

Draft County Proposal

7/07/05

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

County of Monterey
Office of Community Development
County Administrative Offices
230 Church Street, Building 3
Salinas, CA 93901
Recorded for the Benefit of
The County of Monterey
Pursuant to Government Code Section 6301

DEVELOPMENT AGREEMENT

By and Between

THE COUNTY OF MONTEREY

and

EAST GARRISON PARTNERS I, LLC

for the
East Garrison Project
Fort Ord, County of Monterey

Table of Contents

	<u>Page</u>
1. DEFINITIONS.....	6
1.1 Definitions.....	6
2. DEVELOPMENT OF THE PROPERTY.....	8
2.1 Vested Rights.....	8
2.2 Applicable Law.....	9
2.3 Subdivision Improvement Agreements.....	10
2.4 Processing Subsequent Development Approvals.....	10
2.5 Development Timing.....	11
2.6 Changes and Amendments to Development Approvals.....	11
2.7 Reservations of Authority.....	13
2.8 Applicable Impact Fees and Development Exactions.....	15
2.9 Off-Site Public Facilities.....	15
2.10 Regulation by Other Public Agencies.....	17
2.11 Life of Subdivision Maps, Development Approvals, and Permits.....	17
2.12 Vesting Tentative Maps.....	18
2.13 Developer's Right to Rebuild.....	18
2.14 No Conflicting Enactments.....	18
2.15 Initiatives and Referenda.....	19
2.16 Environmental Mitigation.....	19
2.17 Subdivision Maps.....	20
3. FINANCING OF PUBLIC IMPROVEMENTS AND SERVICES.....	20
3.1 Community Service District.....	20
3.2 Community Facility District.....	20
3.3 Maintenance of Improvements Prior to Acceptance.....	21
3.4 Private Roads.....	21
4. REVIEW FOR COMPLIANCE.....	21
4.1 Annual Review.....	21
4.2 Information to Be Provided.....	21
4.3 Annual Review Fee.....	21
4.4 Failure to Properly Conduct Annual Review.....	22
5. ANNEXATION.....	22
6. DELAY; DEFAULT AND REMEDIES.....	22
6.1 General Provisions.....	22
6.2 Remedies.....	23
6.3 Enforced Delay – Extension of Times of Performance.....	24
6.4 Dispute Resolution; Legal Action.....	25
7. MORTGAGEE PROTECTION.....	27
7.1 Mortgage Protection.....	27
7.2 Mortgagee Not Obligated.....	27
7.3 Notice of Default to Mortgagee.....	27

7.4	Multiple Mortgages.....	27
8.	INDEMNIFICATION.....	28
8.1	Indemnification by Developer	28
8.2	Notice to Developer	29
8.3	Other Indemnification Agreements.....	29
9.	GENERAL PROVISIONS.	29
9.1	Binding Effect.....	29
9.2	Effective Date	29
9.3	Term.....	29
9.4	Assignment	30
9.5	Nonassuming Transferees.....	31
9.6	Automatic Termination.....	32
9.7	Notices	32
9.8	Cooperation in Defense.....	34
9.9	No Partnership; No Agency	34
9.10	Amendments to Agreement	35
9.11	Entire Agreement	35
9.12	No Third Party Beneficiary.....	35
9.13	Covenants Running With the Land.....	35
9.14	Cooperation in Performance	35
9.15	Applicable Law	36
9.16	Recordation of Agreement.....	36
9.17	Severability	36
9.18	Estoppel Certificate.....	36
9.19	Construction of Agreement.....	37
9.20	Time of Essence.....	37
9.21	Cure; Reapproval	37
9.22	Waiver.....	38
9.23	Attorneys' Fees.....	38
9.24	Jurisdiction, Venue and Statute of Limitations.....	38
9.25	Counterparts	38
9.26	Authority	38

- EXHIBIT A-1 LEGAL DESCRIPTION OF THE PROPERTY
- EXHIBIT A-2 MAP OF THE PROPERTY
- EXHIBIT A-3 MAP OF THE PROPERTY (ARMY PARCEL NUMBERS)
- EXHIBIT B DEVELOPMENT EXACTIONS
- EXHIBIT C APPLICABLE LAWS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement" or "Development Agreement") is entered into as of the ____ day of _____, 2005 ("Effective Date"), by and between the COUNTY OF MONTEREY (the "County") and EAST GARRISON PARTNERS I, LLC, a California limited liability company (comprised of the members identified below and shown on the signature pages of this Agreement) having an address at 24571 Silver Cloud Court, Suite 101, Monterey, CA 93940 ("Developer"), pursuant to California Government Code Section 65864, et seq. The County and Developer are sometimes referred to herein as a "Party" and collectively as "Parties."

RECITALS

A. **Legal Authority.** County is authorized by California Government Code Sections 65864-65869.5 (the "Development Agreement Law") and Chapter 18.62 of the Monterey County Code (the "Development Agreement Regulations"), to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

B. **Developer's Interest in Land.** Developer is a California limited liability company, the members of which are Woodman Development Company, LLC, and Lyon East Garrison Company I, LLC. Pursuant to a certain Disposition and Development Agreement ("DDA") dated as of _____ between Developer and the Redevelopment Agency of the County of Monterey ("Agency") and consented and agreed to by County (a copy of which is on file with the Secretary of the Agency), Developer has the contractual right to purchase from the Agency approximately two hundred forty-four (244) acres of real property in the County known generally as East Garrison, a part of Track 0 at Ford Ord, which property is described in the Legal Description of the Property, attached hereto as *Exhibit A-1*, and shown on the map set forth in the Map of the Property, attached hereto as *Exhibit A-2* (the "Property"). *Exhibit A-3* is attached hereto for the sole purpose of referencing the Army parcel numbers with reference to the Property.

C. **Transfer of Title.** The Property is currently owned by the United States Army ("Army") and is in the process of being transferred to the Fort Ord Reuse Authority ("FORA") pursuant to a Track 0 Finding of Suitability to Transfer ("FOST") (May 2003) setting forth the remedial actions taken and disclosures and certain restrictions pertaining to the environmental condition of the Property, which restrictions will be incorporated into the Army deed for the Property. FORA will subsequently transfer the Property to the Agency. The Agency will transfer the Property to Developer pursuant to the terms of the DDA. Conveyance of the Property from Agency to Developer is consistent with the Base Realignment and Closure Act's policies of job creation and economic growth to offset economic and job losses occasioned by the closure of Fort Ord.

D. **Reuse Plan and Conforming County Plans.** As the base-wide planning authority for Fort Ord, FORA adopted a base-wide Fort Ord Reuse Plan on June 13, 1997

("Reuse Plan") to guide the development of Fort Ord under plans developed by local jurisdictions that are consistent with the Reuse Plan. Following the adoption of the Reuse Plan, County amended its General Plan on November 20, 2001 to conform to the permitted uses generally provided in the Reuse Plan for lands at Fort Ord within the jurisdiction of County. County also adopted a Redevelopment Plan ("County Redevelopment Plan") for the County lands at Fort Ord, consistent with the Reuse Plan and the General Plan. Pursuant to Section 33220 of the California Health and Safety Code, and the ordinance adopting the County Redevelopment Plan, County is authorized to undertake actions for the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of the County Redevelopment Plan.

E. **Project Description.** Consistent with the Reuse Plan, the General Plan and the County Redevelopment Plan, Developer has proposed, and County has approved in the Development Approvals (referenced in Recital F), the development of the Property as a new community with residential, commercial, public, cultural and open space land uses. The community will consist of a number of residential neighborhoods surrounding a mixed use town center. The Development Approvals allow for the development of up to one thousand four hundred (1,400) residential units, plus up to seventy (70) second units, each on the same lot as a residential unit, including both deed restricted affordable housing and market rate housing, a mixed use Town Center with commercial and office and residential uses, public facilities and institutional uses, artist studio space as part of a historic district, and open space, parks and recreational areas, as more specifically set forth in the Development Approvals (the "Project").

F. **Development Approvals.** The Development Approvals include the following land use and development approvals and related actions:

1. Certification of a Final Subsequent Environmental Impact Report ("FSEIR), including project-specific mitigation measures adopted by County.
2. Mitigation Monitoring and Reporting Program ("MMRP") by County Board of Supervisors (Resolution No. _____, adopted on _____).
3. The East Garrison Specific Plan ("Specific Plan") approved by the County Board of Supervisors (Resolution No. _____, adopted on _____).
4. General Plan text amendments approved by the County Board of Supervisors (Resolution No. _____ adopted on _____).
5. Zoning Ordinance text and map amendments adopted by the County Board of Supervisors (Ordinance No. _____ adopted on _____).
6. Combined Development Permit, including Conditions of Approval, comprising a standard subdivision (Vesting Tentative Map) to create parcels for up to one thousand four hundred (1,400) dwelling units (plus up to seventy (70) second units, each on the same lot as a residential unit), commercial uses, and public uses; use permit for tree removal; general development plan; use permit to allow development on slopes over thirty percent (30%); and Design Approval, approved by County Board of Supervisors (Resolution No. _____, adopted on _____).

7. Allocation by the County of 470 acre-feet annually of potable water to serve the Project (Resolution No. _____, adopted on _____).

8. This Development Agreement approved by the County Board of Supervisors by (Ordinance No. _____, adopted on _____, (the "Enacting Ordinance")).

Actions by agencies other than County and Agency are not considered Development Approvals for the purposes of this Agreement.

G. **DDA.** The DDA between the Agency and Developer was approved by Agency Resolution No. _____ adopted on _____, and the Consent and Agreement of the County thereto was approved by the County Board of Supervisors by Resolution No. _____ adopted on _____. The DDA addresses terms and timing of conveyance of the Property from the Agency to Developer, financial terms including financing commitments by the Agency and Developer for segments of the Project and phasing and build out requirements for the Project, consistent with the Development Approvals as implemented and administered by the County.

H. **Certainty Desired.** Developer desires to carry out the development of the Property as a mixed use development consistent with the Reuse Plan, the General Plan, the County Redevelopment Plan, the Development Approvals and this Agreement. The complexity, magnitude and long term buildout of the Project would be difficult for Developer to undertake if the County had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. In order to obtain the housing, tax and other benefits the Project will provide and to assure that the impacts of the Project will be adequately addressed, County desires certainty that the Project will be developed as approved in the Development Approvals, and in particular that needed infrastructure, facilities and services related to the Project will be provided in a timely fashion. As a result of the execution of this Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in County planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project, and further that the Project will be implemented and infrastructure, facilities and services will be provided pursuant to the Development Approvals.

