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COPY

OPTION AGREEMENT

BY AND AMONG

CITY OF MARINA
("City")

CYPRESS MARINA HEIGHTS, L.P.
a California limited partnership
("Developer")

REDEVELOPMENT AGENCY OF THE CITY OF MARINA
("Agency")

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OPTION AGREEMENT

This OPTION AGREEMENT (this ***"Agreement"***) is entered into as of this 14th day of November 2002, by and among the **REDEVELOPMENT AGENCY OF THE CITY OF MARINA**, a public body, corporate and politic, (the ***"Agency"***), the **CITY OF MARINA**, a California municipal corporation (the ***"City"***), and **CYPRESS MARINA HEIGHTS, L.P.**, a California limited partnership (the ***"Developer"***), with reference to the following facts and circumstances (the Agency, the City, and the Developer are sometimes referred to herein collectively as the ***"Parties"***, and individually as a ***"Party"***):

RECITALS:

A. The Agency, the City and the Fort Ord Reuse Authority (***"FORA"***) wish to accomplish the redevelopment of that certain real property within the Marina Fort Ord Redevelopment Project Area No. 3 (the ***"Project Area"***) consisting of approximately two hundred and forty-eight (248) acres, located between Imjin Road, Abrams Drive and 12th Street in the City of Marina, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the ***"Project Site"***).

B. FORA is an independent public corporation of the State of California with jurisdiction over the territory of the former Fort Ord, created pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code for the purpose of facilitating the over-all redevelopment of the former Fort Ord in accordance with the Fort Ord Base Reuse Plan (***"FORA Base Reuse Plan"***).

C. The Agency intends pursuant to this Agreement to grant the Developer an option to acquire the Project Site from the Agency, and thereafter proceed with the Development of the Project Site pursuant to the terms and provisions of this Agreement.

D. Acquisition of the Project Site by the Developer for Development of the Project Site pursuant to this Agreement is in the best interests of FORA, the City, the Agency and the health, safety and welfare of the residents and taxpayers of the City, is consistent with the goals and objectives of the Redevelopment Plan (as hereinafter defined) and is in accord with the public purposes and provisions of applicable state and local laws.

E. In connection with public policy goals of FORA, the Agency and the City to redevelop the Project Site, the Army intends to perform at its sole cost and expense, all necessary remedial action required by the Environmental Protection Agency's guidelines on the transfer of federal property by deed in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Section 120 (h)(3).

F. The Developer has the necessary equity and the capability to obtain financing for: (a) the Purchase Price; (b) the estimated impact and mitigation fees payable to the City, as more particularly set forth in Section 2.4 below; (c) the impact and mitigation fees payable to FORA, as more particularly set forth in Section 2.3 below; and (d) the cost of development of the Project Site.

G. Development of the Project Site will provide employment and substantially improve the economic and physical conditions of the Project Site and the City in accordance with the purposes and goals of the FORA Base Reuse Plan and the Redevelopment Plan.

H. Pursuant to Health and Safety Code Section 33413, the Agency is required to ensure that a minimum of 15% of all housing constructed in a project area is affordable to low and moderate income households. The Agency plans to meet the requirements of Health and Safety Code Section 33413 by restricting the affordability and occupancy of the housing located in the portion of Fort Ord identified as Abrams B. Subject to Section 7.6, the Agency is not requiring the Developer to construct housing affordable to households of very low, low or moderate income on the Project Site.

I. FORA, the City and the Agency have determined that the Development of the Marina Heights Project pursuant to this Agreement is consistent with the provisions of the FORA Base Reuse Plan, and the Marina Redevelopment Plan.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained hereinafter, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

TERMS AND CONDITIONS:

ARTICLE 1
DEFINITIONS OF TERMS

Section 1.1 **Incorporation of Recitals.** The hereinabove Recitals are true and correct and are hereby incorporated into this Agreement by reference.

Section 1.2 **Definitions.** Whenever used in this Agreement, the following words or phrases shall have the following meanings:

1.2.1 ***"Additional Entitlements"*** shall have the meaning set forth in Section 3.2.1.

1.2.2 ***"Affiliate"*** means any limited liability company, partnership, joint venture, trust, or corporation who now or hereafter (a) directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the Developer; or (b) in which fifty percent (50%) or more of the equity interest of which is held beneficially or of record by the Developer, as the context may require; or (c) is Controlled by or under the day-to-day management of Charles R. Lande. ***"Control"*** means the possession, directly or indirectly, of the power to cause the direction of the management and policies of any entity including but not limited to a limited liability company, a partnership, a joint venture, a trust, or a corporation, whether through the ownership of voting securities, by contract, family relationship or otherwise.

1.2.3 ***"Agency"*** means the Redevelopment Agency of the City of Marina.

1.2.4 ***"Application"*** shall have the meaning set forth in Section 5.4.2.

1.2.5 ***"Assignment and Assumption Agreement"*** shall have the meaning set forth in Section 8.1.3.

1.2.6 ***"Bridge Homes"*** means the homes with respect to which the sales price is restricted pursuant to Section 7.6.

1.2.7 ***"CEQA"*** shall mean and refer to the California Environmental Quality Act, as amended.

1.2.8 ***"Certificate of Completion"*** shall mean and refer to a certificate in the form attached hereto as Exhibit B, to be provided by the Agency upon satisfactory completion of the Improvements on the Project Site.

1.2.9 ***"City"*** means the City of Marina, a municipal corporation.

1.2.10 ***"Close of Escrow"*** shall have the meaning set forth in Section 6.1.1.

1.2.11 ***"Closing Date"*** shall mean and refer to the date on which the Close of Escrow actually occurs.

1.2.12 ***"CPI Increase"*** shall mean any increase in the ***"Consumer Price Index"*** (as defined below) for the twelve (12) month period prior to each January 1st during the term of this Agreement (the ***"Adjustment Date"***). As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose statistical area (CPI-U) (1982-84 = 100) (the "Index") published by the United States Department of Labor, Bureau of Labor Statistics. To determine the CPI Increase, the Index most recently published and available to the public on the Adjustment Date (the ***"Adjustment Index"***) shall be compared with the Index used as the Adjustment Index on the prior Adjustment Date (or in the case of the first adjustment, the Index most recently published prior to the date of this Agreement) (the ***"Prior Index"***). If the Adjustment Index has increased over the Prior Index, the CPI Increase, expressed as a percentage or as a whole number and decimal fraction (carried to the third decimal place and rounded up if the third decimal place is .005 or greater and rounded down if the third decimal place is less than .005), shall be determined by dividing the Adjustment Index by the Prior Index. In the event the Index is changed so that the base year differs from that used for the Prior Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. In the event the Index is discontinued or revised during the term of this Agreement, such other governmental index or computation with which it is replaced shall be used.

1.2.13 ***"Developer"*** shall mean and refer to Cypress Marina Heights, L.P., a California limited partnership.

1.2.14 ***"Development"*** shall mean satisfaction of all of the following: (a) entitlement of the Improvements on the Project Site; (b) the preparation and grading of the Project Site by the Developer; and, (c) the Developer's best and diligent efforts to construct the Improvements on the Project Site in accordance with the Schedule of Benchmarks.

1.2.15 ***"Development Agreement"*** shall mean a statutory development agreement prepared in accordance with Government Code Section 65864 et seq.

1.2.16 ***"Development Costs"*** shall have the meaning set forth in Section 6.3.1.

1.2.17 ***"Developer Event of Default"*** shall have the meaning set forth in Section 10.4.1.

1.2.18 ***"Effective Date"*** shall mean and refer to the effective date of this Agreement, which shall be the date upon which the last party executed this Agreement.

1.2.19 ***"Escrow"*** and ***"Escrow Holder"*** shall have the meanings set forth in Section 6.4.

1.2.20 ***"Event of Default"*** shall mean and refer to a Governmental Authority Event of Default or a Developer Event of Default.

1.2.21 ***"FORA"*** shall mean and refer to the Fort Ord Reuse Authority, a California public corporation, created pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code.

1.2.22 ***"FORA Agreement"*** shall mean that certain Memorandum of Agreement between the United States of America, acting by and through the Secretary of Army, United States Department of the Army, and FORA for the sale of portions of the former Fort Ord located in Monterey County, California, dated as of June 20, 2000.

1.2.23 ***"FORA Base Reuse Plan"*** shall mean and refer to the Fort Ord Reuse Plan developed and adopted June 19, 1997 pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code.

1.2.24 ***"General Plan"*** shall mean the City of Marina General Plan dated July 2001.

1.2.25 ***"Governmental Authority"*** or ***"Governmental Authorities"*** shall mean any federal, state, county, municipal and local governmental and quasi-governmental body or authority having or exercising jurisdiction over the Parties, the Project Site, or such portions thereof as the context indicates.

1.2.26 ***"Governmental Authority Event of Default"*** have the meaning set forth in Section 10.3.1

1.2.27 ***"Gross Cash Receipts"*** shall have the meaning set forth in Section 6.3.1.

1.2.28 ***"Implementation Agreement"*** means that certain agreement by and between the City and FORA dated May 1, 2002.

1.2.29 ***"Improvements"*** shall mean and refer to the improvements described in Section 2.1 below.

1.2.30 ***"Infrastructure Improvements"*** shall mean on-site and off-site improvements required for construction of the Project including, but not limited to, streets, roads, drainage, sanitary sewer, water, electrical, communication and other utilities.

1.2.31 ***"Internal Rate of Return"*** or ***"IRR"*** shall have the meaning set forth in Section 6.3.1.

1.2.32 ***"Opening of Escrow"*** shall have the meaning set forth in Section 6.4.

1.2.33 ***"Outside Satisfaction Date"*** shall have the meaning set forth in Section 3.1.2 below.

1.2.34 ***"Parcel to be Repurchased"*** shall have the meaning set forth in Section 10.6.

1.2.35 ***"Permits and Approvals"*** shall mean and refer to all planning, zoning, land use, subdivision permits and approvals and any other discretionary permits, certifications and approvals, whether granted conditionally or unconditionally, including compliance with CEQA, which: (a) are subject to determination or review by any councils, boards, commissions or hearing officers; and (b) are governed by the applicable general plan, zoning ordinances, zoning maps, subdivision ordinances, or federal, state and local laws and regulations; and (c) must be obtained in order to proceed with the Development of the Project Site. The term "Permits and Approvals" shall not include applying for or receiving any grading permits, demolition permits, building permits, sewer permits or other similar permits or approvals to perform actual physical work on the Project Site.

1.2.36 ***"Permitted Exceptions"*** shall have the meaning set forth in Section 4.4.

1.2.37 ***"Preliminary Title Report"*** shall have the meaning set forth in Section 4.4.

1.2.38 ***"Profit Participation"*** shall have the meaning set forth in Section 6.3.2.

1.2.39 ***"Project"*** shall have the meaning set forth in Section 2.1.

1.2.40 ***"Project Area"*** shall have the meaning set forth in Recital A of this Agreement.

1.2.41 ***"Project Commencement"*** shall have the meaning set forth in Section 6.3.1.

1.2.42 ***"Project Completion"*** shall have the meaning set forth in Section 6.3.1.

1.2.43 ***"Project Site"*** shall have the meaning set forth in Recital A of this Agreement.

1.2.44 ***"Proposed Transfer"*** shall have the meaning set forth in Section 8.1.4.

1.2.45 ***"Purchase Price"*** shall have the meaning set forth in Section 6.2.

1.2.46 ***"Recession"*** shall mean an economic recession as determined by the National Bureau of Economic Research, or any successor organization charged with the duty of determining the state of the United States economy.

1.2.47 ***"Redevelopment Plan"*** shall mean and refer to the Marina Redevelopment Agency Redevelopment Plan, Redevelopment Project Area Number 3, Former Fort Ord Redevelopment Project dated April 1999.

1.2.48 ***"Repurchase Price"*** shall have the meaning set forth in Section 10.6.1.

1.2.49 ***"Repurchase Option"*** shall have the meaning set forth in Section 10.6.

1.2.50 ***"Representatives"*** shall have the meaning set forth in Section 11.1.1.

1.2.51 ***"Resale Restriction Agreement"*** means a resale restriction agreement to encumber a Bridge Home. A form of Resale Restriction Agreement is attached to this Agreement as Exhibit C.

1.2.52 ***"Schedule of Benchmarks"*** means the schedule attached hereto as Exhibit D to this Agreement, which is incorporated herein by this reference.

1.2.53 ***"Supplemental Title Report"*** shall have the meaning set forth in Section 4.4.

1.2.54 ***"Survey"*** shall have the meaning set forth in Section 4.4.

1.2.55 ***"Title Company"*** shall mean and refer to Stewart Title Company.

1.2.56 ***"Title Policy"*** shall have the meaning set forth in Section 4.4.

