.....	24
3. Restrictions Respecting Use and Maintenance.....	24
4. Party Walls and Common Roof Areas	25
5. Enforcement Procedures.....	25
C. Architectural Guidelines.....	25
D. Residential Purchase Agreement and Joint Escrow Instructions.....	25
1. Purchase Price.....	25
2. Conditions	25
VIII. NO REPRESENTATIONS	26
ADDENDA:	
I. Irvine Campus Housing Authority Board of Directors and Additional Officers	
II. Homeowner Assessments	

UNIVERSITY HILLS BUYER DISCLOSURE STATEMENT

For Buyers of Homes: in Phases I-IX, Series 100, 150, 200, 300, 600, 700, 750, 800, 850, 920, 930 and 940's.

The Irvine Campus Housing Authority ("ICHA") has prepared this Buyer Disclosure Statement, together with certain accompanying documents, for your review as a potential purchaser of a home in University Hills. This Disclosure Statement gives basic information concerning the University Hills development and describes, in summary form, the rights and obligations you will have as a University Hills homeowner. The documents provided with this Disclosure Statement include (i) the Ground Sublease, (ii) the University Hills Property Use and Maintenance Regulations, (iii) the University Hills Architectural Guidelines, (iv) the Residency Requirements and Rental Rules in University Hills and (v) Residential Purchase Agreement and Joint Escrow Instructions, which you will be required to sign. These documents set forth in detail the legal rights and obligations that you will incur if you elect to purchase a home in University Hills. Although a brief description of each of these documents and related materials is given below, it should be emphasized that **READING THESE DESCRIPTIONS IS NO SUBSTITUTE FOR A CAREFUL REVIEW OF THE DOCUMENTS THEMSELVES.**

IT IS IMPORTANT THAT YOU REVIEW THESE DISCLOSURE MATERIALS.

I. GENERAL DEVELOPMENT INFORMATION

A. Developer. The developer of University Hills is the Irvine Campus Housing Authority ("ICHA"), a California nonprofit public benefit corporation created by The Regents of the University of California ("The Regents") for the purpose of fostering and encouraging the development of affordable faculty and staff housing on the campus of the University of California, Irvine ("UCI"). ICHA is a corporation separate and distinct from The Regents, governed by a Board of Directors appointed by the UCI Chancellor with the consent of the President of the University of California (the "University"). The principal office of ICHA is located at 1083 California Avenue, Irvine, California, 92617, on the UCI campus.

A majority of the members of the ICHA Board are faculty members and senior administrators of the University. Under ICHA's Bylaws, approved by The Regents, ICHA's Board of Directors will consist of no fewer than five and no more than twelve members. The Board will be composed of no more than three outside members not employed by the University, who must reside in Orange County, at least six members of the Academic Senate, with the remaining members being full-time administrative employees of the University.

To ensure the continuing disinterested dedication of the Board to meeting the University-wide goals of the Housing Program, the number of appointees who are residents of University Hills is limited to a maximum of three. The members of the ICHA Board and its configuration are subject to change without notice. The present directors and principal officers of ICHA are listed in Addendum #1.

B. Builder/Architect. The builders and architects selected by ICHA to construct the homes in Phases I-IX of University Hills are listed in the following table.

Phase	Series and Home Type	Builder	Architect
I - III	100 & 300 Single Family 200 Townhome	J.M. Peters Co.	Richardson Nagy Martin (RNM Architects)
IV	150 Patio	Akins Development Co.	Berkus Group Architects
IV	300 Single Family	Akins Development Co.	Richard Nagy Martin (RNM Architects)
V & VI - 1 & 2	150 Patio	Akins Communities, Inc.	Berkus Group Architects
VII - 1 & 2	600 & 700 Paired	Catellus Residential Group ("CRG"), 1996 merger between Catellus Development and Akins Communities, Inc.	WFA, Inc., established 1988 by David Smith, A.I.A., partner in charge and Kim Pederson, A.I.A.
VII - 3, 4, 5	750 Single Family	Catellus Residential Group	WFA, Inc.
VIII - 1, 2, 3, 4, 5	800 Single Family	Brookfield Campus Housing, Inc. ("BCH"), a division of Brookfield Homes. Brookfield acquired CRG in 2000.	WFA, Inc.
VIII - 6, 7	850 Single Family	Brookfield Campus Housing, Inc. ("BCH")	WFA, Inc. Thomas Cox Architects (TCA)
IX-2	920 Single Family	California Pacific Homes, Inc. ("CPH")	Robert Hidey Architects (RHA)
IX- 3 & 4	930 Single Family Courtyard Homes & 940 Single Family	California Pacific Homes, Inc. ("CPH")	Bucilla Group Architecture ("BGA")

C. Description of University Hills. The University Hills community is located on the UCI campus south of East Peltason Avenue and the Las Lomas Faculty/Staff Apartments. Currently, University Hills covers approximately two hundred twelve (212) contiguous acres. The community currently consists of one thousand one hundred eighty (1,180) apartment units and homes, including single-family detached and attached residences, townhomes, condominiums, and custom homes.