I. **Subsequent Development Approvals.** In addition to the Development Approvals, the Project will require various additional future land use and construction approvals, from County to implement the Development Approvals ("Subsequent Development Approvals"), which shall automatically be deemed to be part of the Development Approvals as they are approved.

J. **Consistent with General Plan.** County has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867 and Chapter 18.62.10 of the Monterey County Code. As required by Government Code Section 65867.5, County has found that the provisions of this Development Agreement and its purposes are consistent

with the goals, policies, standards and land use designations specified in the General Plan, the Reuse Plan and the County Redevelopment Plan.

K. Planning Commission and Board Approvals. On [July 13, 2005], the County of Monterey Planning Commission (the "Planning Commission"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Development Agreement pursuant to Resolution No. _____. On _____, _____, the Board of Supervisors adopted County Ordinance No. _____ approving this Development Agreement and authorizing its execution, and that Ordinance ("Enacting Ordinance") became effective on _____, _____.

L. Project Provides Substantial Benefits. This Agreement furthers the public health, safety and general welfare and that the provisions of this Agreement are consistent with the Reuse Plan, the General Plan, as amended, the County Redevelopment Plan, and the Specific Plan. For the reasons recited herein, County and Developer have further determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Development Approvals and Subsequent Development Approvals, thereby encouraging planning for, investment in and commitment to use and develop the Property. Continued use and development of the Property is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted:

1. Provide for the redevelopment of the former East Garrison site.
2. Further the purposes of the County Redevelopment Plan, including eliminating and preventing blight, strengthening the economic base of the Project Area, and achieving the Project Objectives as outlined in Section 110 of the County Redevelopment Plan. The Project will provide increased tax revenue for the Agency for use in the Project Area, including tax increment funds available for use within the East Garrison Specific Plan area.
3. Provide for the rehabilitation, reuse, preservation and maintenance of historic buildings.
4. Result in the construction of twenty percent (20%) deed-restricted affordable (very low, low and moderate income) housing, including within the twenty percent (20%), two percent (2%) more low-income housing units than required by the County Code.
5. Provide ten percent (10%) "Workforce II" housing, in addition to the requirements for twenty percent (20%) for very low, low and moderate income deed restricted housing.
6. Result in the removal of hazardous materials, including remediation/removal of soil contaminated with lead-based paint.
7. Provide up to THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000) for public facilities, including a fire station (pursuant to agreement with the Salinas Rural Fire District) that will serve the project site as well as

provide protection for areas within the Salinas Rural Fire District boundaries, including UC MBEST, the Bureau of Land Management lands, CSUMB, and provide aid to the cities of Marina and Salinas. The THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3, 500,000) will also contribute to other public facilities such as a library and a Sheriff's Community Field Office, as determined by the Agency.

8. Provide infrastructure improvements that can be utilized by regional users, such as Laguna Seca County Park, the Bureau of Land Management, and future users of County and other agency lands within the former Fort Ord. Improvements include:

a. Regional access improvements identified in the Fort Ord Reuse Authority Capital Improvement Program,

b. Regional improvements to Reservation Road and to its intersection with Davis Road, and

c. Contribution of pro-rata funding toward regional transportation improvements identified in the FSEIR.

9. Structure the East Garrison Community operations and maintenance such that roads, drainage, law enforcement, parks, open space, lighting, transit, and fire services provided within the community are fully funded by the community and do not adversely impact the County's General Fund.

10. Provide needed market-rate housing to help meet local demand and growth projections identified by the State Department of Housing and Community Development Department and the Association of Monterey Bay Area Governments. The Monterey County General Plan Housing Element, dated October 2003, identified East Garrison as one location where housing demand could be met.

M. Applicability to Property. This Agreement shall be applicable to the Property and portions thereof and Developer shall be bound by the terms hereof as title and/or possession thereto is transferred to the Developer from the Agency pursuant to the DDA. Pursuant to Section 9.17, and in compliance with Section 65868.5 of the Development Agreement Law, this Agreement will be recorded with the County Recorder no later than ten (10) days after the Effective Date. Recordation of this Agreement is required before the Property will be acquired by Developer. County and Developer expressly acknowledge and agree that the Army, FORA and the Agency by reason of their ownership of the Property or any portion thereof are not subject to the provisions of this Agreement nor is their consent required for recordation of this Agreement because the County's and Developer's rights and obligations hereunder are conditioned upon the conveyance of the Property from the Army to FORA and from FORA to the Agency and the subsequent acquisition of the Property by Developer from the Agency pursuant to the DDA.

N. Nature of Agreement. This Agreement constitutes a contract, obligation and evidence of indebtedness within the meaning and scope of Government Code Section 53511 in that it provides for a means of satisfying financing obligations for various improvements and facilities to be owned by or maintained for the benefit of County and the public generally in the Project and Community (as referenced in

Recital L, above), the binding validity of which is essential to the on-going operations of the County and the Agency with respect to the Project.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS.

1.1 Definitions. As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this section. To the extent that any capitalized terms contained in this Agreement are not defined below, then such terms shall have the meaning otherwise ascribed to them in this Agreement, Development Approvals or the DDA.

1.1.1 "Administrative Amendments" shall have the meaning set forth in Section 2.6.2(a).

1.1.2 "Agency" mean the Redevelopment Agency of the County of Monterey, as set forth in Recital B.

1.1.3 "Annual Review" shall have the meaning set forth in Section 4.1.

1.1.4 "Army" mean the United States Government, acting by and through the Department of the Army, as set forth in Recital C.

1.1.5 "Agreement" or "Development Agreement" shall mean this Development Agreement, as set forth in the preamble.

1.1.6 "Applicable Law" shall have the meaning set forth in Section 2.2.

1.1.7 "Assignee" shall have the meaning set forth in Section 9.4.1.

1.1.8 "CEQA" mean the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the Guidelines for California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 2, Section 15000 et seq.), as each is amended from time to time.

1.1.9 "Certification of Agreement Compliance" shall mean a resolution adopted by County at the conclusion of an Annual Review, if Developer is found to be in compliance with this Agreement, as provided in Section 18.62.150 of the Monterey County Code.

1.1.10 "CFD" shall mean Community Facilities District.

1.1.11 "Combined Development Permit" shall have the meaning in Recital F.6.

1.1.12 "CSD" shall mean Community Services District.

1.1.13 "CSD Legislation" shall have the meaning set forth in Section 3.1.

1.1.14 "County" shall mean the County of Monterey.

- 1.1.15 "County Law" shall have the meaning set forth in Section 2.14.
- 1.1.16 "County Redevelopment Plan" shall have the meaning set forth in Recital D.
- 1.1.17 "Cure Period" shall have the meaning set forth in Section 6.1.1.
- 1.1.18 "DDA" shall have the meaning set forth in Recital B.
- 1.1.19 "Default" shall have the meaning set forth in Section 6.1.2.
- 1.1.20 "Design Approval" shall have the meaning set forth in Recital F.7.
- 1.1.21 "Developer" shall have the meaning set forth in Recital B.
- 1.1.22 "Development Agreement Law" shall have the meaning set forth in Recital A.
- 1.1.23 "Development Agreement Regulations" shall have the meaning set forth in Recital A.
- 1.1.24 "Development Approvals" shall have the meaning set forth in Recitals, E and F.
- 1.1.25 "Effective Date" shall have the meaning set forth in the Preamble.
- 1.1.26 "Enacting Ordinance" shall have the meaning set forth in Recital F.8.
- 1.1.27 "Enforced Delay" shall have the meaning set forth in Section 6.3.1.
- 1.1.28 "Extended Cure Period" shall have the meaning set forth in Section 6.1.1.
- 1.1.29 "FORA" shall have the meaning set forth in Recital C.
- 1.1.30 "FORA CIP" shall have the meaning set forth in Section 2.9.4.
- 1.1.31 "FORA Improvements" shall have the meaning set forth in Section 2.9.4.
- 1.1.32 "FOST" shall have the meaning set forth in Recital C.
- 1.1.33 "FSEIR" shall have the meaning set forth in Recital F.1.
- 1.1.34 "General Plan" shall mean Monterey County General Plan, as referenced in Recital D.
- 1.1.35 "General Plan text amendments" shall mean a district formed pursuant to California Streets and Highways Code Section 22550 et seq., as used in Section 3.1.
- 1.1.36 "Landscape and Lighting District" shall have the meaning set forth in Section 4.1.

- 1.1.37 "Local Agency Formation Commission" or "LAFCO" shall mean the Local Agency Formation Commission of Monterey County as used in Section 5.1.
- 1.1.38 "MMRP" shall have the meaning set forth in Recital F.2.
- 1.1.39 "Mortgage" shall have the meaning set forth in Section 7.1.
- 1.1.40 "Mortgagee" shall have the meaning set forth in Section 7.1.
- 1.1.41 "Non-Assuming Transferee" shall have the meaning set forth in Section 9.5.
- 1.1.42 "Party" shall have the meaning set forth in the Preamble.
- 1.1.43 "Phased Final Map" shall have the meaning set forth in Section 2.6.3.
- 1.1.44 "Planning Commission" shall have the meaning set forth in Recital K.
- 1.1.45 "Planning Director" shall mean the Planning Director of Monterey County.
- 1.1.46 "Project" shall have the meaning set forth in Recital E.
- 1.1.47 "Property" shall have the meaning set forth in Recital B.
- 1.1.48 "PUC" shall have the meaning set forth in Section 2.9.1.
- 1.1.49 "Reuse Plan" shall have the meaning set forth in Recital D.
- 1.1.50 "SRFPD" shall have the meaning set forth in Section 5.1.
- 1.1.51 "Subdivision Map Act" refers to Government Code Section 66410 et seq.
- 1.1.52 "Specific Plan" shall have the meaning set forth in Recital F.3.
- 1.1.53 "Subdivision Improvement Agreements" shall have the meaning set forth in Section 2.3.
- 1.1.54 "Subsequent Development Approvals" shall have the meaning set forth in Recital I.
- 1.1.55 "Term" shall have the meaning set forth in Sections 9.3 and 9.4.
- 1.1.56 "Vesting Tentative Map" shall have the meaning set forth in Recital F.6.
- 1.1.57 "Zoning Ordinance text and map amendments" shall have the meaning set forth in Recital F.5.