1.2.57 ***"Transfer"*** shall have the meaning set forth in Section 8.1.1.

1.2.58 ***"Unavoidable Delays"*** shall mean delays beyond the control of the Party claiming the same and are limited to the following: (a) delay attributable to acts of God, strikes or labor disputes; (b) delay attributable to the actions or inaction of any governmental agency other than the City or the Agency that unreasonably delays Development of the Project Site; (c) delays of the City in processing the Permits and Approvals beyond the periods of time established therefor in the Development Agreement; (d) delay attributable to inclement weather or earthquake resulting in suspension of Project Site work for safety purposes, i.e., heavy rainfall; (e) delay attributable to inability to procure or a general shortage of labor, equipment, materials or supplies in the open market, or failure of transportation (but not attributable to a mere increase in price); (f) delay caused by acts of a public enemy, terrorism, insurrections, riots, mob violence, sabotage, and malicious mischief, casualty or earthquake causing substantial damage to previously constructed improvements; or (g) delay in performance of any term, covenant, condition or obligation under this Agreement by one party as a result of default or delays of any other Party whether in rendering approvals or otherwise. In each case (a) through

(g) aforesaid, "Unavoidable Delays" shall include the consequential delays resulting from any such cause or causes. For the purpose of this definition, a cause shall be beyond the control of the Party whose performance would otherwise be obligated only if such cause would prevent or hinder the performance of an obligation by any reasonable person similarly situated and shall not apply to causes peculiar to the Party claiming the benefit of an Unavoidable Delay (such as the failure to order materials in a timely fashion).

1.2.59 ***"Unleveraged Cash Flow"*** shall have the meaning set forth in Section 6.3.1.

Section 1.3 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A	Project Site Legal Description
Exhibit B	Certificate of Completion
Exhibit C	Bridge Home Resale Restriction Agreement
Exhibit D	Schedule of Benchmarks
Exhibit E	City Impact and Mitigation Fees
Exhibit F	Option Exercise Notice
Exhibit G	Profit Participation Payment Example
Exhibit H	Agency Quitclaim Deed
Exhibit I	List of Pre-approved Home Builders
Exhibit J	Assignment and Assumption Agreement
Exhibit K	Memorandum of Agreement

ARTICLE 2
DESCRIPTION OF THE PROJECT

Section 2.1 **The Marina Heights Project (the *"Project"*).** The Project Site is the current site of a portion of the Abrams Park and Upper Patton Park sections within the Main Garrison of Fort Ord. It is contemplated that the Developer shall demolish the Abrams Park and Upper Patton Park military housing projects, along with all other site improvements, underground utilities (with the consent of the utility provider, if required), public frontage improvements and common areas currently situated on the Project Site. It is contemplated by the parties that the Developer shall entitle and prepare the Project Site for the development of the Improvements which are anticipated to consist of approximately One Thousand and Fifty (1,050) residential units. Of these, it is anticipated that (a) One Hundred and Two (102) shall be attached town homes to be sold to the general public at market rates, (b) Seven Hundred and Seventy-Eight (778) shall be single family detached homes to be sold to the general public at market rates, (c) Eighty-Five (85) residential units shall be single family detached homes to be sold as "Bridge Homes" (as such term is defined in Section 7.6.1 below) to Assisted Homebuyers and (d) Eighty-Five (85) one-quarter (1/4) to one-half (1/2) acre "Estate Lots" shall be sold by the Developer for the development of Eighty-Five (85) custom homes to be sold to the general public at market rates.

Section 2.2 **Environmental Mitigation Measures.** The parties acknowledge that before the Developer can proceed with the acquisition and Development of the Project Site, the

City and the Agency shall have complied with CEQA. The City will act as the lead agency for the compliance with CEQA and will retain an outside consultant to perform the CEQA review and preparation of the appropriate level of CEQA compliance document to study the impacts of the Improvements (the ***"Project Specific CEQA Compliance Document"***) at the Developer's sole cost and expense. The City shall have absolute discretion to determine the appropriate type of Project Specific CEQA Compliance Document to be prepared and to evaluate environmental impacts and alternatives, to mitigate environmental impacts, to approve alternatives to the proposed development or to deny approval of the proposed development based on the Project's environmental impacts. Except as otherwise specified in the Project Specific CEQA Compliance Document and any finding adopted by the City Council in connection therewith, the Developer shall be responsible for the implementation of all identified mitigation measures which the Project Specific CEQA Compliance Document identifies as necessary to mitigate the impacts of the Project at its sole cost and expense, and will implement mitigation measures in accordance with the Project Specific CEQA Compliance Document without any adjustment of the Purchase Price unless the number of units in the Development is changed as provided in Section 6.2. Notwithstanding the foregoing, in no event shall the Developer be responsible for the implementation of those mitigation measures set forth in the Installation-Wide Multi-species Habitat Management Plan For Former Fort Ord, California, prepared by the U.S. Army Corps of Engineers, dated as of April 1997 (the ***"HMP"***). The implementation of such mitigation measures set forth in the HMP shall be performed by FORA, at its sole cost and expense prior to the Close of Escrow.

Section 2.3 **FORA Impact Fees.** The Developer shall pay to FORA all impact and mitigation fees adopted by FORA with respect to the use and development of former Fort Ord lands that are applicable to the Development of the Project Site, which fees for all of the Improvements are currently Thirty-Five Thousand Three Hundred Nineteen Dollars ($35,319.00) per residential unit (the ***"FORA Impact Fee"***). Such FORA Impact Fee shall be payable by the Developer in proportional increments in connection with the issuance of building permits by the City for residential units which shall completely satisfy the Developer's obligation to pay the special tax lien levied within the FORA Basewide Community Facilities District. It is understood that any additional housing units in excess of amount set forth in Section 2.1 herein listed may require additional FORA Impact Fees. The Developer shall have no financial obligation to FORA other than the FORA Impact Fees (although the Agency as obligated to pay a portion of the Purchase Price to FORA upon the Close of Escrow if the Developer exercises the Option).

Section 2.4 **City Impact Fees.** The Developer shall pay to the City all City-imposed impact and mitigation fees with respect to the Development of the Project Site, as set forth in Exhibit E. Such fees shall be payable by the Developer to the City in proportional increments at the time of the issuance of building permits by the City for residential units on the Project Site.

Section 2.5 **Developer's Deposit.** Pursuant to the terms of the Agreement to Negotiate Exclusively between the Developer and the City dated August 22, 2000, as amended by Amendment No. 1 dated February 20, 2001, as further amended by Amendment No. 2 dated August 21, 2001 (***"ENRA"***), the Developer has agreed to pay to and reimburse the City and the Agency for all legal and consulting fees, staff overhead costs and other direct out-of-pocket expenses incurred by the City or the Agency in connection with the negotiations for and

preparation of this Option Agreement, any Development Agreement and the processing of the Permits and Approvals including the preparation of the Project Specific CEQA Compliance Document. Pursuant to the ENRA, and prior to the Effective Date hereof, the Developer has deposited with the City $471,505.69 (***"Developer Deposit"***). The City and the Agency have used and shall continue to use the Developer Deposit in accordance with the accounting prepared by the City pursuant to the ENRA, as such accounting has been and may be amended from time to time. The City shall provide the Developer with written copies of any amendments to the accounting as soon as the City determines that an amendment is necessary. The City shall maintain an accurate accounting of all the expenses incurred and shall provide the Developer with a monthly statement of accounting.

At any time that the amount on deposit with the City is reduced to $20,000, the City shall notify the Developer of the same and the Developer shall within 30 days of the City's notice deposit an additional sum of $50,000.

If the Developer fails to make any required deposit pursuant to this provision, the Agency and the City may terminate this Agreement pursuant to Section 10.4. Additionally, in the event of a failure to make any required deposit, the City and the Agency shall be under no obligation to continue work on the processing of the Permits and Approvals. Any required deposits that are not made within thirty (30) days after the same are due shall bear interest at the rate of one and one-half percent (1 ½%) per month until paid. In the event of the termination of this Agreement for any reason, the City shall return to the Developer any unexpended and unencumbered amounts remaining on deposit after the City has paid all outstanding invoices.

ARTICLE 3
OPTION TO PURCHASE

Section 3.1 **Grant of Option.** Subject to the terms and conditions set forth below and for good and valuable consideration, the receipt of which is hereby acknowledged, the Agency hereby grants to the Developer the exclusive option to acquire fee title to the Project Site, for the Purchase Price and under the terms and conditions set forth in this Agreement (the ***"Option"***).

3.1.1 **Option Term.** The term during which the Option can be exercised (the ***"Option Term"***) shall commence on the Effective Date and shall expire on the earlier of: (a) the date which is the one year anniversary of the date upon which the Permits and Approvals become final and no longer subject to any legal challenge, including but not limited to a challenge based on failure to comply with CEQA; or (b) the termination of this Agreement pursuant to Article 10. In the event the Developer does not provide an Option Exercise Notice (as defined in Section 3.1.2 below) to the Agency prior to the expiration of the Option Term and all conditions to exercise of the Option have been satisfied or waived then the Option shall expire, this Agreement shall terminate, and the Developer, within ten (10) days after the Agency's demand, shall assign to Agency all of the Developer's rights to any and all Permits and Approvals obtained for the Project and quitclaim any interest in the Project Site to the Agency, without any consideration paid by the Agency.

3.1.2 **Exercise of Option.** At any time during the Option Term, provided the conditions precedent to the exercise of the Option have been satisfied or waived by the Agency,

the Developer may exercise the Option by giving written notice to the Agency that the Option is exercised (an ***"Option Exercise Notice"***) in the form shown in Exhibit F attached hereto. This Agreement shall thereafter constitute a Disposition and Development Agreement under which the Project Site shall be sold to the Developer and the Developer shall develop the Project Site in accordance with the Agreement. Without affecting the validity of the deadline for any particular condition set forth in Section 3.2 and the Schedule of Benchmarks, the Developer must have satisfied every obligation under this Agreement (or such obligation must have been waived by the City and the Agency) by not later than sixteen (16) years after the Effective Date, subject to day-for-day extensions for Unavoidable Delays, (the ***"Outside Satisfaction Date"***) (unless mutually extended by the parties hereto). Escrow shall close on the conveyance of the Project Site to the Developer no later than sixty (60) days following Agency's receipt of the Option Exercise Notice, provided the closing conditions described in Articles 3 and 4 have been fulfilled or waived and subject to Unavoidable Delays.

Section 3.2 Conditions Precedent. Subject to Unavoidable Delays, the conditions precedent to the Developer's exercise of the Option for the Project Site set forth in this Section 3.2 must first be met by the times specified for such conditions in the Schedule of Benchmarks. Satisfaction of these conditions depends on performance by the Developer. Only the Agency and City can waive satisfaction of the conditions in this Section 3.2. In the event that the Developer has not satisfied the conditions (or such condition has not been waived by the City and the Agency) set forth in this Section 3.2, within the time frames set forth in this Section 3.2 and the Schedule of Benchmarks, this Agreement may be terminated by the City and Agency pursuant to Article 10.

3.2.1 City and Other Permits and Approvals. The Developer has filed an application with the City for preliminary staff review of the Project and shall apply to the City for any entitlements or discretionary approvals (collectively, the ***"Permits and Approvals"***), required for the Development of the Project Site and shall diligently pursue and obtain such Permits and Approvals. The Parties acknowledge that the Permits and Approvals to be obtained by the Developer from the City include but are not necessarily limited to a general plan amendment, a zoning action to bring the zoning into conformity with the general plan, if necessary, and a vesting tentative map. The Parties acknowledge that in the event that additional or different entitlements are required by either the City or another Governmental Authority, (collectively, the ***"Additional Entitlements"***) the Additional Entitlements shall automatically become part of the defined term Permits and Approvals. The Developer's application for such Permits and Approvals shall be consistent with the terms and conditions of this Agreement, unless otherwise mutually agreed to by the Parties hereto. If, despite the Developer's good faith efforts, and subject to Unavoidable Delays, all necessary Permits and Approvals in a form acceptable to the Developer and with conditions acceptable to Developer in its sole and absolute discretion have not been obtained and all rights to contest or appeal the issuance of such Permits and Approvals shall have expired by June 30, 2004, then this Agreement may be terminated by either Party pursuant to Section 10.2. The Agency shall use its best and diligent efforts to assist the Developer in obtaining the necessary Permits and Approvals from Governmental Authorities, including authorizing the Developer, to the extent required based on the Agency's ownership of the Project Site, to file applications for such Permits and Approvals, if the Developer so requests. At the mutual agreement of the Agency and the Developer, the City shall (at the sole cost and expense of the Developer) hire a contract planner to expedite the processing of the Permits and

Approvals or conduct private plan checks or inspection services at the Developer's cost. The Parties further acknowledge that two Development Agreements shall be submitted for action by the City shortly after the approval of this Agreement by the Agency; one of which shall lock in the existing ordinances, policies and standards of the City pending the City's action on the Permits and Approvals, and the second of which shall confer on the Developer rights to the Permits and Approvals as acted on by the City.