D. Future Development. YOU SHOULD BE AWARE THAT THE AREAS ADJACENT TO UNIVERSITY HILLS MAY BE DEVELOPED IN THE FUTURE AND MAY BE DEVELOPED FOR ANY ONE OR MORE OF A NUMBER OF USES, INCLUDING RESIDENTIAL AND NONRESIDENTIAL USES. THE REGENTS RESERVE THE SOLE AND EXCLUSIVE RIGHT TO DEVELOP OR PERMIT DEVELOPMENT OF AREAS ADJACENT TO UNIVERSITY HILLS IN ACCORDANCE WITH PLANS ACCEPTABLE TO THE REGENTS OR TO DETERMINE NOT TO DEVELOP OR PERMIT DEVELOPMENT OF SUCH AREAS.

II. DEVELOPMENT OWNERSHIP STRUCTURE AND ASSESSMENTS

A. Leasehold Interest in Land. Although you will own the home you may purchase in University Hills, all of the land on which University Hills is located is, and will continue to be, owned by The Regents. As a homeowner, you will acquire a long-term leasehold interest in the land underlying your home (as described in more detail in Section VII below), which leasehold interest will be subject to renewal upon certain stated conditions. Technically, you will be a sublessee, since you will receive your leasehold interest from ICHA that is, in turn, the lessee under a master lease ("Master Lease") with The Regents covering the entire University Hills community. The Regents have agreed that, in the event of a default by ICHA, under the Master Lease, your sublease will be recognized as a direct lease from The Regents to you, provided that you are not then in default under your sublease and that you agree to recognize The Regents as lessor.

As with any lease, you will be required to make lease payments to ICHA pursuant to the terms of your Ground Sublease. The terms of such payments may vary from one homeowner to another, but generally a current monthly payment will be required coupled with an agreement on your part to pay ICHA (for the benefit of The Regents) a stated percentage of the appreciation in value (if any) you recognize on your home and improvements at the time of any resale. The percentage of appreciation that you may be required to pay over as deferred rent may vary from ten percent (10%) to thirty percent (30%), depending upon the level of current rent payment you elect to make.

By the terms of the Ground Sublease, you may select one of three rent payment plans. Under each of the three plans, the rent payment is computed as the sum of three separate components (1) a Base Rent component (2) a Deferred Rent component that includes a percentage share of the appreciation in your home to which ICHA is entitled at the time of resale and (3) Incremental Rent. The three payment plans are as follows:

PLAN 1: The Base Rent is four percent (4%) of the land value. When you resell your home, you keep ninety percent (90%) of any appreciation, and ten percent (10%) is paid to ICHA.

PLAN 2: The Base Rent is two percent (2%) of the land value. Upon resale, you keep eighty percent (80%) of any appreciation, and twenty percent (20%) is paid to ICHA.

PLAN 3: The Base Rent is zero (i.e., no Base Rent payment is required). Upon resale, you keep seventy percent (70%) of any appreciation, and thirty percent (30%) is payable to ICHA.

Under all three payment plans, you may also be required to pay, after the first five (5) years, an annual amount of Incremental Rent equal to four percent (4%) of any increase in the value of the land. (For example, if the initial value of your land was \$30,000 and, during the first five (5) years, it increased to \$39,900, the Incremental Rent which you would be required to pay after the fifth year would be $.04 \times \$9,900$ or \$396 per year.) Land values will be revalued every five (5) years to reflect the lesser of (i) the change in the Consumer Price Index or (ii) the Faculty Salary Index. However, land values as revalued may not increase at a rate in excess of ten percent (10%) per year or fifty percent (50%) every five (5) years. Following each such revaluation of land values, appropriate adjustments will be made to the level of Incremental Rent.

The following table illustrates the operation of the three rent payment plans for a sample lot having an initial value of \$30,000. For these purposes, it is assumed that the lot value increases by thirty-three percent (33%) during each five (5)-year period, to a level of \$39,900 in year six and \$53,067 in year eleven. (It should be noted that the table shows only annual rent payment levels and does not account for the share of appreciation to which ICHA would be entitled under each plan upon resale of the home.)