2. DEVELOPMENT OF THE PROPERTY.

2.1 Vested Rights.

2.1.1 Subject to Agreement. The Property is hereby made subject to the provisions of this Agreement. All development of or on the Property, or any portion thereof, including the Project, shall be undertaken only in compliance with the

Development Approvals, Subsequent Development Approvals, the Applicable Law, the provisions of this Agreement, and as applicable, the DDA. In the event of a conflict, this Agreement shall take precedence over the Development Approvals, and this Agreement and the Development Approvals shall both take precedence over the DDA.

2.1.2 Vested Rights. Developer shall have a vested right to develop the Property for the period this Agreement is in effect in accordance with the Development Approvals (including subsequent Development Approvals), the provisions of this Agreement and the Applicable Law. The Parties have negotiated and agreed upon the development fees, dedications and exactions that will be required in connection with the Project, and subject to the provisions of Section 2.8, are set forth in **Exhibit B** attached hereto [to be provided]. The amounts of permit processing fees shall be those lawfully enacted and in effect when the obligation to pay the fee is incurred, consistent with Section 2.7.2(a) of this Agreement.

2.1.3 Permitted Uses and Density. The permitted uses of the Property; the density and intensity of use of the Property; the maximum height, bulk and size of proposed buildings; provisions for the reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Development Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Development Approvals), the Subsequent Development Approvals. Permitted uses are those uses permitted by the land use designations identified on the Specific Plan's Land Use Plan (Specific Plan Figure 3.6) pertaining to the Property and permitted by the Development Approvals and Applicable Law.

2.2 Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the development of the Property shall be those set forth in the Development Approvals and this Agreement, including the General Plan as amended, the Specific Plan, the Vesting Master Tentative Map, certain ordinances as amended in conjunction with the Specific Plan and, with respect to matters not addressed by these documents, those rules, regulations, official policies, standards and specifications (including County ordinances and resolutions), to the extent not inconsistent with the Development Approvals, governing permitted uses, building locations, timing of construction, densities, design, heights, fees, and exactions in force and effect on the date of adoption of the Enacting Ordinance (the "Applicable Law"). Prior to the Effective Date of this Agreement, the Parties shall prepare two (2) sets of the Development Approvals and Applicable Laws applicable to the Project as of the date of adoption of the Enacting Ordinance, one (1) set for the County and one (1) set for Developer, to which shall be added from time to time, Subsequent Development Approvals, so that if it becomes necessary in the future to refer to any of the Development Approvals or Applicable Laws, there will be a common set available to both Parties. Failure to include in the sets of Development Approvals and Applicable Laws any rule, regulation, policy, standard or specification that is within the Applicable Laws and Development Approvals as described in this provision shall not affect the applicability of such rule, regulation, policy, standard or specification; provided, in such case the burden shall be on the Party asserting the applicability to reasonably establish that any such rule, regulation, policy,

standard or specification was in effect on the date of adoption of the Enacting Ordinance and conforms to the definition of "Applicable Law" as set forth in this Section.

The Applicable Law as set forth in Exhibit C are those versions in effect on the date of adoption of the Enacting Ordinance, unless otherwise noted.

2.3 Subdivision Improvement Agreements. The Parties acknowledge that County approval of various plans and agreements (collectively "Subdivision Improvement Agreement(s)") will be required prior to the approval of final map(s) based on the Vesting Master Tentative Map. The Subdivision Improvements Agreement(s) will, among other things, set forth the specific details of required infrastructure improvements. Accordingly, County shall not use its discretionary authority in considering any Subdivision Improvement Agreement in a manner inconsistent with the Development Approvals or Subsequent Development Approvals.

2.4 Processing Subsequent Development Approvals.

2.4.1 Timely Submittals By Developer. Developer acknowledges that County cannot begin processing Subsequent Development Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to County in a timely manner any and all documents, applications, plans, and other information necessary for County to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to County in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law.

2.4.2 Timely Processing By County. Upon submission by Developer of all appropriate applications and applicable processing fees for any Subsequent Development Approval, County shall promptly and diligently, subject to the reasonable availability of County resources and to Applicable Law, commence and complete all steps necessary to act on Developer's Subsequent Development Approval applications. County actions, at County's discretion, may include, without limitation: (i) providing at Developer's expense and subject to Developer's request and prior approval, additional staff and/or staff consultants for concurrent, expedited planning and processing of each Subsequent Development Approval application. County shall use best efforts to provide, consistent with overall staff demands and County resources, adequate staff as may be necessary, to timely process, pursuant to Applicable Law, such Subsequent Development Approval applications.

2.4.3 Review of Application for Subsequent Development Approvals. In connection with an application for a Subsequent Development Approval, County shall exercise its discretion in a timely manner consistent with the Development Approvals and Applicable Law and as provided in this Agreement, subject to the Reservations of Authority set forth in Section 2.7. County may deny an application for a Subsequent Development Approval only if such application does not comply with this Agreement or Applicable Law or is materially inconsistent with the Development Approvals. County may approve an application for such a Subsequent Development Approval subject to any conditions reasonably necessary to bring the Subsequent Development Approval into compliance with this Agreement or Applicable Law, or as necessary to make the

Subsequent Development Approval consistent with the Development Approvals; provided that if an amendment to any Development Approval is required in connection with an application for a Subsequent Development Approval, the amendment shall be processed in accordance with Section 2.6. Upon approval, a Subsequent Development Approval shall be automatically vested under the terms of this Agreement. If County denies any application for a Subsequent Development Approval, County shall specify in writing the reasons for such denial and shall, at Developer's request, consult with Developer regarding modification of the application to address the issues identified by the County. This section is subject to the County's reservations of authority set forth in Section 2.7 of this Agreement.

2.4.4 Effect of Legal Proceedings. Notwithstanding any administrative or judicial proceedings, initiative or referendum concerning the Vesting Master Tentative Map, Development Approvals, Subsequent Development Approvals, Specific Plan, Specific Plan FSEIR, General Plan Amendments, or Rezoning, and provided that such actions by County or Developer are not proscribed by law or court order, County shall process the Developer's applications for Subsequent Development Approvals as provided for herein to the fullest extent allowed by law and Developer may proceed with development pursuant to the Development Approvals or Subsequent Development Approvals to the fullest extent allowed by law.

2.5 Development Timing. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Property will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors that are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that, unless otherwise provided for in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, subject to the requirements in the DDA.

The Combined Development Permit is intended to assure the timely provision of adequate infrastructure and services, including but not limited to water supplies, sewer, stormwater drainage, and streets, including emergency access.

Pursuant to the DDA, the Agency will administer certain phasing, timing, and financial requirements pertaining to horizontal and vertical development, affordable housing and other components of the Project in implementation of and consistent with the Development Approvals and this Agreement.

2.6 Changes and Amendments to Development Approvals.

2.6.1 Project Amendments. Given the long-term buildout of the Project, the Parties acknowledge that development of the Project may require

amendments to Development Approvals or Subsequent Development Approvals. Amendments to the Specific Plan shall be processed as provided therein (Chapter 6 of Specific Plan). To the extent permitted by Applicable Law, any Development Approval or Subsequent Development Approval may, from time to time, be amended or modified in the following manner:

2.6.2 (a) Administrative Amendments. Upon the written request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval, the Planning Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Planning Director or his/her designee finds that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and is not subject to further environmental review under CEQA (See Guidelines Sections 15162, 15163), the amendment shall be determined to be an "Administrative Amendment" and the Planning Director or his/her designee may approve, or may approve with appropriate conditions, the Administrative Amendment consistent with the County's procedures for Administrative Permits, including any requirements for notice, public hearing, and appeal rights. The determination of whether a requested amendment or modification is an Administrative Amendment shall be within the reasonable discretion of the Planning Director. Examples of amendments or modifications which may, depending on particular circumstances, be treated as Administrative Amendments, include, but are not limited to, the following: (1) Minor Variations, as outlined in Specific Plan Section 6.4.1, numbers 1 through 9; (2) lot line adjustments that do not result in a significant change in the lot size; (3) alterations in vehicle circulation patterns or vehicle access points which do not adversely affect capacity or service levels; (4) changes in trail alignments; (5) substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan; (6) variations in the location of structures that do not substantially alter the design concepts of the Project; (7) variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project; and (8) minor adjustments to the Property diagram or Property legal description.

2.6.2 (b) Material Amendments. Any request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval which is determined by the Planning Director or his/her designee to be a material amendment ("Material Amendment"), and not an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to Applicable Law in effect at the time of consideration for approval, or, if a tentative map, at the time the application is deemed complete.

2.6.2 (c) Future Amendments. Any future amendment or modification to a Development Approval or Subsequent Development Approval shall be incorporated in this Agreement without the need to amend this Agreement; provided that any development or other action under any such future Material Amendment under Section 2.6.2(b) shall be subject to the rules, regulations, official policies, standards and specifications in effect on the effective date of the amendment.

2.6.3 Parcel Adjustments; Approval of Phased Final Maps. The Planning Director and County Surveyor and Developer acknowledge that as the development of the Project proceeds and phased final maps ("Phased Final Maps") are approved, it may be necessary to adjust the configuration of certain parcels as shown on the Vesting Master Tentative Map. The Planning Director and County Surveyor may, but shall not be required to, approve a final map for which individual parcels have been reconfigured by making the finding required pursuant to the Subdivision Map Act that a proposed final map is in substantial conformity with an approved Vesting Master Tentative Map, if such proposed final map meets the spirit and intent of the Development Approvals, and provided that any such reconfiguration does not increase the number of parcels or result in environmental impacts that have not been previously analyzed under CEQA. In making such finding of substantial conformity under this Section 2.6.3, the Planning Director and County Surveyor may make a finding of substantial conformity even though the boundaries of individual parcels are adjusted, such parcels are combined, or roads, drainage or other utility easements are realigned to adequately serve the Project, provided that the Planning Director and County Surveyor have approved such adjustment or other modification. Without limiting the foregoing, County agrees that it will transfer to Developer in a timely manner and without consideration, a small one-quarter (1/4) acre parcel at the entrance to the Project to conform to the Vesting Master Tentative Map, and accept fee title to portions of Reservation Road following improvements thereto. Without limiting the foregoing, County agrees that it will initiate the appropriate legal steps to transfer to Developer such interest as the County may possess in parcels H5, H6, 749 and 750 as needed to conform the portion of the Project at the entrance to Reservation Road to the Vesting Tentative Map, and will accept fee title to portions of Reservation Road following improvements thereto. Developer will make an irrevocable offer of dedication of the right of way necessary to expand Reservation Road to a four (4) lane facility including a median.