3.2.2 **No Limitation of City Discretion**. The Developer acknowledges that execution of this Agreement by the City, and the Agency does not limit the discretion of the City in the entitlement and approval process.

3.2.3 **Construction Plans, Drawings and Related Documents.** The Developer shall prepare and submit construction plans, drawings and related documents for the first phase of the Infrastructure Improvements necessary for the Development of the first phase of the Project to the City for review and written approval as required by City laws, codes, ordinances and regulations. The constructions plans, drawings and related documents for the first phase and subsequent phases of the Infrastructure Improvements shall be prepared and submitted to the Agency in accordance with the Schedule of Benchmarks.

3.2.4 **Infrastructure Improvements Financing Plan.** At least ninety (90) days prior to the expiration of the Option Term, the Developer shall submit to the Agency a financing plan for the first phase of the Infrastructure Improvements. The financing plan for the first phase of the Infrastructure Improvements shall include: (a) a cost breakdown for the Infrastructure Improvements for the first phase based upon the Permits and Approvals and any design documents; and (b) evidence that the Developer has the capacity to obtain sufficient debt and equity financing in the amount necessary to fully finance the development of the first phase of the Infrastructure Improvements. The Agency shall review the proposed financing plan for the first phase of the Infrastructure Improvements and shall approve or disapprove the financing plan for each phase of the Infrastructure Improvements within thirty (30) days of receipt.

The Agency's review of the financing plan shall be for the purposes of determining if the contemplated financing for the first phase of the Infrastructure Improvements will be reasonably available, will provide sufficient funds for construction of the first phase of the Infrastructure Improvements and will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

Any disapproval of a proposed financing plan shall state in writing the reasons for disapproval and the changes which the Agency requests. The Developer shall thereafter submit a revised financing plan to the Agency for its approval within thirty (30) days of the Agency's notification of disapproval. The Agency shall either approve or disapprove the revised financing plan within ten (10) business days of receipt. If the revised financing plan is disapproved, then the Developer shall have thirty (30) days to submit a further revised financing plan. The periods for submission of a revised financing plan, review, and approval or disapproval shall continue to apply until a financing plan has been approved by the Agency; however, the financing plan for the first phase of Infrastructure Improvements must be approved by the Agency no later than the expiration of the Option Term unless otherwise mutually agreed to by the Agency and the Developer, or this Agreement may be terminated by either Party pursuant to Article 10.

ARTICLE 4
DEVELOPER CONDITIONS PRECEDENT TO CLOSE OF ESCROW

Section 4.1 **Conditions Precedent.** As conditions precedent to the Close of Escrow for the Project Site, the conditions set forth in this Article 4 must be met by the that date which is sixty (60) days after the Developer exercises the Option pursuant to Section 3.1. If the conditions precedent in this Article 4 have not been satisfied or waived by the above date, then this Agreement may be terminated by the Developer pursuant to Article 10 below.

Section 4.2 **Ownership of Project Site.** Prior to the Close of Escrow, the Agency shall have obtained fee title ownership to the Project Site and shall be ready to convey the Project Site to the Developer.

Section 4.3 **Easement.** To the extent the roads currently serving the Project Site, including, but not limited to Imjin Road, 12th Street (which will become Imjin Parkway) and California Street (collectively, the ***"Streets"***) are not public rights-of-way after conveyance of the Project Site from FORA to the City or the Agency, the City or the Agency shall grant to the Developer, in a form acceptable to the Developer, a public easement, license, right of entry or other similar right and assurance (appropriately documented) across, under, and over the surface and subsurface of the Streets necessary or desirous to serve the Project Site (collectively, the ***"Street Easements"***).

Section 4.4 **Title Policy.** The Title Company shall have issued a commitment to provide to the Developer an ALTA Owner's Policy of Title Insurance with any title endorsements reasonably requested by the Developer, with coverage in the amount of the Purchase Price (the ***"Title Policy"***), insuring the Developer's fee title to the Project Site, subject only to the "Permitted Exceptions" (as defined below). For purposes of this Agreement, (a) title endorsements shall be deemed reasonably requested by the Developer if the Developer shall have requested the issuance of such title endorsement by the Title Company prior to the expiration of the Option Term and the Title Company shall have agreed in writing to issue such endorsements as part of the Title Policy; and, (b) ***"Permitted Exceptions"*** shall mean all matters shown on the standard preliminary title report (the ***"Preliminary Title Report"***), supplemental title report (the ***"Supplemental Title Report"***), the ALTA Survey (the ***"Survey"***) which have not been objected to in writing by the Developer prior to the expiration of the Option Term. Within ten (10) days after request therefor, the City, or the Agency (as applicable) shall deliver all affidavits and information reasonably required by the Title Company issuing such title insurance policies to the Developer. In the event that the Title Company requires any affidavits or information from FORA, the City and the Agency shall assist the Developer in obtaining such materials from FORA.

Section 4.5 **No Default.** No uncured Event of Default hereunder shall then exist prior to Close of Escrow unless waived by the Developer at its sole discretion.

Section 4.6 **Completion of Remediation Measures.** All remediation measures required to be conducted by the U.S. Army pursuant to Sections 2.03, 15, 16 and 17 of the FORA Agreement shall be completed prior to the Close of Escrow.

Section 4.7 **Licenses and Permits.** The Agency and the City shall provide the Developer with a list and copies of any easement or license which is not reflected in the Title Policy issued by the Title Company pursuant to Section 4.4 as may be required (a) for the use of roads, utilities and other services necessary or desirable for the enjoyment and benefit of the Project Site; and, (b) for ingress and egress as may be necessary to the Project Site as shown on Exhibit M to the FORA Agreement to the extent the Agency or the City is aware of such easements or licenses. The City and the Agency shall assist the Developer in obtaining such materials from FORA, if applicable.

Section 4.8 **HMP and Habitat Implementation Plan.** (a) FORA shall have implemented or be in the process of implementing the HMP and the Habitat Implementation Plan; (b) the Developer shall have no obligations with respect to the HMP or the Habitat Implementation Plan; (c) neither the HMP nor the Habitat Implementation Plan shall have been amended; and, (d) the HMP and the Habitat Implementation Plan shall be in full force and effect.

Section 4.9 **Other FORA Obligations.** FORA shall have (a) consented to the sale of the Project Site to the Developer in accordance with the terms of this Agreement; (b) determined that the transaction contemplated by this Agreement is consistent with the FORA Agreement; and, (c) assigned or consented to the assignment to the Developer of the Agency's rights under the FORA Agreement to the extent provided herein.

Section 4.10 **Eligibility for Listing as a Historic Structure.** No structure on the Project Site shall have been determined to be eligible for listing on the National Register of Historic Places, the California State Register of Historic Places, or any Monterey County or City of Marina registry of historic places.

Section 4.11 **Water Allocation**. The Developer shall have obtained an annual allocation of potable water from the City that the Developer deems sufficient within the exercise of its sole and subjective business judgment.

Section 4.12 **Sewer Allocation**. The Developer shall have received assurances from the Monterey Regional Water Pollution Control Agency and the City of equitable utilization of existing sewage treatment capacity, including existing connections to the Fort Ord Sewage Collection System (as defined in the FOR A Agreement), sufficient to serve the Improvements.

Section 4.13 **Other Information.** Upon request of the Developer, the Agency, or the City shall provide to the Developer all other information and legible copies of any additional documents in the possession of the City or the Agency which may materially affect the economic or physical condition of the Project Site, unless such information is not subject to public disclosure pursuant to the Public Records Act. Further, the Agency and the City shall assist the Developer in obtaining such additional information and documents from FORA, if applicable.

ARTICLE 5
COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES

Section 5.1 **FORA.** The Parties acknowledge that, despite the fact that FORA is not a party to this Agreement, FORA has certain legal authority, rights and obligations in connection with the Project Site including but not limited to the implementation of HMP and the Habitat

Implementation Plan. The Parties further acknowledge that FORA will have to make certain findings with respect to the Project including that the Development of the Project Site in accordance with this Agreement and the Application is an Economic Development Use (as defined in Section 2.01 of the FORA Agreement).

The Parties shall work together with FORA so that all of the Army's obligations under the terms of the EBS and FOSET shall be assigned to the Developer. Further, the Parties shall work with FORA during the Option Term to develop the appropriate documentation of FORA's obligations to the Developer.

Section 5.2 General Provisions.

5.2.1 Cooperation of the Parties. In carrying out the obligations described in this Agreement, the Parties shall cooperate and use best and diligent efforts including, but not limited to (a) pursuing any amendments to this Agreement that are reasonably necessary to accomplish the goals expressed in this Agreement and to facilitate the development of the Project Site; (b) assisting the Developer in obtaining permits or other information from other government agencies including FORA, the U.S. Army, the Marina Coast Water District and the Monterey Regional Water Pollution Control Agency; and, (c) causing FORA to assign to the Agency or the Developer any rights it may have to enforce obligations of the Army to FORA including but not limited to rights and obligations set forth in the FORA Agreement.

5.2.2 Meetings. During the term of this Agreement, representatives of the City, the Agency and the Developer shall meet as required, at such time and place as they determine in order to exchange information on the progress of the matters referred to in this Agreement and to consider or decide other matters pertaining to obligations of the parties pursuant to this Agreement.

5.2.3 Additional Information. Each Party reserves the right at any time to obtain from any other Party further information and data as reasonably necessary to ascertain (a) such other Party's capability, intent and commitment to fulfill its obligations pursuant to this Agreement; (b) such other Party's organizational structure; and, (c) issues that may arise relating to the fulfillment of each respective party's obligations pursuant to this Agreement; provided, however, the Developer acknowledges that the City, the Agency and FORA are public agencies subject to the Public Records Act and that certain information in their possession may not be subject to public disclosure and thus may not be available to the Developer.

5.2.4 No Negation of Representations and Warranties. The exercise or undertaking by the Developer of an inspection, examination, test or study or the review by the Developer of the due diligence materials provided by FORA, the City or the Agency or any other act by the Developer shall not negate any representation, warranty or covenant of the City or the Agency or the obligations of the City or the Agency or modify any of Developer's rights in the event of any breach by the City or the Agency of their representations, warranties or covenants in this Agreement.

5.2.5 Mutual Assistance/Confidentiality/Public Relations.

(a) General Assistance. Each Party reserves the right at any time to request and obtain reasonable additional information, data or assistance from any other Party with respect to its obligations pursuant to this Agreement. In requesting the assistance of another Party, each Party shall prepare and submit a written statement or statements clearly detailing the nature, form and extent of any data or assistance requested. Upon receipt of such written request, the Party receiving the request shall use diligent efforts to provide the requesting Party with appropriate information and assistance. If requested by a Party, another Party shall promptly present periodic oral briefings or written progress reports to the requesting Party's representative advising the requesting Party on pertinent matters and studies in progress.

(b) Confidentiality. The Parties anticipate during the term of this Agreement that each shall from time to time disclose and provide to the other certain reports, correspondence and other information related to the Development of the Project Site which each shall seek to acquire. Unless otherwise specifically required by law and subject to a standard of reasonableness, no Party shall disclose (except to their own and to the other Party's employees, officers, directors, agents, advisors, lenders, investors, counsel and consultants) information regarding any other Party related to the Development of the Project Site which is not already public and which has been delivered to such Party pursuant to the terms hereof. Each Party shall require its employees, officers, directors, agents, advisors, lenders, investors, counsel and consultants to abide by the confidentiality provisions set forth in this Section 5.2.5 (b). In particular, the City and the Agency shall each use its best and diligent efforts to keep confidential proprietary information or materials of the Developer and shall use its best and diligent efforts to cause FORA to comply with this Section 5.2.5 (b). Notwithstanding the foregoing, the Developer acknowledges and agrees that the City, the Agency and FORA, as public bodies, (i) are subject to disclosure obligations under applicable law; and, (ii) hold council or board of directors meetings which are open to the public and at which information concerning their respective obligations pursuant to this Agreement may be disclosed. Nothing herein shall prohibit any disclosure required by law. Any written notice hereunder marked CONFIDENTIAL UNDER SECTION 5.2.5 (b) OF THE MARINA HEIGHTS OPTION AGREEMENT in capital letters shall be deemed to provide all recipients thereof with actual knowledge that such notice is confidential pursuant to this Section 5.2.5 (b). In the event of any breach of this Section 5.2.5 (b), the injured Party will be entitled, in addition to any other remedies that it may have at law or in equity, to injunctive relief or an order of specific performance.

(c) Public Relations. The Parties shall reasonably cooperate in publicizing the proposed Development of the Project Site.