Sample Total Annual Land Rent

During Years 1 to 5 Lot Value = <u>\$30,000</u>	During Years 6 to 10 Lot Value = <u>\$39,900</u>	During Years 11 to 15 Lot Value = <u>\$53,067</u>
PLAN 1		
Base Rent = .04 x \$30,000 = <u>\$1200</u> per year	Base Rent = \$1200 Incremental Rent = .04 x \$9,900 = \$396 Total per year = <u>\$1596</u>	Base Rent = \$1200 Incremental Rent = .04 x \$23,067 = \$923 Total per year = <u>\$2123</u>
PLAN 2		
Base Rent = .02 x \$30,000 = <u>\$600</u> per year	Base Rent = \$600 Incremental Rent = .04 x \$9,900 = \$396 Total per year = <u>\$996</u>	Base Rent = \$600 Incremental Rent = .04 x \$23,067 = \$923 Total per year = <u>\$1523</u>
PLAN 3		
Base Rent = 0.0 x \$30,000 = <u>\$0</u> per year	Base Rent = \$0 Incremental Rent = .04 x \$9,900 = \$396 Total per year = <u>\$396</u>	Base Rent = \$0 Incremental Rent = .04 x \$23,067 = \$923 Total per year = <u>\$923</u>

As can be seen from this table, Plan 1 has the highest annual rent charges. However, Plan 1 allows you to keep the greatest share of your resale appreciation. For example, if you purchased a home for \$250,000 and resold it five years later for \$290,000 (thus generating an appreciation of \$40,000), under Plan 1, you would be able to keep \$36,000 of this appreciation. However, under Plan 2, you would be able to retain only \$32,000; and, under Plan 3, you would be able to keep only \$28,000. Thus, in choosing among the three rent payment plans, you will be making a tradeoff between current rent costs and future appreciation. (Of course, this example is used only for the purpose of illustration.) ICHA DOES NOT AND CANNOT MAKE ANY PREDICTION ABOUT THE FUTURE VALUE OF ANY HOME IN UNIVERSITY HILLS.

IF YOU ARE A UNIVERSITY-ASSOCIATED PERSON WHOSE PRINCIPAL OBJECTIVE IN PURCHASING A HOME IN UNIVERSITY HILLS IS CAPITAL GAIN, ICHA AND THE REGENTS STRONGLY RECOMMEND THAT YOU CONSIDER ACQUIRING A HOME IN A LOCATION OUTSIDE OF THE UNIVERSITY HILLS COMMUNITY.

B. Ownership of Common Facilities and Streets. The University Hills community has been designed to include areas of open space, pathways, bikeways, and other recreational facilities available to all residents in University Hills. Recreational facilities built include a Community Center that provides space for University Hills residents to meet and hold events, three swimming pools and spas, a children's wading pool, four tot lots, a volleyball court, a lighted basketball court, two lighted tennis courts, a multipurpose field, a dog run and picnic and barbecue areas. The recreational facilities will be available to you as a homeowner. Residents of apartments in University Hills share the use of these facilities. You should note that ICHA is not obligated to construct any recreational facilities in addition to those already completed.

These various improvements are owned and maintained by ICHA, but ICHA reserves the right at its sole discretion to transfer such ownership and maintenance responsibilities to a nonprofit corporation or to The Regents. The ICHA Board of Directors is empowered to establish reasonable rules and regulations for the use of such facilities, and to impose upon you and other homeowners (as a form of ground rent) reasonable assessments (both regular and special) for expenses relating to the operation, maintenance, and replacement of such facilities.

With regard to the streets and certain utility infrastructure facilities located in the existing phases of University Hills, ICHA or The Regents will provide necessary maintenance services for such facilities, except that the homeowners will be assessed a charge for maintaining the landscaping and infrastructure of the streets and parkways, the common area and the recreation and community facilities, which will be included as part of the general assessment for community common facilities.

III. ELIGIBILITY TO PURCHASE A HOME: THE PRIORITY SYSTEM

As briefly mentioned above, the stated purpose of ICHA in developing housing on the UCI campus is to create and maintain the stock of affordable housing which is available to the faculty and staff of UCI. In order to further its goals, ICHA and The Regents have created a priority system in order to determine eligible prospective buyers. Potential purchasers are selected in accordance with this priority system.

ONLY FULL-TIME EMPLOYEES OF THE UNIVERSITY ARE ELIGIBLE TO PURCHASE A HOME IN UNIVERSITY HILLS (except as discussed in Section VII A.5 (f) below).

A. The Priority System. First priority will be given to members of the Academic Senate, members of the Senior Management Group, Designated University-Associated Persons, and to Designated Current Owners specified by the University.

Second priority will be given to persons who are members of the University's non-Senate academic staff and to members of the Management and Senior Professional Program.

The third priority category will consist of University-Associated persons who are current nonacademic staff of the University.