2.6.4 Offer of Temporary Dedication of Road and Drainage and Other Utility Easements. The County and Developer acknowledge that as development of the Project proceeds it may be necessary to relocate or realign road, drainage or other utility easements as shown on the Vesting Master Tentative Map. In order to further the development of the Project in the most expeditious manner, the County and Developer agree that proposed easements as shown on the Vesting Master Tentative Map will be offered as temporary statutory dedications. If the easements on a final map covering all or a portion of the Property are realigned and differ from those on the Vesting Master Tentative Map, the temporary easement shall revert, by its terms, to Developer at such time as a replacement offer of dedication approved by the County is recorded.

2.7 Reservations of Authority.

2.7.1 Intent. The Parties acknowledge that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted herein to the maximum extent allowed by law. The Parties further acknowledge and agree that the County is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to the County all of its police power that cannot be so limited. This Agreement

shall be construed to reserve to the County all such power and authority which cannot be restricted by contract including without limitation, compliance with CEQA.

2.7.2 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following subsequent land use regulations shall apply to the development of the Property:

(a) Processing fees and charges of every kind and nature imposed by the County in accordance with the law and regulations applicable at the time liability for the fees and charges is incurred to cover the estimated actual costs to the County of processing applications for Development Approvals, Subsequent Development Approvals, amendments, and other approvals related to the Project and for monitoring compliance with and enforcing any Development Approvals or other approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals or any other matter of procedure, provided such procedures are uniformly applied to all substantially similar types of development projects and properties.

(c) Regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County, provided such County laws and regulations are uniformly applied to all substantially similar types of development projects and properties.

(d) County ordinances and regulations which may be in conflict with the Development Approvals or Subsequent Development Approvals but which are reasonably necessary to protect the public health or safety, provided such County laws and regulations are uniformly applied to all substantially similar types of development projects and properties, and will remain in effect or be applicable only to the extent and for such period as necessary to protect the public health or safety.

(e) New rules, regulations, policies, standards and specifications (including permit requirements) applicable to the Property, which do not conflict with the Applicable Law or Development Approvals, provided such new rules, regulations, policies, standards and specifications are uniformly applied to all substantially similar types of development projects and properties.

(f) Fees, if any, required for compliance with state or federal laws.

2.7.3 Modification or Suspension by State or Federal Law. In the event the County, in good faith, reasonably determines that State or Federal laws or regulations enacted or adopted after the date hereof prevent or preclude compliance with one or more of the provisions of this Agreement, the Parties shall meet and confer in good faith in order to modify or otherwise amend this Agreement or the Development Approvals, consistent with Section 2.6.1, above, as may be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement and the Development Approvals shall remain in full force and effect to the extent they are not inconsistent with such laws or regulations, as determined by the County. In making

determinations under this Section 2.7.3, the County shall consult with Developer. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) the County's determination of the applicability to the Project any such State or Federal laws or regulations.

2.8 Applicable Impact Fees and Development Exactions. Subject to its reservations of authority in Section 2.7, the County shall not, without the prior written consent of Developer, impose, levy, require or increase any impact fee or development exaction applicable to the development of the Project or any portion thereof, or impose, levy, require or increase any impact fee or development exaction as a condition to any Subsequent Development Approval or any action implementing any Development Approval in connection with the Project or any portion thereof, except for the imposition of those impact fees and development exactions set forth in ***Exhibit B*** hereto. County agrees in administering the Development Approvals that second units as allowed in the Specific Plan shall not be separately subject to impact fees and development exactions. The parties also contemplate that second units shall also be exempt from FORA fees, which fees or exactions are within the authority of FORA. Notwithstanding the provisions set forth above in this Section 2.8, the County may impose a new impact fee or exaction if such fee or exaction is necessary to address a condition dangerous to the health or safety, including a condition threatening the adequacy, reliability, or quality of the water supply to the Project. All new fees or exactions shall be established and imposed in compliance with state law. to address a condition dangerous to health or safety

2.9 Off-Site Public Facilities.

2.9.1 Standards. All off-site public works facilities or infrastructure which Developer is required to construct pursuant to the provisions of this Agreement and the Combined Development Permit and which, upon completion, will be dedicated to the County or any other public agency, a CSD or a California entity regulated by the California Public Utilities Commission ("PUC"), shall be designed and constructed to County standards, or to the standards of the applicable entity to which the infrastructure is to be dedicated, unless other provisions are made with the applicable entity. All such public roads and traffic improvements shall be constructed in accordance with County and Specific Plan standards.

2.9.2 Right of Reimbursement. To the extent that Developer: (i) constructs, installs or otherwise provides financing for public facilities or other infrastructure improvements beyond that required to serve the Project and benefiting lands within the County outside of the Property, which lands are not owned or controlled by Developer; (ii) provides easements or other rights of way for the benefit of other property in the Specific Plan area; (iii) reimburses or funds County acquisition of real property interests or County construction of off-site road and traffic improvements pursuant to the provisions of Section 2.9.1, infra; or (iv) provides Services, as defined in Section 4.1, benefiting lands not owned or controlled by Developer, the County shall take such actions as are necessary and lawful to ensure such other benefited properties are assessed, or otherwise charged, and Developer is reimbursed for the pro-rata share of the benefits conferred upon such lands other than the Property by such public facilities, infrastructure improvements and services. This may include, but is not limited to, the

adoption of an area of benefit, by which a developer impact fee will be imposed, or the use of appropriate mechanisms in any CFD or CSD proceedings. Prior to the commencement of any action as described in items (i) through (iv) above, such reimbursement obligation to Developer shall be evidenced by an appropriate reimbursement agreement to be entered into between the County and Developer. Not later than one hundred twenty (120) days from the effective date of this Agreement, the Parties shall negotiate in good faith a form of Reimbursement Agreement to implement the provisions of this Section. Developer has the burden of proposing the pro rata share owed by others who have benefited from Developer's actions. For purposes of this Section 2.9.2 the construction, installation or financing of the public facilities or other infrastructure improvements beyond that required to serve the Project includes any requirement for oversizing any public facility or infrastructure improvement serving lands other than the Property, excluding water and sewer facilities for which Developer shall be reimbursed by agreement with utility Developers.

All on-site and off-site roads and traffic improvements, to the extent funded directly or indirectly by Developer, including off-site road and traffic improvements, shall be eligible for fair-share reimbursement from future development benefiting from the facilities, except to the extent that such improvements are funded by traffic impact fees paid by Developer. County agrees to use diligent best efforts and to assist Developer, pursuant to Section 2.9.4, in obtaining inclusion in the FORA CIP, to the extent not already included, of offsite roads and traffic improvements to be funded by FORA, and for Developer to receive credits against FORA fees for those improvements directly funded by Developer.

2.9.3 Provision of Real Property Interests by County and Construction of Improvements. In any instance where Developer is required under the Development Approvals to construct any public improvement on land not owned by Developer, Developer shall, at its sole cost and expense, subject to the reimbursement provisions of Section 2.9.2 or as provided in the DDA, provide, or fund the acquisition of, the real property interests necessary for the construction of such public improvements. If requested by Developer, where the affected property Developer has rejected an offer by Developer based upon market value as determined by an appraisal prepared by a County approved appraiser in cooperation with the County, and upon Developer's provision of adequate funding, the County shall promptly and timely negotiate and seek the purchase of the necessary real property interests to allow Developer to construct the public improvements as required by the Development Approvals. Under these circumstances, in accordance with the procedures established by law, including Government Code Section 66462.5(a), requiring approval of a final map where neither the subdivider nor public agency has an interest in land sufficient to allow offsite improvements to be constructed or installed where the County fails to acquire the necessary property interests by negotiation, the County shall consider use of its power of eminent domain to acquire such real property interests. Developer shall pay all costs associated with such acquisition or condemnation proceedings. This Section 2.9.3 is not intended by the Parties to impose upon Developer an enforceable duty to acquire land or construct any public improvements on land not owned by Developer, except to the extent that Developer elects to proceed with the development of the Project, and then only in

accordance with valid conditions imposed by the County upon the development of the Project under the Development Approvals and the Subdivision Map Act or other legal authority.

2.9.4 FORA Improvements. Certain off-site public improvements including roads and transportation improvements are the responsibility of FORA ("FORA Improvements") to be paid for from, among other sources, fees (which shall include special taxes and/or assessments) collected by FORA from the transfer and development of lands under the Reuse Plan. County agrees to use diligent best efforts to seek the timely inclusion by FORA in its Capital Improvement Program ("FORA CIP") as FORA Improvements certain road and intersection improvements required for the Project as identified in the Development Approvals. County shall also use diligent best efforts to cooperate with Developer in seeking an agreement with FORA to provide for credits to Developer against payment of FORA fees for those FORA Improvements financed, in whole or in part, by advances from Developer; to provide for the timing of FORA fees, at the option of Developer, to be payable at the time of and as a condition to the issuance of building permits for vertical construction of the Project, and to release its lien on the Property subject to satisfactory assurances of payment of FORA fees, in order for a CFD and CSD to be utilized by County and Developer to finance project-specific infrastructure required for vertical development.

2.9.5 School Site. If the Monterey Peninsula School District identifies a site in reasonable proximity to the Site on County land for a new school to serve the Project, the County intends, on request from the School District and conditioned upon completion of appropriate environmental review and applicable County process, to provide the identified site to the School District for the purposes of constructing the new school.