Section 5.3 Permits and Approvals. Subject to Section 3.2.2 above, the Agency shall use its best and diligent efforts to assist the Developer in its attempts to obtain any Permits and Approvals for the Development of the Project Site, including, without limitation, execution of applications, to the extent required based on the Agency's ownership of the Project Site, for land use permits and other applications, maps and subdivision map applications, and other instruments which may be required in connection with same, provided that all such maps, applications, grant deeds and other instruments are in compliance with all applicable legal

requirements and are consistent with the requirements of this Agreement unless otherwise agreed to by the parties hereto. Except as provided by the terms and conditions contained in this Agreement, the Agency shall not have any obligation to advocate or support Developer's applications for land use approvals.

Section 5.4 **Representations and Warranties of the City.** As an inducement to the Developer and the Agency to enter into this Agreement, the City hereby represents and warrants to the Developer and the Agency, which representations and warranties are true and correct as of the Effective Date, shall remain true and correct as of the Close of Escrow and throughout the term of this Agreement and shall survive the expiration or earlier termination of this Agreement unless the City so notifies the other parties hereto in accordance with Section 5.4.9 below.

5.4.1 The City has the legal power, right and authority to enter into this Agreement and the instruments referred to herein, and to consummate the transactions contemplated hereby, and the consummation of the transactions contemplated hereby do not require the consent or approval of a party which is not a Party to this Agreement.

5.4.2 There is no provision of any indenture, instrument or agreement, written or oral, to which the City is a party or which governs the actions of City or which is otherwise binding upon the City or the City's property which would adversely affect the Permits and Approvals or Development of the Project Site in accordance with the application submitted by the Developer to the City on July 19, 2002 (the ***"Application"***).

5.4.3 There is no provision of any indenture, instrument or agreement, written or oral, to which the City is a party or which governs the actions of City or which is otherwise binding upon the City or the City's property, nor is there any judgment, decree, or order of any court, federal, state or city government binding on the City or the City's property which would be contravened by the execution, delivery or performance of this Agreement or any documents required hereby to be executed by the City.

5.4.4 There is no action, suit, or proceeding at law or in equity or by or before any Governmental Authority now pending, or, to the knowledge of the City, threatened against or affecting the City, the Project Site or any properties or rights of the City, which, if adversely determined, would materially impair the right of the City to execute or perform its obligations under this Agreement or any documents required hereby to be executed by the City.

5.4.5 Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, including Developer's intention to entitle the Project Site, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which the City is a party.

5.4.6 No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings affecting any of the

City's obligations regarding the Project Site, are pending or threatened against the City, nor are any of such proceedings contemplated by the City.

5.4.7 To the best of the City's knowledge, all reports, documents, instruments, information and forms of evidence delivered to the Developer by the City concerning or required by this Agreement are accurate, correct and sufficiently complete to give Developer true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

5.4.8 To the best of the City's knowledge, Development of the Project Site in accordance with this Agreement and the Application does not conflict with the FORA Base Reuse Plan and FORA has not directly communicated any objection to the Project as is contemplated by this Agreement and the Application to the City.

5.4.9 Whenever a statement concerning factual matters herein is qualified by the phrase "to the City's knowledge" or similar words, it is intended to indicate that no information that would give the City Manager or Planning Director, current actual knowledge that the inaccuracy of such factual statements has come to such person's attention. If the City receives any notice that any representation or warranty made herein is untrue during the term of this Agreement, the City shall immediately notify Developer and the Agency in writing. Every representation and warranty by the City contained herein shall be true and correct as of the Effective Date, and shall remain true and correct as of the Close of Escrow and throughout the term unless the City provides such written notice otherwise to the Developer and the Agency.

Section 5.5 Representations and Warranties of the Agency. As an inducement to the Developer and the City to enter into this Agreement, the Agency hereby represents and warrants to the Developer and the City , which representations and warranties are true and correct as of the Effective Date, shall remain true and correct as of the Close of Escrow and throughout the term of this Agreement and shall survive the expiration or earlier termination of this Agreement unless the Agency so notifies the other parties hereto in accordance with Section 5.5.11 below.

5.5.1 The Agency has the legal power, right and authority to enter into this Agreement and the instruments referred to herein, and to consummate the transactions contemplated hereby, and the consummation of the transactions contemplated by the Agency hereby do not require the consent or approval of a party which is not a Party to this Agreement.

5.5.2 There is no provision of any indenture, instrument, or agreement, written or oral, to which the Agency is a party or which governs the actions of the Agency or which is otherwise binding upon the Agency or the Agency's property which would adversely affect the Permits and Approvals or Development of the Project Site in accordance with the Application and the Schedule of Benchmarks.

5.5.3 There is no provision of any indenture, instrument, or agreement, written or oral, to which Agency is a party or which governs the actions of Agency or which is otherwise binding upon the Agency or the Agency's property, nor is there any judgment, decree, or order of any court, federal, state or city government binding on the Agency or the Agency's property

which would be contravened by the execution, delivery or performance of this Agreement or any documents required hereby to be executed by the Agency.

5.5.4 There is no action, suit, or proceeding at law or in equity or by or before any Governmental Authority now pending, or, to the knowledge of the Agency, threatened against or affecting the Agency, or any properties or rights of the Agency, which, if adversely determined, would materially impair the right of the Agency to execute or perform its obligations under this Agreement or any documents required hereby to be executed by the Agency.

5.5.5 To the best of Agency's knowledge, neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, including Developer's intention to entitle the Project Site, nor compliance with the terms of this Agreement and the documents referenced herein require the consent or approval of a party which is not a Party to this Agreement, other than FORA, or otherwise conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which the Agency is a party.

5.5.6 No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against the Agency, nor are any of such proceedings contemplated by the Agency.

5.5.7 To the best of the Agency's knowledge, all reports, documents, instruments, information and forms of evidence delivered to the Developer by the Agency concerning or required by this Agreement are accurate, correct and sufficiently complete to give Developer true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

5.5.8 Except as set forth in Section 7.6, neither California Health and Safety Code Section 33413 nor the Redevelopment Plan require the Developer to construct housing affordable to persons of very low, low or moderate income on the Project Site.

5.5.9 The Agency has not received any written notice of and has no actual knowledge of any violation of any law, ordinance, regulation, order or requirement of any Governmental Authority applicable to the Project Site, including without limitation, requirements imposed under any recorded covenants, conditions, restrictions, easements or other rights affecting the Project Site.

5.5.10 To the best of the Agency's knowledge, Development of the Project Site in accordance with this Agreement and the Application does not conflict with the FORA Base Reuse Plan.

5.5.11 Whenever a statement concerning factual matters herein is qualified by the phrase "to the Agency's knowledge" or similar words, it is intended to indicate that no information that would give the Redevelopment Agency Executive Director, current actual knowledge that the inaccuracy of such factual statements has come to such person's attention. If the Agency receives any notice that any representation or warranty made herein is untrue during

the term of this Agreement, the Agency shall immediately notify Developer and the City in writing. Every representation and warranty by the Agency contained herein shall be true and correct as of the Effective Date, shall remain true and correct as of the close of Escrow and throughout the term of this Agreement unless the Agency provides such written notice otherwise to Developer and the City.

Section 5.6 Representations and Warranties of Developer. As an inducement to the City and the Agency to enter into this Agreement, the Developer hereby represents and warrants to the City and the Agency, which representations and warranties are true and correct as of the Effective Date shall remain true and correct as of the Close of Escrow and throughout the term of this Agreement, and shall survive the expiration or earlier termination of this Agreement:

5.6.1 The Developer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby and the parties executing this Agreement are authorized to bind the Developer;

5.6.2 The Developer is validly formed and is authorized to do business in California;

5.6.3 There is no charter, bylaw, or capital stock provision of Developer, and no provision of any indenture, instrument, or agreement, written or oral, to which Developer is a party or which governs the actions of Developer or which is otherwise binding upon Developer or Developer's property, nor is there any judgment, decree, or order of any court or city binding on Developer or Developer's property which would be contravened by the execution, delivery or performance of this Agreement or any documents required hereby to be executed by Developer;

5.6.4 There is no action, suit, or proceeding at law or in equity or by or before any Governmental Authority now pending, or, to the knowledge of Developer, threatened against or affecting Developer, the Development or any properties or rights of Developer, which, if adversely determined, would materially impair the right of Developer to execute or perform its obligations under this Agreement or any documents required hereby to be executed by Developer;

5.6.5 Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Developer is a party;

5.6.6 No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against Developer, nor are any such proceedings contemplated by Developer; and

5.6.7 All reports, documents, instruments and information delivered to the City and the Agency by the Developer concerning or required by this Agreement are accurate, correct

and sufficiently complete to give the City and the Agency true and accurate knowledge of their subject matter, and do not contain any material misrepresentation or omission.

5.6.8 Developer is a California limited partnership comprised of Chadmar/Watt Marina Partners, LLC, a California limited liability company and Cypress Marina Partners, L.P., a California limited partnership. Chadmar/Watt Marina Partners, LLC's managing members are Nadra, Inc., a California corporation and Chadmar Marina Partners, LLC, a California limited liability company. So long as Charles R. Lande or an Affiliate Controls or is Controlled by or is under common Control with Developer, a change in the membership of Developer would not constitute a breach of this representation.

5.6.9 Whenever a statement concerning factual matters herein is qualified by the phrase "to Developer's knowledge" or similar words, it is intended to indicate that no information that would give Charles R. Lande, or his successor in interest, current actual knowledge that the inaccuracy of such factual statements has come to such person's attention. If the Developer receives any notice that any representation or warranty made herein is untrue, except as specifically provided in Section 5.6.8 above, the Developer shall immediately notify the City and the Agency in writing. Every representation and warranty by the Developer contained herein shall be true and correct as of the Effective Date, shall remain true and correct as of the Close of Escrow and throughout the term of this Agreement unless the Developer provides such written notice otherwise to the City and the Agency.

ARTICLE 6
DISPOSITION OF PROPERTY

Section 6.1 Acquisition and Sale of Project Site.

6.1.1 Upon delivery of the Option Exercise Notice and subject to all of the terms and conditions of this Agreement, the Agency hereby agrees to sell and convey the Project Site to the Developer, and the Developer hereby agrees to purchase the Project Site from the Agency within sixty (60) days after receipt of the Option Exercise Notice pursuant to Section 3.1.2 subject to Unavoidable Delays (***"Close of Escrow"***).

6.1.2 **"As Is."** The Developer acknowledges that prior to the expiration of the Option Term it shall have made extensive investigations of the physical and environmental condition of the Project Site and the suitability of the Project Site for its intended use, and that it has satisfied itself as to such matters and, except as otherwise provided in this Agreement including the representations and warranties set out in Article 5 hereof, shall rely solely on its own investigations with respect to all matters related to the Project Site, including, without limitation, the physical or environmental condition of the Project Site, or matters related to land use controls, marketability, economic viability or value of the Project Site. The Developer further acknowledges that, except as set out in this Agreement including the representations and warranties set out in Article 5 hereof, (a) all documents and instruments delivered to or made available to the Developer have been provided without representation or warranty whatsoever (unless otherwise set out herein); and, (b) Developer has represented to all other Parties hereto and those Parties have expressed their reliance upon the Developer's representation that the Developer is an experienced purchaser of real property such as the Project Site and has or has

available to it the expertise properly and fully to investigate all matters related to the physical condition, land use controls, marketability, environmental conditions, endangered species statutes, and viability of the Project Site for the Developer's intended use. The Developer shall accept the Project Site in "AS IS" condition without representation or warranty, except as otherwise set out herein.

The Developer agrees that, from and after the Close of Escrow, the Developer for itself and its agents, affiliates, successors and assigns, hereby RELEASES AND FOREVER DISCHARGES the City and the Agency, and their agents, affiliates, successors and assignees from, and waives any right to proceed against the City and the Agency, and their agents, affiliates, successors and assignees, for any and all rights, claims, and demands at law or in equity relating to the physical or environmental condition of the Site. Without limiting the foregoing, the Developer hereby specifically WAIVES, in connection with the matters released above, the provision of the California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not now or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Developer hereby acknowledges that the Developer has carefully reviewed this Section and discussed its impact with legal counsel, and that the provisions of this Section are a material part of this Agreement.

Developer Initials _____

Section 6.2 **Purchase Price.** The purchase price for the Project Site to be paid by Developer shall be that sum of Ten Million Six Hundred Twenty Thousand Dollars ($10,620,000) (the ***"Purchase Price"***). In the event that the number of residential units that constitute the Improvements changes, the Purchase Price shall be adjusted as agreed by the parties, or in the absence of agreement, based on the assumptions underlying the Self Contained Appraisal Report ("Marina Heights") including, but not limited to, the valuation date set out therein prepared and delivered to the City on or about March 15, 2002. If any party desires an adjustment in the Purchase Price due to a change in the density of the Project, it shall give written notice thereof to the other parties and within sixty (60) days after delivery of such notice, the parties shall submit to Hulberg & Associates, Real Estate Appraisers, San Jose, California, or to such other appraiser as the parties may jointly select in place of Hulberg & Associates, any and all relevant information concerning changes in the number of residential units, and such other pertinent information as may be requested by the appraiser. The appraiser's determination of any adjustment in the Purchase Price due to the change in the number of residential units shall be binding on the parties.