B. Sales Facilitator. If the seller chooses to utilize a sales facilitator, the transaction will be turned over to an outside sales facilitator to write the purchase contract, present it to the seller, open the escrow and handle other issues necessary to close the transaction. **THE FACILITATOR IS NOT ACTING AS AN AGENT FOR EITHER PARTY, BUT ONLY AS A FACILITATOR IN THE TRANSACTION.**

THE SELLER WILL BE RESPONSIBLE FOR RETAINING THEIR OWN REAL ESTATE AGENT/BROKER IN CASES WHERE THE HOME IS BEING OFFERED TO THE GENERAL PUBLIC AS DISCUSSED IN SECTION VII A.5 (f) BELOW.

ICHA ADHERES STRICTLY TO THE ANTI-DISCRIMINATION LAWS OF THE STATE OF CALIFORNIA. ACCORDINGLY, UNDER SECTION 12920 OF THE CALIFORNIA GOVERNMENT CODE, ANY PRACTICE OF DISCRIMINATION IN HOUSING ACCOMMODATIONS BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, PHYSICAL DISABILITY, MENTAL DISABILITY, MEDICAL CONDITION, MARITAL STATUS, FAMILIAL STATUS, NATIONAL ORIGIN, OR ANCESTRY IS CONTRARY TO PUBLIC POLICY. THE FAIR HOUSING AMENDMENTS ACT OF 1988 PROHIBITS DISCRIMINATION AGAINST FAMILIES WITH CHILDREN AND THE HANDICAPPED.

IV. MATERIAL RESTRICTIONS ON RESALE

To assure that homes in University Hills remain available to and affordable by members of the University community, four material restrictions have been placed on resales under the terms of the Ground Sublease. The first restriction may lengthen the time required for selling a home in University Hills. The second and third restrictions limit the amount of any resale price you may receive, and the fourth concerns continuing ownership eligibility. YOU SHOULD REVIEW EACH OF THESE RESTRICTIONS CAREFULLY. PLEASE CONSULT SECTIONS 3.05, 3.06, 3.07, 3.08 AND 3.09 OF THE GROUND SUBLEASE FOR THE FULL PROVISIONS REGARDING THESE RESTRICTIONS.

A. Resale Offering Procedure. The first restriction relates to resale offering procedures. Under the provisions of the Ground Sublease, any homeowner offering a home for resale must comply with an offering procedure requiring that, for a period of up to eight (8) months, and perhaps longer if the terms or conditions of sale for the home are changed in any material respect, the home be offered only to the University and specified categories of University faculty and staff members. Thereafter, the home may be offered for sale to the general public, but only on terms and conditions that are no more favorable than those offered during the initial eight (8) month restricted period. (These procedures are described in detail in Section 3.05 of the Ground Sublease and Section VII A.5 below.)

B. Resale Price Limitation. The second restriction concerns the price at which any home in University Hills may be offered for resale. Specifically, the Ground Sublease provides that no home may be offered for resale at a price that is greater than the price initially paid by the homeowner, as inflated by the increase (if any) in the higher of three specified indices which measure inflation, plus the appraised value of improvements qualified by ICHA and made to the home during the homeowner's period of ownership, plus certain incidental expenses incurred to improve the appearance of the home for resale. (These procedures are described in detail in Section 3.08 of the Ground Sublease and Section VII A.7 below.)

C. Shared Appreciation. The third restriction concerns the amount of appreciation a homeowner will be entitled to keep upon resale of the home. As described in more detail in Exhibit B to the Ground Sublease, each homeowner is required to share with ICHA between ten percent (10%) and thirty percent (30%) of his or her resale appreciation, depending upon the rental plan chosen for the payment of ground rent under the Sublease. (This is discussed in more detail in Section 3.09 of the Ground Sublease and Section VII A.2 below.)

D. Ownership Eligibility. The fourth restriction concerns the eligibility to maintain ownership of a home in University Hills. Under the provisions of the Ground Sublease, a homeowner who experiences a permanent change to an appointment status not considered to be a career or regular position or to an appointment status not considered to be in full-time service to the University, or whose use of the property as a principal residence ceases, may be ineligible to continue owning a University Hills home. (These circumstances are described in Section 3.06 and 3.07 of the Ground Sublease and Sections VII A.3 and 6 below.)

V. GENERAL DISCLOSURE ITEMS

A. Assessments for Operation and Maintenance of Common Facilities. As noted above, under the terms of the Ground Sublease, the ICHA Board of Directors is given the authority to impose regular and special assessments against all homeowners in University Hills for the purpose of meeting expenses related to the operation and maintenance of the community's open space, pathways, bikeways, other recreational facilities, and similar improvements. Regular assessments are levied against all homes, regardless of product type. In addition, homeowners in Series 200 townhomes, Series 600 and 700 paired homes, Series 750 single-family homes, and Series 930 single-family courtyard homes are charged a supplemental regular assessment to cover additional fees for maintenance and upkeep of landscaping within the open space surrounding their home. SEE ADDENDUM #2 FOR CURRENT ASSESSMENTS ON YOUR HOME.