2.10 Regulation by Other Public Agencies. It is acknowledged by the County and Developer that other public agencies not within the control of the County possess authority to regulate aspects of the development of the Property separately from or jointly with the County and this Agreement does not limit the authority of such other public agencies. Developer shall, in accordance with Developer's construction schedule, diligently and timely apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. The County shall, as reasonably requested by Developer and as appropriate, cooperate with Developer in Developer's effort to obtain such permits and approvals, provided that same does not impose any costs on or require the County to incur any costs, without compensation or reimbursement, or require the County to amend any County policy, regulations or ordinances.

2.11 Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map or any other map, permit (except building permits which shall not be extended), or other land use entitlement approved as a Development Approval or Subsequent Development Approval shall automatically be extended for the longer of the duration of this Agreement (including any extensions) or the term otherwise applicable to such Development Approval or Subsequent Development Approval if this

Agreement is no longer in effect. The Term of this Agreement and any subdivision map or other Development Approval or Subsequent Development Approval shall not include any period of time during which a restriction on development such as a moratorium (as defined in Government Code Section 66452.6(f)) or court order prevents or delays the construction of the Project. The Developer shall notify the County as soon as the event of a delay triggers the provisions of this Section, and when such event ends.

2.12 Vesting Tentative Maps. If any tentative or final subdivision map or tentative or final parcel map heretofore or hereafter approved in connection with development of the Property is a vesting map under the Subdivision Map Act, and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting maps shall survive.

2.13 Developer's Right to Rebuild. Subject to the Agreement and Covenant for the Transfer of East Garrison Historic District, former Fort Ord, entered into on August 3, 2004, between the California State Historic Preservation Officer and FORA, the County agrees that Developer may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Development Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations imposed by this Agreement, and shall comply with the Development Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

2.14 No Conflicting Enactments. Except as and to the extent required by state or federal law, and subject to the provisions of Section 2.7 and Section 2.15.2(a), or unless the Developer consents, the County shall not apply to the Project any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "County Law") that is in conflict with the Applicable Law, this Agreement or the Development Approvals or with the vested rights provided by this Agreement. Without limiting the generality of the foregoing, any County Law enacted or adopted after the effective date of the ordinance approving this Agreement (also collectively, a "County Law") shall be deemed to conflict with this Agreement or the vested rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

(a) Reduce the number of residential units permitted to be developed on the Property to fewer than one thousand four hundred (1,400) residential units and seventy (70) second units;

(b) Materially reduce the square footage of commercial development permitted to be developed on the Property;

(c) Change any land use designation or permitted use of the Property;

(d) Materially reduce or restrict the availability of public utilities, services or facilities or any privileges or rights to public utilities, services or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) below levels needed for the Project;

(e) Limit or control the location, configuration or size of lots, buildings, structures, grading or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Development Approvals or this Agreement;

(f) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Agreement, the Development Approvals or the DDA;

(g) Require the issuance of additional permits or approvals by the County other than those required by Applicable Law;

(h) Vary the mix of development project from that described in the Development Approvals.

2.15 Initiatives and Referenda. The provisions of this Section 2.15 shall apply only to initiatives and referenda and are subject to Section 2.7, Reservations of Authority.

2.15.1 If any County Law is enacted by initiative, referendum or by the Board of Supervisors directly or indirectly in connection with any proposed initiative or referendum, the application of which County Law to the Project would conflict with the Development Approvals, Applicable Law or this Agreement or conflict with the vested rights provided by this Agreement, such Law shall not apply to the Property or Project, except that the Parties acknowledge that any legislative action in connection with the Development Approvals, including but not limited to approval of this Agreement, and adoption of any General Plan amendment, Specific Plan or Zoning ordinance is subject to referendum that may affect the vested rights provided by this Agreement.

2.15.2 Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the County, or portions of the County, shall apply to the Property or Project.

2.16 Environmental Mitigation. The Parties understand that the Specific Plan FSEIR, as a project level document with respect to the Project, is intended to be used in connection with each of the applicable Development Approvals and all of the Subsequent Development Approvals needed for the Project. Consistent with the CEQA streamlining policies applicable to specific plans, including but not limited to California Code of Regulations, Title 14, Section 15182, the County agrees to use the Specific Plan FSEIR in connection with the processing of any Subsequent Development Approval as appropriate under law. Notwithstanding any other provision of this Agreement, nothing contained in this Agreement is intended to or shall limit or restrict the discretion of the County to take any appropriate action as may be required and appropriate under CEQA with respect to any discretionary amendments to Development Approvals or Subsequent Development Approvals.

2.17 Subdivision Maps. A subdivision, as defined in Government Code Section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Development Agreement Law.

3. FINANCING OF PUBLIC IMPROVEMENTS AND SERVICES.

3.1 Community Service District. County shall use its diligent best efforts to secure passage of Senate Bill No. 1092 (Senator Maldonado) or similar legislation (the "CSD Legislation") permitting the County to complete the formation of a community services district ("CSD") for East Garrison prior to conveyance of the Property to Developer. In accordance with the CSD Legislation upon enactment the Development Approvals, and at the request of Developer, County, at Developer's expense, shall file and diligently prosecute an application with the Monterey County Local Agency Formation Commission for the establishment of the CSD to fund maintenance and operating costs ("Services") for such improvements as transit, law enforcement, roadways, storm water drainage and detention/retention areas, parks, open space and other public improvements, as agreed between the Parties. Developer shall assist with the processing of the Application in good faith and shall cooperate with County in the establishment of the CSD. County and Developer shall meet and confer in good faith to determine the appropriate services to include within the CSD. The scope of services included in the CSD shall be consistent with the requirements of the Development Approvals. It is the intent of County and Developer that, unless otherwise mutually agreed, services typically performed by County should only be included within the CSD to the extent necessary to make the Project revenue neutral for County (as determined pursuant to the provisions of the DDA). In any case where the County creates a CSD, the County may allow Developer (or a designated successor or agent) to perform some or all of the work for the CSD. County shall assist in the timely formation of a CSD. Nothing in this section shall preclude County, the CSD and Developer from agreeing to fund, in implementation of the Development Approvals and in order to obtain fiscal neutrality for the County (as determined pursuant to the provisions of the DDA) any of such services and maintenance through other appropriate funding mechanisms including, but not limited to, a CFD (as referenced in Section 3.2, below), a Landscape and Lighting and Maintenance District or a homeowners' association.

3.2 Community Facility District. In accordance with the provisions of the DDA, Developer may request and County shall use its good faith effort in the formation of community facilities districts ("CFD"), for the purposes of funding public infrastructure, including without limitation, design, acquisition and construction costs, and public facility maintenance costs or public services. Developer shall pay all expenses of creation of such district. County shall diligently and expeditiously review and process applications necessary to establish funding mechanisms in accordance with the Applicable Law. County shall initiate CFD proceedings utilizing the special tax mechanisms authorized under the law of the State of California where the property subject to special taxes provides primary security for payment of the special taxes, provided, however, any such CFD shall be in conformance with County policies regarding land-based financing. County and Developer acknowledge that the use of CFD's is consistent with and contemplated by the Development Approvals and the DDA.

Nothing herein shall impair Developer's right to seek the creation of CFD's through entities other than County (including but not limited to the CSD or the Agency).

3.3 Maintenance of Improvements Prior to Acceptance. Developer shall provide for and fund the maintenance, either directly or through a third party legal entity, of the public improvement or dedicated areas required by the Development Approvals until such improvements or property interests are accepted as complete by the County, a CSD, or other public agency, and maintenance responsibilities are assumed by the accepting agency. The County shall act with reasonable diligence in processing the acceptance of public improvements and assuming maintenance responsibilities.

3.4 Private Roads. The Parties acknowledge that private roads must be maintained by the Homeowners Association. Developer shall identify to the County and take all steps necessary to assure that a Homeowners Association will maintain the private roads in perpetuity.

4. REVIEW FOR COMPLIANCE.

4.1 Annual Review. During the Term of this Agreement, Developer's compliance with the terms and conditions of this Agreement shall be reviewed annually ("Annual Review"), and this Agreement may be modified or terminated, in accordance with Section 18.62.150 of the County Code. Any action by the County under this section shall be an additional remedy and shall have no effect on Section 6 of this Agreement.

4.2 Information to Be Provided. In addition to and in furtherance of the process set out in Section 18.62.150 of the County Code, the following shall apply: (a) the County shall provide to Developer a copy of any staff report related to the evaluation of Developer's compliance with the provisions of this Agreement; (b) Developer shall annually, not later than at least sixty (60) days prior to each anniversary of the Effective Date of this Agreement, prepare an Annual Report detailing: (1) the total square footage of building permits issued to such date; (2) the amount of Residential square footage and Non-Residential square footage for which building permits were issued since the most recent prior Annual Review; (3) the amount of square footage for affordable housing for which building permits were issued since the most recent prior Annual Review; and (4) such other information as the County may reasonably request to determine Developer's compliance with the terms of this Agreement; (c) any finding of non-compliance shall include a reasonable period, based upon all relevant facts and circumstances, to allow Developer to remedy the non-compliance; and (d) the County may only find the developer in breach or noncompliance with this Agreement after a hearing before the Board of Supervisors in accordance with applicable provisions of state law and the Monterey County Code, with reasonable notice having been given to the Developer, and the Developer having been given an opportunity to appear and present evidence and testimony.

4.3 Annual Review Fee. A one time 'start-up' payment of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) shall be paid to the County as a credit against Annual Review fees upon recordation of the first final map for the Project for the purpose of reimbursing the County on an hourly basis for the Annual Review activities specified in Section 4.1. County invoices for ours expended b County personnel in conducting said

annual review shall be submitted to Developer annually. Such invoices shall itemize the time spent during the billing period on each of the Annual Review criteria set forth in Section 4.1 and shall identify the hourly rate charged, which rate shall be the hourly rate specified for Monterey County Planning and Building Inspection Department Personnel in the Monterey County Fee Schedule then in effect. Upon exhaustion of the start-up fee by the County, payments for fees shall be made within thirty (30) days of receipt of invoices. The above language notwithstanding, the Developer shall not be required to pay Annual Review fees in excess of FIVE THOUSAND DOLLARS (\$5,000) per year. This fee is separate from the Mitigation Monitoring Reporting Plan fees specified in Monterey County Fee Schedule for mitigation monitoring which fees are a separate obligation of Developer. County shall not, however, charge Developer more than once to the extent that any Annual Review Activity duplicates a mitigation monitoring activity.