Section 6.3 **Profit Participation Agreement.**

6.3.1 As used in this Section 6.3, the following terms shall have the following meanings:

(a) ***"Development Costs "***means all third party out-of-pocket costs and expenses paid by the Developer to acquire, own, hold, develop or sell all or any part of the

Project, which shall include reasonable development fees, management fees or other amounts paid by Developer to affiliates of the Developer for services rendered in connection with the Project, provided that all payments by Developer of development and management fees paid to affiliates of Developer shall not exceed 3% of Gross Cash Receipts derived from the sale of residential dwellings and 5.5% of Gross Cash Receipts derived from the sale of lots which have not been improved with residential dwellings by Developer. Development Costs shall exclude (i) the repayment of the principal and interest of any loan obtained by the Developer; and, (ii) any distributions, preferred return or other capital return to the members of the Developer.

(b) ***"Gross Cash Receipts"*** means all cash revenues received by the Developer from any source whatsoever in connection with the sale, exchange or disposition of all or any part of the Project, which shall include any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Project, but shall exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer. In the event the Developer has received a promissory note or other financing device (collectively referred to as a ***"Note"***) as a part of a sale or other disposition of a portion of the Project, the Developer shall include as cash for the purposes of determining Gross Cash Receipts, (i) all payments of principal and interest received on a Note as they are received; and, (ii) if and to the extent all or some portion of a Note is due and payable after Project Completion, the net present value, as of the Project Completion, of payments remaining due under the Note, using an annual discount rate equal to the then Prime Rate as published in the most recent issue of the Wall Street Journal, plus 2 basis points.

(c) ***"Project Commencement"*** means the first day of January, 2002, it hereby being acknowledged by the Parties that accumulated Development Costs as of January 31, 2002 were $431,079.

(d) ***"Project Completion"*** means the first day of the month following the earlier of (i) 16 years after the Effective Date; or, (ii) expiration of the 90th day after the sale or transfer of that portion of the Project intended for residential development (***"Project Residential Property"***) which results in the Project being substantially complete. As used in this definition, "substantially complete" shall mean the date that the last parcel of the Project Residential Property has been sold or otherwise transferred, except that if a period of more than one year elapses without the sale or transfer of any parcel of Project Residential Property and at least 90% of the Residential Property has been sold or transferred, "substantially complete" shall mean the date that is one year after the last sale or transfer of Project Residential Property.

(e) ***"Unleveraged Cash Flow"*** means Gross Cash Receipts received by the Developer less Development Costs paid by the Developer.

(f) ***"IRR"*** means the annual percentage internal rate of return that shall be calculated on the Unleveraged Cash Flow for each month using a monthly internal rate of return factor, which will produce an annual rate of return equal to 20%. The annual rate of return based on monthly compounding is determined by adjusting the rate of return calculated by the internal rate of return formula in the Excel 2000 based upon monthly cash flows ("Unadjusted IRR" in the formula below) by the formula:

annual internal rate of return = $(1+\text{Unadjusted IRR})^{12}-1$.

6.3.2 If at Project Completion the Project IRR is greater than 20%, at Project Completion the Developer shall pay to the Agency an amount (***"Profit Participation"***) equal to fifteen percent (15%) of the difference between (a) the Unleveraged Cash Flow as of Project Completion less (b) the amount of Unleveraged Cash Flow from Project Commencement through the point in time at which an annual internal rate of return to Developer on Unleveraged Cash Flow from the Project equals 20% ("IRR Hurdle"). An example of the calculation of the Profit Participation is attached as Exhibit G. The payment of Profit Participation shall be in addition to the payment of the Purchase Price.

6.3.3 Any Gross Cash Receipts received by the Developer or any Development Costs paid by the Developer during any month shall be deemed to be received or paid on the last day of the month.

6.3.4 Developer shall present a fully detailed calculation of the Profit Participation amount at the time of payment to the Agency. The Developer shall provide any backup information reasonably requested by the Agency. The Agency shall have the right to audit the calculation of the Profit Participation at its expense at any time within nine months of the payment and the Developer shall maintain and make available to the Agency and its agents all records necessary for the calculation of the Profit Participation. If the audit discloses a payment discrepancy, the parties shall make an adjustment payment plus interest at the Prime Rate within 30 days. If the audit discloses a shortfall of five percent or more of the Profit Participation amount, the Developer shall also pay to the Agency the costs of the audit.

6.3.5 The Profit Participation shall be paid to Agency not later than 45 days following Project Completion. Developer shall provide to the Agency copies of the periodic reporting respecting Development Costs and Gross Cash Receipts provided by Developer to each of its members or partners, which reporting shall be in the form and with such detail as required by the partnership agreement of Developer and in conformance with generally accepted accounting principles consistently applied (***"GAAP"***). Based on such reporting, when 70% or more of Project Residential Property has been sold or transferred and the IRR Hurdle has been achieved, beginning in the next quarterly reporting time period, and quarterly thereafter, Developer shall place into an escrow reserve account at the Title Company an amount equal to seventy-five percent (75%) of the Profit Participation earned as of that point in time, which escrowed funds shall be held by the Title Company as security for Developer's obligations to make the payment of the Profit Participation due at Project Completion. The only exception to payments into the escrow reserve account shall be if Unleveraged Cash Flow, even though having initially surpassed the IRR Hurdle, at any time does not satisfy the IRR Hurdle. In such circumstance, deposits of the Profit Participation into the escrow reserve account will be suspended and the Developer may draw on the escrow reserve account to pay Development Costs, if required, until the IRR Hurdle is again achieved. The Developer and Agency shall join in directing the Title Company to invest the escrow funds in certificates of deposit, money market funds, or other commercially prudent investments and the funds shall be held and invested pursuant to agreement between the Developer, Agency and Title Company.

Section 6.4 **Escrow.** Within five (5) business days after the Developer sends the Option Exercise Notice pursuant to Section 3.1.2, the City, the Agency and the Developer shall open an escrow (the ***"Escrow"***) with Stewart Title Company (the ***"Escrow Holder"***) by depositing with the Escrow Holder a fully executed counterpart original of this Agreement, which Agreement shall serve as escrow instructions for the Escrow Holder's administration of the Escrow. The Escrow Holder is authorized to act under this Agreement, and upon indicating its acceptance of the provisions of this Section 6.4 in writing, delivered to the City, the Agency and the Developer within five (5) days after receipt of such counterpart original of this Agreement, shall carry out its duties as Escrow Holder. The date Escrow Holder indicates its acceptance shall be deemed the ***"Opening of Escrow"***.

Section 6.5 **Escrow Deliveries.**

6.5.1 Within five (5) business days after the Opening of Escrow, the Developer shall deliver into Escrow a fully executed counterpart original of this Agreement, which shall serve as the escrow instructions for the purchase and sale of the Project Site.

6.5.2 Developer shall deliver to Escrow Holder the Purchase Price and funds to pay for the Developer's share of the closing costs on or before the Close of Escrow.

Section 6.6 **Additional Instructions.** The Parties shall promptly execute and deliver to the Escrow Holder any appropriate separate or additional escrow instructions, which are not inconsistent herewith as necessary to effectuate the Close of Escrow. If there is any inconsistency between the terms hereof and the terms of the escrow instructions, the terms hereof shall control unless an intent to amend the terms hereof is expressly stated in such instructions.

6.6.1 **Closing Date.** Subject to Unavoidable Delays, the Closing Date for the Project Site shall be sixty (60) days after Developer exercises the Option unless otherwise mutually agreed to in writing by the Agency and Developer.

Section 6.7 **Escrow and Title Charges.** The Developer shall pay at the Close of Escrow (a) all recording charges incident to the recording of the Deed; (b) all premiums for Developer's title insurance policy including endorsements; (c) all fees, costs and expenses of the Escrow Holder; and, (d) all County and City assessed documentary transfer tax.

Section 6.8 **Conveyance of Title and Delivery of Possession.**

6.8.1 Subject to the mutually dependent submissions, approvals and consents set forth in this Section which are conditions precedent to conveyance, and provided the Developer is not in default hereunder, conveyance by the Agency to the Developer of the Project Site in accordance with the provisions of this Section shall be completed on or prior to the Closing Date. The following obligations of the City, the Agency and the Developer are conditions precedent to the Close of Escrow for the Project Site:

(a) The Developer shall deposit the following documents into Escrow prior to Closing:

(i) The Purchase Price plus funds for the Escrow and Title charges.

(b) The Agency shall deposit the following documents into Escrow prior to Closing:

(i) A deed in substantially the form of Exhibit H attached hereto, conveying to the Developer title to the Project Site (***"Deed"***);

(ii) Such proof of the Agency's authority and authorization to deliver the Deed as the Title Company may reasonably require in order to issue the policy of title insurance to Developer; and.

(iii) A Certification of Non-Foreign Status in accordance with I.R.C. Section 1445.

(c) The Agency and the City shall use best and diligent efforts to cause FORA to deposit the following document into Escrow prior to the Closing:

(i) A written assignment of all of FORA's rights to proceed against the US Army under the terms of the EBS and FOSET in a form reasonably acceptable to Developer.

6.8.2 Subject to the terms and conditions of this Agreement, the Parties shall perform all acts and execute and deliver all other documents reasonably necessary for the conveyances in sufficient time for the Project Site to be conveyed in accordance with the Schedule of Benchmarks.

Section 6.9 Escrow Holder.

6.9.1 The Escrow Holder is authorized to:

(a) Pay and charge the Developer for any fees, charges and costs payable by Developer under this Article 6. Before such payments are made, the Escrow Holder shall notify the Developer of the fees, charges, and costs necessary to Close under the Escrow; and

(b) Disburse funds and deliver the deeds and other documents to the Parties entitled thereto when the conditions of this Escrow have been fulfilled by the City, the Agency and the Developer. Such funds and other documents shall not be disbursed and delivered by the Escrow Holder unless and until it has recorded the Deed for the Project Site.

6.9.2 Any amendment of these escrow instructions shall be in writing and signed by the Parties. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as Escrow Holder under such amendment.

6.9.3 All communications from the Escrow Holder to the Parties shall be directed to the addressees and in the manner established in Section 11.7 of this Agreement for notices, demands and communications between or among the Parties.

6.9.4 The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under this Article, and any amendments hereto agreed upon by the Escrow Holder.

ARTICLE 7
DEVELOPMENT OF THE PROJECT SITE

Section 7.1 **Development of the Project Site.** Developer intends to proceed with the Development of the Project Site in accordance with the Application and Schedule of Benchmarks, and, thereafter, use commercially reasonable efforts to construct the Improvements on the Project Site in accordance with all applicable Permits and Approvals approved by the City which shall also comply with the City's General Plan, the Redevelopment Plan and the FORA Base Reuse Plan. Subject to the provisions of this Article 7, the City and the Agency acknowledge that the Developer has the right to proceed with the Development of the Project Site as the Developer deems appropriate within the exercise of its sole and subjective business judgment in accordance with the Permits and Approvals.

Section 7.2 **Schedule of Benchmarks.** Subject to any Unavoidable Delays, the Developer shall begin Development of the Project Site and proceed with construction within the times specified in the Schedule of Benchmarks or such reasonable extension of said dates as may be granted by this Agreement or by the Agency.

Section 7.3 **Compliance with Laws.** The Project Site shall be developed in compliance with all applicable laws or regulations. The Parties agree that the purpose of this Agreement is to provide for the sale of land by the Agency and is not, nor is it intended to be, a public works contract. In performing this Agreement, the Developer is an independent contractor and not the agent of the City or the Agency. Neither the City nor the Agency shall have any responsibility for payment to any contractor or supplier of Developer.

Section 7.4 **Local Hiring Requirements.** The Developer shall also follow the guidelines of the local hiring requirement of FORA and the City.

Section 7.5 **Anti-Discrimination During Construction.** The Developer shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin in the Development of the Project Site.

Section 7.6 **Sale of Bridge Homes.**

7.6.1 Eighty-Five (85) single family homes to be Developed on the Project Site shall be sold for an average purchase price of Two Hundred and Fifty Five Thousand Dollars ($255,000) per home (the ***"Bridge Home Purchase Price"***), as such price may be increased annually beginning on January 1, 2004 by the CPI Increase (each such home shall be a ***"Bridge Home"***). The Bridge Homes shall be disbursed throughout the Project Site. The Agency shall

use commercially reasonable efforts to assist the Developer in locating homebuyers for the Bridge Homes. Except as provided in Section 7.6.2, Developer's obligations under this Section 7.6.1 with respect to the Bridge Home Purchase Price shall be limited to the initial sale of the Bridge Homes, and Developer shall have no other obligations regarding subsequent sales of the Bridge Homes.

7.6.2 As a condition of purchase of the Bridge Homes, each homebuyer shall be required to execute and record against the home a Bridge Home Resale Restriction Agreement in the form shown in Exhibit C attached hereto.

Section 7.7 Certificate of Completion.

7.7.1 After completion of construction of a portion of the Improvements in compliance with the Permits and Approvals and this Agreement, the Agency shall, promptly following written request therefor, furnish a Certificate of Completion for that portion of the Improvements. The Certificate of Completion shall be in the form attached hereto as Exhibit B. The Agency shall not unreasonably withhold the Certificate of Completion. Such Certificate of Completion shall be, and shall so state that it is, conclusive determination of satisfactory completion of the Developer's construction obligations pursuant to this Agreement for that portion of the Improvements.

7.7.2 If the Agency refuses or fails to furnish a Certificate of Completion after written request therefor, the Agency shall, within fourteen (14) days after delivery of the written request, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or material for landscaping, the Agency will issue its Certificate of Completion upon the posting by the Developer with the Agency of a bond or other collateral in the form acceptable to the Agency and in an amount representing one hundred twenty-five percent (125%) of the full value of the work not yet completed.

7.7.3 Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, trust deed or other security instrument. Such Certificate of Completion shall not be construed as a Notice of Completion as described in California Civil Code Section 3093.

ARTICLE 8
LIMITATIONS ON TRANSFERS AND SECURITY INTERESTS

Section 8.1 Transfers.

8.1.1 Limitation As To Transfer of the Project Site and Assignment of Agreement. The Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor sell, transfer, convey, lease, mortgage, encumber, or hypothecate (herein each sometimes referred to as a ***"Transfer"***) the whole or any part of the Project Site, other than the sale or rental of residential units as contemplated by this Agreement, without the prior written approval of the Agency, which approval shall not be

unreasonably withheld, conditioned or delayed. The Developer acknowledges that the identity, make-up and proposal of the Developer are of particular concern to the City and the Agency , and it is because of these matters that the City and the Agency have entered into this Agreement with the Developer. In particular, the Developer agrees that the following obligations shall be nontransferable unless consented to in writing by the Agency in accordance with this Section 8.1.1: (a) the Profit Participation Payment set out in Section 6.3; and, (b) the Development of the Infrastructure Improvements. The prohibitions contained in this Section 8.1.1 shall not be deemed to prevent the (i) granting of easements or permits to facilitate the Development of the Project Site; or, (ii) any mortgage or deed of trust permitted by this Agreement.

8.1.2 Permitted Transfer. Notwithstanding anything to the contrary in Section 8.1.1 above (except as provided in Section 8.1.3 below), the Agency agrees that its prior written approval shall not be required for the following Transfers (each, a ***"Permitted Transfer"***):

(a) any Transfer to one or more Affiliates of Developer; or

(b) the merger, consolidation, restructuring or sale of substantially all of the assets of Developer or of any Affiliate, provided that the resulting entity has a net worth, calculated in accordance with generally accepted accounting principles consistently applied, equal to or greater than the net worth of Developer immediately prior to such transaction; or

(c) the assignment to any trustee by way of a deed of trust in favor of holder or beneficiary under such deed of trust, or the absolute or collateral assignment, pledge, grant or transfer to such holder, of the Developer's right, title and interest in, to and under this Agreement for the purpose of creating an encumbrance on or security interest in such interest pursuant to Section 8.2 of this Agreement, or to or by any such holder or other purchaser in connection with its acquisition of the Project Site by foreclosure or deed in lieu of foreclosure and disposition of the Project Site; or

(d) the transfer or sale of lots within the Project Site to one or more home builders, which home builders are listed on Exhibit I to this Agreement or which have been approved by the Agency in accordance with Section 8.1.3 hereof.

8.1.3 Transfer to Home Builders Not Listed on Exhibit I. Portions of the Project may be transferred to home builders other than those listed on Exhibit I, provided the Agency approves such proposed home builder transferee (***"Proposed Transferee"***) which approval shall not be unreasonably withheld.

(a) The Developer shall deliver to the Agency written notice of the Proposed Transfer and Proposed Transferee, at least thirty (30) days before the Proposed Transfer. The Agency shall approve the Proposed Transferee if the Agency, in the exercise of reasonable discretion, determines that the Proposed Transferee is comparable to the home builders listed in Exhibit I with respect to financial capability, experience, reputation, integrity, purchaser satisfaction and quality of design and construction (***"Transferee Homebuilding Standards"***). After considering the foregoing, and conducting any investigation as it deems prudent, the Agency shall give written notice to the Developer approving or disapproving the Proposed Transferee based on the Transferee Homebuilding Standards. If the Agency

disapproves the Proposed Transferee because it does not meet the Transferee Homebuilding Standards, it shall give to Developer the reasons for such disapproval. Within ten (10) days after receipt of written notice of disapproval from the Agency, the Developer may appeal the Agency's determination by giving written notice to the Agency requesting that the dispute resolution procedures set forth in Section 10.9 hereof be followed. The subject of the dispute resolution procedures shall be whether the Proposed Transferee meets the Transferee Homebuilding Standards based on the information submitted to the Agency and other information that may be presented at the mediation. The mediation shall be conducted in Monterey County, California. The cost of the mediation shall be borne equally by the Agency and the Developer. The proposed transfer shall not occur until dispute resolution proceedings have been completed and any attempted transfer not conforming to the provisions of this section 8.1.3 shall be void and of no effect.

(b) As a condition to any such transfer, any person or entity accepting such transfer shall either (i) enter into a legally binding assignment and assumption agreement with Developer in recordable form and otherwise substantially in the form attached hereto as Exhibit J (the ***"Assignment and Assumption Agreement"***); or, (ii) enter into a legally binding purchase and sale agreement with the Developer obligating such home builder to construct residential dwelling units and improvements on the real property being transferred in compliance with the terms and provisions of this Agreement, any development agreement affecting such real property, and all Permits and Approvals given for such real property and dwelling units by the City. A true and correct copy of the executed Assignment and Assumption Agreement or purchase and sale agreement, as applicable, shall be delivered to Agency immediately following such transfer.

8.1.4 Transfer Consent Procedures. At any time Developer desires to effect a Transfer requiring the consent of the Agency under this Agreement (a ***"Proposed Transfer"***), Developer shall request consent from the Agency in writing and shall submit to the Agency all proposed agreements and documents (collectively, the ***"Transfer Documents"***) memorializing, facilitating, and evidencing the Proposed Transfer. The Agency agrees to notify Developer in writing of its decision on Developer's request for consent to such Proposed Transfer within thirty (30) days after Developer's submittal of the Transfer Documents. The Agency's failure to notify Developer of its disapproval of the Proposed Transfer within such time period shall be deemed to constitute the Agency's approval of such Proposed Transfer. In the event the Agency consents to a Proposed Transfer pursuant to this Section 8.1, then such Transfer shall not be effective unless and until the Agency receives a copy of an executed and binding Assignment and Assumption Agreement or purchase and sale agreement in accordance with Section 8.1.3.b above. If such request is denied, the Agency shall state the reasons for such disapproval in its notice of denial of the Developer's request. Upon the effectiveness of any Transfer, the Developer shall be fully relieved and released of each of its duties and obligations with respect to the portion of the Project Site transferred subsequent to the effective date of such Transfer, except as to the nontransferable obligations of Developer set forth in Section 8.1.1.

8.1.5 Successive Transfer. Except as to the nontransferable obligations of Developer set forth in Section 8.1.1, the provisions of Article 8 hereof shall apply to each successive Transfer and transferee. The Developer's obligations under this Agreement with

respect to the portion of the Project Site transferred which are to be assumed by a transferee shall be set out in substantially the form of the Assignment and Assumption Agreement.

8.1.6 Termination of Restrictions on Transfer. The restrictions set forth in this Section 8.1 shall terminate upon the earlier of (a) the termination of this Agreement; (b) the issuance of a Certificate of Completion with respect to the portion of the Improvements constructed.

Section 8.2 Security Financing; Right of Holders.

8.2.1 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.

(a) The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value as to the Project Site, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Project Site, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

(b) Whenever the City or the Agency shall deliver a notice or demand to the Developer with respect to any breach or default by the Developer under this Agreement, the City or Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any first mortgage or deed of trust who has previously made a written request to the City or Agency for special notice hereunder. No notice of default to the Developer shall be effective against any such holder unless given to such holder as aforesaid. Such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option within ninety (90) days after receipt of the notice, to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession, such holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within a reasonable period of time as necessary to remedy or cure such default of the Developer, and shall comply with all other obligations of the Developer under this Agreement. Any such holder properly completing such improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency. Nothing contained herein shall be deemed to permit or authorize such holder to undertake or continue the Development of the Project Site (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed the Developer's obligations under this Agreement by written agreement satisfactory to the City and the Agency. The holder, in that event, must agree to fulfill, in the manner provided in this Agreement, the obligations under this Agreement to which the lien or title of such holder relates and submit evidence satisfactory to the City and the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements in accordance herewith shall be entitled, upon

written request made to the Agency, to a Certificate of Completion from the Agency with respect to the Improvements on the Project Site.

(c) The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development. Any reference herein to the "holder" of a mortgage or deed of trust shall be deemed also to refer to a lessor under a sale and leaseback.

8.2.2 Noninterference with Holders. The provisions of this Agreement do not limit the right of holders to foreclose or otherwise enforce any mortgage, deed of trust, or other security instrument encumbering the Project Site and the Improvements, or the right of holders to pursue any remedies for the enforcement of any pledge or lien encumbering the Project Site; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance, or sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns, and the Project Site, shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants of this Agreement and all documents and instruments recorded pursuant hereto.

ARTICLE 9
USES OF THE PROJECT SITE

Section 9.1 Obligation to Refrain from Discrimination. The Developer covenants and agrees for itself, its successors, and assigns, and for every successor in interest to the Project Site or any part thereof, that, other than as permitted by the Unruh Civil Rights Act and the Federal Fair Housing Act, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, age, handicap, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site, and the Developer (itself or any person claiming under or through the Developer) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Site or any portion thereof.

Section 9.2 Nondiscrimination. The Developer shall refrain from restricting the rental, sale or lease of the Project Site or any portion thereof, on the basis of sex, age, handicap, marital status, race, color religion, creed, ancestry or national origin of any person.

Section 9.3 Mandatory Language in All Subsequent Deeds, Leases and Real Property Conveyance Contracts. All deeds, leases or other real property conveyance contracts entered into by the Developer on or after the date of execution of this Agreement as to any portion of the Project Site or the Improvements shall contain the following language:

a. In Deeds:

> "Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy,

tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees in the property herein conveyed. The foregoing covenant shall run with the land."

b. In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that his lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, or employees in the land herein leased."

c. In Real Property Conveyance Contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees of the land."

Section 9.4 Effect and Duration of Covenants. Following Development of the Project Site in accordance with this Agreement and after issuance of the Certificate of Completion for the Improvements, each of the rights, duties and obligations of the Developer, the City and the Agency shall be deemed to have been satisfied under this Agreement, and the Developer and its successors in interest to the Project Site shall have no further obligations with respect to the matters provided for in this Agreement with the exception of the following, each of which shall be set forth in particularity in any document of transfer or conveyance by the Developer:

9.4.1 The FORA Base Reuse Plan, which shall remain in effect until its expiration;

9.4.2 The anti-discrimination and non-segregation requirements set forth in Sections 9.1, 9.2, and 9.3 which shall remain in effect in perpetuity; and

9.4.3 The requirements regarding the Bridge Homes as set forth in this Agreement and the Resale Restriction Agreement.

Section 9.5 Public Agency Rights of Access to the Project Site. Upon no less than five (5) business days written notice, the City and other public agencies, without charge or fee, shall have the right to enter the Project Site or any part thereof at all reasonable times (i.e., during construction, between the hours of 8:00 a.m. and 4:00 p.m.), or without notice during at any time during any emergency, for the purposes of inspecting the work being performed at the Project Site and for the purposes of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities, if any, located on the Project Site.

ARTICLE 10
EVENTS OF DEFAULT, REMEDIES AND TERMINATION

Section 10.1 Application of Remedies. This Article 10 shall govern the Parties' remedies for breach or failure under this Agreement.

Section 10.2 No Fault of Parties.