4.4 Failure to Properly Conduct Annual Review. If County fails, during any calendar year to conduct the Annual Review as to Developer's compliance with the terms of this Agreement, such failure shall not constitute a default by County or Developer under this Agreement.

5. ANNEXATION.

County shall cooperate with the Local Agency Formation Commission of Monterey County ("LAFCO") to seek timely approval of LAFCO of annexation of the Property to the Salinas Rural Fire Property District ("SRFPD"), subject only to conditions consistent with the Development Approvals and this Agreement. County acknowledges that annexation of the Property to SRFPD is a condition precedent to the closing of escrow for conveyance of the Property from the Agency to Developer pursuant to the DDA (unless amended or modified by the parties to the DDA).

6. DELAY; DEFAULT AND REMEDIES.

6.1 General Provisions.

6.1.1 Breach. Subject to extensions of time under Section 7.3 or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Agreement shall constitute a breach of this Agreement. In the event of alleged breach of any terms or conditions of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice (the "Cure Period") to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have fifteen (15) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days, the breaching Party shall, within a thirty (30) day period following notice to the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances (the "Extended Cure Period"); commence to cure such breach; and be proceeding diligently to cure such breach. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings; but the County's right to refuse to issue a permit or Subsequent Development Approval, under Section 6.1.3, shall not be limited by this

provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege any other breach at any other time.

[County proposal; not accepted by Developer: All terms and conditions of the Conditions of Approval (Condition of Compliance and/or Monitoring Reporting Plan) are incorporated in this Agreement by reference as though fully set forth herein. Developer shall comply with all such terms and conditions, and any failure to do so shall be a breach of this Agreement.]

6.1.2 Default. If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default ("Default"), and the non-breaching Party, at its option, may terminate the Agreement, institute legal proceedings pursuant to this Agreement and shall have such remedies as are set forth in Section 7.2.3 below.

6.1.3 Withholding of Permits. In the event of material Default of Developer, or following notice of breach by Developer and during the Cure Period or Extended Cure Period, upon a finding by the County Planning Director that Developer is in serious and substantial breach, the County shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Agreement; provided that such refusal shall not extend for a period of more than thirty (30) days unless the Board of Supervisors, following consideration of evidence and based upon substantial evidence, determines to extend such period of refusal, in addition to any other action the Board may deem appropriate.

6.2 Remedies.

6.2.1 Termination. In the event of Default by the County or Developer in the performance of any one or more of its material obligations under this Agreement, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate this Agreement pursuant to California Government Code Section 65868 and regulations of the County implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and County regulations implementing said section. Prior to either Party seeking to commence any procedure leading to termination, the Parties shall meet and confer in good faith in an attempt to resolve the issues.

Following consideration of the evidence presented in said review before the Board of Supervisors, either Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party.

Termination of this Agreement shall be subject to the provisions of Section 9.7.2 hereof.

6.2.2 Specific Performance by County. The County and Developer agree that in the event of Default by the County, the Parties intend that the primary remedy for Developer shall be specific performance of this Agreement. A claim by Developer for monetary damages against the County may only be considered if specific

performance is not granted by the Court. If the County issues a Development Approval or Subsequent Development Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, the County shall be entitled to specific performance for the sole purpose of causing Developer to satisfy such condition.

6.2.3 Limitation of Remedies. In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited by Section 7.2.2. Any such legal action shall be brought in the Superior Court for Monterey County, California.

6.3 Enforced Delay – Extension of Times of Performance.

6.3.1 Enforced Delay: Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default ("Enforced Delay") where delays or defaults are due to war; acts of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; environmental conditions (including, but not limited to hazardous waste or munitions or explosives of concern ("MEC" or "UXO")) existing or discovered on or affecting the Property and any delay caused resulting from the investigation and remediation of such conditions, whether the responsibility of the Army, Developer or other parties; litigation which enjoins construction or other work on the Site, causes a lender to refuse to fund a loan or accelerate payment on a loan, or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Site or to suspend construction or other work on the Site; unusually severe weather; inability to secure necessary labor, materials or tools (provided that Developer has reasonably attempted to obtain such materials on a timely basis); delays of any contractor, subcontractor or supplier; acts or the failure to act of any public or governmental agency or entity (assuming such agency or entity was timely requested to act or otherwise has a duty to act) (except that acts or the failure to act of the County shall not excuse performance by the Agency or County); or any other causes beyond the reasonable control and without the fault of the party claiming an extension of time to perform. Other causes of Enforced Delay shall include, without limitation: (1) a drop of twenty-five percent (25%) or more (based on the most current edition of the Ryness report for Monterey County or comparable market report if the Ryness Report is not available) in market demand and absorption rate for sales of residential lots or homes, rental of apartments, or sales or leasing of commercial properties in those market demand and absorption assumptions made in the Developer's financial projections, or (2) an increase in interest rates to a rate equal to 10% or more for construction and permanent financing or home mortgage interest rates, or (3) national or international economic or monetary conditions (including, but not limited to, those caused by acts of war or terrorism) materially adversely affecting the supply and/or cost of investment capital assumed to be available for the Project in the Developer's financial projections reviewed and accepted by the Agency as of the Effective Date of this Agreement, (4) environmental conditions, pre-existing or

discovered, delaying the construction or development of the Site or any portion thereof, (5) litigation or administrative proceedings challenging this Agreement, the Project or the Development Approvals, and (6) the inability of Developer or its members or assignees, despite reasonable and timely efforts, to obtain tax credit allocations and/or bond financing on reasonable terms for the affordable housing to meet the inclusionary housing requirements of the Project, provided that in such event the Parties shall use best efforts to mutually agree to a reconfiguration of the affordable housing phasing requirements described in Attachment No. 3 to this Agreement. An extension of time for any such cause shall only be for the period of the Enforced Delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the County and the Developer. Notwithstanding the foregoing paragraph, the time for completion of any action by the County or Developer pursuant to this Agreement shall constitute an Enforced Delay and shall be automatically extended for such additional period of time as may be required to complete: (1) compliance and certification of compliance with CEQA, or (2) any pending application for consideration by the County with respect to an approval by the County relating to any such action. In the event extensions of time of performance for events of Enforced Delay shall exceed two (2) years, except for Enforced Delays as a result of litigation, the Parties shall meet and confer on mutually acceptable ways or modifications to the Project to proceed with development notwithstanding the event or events causing such Enforced Delay.

6.3.2 Excused Delay under DDA. In addition to Enforced Delays under Section 7.3.1, no Party shall be deemed to be in breach or default of its obligations under this Agreement where its nonperformance or delay constitutes or is prevented by excused delay ("Excused Delay") under the terms of the DDA, for the period of such Excused Delay. Nothing in this section shall be construed to extend the Term of this Agreement.

6.4 Dispute Resolution; Legal Action.

6.4.1 Mediation. Before pursuing any administrative or judicial remedies to resolve any dispute or claim under this Agreement, the Parties hereto shall attempt in good faith to resolve any such dispute by mediation conducted by a mediator mutually selected by the parties or in the absence of mutual agreement, a panel of three (3) mediators where each party selects one mediator, and those two mediators select the third mediator. The third mediator shall serve as chairperson and shall adhere to the Commercial Mediation Rules of the American Arbitration Association.

6.4.2 Judicial Reference. If mediation is not required under the provisions of this Agreement or mediation has not resolved the dispute and any Party to this Agreement commences a lawsuit relating to a dispute arising under this Agreement, all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Neither Party shall

be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The following shall apply to any such proceedings:

(a) The proceeding shall be brought and held in Monterey County, unless the Parties agree to an alternative venue.

(b) The Parties shall use the procedures adopted by JAMS/ENDISPUTE ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties).

(c) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

(d) The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640.

(e) The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy, other than punitive damages.

(f) The referee may require one or more pre-hearing conferences.

(g) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(h) A stenographic record of the trial shall be made.

(i) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

(j) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(k) The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

(l) The costs of such proceeding, including the fees of a referee, shall be borne equally by the parties to the dispute.

(m) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. Except for actions for indemnification, the Parties acknowledge and accept that they are waiving their right to a jury trial.

6.4.3 Extension Of Agreement Term. The Term of this Agreement as set forth in Section 9.3 (and 9.4, if applicable) shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

7. MORTGAGEE PROTECTION.

7.1 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise. The term "Mortgagee" shall include any holder of fee title to the Property subject to a lease with option to purchase.

7.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Development Approvals or Subsequent Development Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Agreement, or otherwise under the Development Approvals or Subsequent Development Approvals.

7.3 Notice of Default to Mortgagee. If County receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then County agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by County that Developer has committed an event of default, and if County makes a determination of noncompliance hereunder, County shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in County's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis a vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed eighteen (18) months from the County's notice.

7.4 Multiple Mortgages. If at any time there is more than one Mortgage constituting a lien on any portion of the Property, the lien of the Mortgagee prior in time

to all others on that portion of the mortgaged property shall be vested with the rights under this Section 8 to the exclusion of the holder of any junior Mortgage; provided, however, that if the holder of the senior Mortgage fails to exercise the rights set forth in this Section 8, each holder of a junior Mortgage then may exercise the rights set forth in this Section 8 to the exclusion of any more junior lienholders but each such junior lienholder shall succeed to the rights set forth in this Section 8 only if the holders of all senior Mortgages have failed to exercise the rights set forth in this Section 8. No failure by the senior Mortgagee to exercise its rights under this Section 8 and no delay in the response of any Mortgagee to any notice by County shall extend Developer's or any Mortgagee's rights under this Section 8. For purposes of this Section 8.4, in the absence of an order of a court of competent jurisdiction that is served on County, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in County, setting forth the order of priority of lien of the Mortgages, may be relied upon by County as conclusive evidence of priority.