10.2.1 The following events constitute a basis for a Party to terminate this Agreement without the fault of the other:

(a) The Developer determines in its sole and subjective business judgment not to exercise the Option within the Option Term;

(b) The Developer, despite good faith efforts, is unable to satisfy one or more of the conditions set forth in Article 3 within the time and in the manner specified in the applicable sections(s) of Article 3;

(c) Subject to Section 3.2.1 relating to Developer obtaining Permits and Approvals, the Developer determines in its sole and subjective business judgment that one or more mitigation measures imposed on the Developer by the Permits and Approvals render the Project economically infeasible;

(d) The City or Agency despite good faith efforts, is unable to satisfy one or more of the conditions set forth in Article 4 within the time and in the manner specified in the applicable section(s) of Article 4 unless the Developer, in its sole and absolute discretion, agrees to waive such condition;

(e) The Developer, despite good faith efforts, is unable to obtain any of the Permits and Approvals necessary to proceed with the Development of the Project Site as contemplated in this Agreement; or

(f) The Agency, despite good faith efforts, is unable to convey the Project Site to the Developer within the time and in the manner specified in Article 6, and the Developer is otherwise entitled to such conveyance.

(g) The City or the Agency, despite best and diligent efforts, are unable to cause FORA to deposit the written assignment referenced in Section 6.8.1(c) into Escrow, unless the Developer, in its sole and absolute discretion, agrees to waive such condition.

10.2.2 Upon the happening of an event described in Section 10.2.1, and at the election of any Party, this Agreement may be terminated by written notice to the other Parties.

10.2.3 After a termination pursuant to this Section 10.2, the Parties shall have no further rights against or liability to the others, except for the return of any unencumbered and unexpended portions of the Developer Deposit.

Section 10.3 Fault of Agency or City.

10.3.1 Except as to events constituting a basis for termination under Section 10.2, each of the following events, if uncured after expiration of the applicable cure period, shall constitute a ***"Governmental Authority Event of Default"***:

(a) Except as provided in Section 10.2, the Agency without good cause fails to convey the Project Site within the time and in the manner specified in Article 6, and the Developer is otherwise entitled to such conveyance.

(b) The Agency or the City willfully and knowingly breach any other material provision of this Agreement.

10.3.2 Upon the happening of an event described in Section 10.3.1, the Developer shall first notify the Agency and the City in writing of their purported breach or failure, and the Agency and the City shall have thirty (30) days from receipt of such notice to cure such breach or failure or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such to completion, which shall in any event, not exceed one hundred eighty (180) days from the date of receipt of notice to cure. If the Agency or the City does not cure within such period, then the event shall constitute an Governmental Authority Event of Default and the Developer shall be entitled to any rights afforded it in law or in equity.

Section 10.4 Fault of Developer.

10.4.1 Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a ***"Developer Event of Default"***:

(a) The Developer does not attempt diligently and in good faith to cause satisfaction of all conditions in Article 3.

(b) The Developer refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the Agency of the Project Site within the time and in the manner specified in Article 6.

(c) Subject to any Unavoidable Delays, the Developer willfully and knowingly refuses to proceed with the Development of the Project Site within the times specified in the Schedule of Benchmarks as required by Article 7.

(d) The Developer conveys the Project Site except as permitted under Article 8.

(e) The Developer willfully and knowingly breaches any other material provision of this Agreement.

(f) The Developer violates Section 7.6 with respect to the Bridge Homes.

(g) The Developer fails to make the Profit Participation Payment as required pursuant to Section 6.3.

(h) The Developer willfully and knowingly breaches any material provision of the Development Agreement or any other agreement with the City or the Agency related to the Project Site.

10.4.2 Upon the happening of any event described in Section 10.4.1, the Agency shall first notify in writing the Developer of the Developer's purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such to completion which shall, in any event, not exceed one hundred eighty (180) days from the date of receipt of the notice to cure. If the Developer does not cure within such period, then the event shall constitute a Developer Event of Default and the Agency shall be afforded all of the following rights and remedies:

(a) **Prior to Closing.** With respect to a Developer Event of Default occurring prior to the Close of Escrow, the Agency may terminate in writing this Agreement. The above remedy shall constitute the exclusive remedy of the Agency for a Developer Event of Default occurring prior to the Close of Escrow, in recognition of the fact that development of the Project Site is an inherently risky and uncertain undertaking. After a termination pursuant to this Section 10.4.2(a), the Parties shall have no further rights against or liability to the others, except for the return of any unencumbered and unexpended portions of the Developer Deposit.

(b) **Between Closing and a Certificate of Completion.** With respect to a Developer Event of Default occurring after the Closing, but prior to the date of the issuance of the final Certificate of Completion for the Project Site, the Agency may, subject to the limitations set forth in Section 10.6.2, exercise the special remedies set forth in Section 10.6 and thereafter, exercise any other remedy against the Developer permitted by law.

Section 10.5 **Rights and Remedies Cumulative.** Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 10.6 Agency Option to Repurchase the Project Site. If this Agreement is terminated pursuant to Section 10.4.1(c) following the Close of Escrow, prior to the date a Certificate of Completion is issued for the final phase of the Improvements, (but subject to day-for-day extension for Unavoidable Delays) then the Developer grants to the Agency, in addition to other rights granted in this Agreement an option to repurchase (the ***"Repurchase Option"***) the Project Site or that portion of the Project Site upon which Development has not commenced or for which a Certificate of Completion has not been issued (the ***"Parcel to be Repurchased"***). Subject to Section 10.6.2(a), the Repurchase Option must be exercised by the Agency within six months of the date the Agency notifies the Developer in writing that it is in default hereunder.

10.6.1 Repurchase Price. The purchase price for the Parcel to be Repurchased (the ***"Repurchase Price"***), which shall be paid in cash, shall be the lesser of (a) the prorated Purchase Price plus the prorated Development Costs or (b) the fair market value of the Parcel to be Repurchased. In the event the Agency exercises the Repurchase Option for a Parcel to be Repurchased and the parties are unable to agree on the amount of the Repurchase Price, the parties shall mutually select an appraiser to prepare an appraisal which shall determine the Repurchase Price. The parties agree that Development Costs shall be allocated to the Parcel to be Repurchased in an equitable manner.

10.6.2 Limitations.

(a) The Agency covenants that it shall not exercise the Repurchase Option during a Recession that adversely affects the housing market; provided however, the period of such Recession shall toll the time that the Agency may act to exercise the Repurchase Option under Section 10.6, so that the Agency shall have a period of six (6) months to exercise the Repurchase Option after the conclusion of such Recession.

(b) Such Repurchase Option shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

i. Any mortgage, deed of trust or other security financing instrument with respect to the Parcel to be Repurchased;

ii. Any rights or interests provided in this Agreement for the protection of the holder of a mortgage, deed of trust or other security financing with respect to the Parcel to be Repurchased; or

iii. The rights provided in this Section 10.6.2 are for the protection of Cypress Marina Partners L.P., a California limited partnership (the ***"Equity Investor"***). Whenever the City or the Agency shall deliver a notice or demand to the Developer with respect to any breach or default by the Developer under Section 10.4.2 of this Agreement, the City or Agency shall at the same time deliver a copy of such notice or demand to the Equity Investor. No notice of default to the Developer shall be effective against the Equity Investor unless given to the Equity Investor as aforesaid. The Equity Investor shall (insofar as the rights of the Agency are concerned) have the right, at its option within ninety (90) days after receipt of the notice, to cure or remedy any such default or to bring in another developer (the ***"Permitted Developer"***), subject to the reasonable approval of the City or Agency, to cure such default. If

such default shall be a default which can only be remedied or cured by the Equity Investor or the Permitted Developer upon obtaining possession, the Equity Investor or the Permitted Developer shall seek to obtain possession with diligence and shall remedy or cure such default within a reasonable period of time as necessary to remedy or cure such default of the Developer, and shall comply with all other obligations of the Developer under this Agreement. The Equity Investor or the Permitted Developer properly completing such improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency. Nothing contained herein shall be deemed to permit or authorize the Equity Investor or a Permitted Developer to undertake or continue the Development of the Project Site (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed the Developer's obligations under this Agreement by written agreement satisfactory to the City and the Agency. The Equity Investor or a Permitted Developer, in that event, must agree to fulfill, in the manner provided in this Agreement, the obligations under this Agreement and submit evidence satisfactory to the City and the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. The Equity Investor or the Permitted Developer properly completing such improvements in accordance herewith shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency with respect to the Improvements on the Project Site.

Section 10.7 No Personal Liability for City or Agency Representatives. No representative of the City or Agency shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any Governmental Authority Event of Default or for any amount which may become due from the City or the Agency, as the case may be, or any successor in interest, on any obligation under the terms of this Agreement.

Section 10.8 No Personal Liability for Developer Representatives. No representative of the Developer shall be personally liable to the City or Agency, or any successor in interest of the City or Agency, in the event of any Developer Event of Default or for any amount which may become due from the Developer, as the case may be, or any successor in interest, on any obligation under the terms of this Agreement.

Section 10.9 Dispute Resolution; Legal Actions.

10.9.1 Mediation. In the event that a dispute arises between any of the Parties in connection with this Agreement, before resorting to any other legal remedy, the Parties hereto shall attempt in good faith to resolve any such controversy or claim by mediation conducted by a mediator, or a panel of mediators of a size appropriate to the scope of the dispute (but not exceeding three (3) in any event), in accordance with the Commercial Mediation Rules of the American Arbitration Association.

10.9.2 Judicial Reference. If any Party to this Agreement commences a lawsuit for 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. The Developer shall not 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, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(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. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the Parties. The Parties acknowledge and accept that they are waiving their right to a jury trial.

10.9.3 Institution of Legal Actions. In addition to any other rights or remedies provided in this Article 10, a non-defaulting Party may institute legal action to cure, correct or remedy any default, to recover damages for any Event of Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the courts of the County of Monterey, State of California.

Section 10.10 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 10.11 Acceptance of Service of Process. If any legal action is commenced by the Developer against the City or Agency, service of process on the City or Agency shall be made by personal service upon the City Manager or City Clerk of the City, or in such other manner as may be provided by law. If any legal action is commenced by the City or Agency against the Developer, service of process on the Developer shall be made by personal service on the Developer, or in such other manner as may be provided by law, whether made within or without the State of California.

Section 10.12 Inaction Not a Waiver of Default. Except as expressly provided in this Agreement to the contrary, any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as waiver of any default or of any such rights or remedies, or deprive any such Party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

ARTICLE 11
GENERAL PROVISIONS

Section 11.1 Insurance.

11.1.1 Throughout Development of the Project Site, the Developer shall take out and maintain, at no cost or expense to the City or Agency, with a reputable financially responsible insurance company acceptable to the City or Agency, comprehensive broad form general public liability insurance, insuring the Developer against claims and liability for personal injury, death, or property damage arising from the use, occupancy, condition, or operation of the Project Site and the Improvements thereon, which insurance shall provide combined single limit protection, including contractual liability, of at least five million dollars ($5,000,000). Such insurance shall name the City and Agency and their respective officers, directors, officials, employees, and servants (collectively ***"Representatives"***), as additional insureds.

11.1.2 Before commencement of any demolition or construction work on the Project Site, or any portion thereof, the Developer shall also procure or cause to be procured, and shall maintain in force until completion of said work (a) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company acceptable to the City and Agency; and, (b) workers' compensation insurance covering all persons employed in connection with work on the Project Site, or any portion thereof. Said builder's risk insurance shall cover improvements in place and all material and equipment at the Project Site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

11.1.3 The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Project Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

11.1.4 With respect to each policy of insurance required above, the Developer shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on the insurance carrier's form setting forth the general provisions of the insurance coverage. These countersigned certificates shall name the Agency and the City and their Representatives as additional insureds under those policies. The required certificate shall be furnished by the Developer prior to commencement of construction of the Improvements.

11.1.5 All such policies required by this Section shall be non-assessable and shall contain language to the effect that (a) the policies are primary and noncontributing with any insurance that may be carried by the Agency or the City; (b) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Agency and the City; and, (c) neither the Agency, nor the City shall be liable for any premiums or assessments. The insurance required hereunder need not be maintained and the Developer need not name the Agency or the City as additional insureds after the City's issuance of a Certificate of Occupancy for the Improvements.

Section 11.2 **Indemnity in favor of the City and the Agency.** From and after the execution of this Agreement, the Developer shall indemnify, defend, protect, and hold harmless the City and the Agency and any and all representatives of the City and the Agency, from and against all losses and liabilities related directly or indirectly to, or arising out of or in connection with: (a) any Developer Event of Default; (b) any of the Developer's activities on the Project Site (or the activities of the Developer's agents, employees, lessees, representatives, licensees, guests, invitees, contractors, subcontractors, or independent contractors on the Project Site), including without limitation the construction of any Improvements on the Project Site; or, (c) any act or omission by Developer related to its performance hereunder during the term of this Agreement, or which may otherwise arise from the Developer's ownership, use, possession, improvement, operation or disposition of the Project Site during the term of this Agreement, regardless of whether such losses and liabilities shall accrue or be discovered before or after termination or expiration of this Agreement, except to the extent such losses or liabilities are caused by or contributed by the City, FORA, or the Agency.