8. INDEMNIFICATION.

8.1 Indemnification by Developer. Subject to Section 9.3, Developer hereby releases the County from liability and agrees that the County shall not be liable for and Developer agrees to indemnify and hold the County and its elective and appointive boards, commissions, officers, agents and employees, harmless from and against all of the following: (a) any liability or claim, action or proceeding against the County or its representatives, officers, agents or employees for personal injury and/or property damage received or sustained or alleged to have been received or sustained by any person or entity in connection with or on account of the performance of work on the Project by Developer, or pursuant to this Agreement, except where such injury or damages were caused by the sole negligence or willful misconduct of the County or its representatives, officers, agents or employees; (b) any judicial liability or claim, action, or proceeding against the County or its representatives, officers, agents or employees to attack, set aside, void or annul the approval of this Agreement, including to the extent that any expenditure by or on behalf of the County hereunder is determined by a court of competent jurisdiction not to provide a public benefit; (c) any liability or claim, action or proceeding for damages or injury caused by one or more Development Approvals or Subsequent Development Approvals except where such injury or damages were caused by the negligence or intentional acts of the County or its representatives, officers, agents or employees; and (d) any claim, action or proceeding to impose personal liability against County representatives, officers, agents or employees caused by one or more of the Development Approvals or Subsequent Development Approvals. Developer further agrees to defend the County in connection with any such claim, action or proceeding. Developer agrees to reimburse County for any court costs and attorneys' fees which County may be required by a court to pay as a result of such claim, action or proceeding. This indemnification includes payment to County by Developer of all judgments and settlements imposed on the County within the scope of this indemnification, provided that neither Developer nor the County shall be liable for any settlement without the consent of Developer and County to the settlement. The County reserves the right to participate in the defense of any action, claim or proceeding, but such participation shall relieve Developer of its

obligations under this paragraph. Developer may intervene in its own right in the event the County is named as a defendant in any action concerning the performance of work by the County pursuant to this Agreement, except where such suit is brought by Developer. Nothing in this paragraph or this Agreement shall create any liability of Developer or the County to third parties which liability did not or does not exist absent this Agreement. The indemnification provisions of this Section 8.1 shall survive termination of this Agreement.

8.2 Notice to Developer. In any case, action or proceeding which is brought against the County in respect of which defense and indemnity may be sought hereunder, the County shall promptly give notice of that action or proceeding to Developer. The failure of the County to give that notice shall not relieve Developer from any of its obligations under this Section 8. This Section 8.2 shall survive termination.

8.3 Other Indemnification Agreements. To the extent that Developer in carrying out the Project has entered into other agreements containing Developer's indemnification obligations to County, those agreements shall apply in lieu of the provisions of Section 8.1 and 8.2 as to the matters covered by such other indemnification obligations. Such other agreements shall include, but are not limited to, Developer's indemnification obligations, if any, under the DDA and indemnification agreements required by the Development Approvals.

9. GENERAL PROVISIONS.

9.1 Binding Effect. The Property is hereby made subject to, and shall be developed only in conformance with, and pursuant to, the provisions of this Agreement, the Applicable law, the Development Approvals and the Subsequent Development Approvals.

9.2 Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").

9.3 Term.

(a) Except as set forth below, the term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of [County: fifteen 15)] [Developer: twenty(20)] years, exclusive of any period references in Section 2.11 or Section 6.4.3.

(b) This Agreement shall terminate upon the expiration of the term or when the Project has been fully developed and all of the Developer's obligations in connection therewith are satisfied as determined by the County. Upon termination of this Agreement, the County shall record a notice of such termination in a form satisfactory to the County Counsel that the Agreement has been terminated.

(c) This Agreement shall automatically terminate and be of no further force or effect as to any single family residence, multifamily building or any non-residential building, and the lot or parcel upon which such residence or building is located when it has been approved by the County for occupancy, without affecting other rights with respect to the remainder of the property covered by this Agreement. Upon

request of the Developer or landowner, the County shall provide a notice of termination in recordable form.

(d) Upon the event of the termination of the DDA and the reacquisition by the Agency of any property covered by this Agreement, this Agreement shall automatically terminate as to such reacquired property and the County may record a notice of such termination as to such reacquired property.

9.4 Assignment. No sale, transfer or assignment of all or a portion of the Property, or creation of a joint venture or partnership, shall require the amendment of the Enacting Ordinance or this Agreement.

9.4.1 Right to Assign.

(a) Developer shall have the right to sell, transfer, ground lease or assign the Property in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") at any time during the term of this Agreement, subject to the written consent of the County; provided that Developer may assign its rights under this Agreement without the consent of County to a member of Developer or to an entity controlling, controlled by or under common control with Developer or a member of Developer. County's consent shall not be unreasonably withheld, delayed or conditioned, and County shall consent if the Assignee reasonably demonstrates to County that it is able to perform the obligations of this Agreement. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Developer, and with respect to the dedication and installation of all infrastructure improvements to be provided by Developer, pursuant to the Development Approvals, and the provisions of Section 9.5.2 of this Agreement.

(b) The sale, transfer, lease or assignment of any right or interest under this Agreement shall be made only together with the sale, transfer, ground lease or assignment of all or a part of the Property. Concurrently with any such sale, transfer, ground lease or assignment, Developer shall (i) notify the County in writing of such sale, transfer or ground lease; and (ii) Assignee shall provide an acknowledgement that Assignee shall succeed to the rights, duties and obligations of Developer with respect to the Parcel or Parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned.

(c) Subject to the County's written consent as provided in Section 9.5.1(a), the County, upon request of Developer or Assignee, and following compliance under the notification provisions above, shall provide Assignee with a certificate of agreement compliance, stating that this Agreement remains valid and in full force and effect and is binding upon County, Developer and the Assignee as of the last Annual Review pursuant to the provisions of Section 5, except that if County knows of any non-compliance, the County shall not be required to issue a Certificate of Agreement Compliance.

9.4.2 Release of Transferring Developer. Except with respect to a transfer and assignment under Section 9.5.1 to a member of Developer or to an entity controlling, controlled by or under common control with Developer or a member of Developer, notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Agreement as to all or the portion of the Property so transferred unless the County is satisfied the Assignee is not less able to comply with Developer's obligations under this Agreement (both financially and otherwise) and Developer is given a release in writing. Developer shall provide to the County all information reasonably necessary for the County to determine the financial and other capabilities of Assignee. Such release shall be provided by the County upon the full satisfaction by Developer of the following conditions:

(a) County is reasonably satisfied that Assignee is not less able than Developer to comply with Developer's obligations under this Agreement (both financially and otherwise).

(b) A showing by Developer that Developer no longer has a legal or equitable interest in the portion of the Property (which may be all of the Property) for which a release is requested.

(c) Developer is not then in Default under this Agreement and has received no Notice to Cure.

(d) Developer has provided the County with the County notice and the Assignee's acknowledgement.

(e) Assignee provides the County with security equivalent to any security previously provided by Developer to secure performance of its obligations hereunder, if any.

Notwithstanding the foregoing, if Developer only transfers a portion of the Property, then Developer shall continue to be obligated under this Agreement with respect to the balance of the Property not so transferred.

9.4.3 Assignments under DDA. Nothing in this Section 9.5 shall relieve Developer of the requirement to comply with any applicable assignments under provisions of the DDA which may generally apply prior to the issuance by the Agency of a certificate of completion of construction of the Project or any portion thereof. County and Agency staff shall coordinate their processing of any assignments under this Agreement and under the DDA so that they may be acted upon concurrently.

9.4.4 Administration. The provisions of this Section 9.5 shall be administered by the Planning Director of County and shall not require any action or approval by the County Board of Supervisors; provided that Developer reserves the right to appeal any decision of the Planning Director to the Board of Supervisors for final determination.

9.5 Nonassuming Transferees. Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and County's consent shall not be required in connection with, (i) any single residential parcel conveyed to a purchaser, (ii) any model

homes, or (iii) any property that has been established as one or more separate legal parcels for office, commercial, industrial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("Nonassuming Transferees") shall be deemed to have no obligations under this Agreement. Nothing in this section shall exempt any property transferred to a Nonassuming Transferee from payment of applicable fees and assessments or compliance with Applicable Law, Development Approvals, this Agreement and Section 2.7.

9.6 Automatic Termination.

9.6.1 This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated Term of this Agreement (including any extensions) as set forth in Section 9.3.

(b) Entry of a final judgment, or issuance of a final court order, following exhaustion of all reasonably available appeals, setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement; provided, however, that entry of a final court judgment or issuance of a final court order, following all reasonably available appeals, setting aside, voiding or nullifying any such referendum measure shall reinstate this Agreement, and the Term of this Agreement shall be tolled during any period in which this Agreement was suspended by such referendum.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits (where applicable), payment or other provision of all development exactions by Developer, and completion of all required public facilities or infrastructure.

9.6.2 Effect of Termination. Termination of this Agreement shall not constitute termination of the Development Approvals or any other land use entitlements approved for the Property or Developer's right of reimbursement under Section 2.9.2 of this Agreement or affect any Section of this Agreement which is stated to survive termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, if Developer determines not to proceed with the Project, then any fees paid by Developer which are not required to cover County's actual cost recovery for services actually performed or which have not been encumbered by the County, such as but not limited to entering into a contract for road improvements, shall be refunded to Developer.

9.7 Notices. All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand delivery or professional messenger service) to either Party, or may be sent by Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery, charges

prepaid, or may be transmitted by facsimile transmission, in any case addressed as follows:

If to the County, to:

Planning Director
Planning and Building Inspection Department
2620 First Avenue
Marina, CA 93922
Fax: (831) 757-5792

With a copy to:

County Counsel
County of Monterey
230 Church Street, Building #1
Salinas, CA 93901
Fax: (831) 755-5081

If to Developer, to:

EAST GARRISON PARTNERS, I, LLC
c/o Woodman Development Company, LLC
24571 Silver Cloud Court, Suite 101
Monterey, CA 93940
Attn: John Anderson
Fax: (831) 647-2441

With copies to:

Lyon East Garrison
Company I, LLC
c/o William Lyon Homes, Inc.
2603 Camino Ramon, Suite 150
San Ramon, CA 94583
Attn: Gregory N. Mix Fax: (925) 543-5501

McDonough Holland & Allen PC
Attn: Joseph E. Coomes, Jr.
555 Capitol Mall, Suite 900
Sacramento, CA 95814
Fax: (916) 444-3826

Lavorato, House, Chilton & Lavorato
310 Capital Street
Salinas, CA 93902

Attn: Greg Chilton, Esq.
Fax: (831) 758-0566

William Lyon Homes, Inc.
4490 Von Karman Avenue
Newport Beach, CA 92660
Attn: Richard S. Robinson
Fax: (949) 252-2526

Morrison & Foerster LLP
101 Ygnacio Valley Road #450
P. O. Box 8130
Walnut Creek, CA 94596
Attn: Bruce Reed Goodmiller, Esq.
Fax: _____

Notices delivered by personal delivery shall be deemed given upon delivery thereof. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof. Any Party may change its address for purposes of this Section 9.8 by giving notice to the other Party as provided herein.

9.8 Cooperation in Defense. In the event of a legal action instituted by any person or entity other than the Parties to this Agreement or their transferees, including without limitation another governmental entity or official ("third party"), challenging the validity of any provision of this Agreement, the Development Approvals, any Subsequent Development Approvals, the public finance district(s) created for this Project or any other aspect of the Project (all such challenges being referred to singly or collectively in this Agreement as a "challenge"), the Parties shall cooperate in good faith in jointly defending against the challenge. The Parties shall execute a joint defense agreement under which each Party shall bear its own fees and costs of defending a challenge. Developer shall indemnify and hold County harmless from damages and liabilities arising from the challenge. The Parties shall consult regularly with, and consider in good faith input received from each other, regarding defense against the challenge. County shall also use its good faith best efforts to defend any third party legal action challenging the validity of the Specific Plan, the FSEIR, or any other related legislative approvals, such as general plan amendments or rezoning.

9.9 No Partnership; No Agency. It is specifically understood and agreed by and between the Parties hereto that the development of the Project on the Property is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. The only relationship between the County and the Developer is that of a government entity regulating the development of private property and the Developer of such property. The Parties hereto acknowledge and agree that this Agreement does not create a partnership, joint venture or

similar entity, and that no such partnership, joint venture or similar entity has been created by or among the County and Developer.

9.10 Amendments to Agreement. Minor changes not affecting any material term or condition of this Agreement and correction of clerical errors are not an "amendment." Any other amendment to this Agreement, except as set forth in Section 9.10.1, must be processed in the same manner as required for the approval of the Agreement.

9.10.1 Administrative Agreement Amendments. Minor changes to this Agreement shall be processed administratively to the extent provided for by Applicable Law. Minor changes shall include, but not be limited to, changes agreed to by the Parties clarifying or interpreting the provisions of this Agreement, changes agreed to by the Parties to conform any provisions of this Agreement to Administrative Amendments under Section 2.6.2(a) or Material Amendments under Section 2.6.2(b), and any other changes determined by the Planning Director to be minor in light of this Agreement as a whole.

9.11 Entire Agreement. It is understood and agreed that all understandings and agreements of the parties with respect to the development of the Property are merged in this Agreement, which fully and completely expresses their agreement with respect to development of the Property, and that there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein, and that neither Party hereto is relying upon any statement or representation made by the other Party and not incorporated into this Agreement. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.12 No Third Party Beneficiary. No person or entity other than a Party to this Agreement or a legal representative, successor in interest or assign of such Party shall be entitled to rely on this Agreement or the performance of Developer or the County hereunder, and this Agreement is not made for the benefit of any person or entity not a Party hereto and no such person or entity shall be entitled to assert any claim arising out of, or in connection with, this Agreement.

9.13 Covenants Running With the Land. The covenants and agreements contained herein are mutual covenants and also constitute conditions to the subsequent or concurrent performance by the Party benefited thereby. All covenants shall be covenants running with the land, and shall bind and inure to the benefit of the Parties to this Agreement and their respective successors and permitted assigns.

9.14 Cooperation in Performance. The Parties hereto agree to cooperate with each other and to take such additional actions, including the execution and delivery of documents and instruments, as may be necessary or appropriate, to fully effectuate and carry out the terms, provisions, purposes and intent of this Agreement, the Development Approvals and the DDA. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be

reasonably necessary under the terms of this Agreement, the Development Approvals or the DDA to carry out the intent and to fulfill the provisions of this Agreement, the Development Approvals and the DDA or to evidence or consummate the transactions contemplated by this Agreement, the Development Approvals and the DDA; provided, however, that such actions shall comply with the provisions of the Development Approvals and Subsequent Development Approvals, and provided, further, that any action by the County is subject to the reservations of authority in Section 2.7.

9.15 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of California.

9.16 Recordation of Agreement. Within ten (10) days following complete execution of this Agreement by the Chairman of the Board of Supervisors and Developer, the Clerk of the Board of Supervisors shall record with the County Recorder a fully executed copy of this Agreement, together with the Enacting Ordinance. The Chairman of the Board of Supervisors shall execute this Agreement within a reasonable time after the Enacting Ordinance approving this Agreement becomes effective.

9.17 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

9.18 Estoppel Certificate.

9.18.1 Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(a) This Agreement is in full force and effect, and unless otherwise indicated has not been amended.

(b) To best of knowledge and without further inquiry, the Party requesting such certificate is not in default of the performance of its obligations under this Agreement, or alternatively, if a default exists or notice of default has been given, the nature and amount of any such defaults.

9.18.2 A Party receiving a request hereunder shall execute and return such certificate within twenty (20) business days following the receipt thereof, unless the County desires to hold a hearing to determine the appropriateness of such certificate, in which case the County shall promptly commence and complete such review. The Parties acknowledge that any certificate given hereunder may be relied upon by any governmental agency, any assignee, and other persons having an interest in the Project, including holders of any deed of trust. The Planning Director shall be authorized to execute any such certificate for the County, unless otherwise directed by the County Board of Supervisors.

9.19 Construction of Agreement.

9.19.1 Construction as a Whole. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, the Parties hereto having been represented by counsel in the negotiation and preparation hereof.

9.19.2 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

9.19.3 Singular and Plural. As used herein, the singular of any word includes the plural.

9.19.4 General. Each reference in this Agreement to this Agreement or any of the Development Approvals or Subsequent Development Approvals shall be deemed to refer to the Agreement, Development Approval, or Subsequent Development Approval as they may be amended from time to time, whether or not the particular reference refers to such possible amendment. "Shall" is mandatory; "may" is permissive.

9.20 Time of Essence. Time is of the essence in the performance of any and all of the provisions of this Agreement as to which time is an element.

9.21 Cure; Reapproval. If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.9, all or any portion of this Agreement, Development Approvals, or Subsequent Development Approvals are set aside or otherwise made ineffective by any settlement or judgment (collectively a "Judgment") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "Deficiencies"), the Parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Development Approvals, and/or Subsequent Development Approvals that the Deficiencies related to, as follows, unless the Parties mutually agree in writing to act otherwise:

(a) If any Judgment requires reconsideration or consideration by County of this Agreement, any Development Approval, or Subsequent Development Approval, then the County shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement, any Development Approval, or Subsequent Development Approval, then the Parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement. The County shall then readopt or reenact this Agreement, Development Approval, Subsequent Development Approval, or any portion thereof, to which the Deficiencies related.

(b) Acting in a manner consistent with the intent of this Agreement for the purposes of subsection (a), above, includes, but is not limited to, recognizing that the Parties intend that the Developer may develop the Property for the Project described in the Specific Plan and other Development Approvals, and adopting such ordinances, resolutions, and other enactments, including but not limited to general plan amendments,

adoption of a specific plan or amendments thereto, final development plans, vesting tentative subdivision maps, final subdivision maps, street abandonments, design review approvals, improvement agreements, use permits, grading permits, certificate of occupancy, preliminary and final development plans, rezonings, lot line adjustments, parcel maps, and any amendments to, or repealing of, any of the foregoing, as are necessary to readopt or reenact all or any portion of this Agreement, Development Approvals, and/or Subsequent Development Approvals without contravening the Judgment.

9.22 Waiver. Failure by a Party to insist upon the performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the breach or Default of the other Party, shall not constitute a waiver of such Party's right to insist and demand compliance by the other Party with the terms of this Agreement thereafter.

9.23 Attorneys' Fees. In any legal action or other proceeding brought by either Party to enforce or interpret a provision of this Agreement, each Party is to pay its own attorneys' fees and any other costs incurred by it in that proceeding. This Section 9.24 shall survive termination.

9.24 Jurisdiction, Venue and Statute of Limitations. Any action at law or in equity arising under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Monterey, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. This Section 9.25 shall survive termination.

9.25 Counterparts. This Agreement may be executed by the Parties in two (2) counterparts, which counterparts shall be construed as a single document and have the same effect as if all of the Parties had executed the same instrument.

9.26 Authority. The person or persons executing this Agreement on behalf of Developer warrants and represents that he/she/they have the authority to execute this Agreement on behalf of Developer, and that the execution of this Agreement has been approved by all required action on the part of Developer, and that this Agreement is fully binding on Developer.

IN WITNESS WHEREOF, This Agreement has been executed by the Parties hereto.

County Board of Supervisors

EAST GARRISON PARTNERS I, LLC, a California limited liability company

By : _____
Chair of the Board

BY: WOODMAN DEVELOPMENT COMPANY LLC, a California limited liability company, as a member

Date: _____

By: Woodman Development Company, Inc., a California corporation, as its managing member

By: _____
John Anderson
President

and

BY: LYON EAST GARRISON
COMPANY I, LLC a California limited
liability company, as a member

By: _____
Its: _____

By: _____
Its: _____

[ADD ACKNOWLEDGMENTS]

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

(RECITAL B)

[TO BE INSERTED]

EXHIBIT A-2

MAP OF THE PROPERTY

[RECITAL B]

[TO BE INSERTED]

EXHIBIT A-3

MAP OF THE PROPERTY (ARMY PARCEL NUMBERS)

[TO BE INSERTED]

EXHIBIT B
DEVELOPMENT EXACTIONS
(IMPACT FEES)
[TO BE INSERTED]

EXHIBIT C
APPLICABLE LAWS

The Applicable Law referenced in and subject to the provisions of Section 2.2 are those versions in effect on the date of adoption of the Enacting Ordinance, unless otherwise noted:

- a. County Redevelopment Plan for Fort Ord;
- b. Monterey County General Plan;
- c. East Garrison Specific Plan and related ordinances and resolutions;
- d. Subdivision Ordinance (Monterey County Code Title 19);
- e. Zoning Ordinance (Monterey County Code Title 21);
- f. Buildings and construction, Monterey County Code Title 18.