Section 11.3 **Indemnity in favor of Developer.** From and after the execution of this Agreement, each of the City and the Agency shall indemnify, defend, protect, and hold harmless the Developer and any and all representatives of the Developer from and against all losses and liabilities related directly or indirectly to, or arising out of or in connection with: (a) any Governmental Authority Event of Default; (b) any of the City's, the Agency's or FORA's activities on the Project Site (or the activities of the agents, employees, representatives, guests, or independent contractors of the City, the Agency on the Project Site); or, (c) any act or omission by the City and the Agency related to their performance hereunder, or which may otherwise arise from the use, possession or disposition of the Project Site by the City and the Agency regardless of whether such losses and liabilities shall accrue or be discovered before or after termination or expiration of this Agreement, except to the extent such losses or liabilities are caused by or contributed by the Developer.

Section 11.4 **Construction.** The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

Section 11.5 **Interpretation.** In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association where ever the context so requires.

Section 11.6 **Time of the Essence.** Time is of the essence of this Agreement.

Section 11.7 **Notices, Demands and Communications Between the Parties.** All notices, requests, demands and other communications given or required to be given hereunder shall be in writing and personally delivered or sent by United States, first-class, certified or registered mail, return receipt requested, or sent by nationally recognized courier service, such as Federal Express. The Parties may deliver notice to each other by electronically transmitted facsimile copies ("FAX"), provided that such FAX notice is followed within forty-eight (48) hours by any type of notice otherwise provided for in this paragraph. Any notice shall be duly addressed to the Parties as follows:

If to City:

City Manager
City of Marina
211 Hillcrest
Marina, CA 93933
Attn: Anthony Altfeld
Telephone: (831) 884-1224
Facsimile: (831) 384-9148

With a Copy To:

City Attorney
City of Marina
857 Cass Street, Suite D
Monterey, CA 93940
Attn: Robert R. Wellington, Esq.
Telephone: (831) 373-8733
Facsimile: (831) 373-7106

And a Copy To:

Bingham McCutchen, LLP
P.O. Box V
Walnut Creek, CA 94596
Attn: Robert E. Merritt, Esq.
Telephone: (925) 937-8000
Facsimile: (925) 975-5390

If to Agency:

Redevelopment Agency Executive Director
City of Marina
211 Hillcrest
Marina, CA 93933
Attn: Anthony Altfeld
Telephone: (831) 883-3672
Facsimile: (831) 883-3675

With a Copy To:

Goldfarb & Lipman
1300 Clay Street, 9th Floor
Oakland, CA 94612
Attn: Karen Tiedemann
Telephone: (510) 836-6336
Facsimile: 836-1035

If to Developer:

Cypress Marina Heights L.P.
2716 Ocean Park Blvd., Suite 3025
Santa Monica, CA 90405
Attn: Charles R. Lande
Telephone: (310) 314-2590
Facsimile: (310) 314-2592

With a Copy To:

Cypress Marina Partners L.P.
c/o Colony Capital
1999 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Telephone: (310) 282-8820
Facsimile: (310) 282-8808

With a Copy To:

Allen Matkins Leck Gamble & Mallory, LLP
515 South Figueroa Street, Seventh Floor
Los Angeles, CA 90071-3398
Attn: Michael L. Matkins, Esq.
Telephone: (213) 622-5555
Facsimile: (213) 620-8816

And To:

Allen Matkins Leck Gamble & Mallory, LLP
515 South Figueroa Street, Seventh Floor
Los Angeles, CA 90071-3398
Attn: Sonia J. Ransom, Esq.
Telephone: (213) 622-5555
Telecopy: (213) 620-8816

Delivery of any notice of or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any notice sent by FAX shall be deemed to be received as of the receipt of such FAX by a Party, provided that such FAX notice is followed up within forty-eight (48) hours by any type of notice otherwise provided for in this paragraph. Any Party may change its address for purposes of this Agreement by giving notice to the other Parties as herein provided.

Section 11.8 Conflicts of Interest. No officer, director, member, official or employee of FORA, the City or the Agency shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

Section 11.9 Attorneys' Fees. If any Party brings an action to enforce the terms hereof or declare its rights hereunder, the prevailing Party in any such action shall be entitled to its reasonable and actual attorneys' fees to be paid by the losing Party or Parties as fixed by the court. If either the City, the Agency or the Developer, without fault, is made a Party to any litigation instituted by or against the other Party or Parties, such other Party or Parties shall defend it against and save it harmless from all costs and expenses including reasonable attorney's fees incurred in connection with such litigation.

Section 11.10 Memorandum of Agreement. A memorandum of this Agreement shall be recorded with the County Recorder of the County of Monterey, which shall be in the form attached hereto as Exhibit K.

Section 11.11 Approvals by the City, the Agency and Developer. Unless expressly provided herein to the contrary, wherever this Agreement requires the City, the Agency or the Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not unreasonably be withheld.

Section 11.12 Developer's Private Undertaking. The development covered by this Agreement is a private undertaking, and following conveyance the Developer shall have full power over and exclusive control of the Project Site herein described; subject only to the limitations and obligations of the Developer under this Agreement, any Development Agreement applicable to the Project, the Marina Redevelopment Plan, the FORA Base Reuse Plan, Permits and Approvals, and the ordinances, policies and standards of the City.

Section 11.13 Entire Agreement, Waivers and Amendments. This Agreement is executed in duplicate counterpart originals, each of which is deemed to be an original. This Agreement, together with all attachments and exhibits hereto, and any Development Agreements affecting the Property constitute the entire understanding and agreement of the Parties. Subject to the Permits and Approvals, and any Development Agreements affecting the Project, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties, whether written or oral, with respect to all or any part of the subject matter hereof. Each Party acknowledges and represents that it is relying on no representations by the other Parties other than those expressly set forth, or referred to, in this Agreement. Any waiver, extension or modification of any provision of this Agreement must be in writing and signed by the Party to be charged.

Section 11.14 Successors and Assigns. Subject to the provisions of Article 8 the terms, obligations and benefits of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

Section 11.15 Relationship. The relationship of the Parties under this Agreement is purely that of independent parties acting at arms' length in good faith for their mutual benefit, and no relationship of partnership, joint venture, co-ownership, principal and agent or otherwise is intended or shall be construed or inferred.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

"DEVELOPER": CYPRESS MARINA HEIGHTS, L.P.,
a California limited partnership

By: Chadmar/Watt Marina Partners LLC, a California limited liability, its General Partner

By: Chadmar Marina Partners LLC, a California limited liability company, Manager

By: _____
Name: Charles R. Lande
Title: Manager

"CITY": CITY OF MARINA

By: _____
James E. Perrine,
Its: Mayor

"AGENCY": REDEVELOPMENT AGENCY OF
THE CITY OF MARINA

By: _____
James E. Perrine
Its: Chairman

EXHIBIT A

Project Site Legal Description

Legal Description For Marina Heights

Marina Heights
248.00 acre (Net Area) Parcel

A portion of Parcel 1 as it is shown on that certain map entitled "Record of Survey showing Boundary of a 422.39 acre parcel of land for Economic Development Conveyance, "Marina I," recorded in Volume 23 of Surveys at Page 91, and a portion of Parcel A as it is shown on that certain map entitled "Record of Survey showing Boundary of a 110.55 acre parcel of land for Economic Development Conveyance, "Preston Park, Marina I-A," recorded in Volume 23 of Surveys at Page 79, Monterey County Records, lying within the former Fort Ord Military Reservation, Monterey City Lands Tract No. 1, City of Marina, County of Monterey, State of California being more particularly described as follows:

BEGINNING at a point on the boundary of the former Fort Ord Military Reservation as it is shown on that certain map entitled "Perimeter Boundary of Fort Ord" recorded in Volume 19 of Surveys at Page 31, Monterey County Records, shown as corner numbered 261, from which a brass disk marked "AP-45 FOMR BLM 1958" bears South 41° 37'31" West, 1.01 feet and running thence from said Point of Beginning along said boundary of the former Fort Ord

1. North 32°18'36" East, 1315.87 feet; thence

2. North 32°18'09" East, 932.35 feet to the northerly boundary line of the 184.66 acre parcel known as "Abrams Park" for Economic Development Conveyance, from which a brass disk in a monument box stamped RCE 20941 bears North 32°18'09" East, 2.95 feet; thence

3. North 32'18'09" East, 560.51 feet; thence leaving said boundary of Fort Ord and the boundary of said Marina I

4. South 57°41'51" East, 781.08 feet; thence

5. South 12°13'13" East, 306.66 feet; thence

6. South 23°56'31" West, 211.66 feet to a 3/4" iron pipe tagged LS 5992 at an angle point in the easterly boundary of Parcel 2, as it is shown on that certain map recorded in Volume 19 of Surveys at Page 131, Monterey County Records, being also on the boundary of said Marina I-A; thence along the northerly and westerly boundary lines of said Parcel 2

7. North 52°13'56" West, 141.26 feet (shown on said map as North 52°13'43" West, 141.29 feet) to a 3/4" iron pipe tagged LS 5992 at an angle point in said Parcel 2 boundary; thence

8. North 79°03'49" West, 159.31 feet (shown on said map as North 79°03'25" West, 159.33 feet) to a 3/4" iron pipe tagged LS 5992 at an angle point in said Parcel 2 boundary; thence leaving said boundary of Marina I-A and following along the boundary of said Marina I

9. South 45°41'01" West, 191.14 feet (shown on said map as South 45°41'08" West, 191.24 feet) to an angle point in said Parcel 2 boundary; thence

10. South 48°03'42" West, 72.14 feet to a 3/4" iron pipe tagged LS 5992 at an angle point in said Parcel 2 boundary; thence

11. South 74°08'48" W, 167.70 feet (shown on said map as South 74°10'00" W, 167.63 feet) to a 3/4" iron pipe tagged LS 5992 at an angle point in said Parcel 2 boundary; thence

12. South 28°17'18" East, 485.12 feet (shown on said map as South 28°16'42" East, 485.16 feet) to a 3/4" iron pipe tagged LS 5992 at an angle point in said Parcel 2 boundary on the northerly line of MacArthur Drive, 60 feet wide; thence leaving said Parcel 2

13. South 22°56'45" East, 60.00 feet to the northerly boundary of Parcel 3 as it is shown on that certain map recorded in Volume 19 of Surveys at Page 131, Monterey County Records; thence along the northerly, westerly and southerly boundary lines of said Parcel 3

14. Along a non-tangent curve to the left, the center of which bears South 22°56'45" East, 295.00 feet, for an arc length of 177.37 feet and a radius of 295.00 feet, through a central angle of 34°27'00" to an "X" chiseled in concrete; thence leaving the southerly boundary of MacArthur Drive

15. South 03°28'41" West, 129.64 feet to a 3/4" iron pipe tagged LS 5992 at an angle point in the boundary of said Parcel 3; thence

16. North 67°24'05" East, 503.66 feet to a 1/2" iron rebar tagged LS 5992 at an angle point in the boundary of said Parcel 3; thence leaving said boundary of Parcel 3

17. North 53°18'08" East, 60.73 feet to a 1/2" iron rebar tagged LS 5992 at an angle point in the boundary of said Parcel 2; thence along the easterly boundary of said Marina I

18. Along a non-tangent curve to the right, the center of which bears South 45°17'28" West, 330.00 feet, for an arc length of 293.93 feet with a radius of 330.00 feet, through a central angle of 51°02'00"; thence

19. South 06'19'28 West, 274.23 feet; thence

20. Along a tangent curve to the right for an arc length of 228.81 feet with a radius of 350.00 feet, through a central angle of 37°27'22"; thence

21. South 43°46'50" West, 45.90 feet; thence

22. Along a tangent curve to the left for an arc length of 125.55 feet, with a radius of 120.00 feet, through a central angle of 59°56'39"; thence

23. Along a tangent curve to the right for an arc length of 74.03 feet, with a radius of 235.00 feet, through a central angle of 18°03'01"; thence

24. Along a non-tangent curve to the right, the center of which bears South 10°17'15" West, 625.00 feet, for an arc length of 43.30 feet, with a radius of 625.00 feet, through a central angle of 3°58'10"; thence

25. South 14°16'41" West, 121.49 feet to a 1/2" iron rebar tagged LS 5992 at the most easterly corner of Parcel 1 as it is shown on that certain map recorded in Volume 19 of Surveys at Page 116, Monterey County Records; thence along the northerly and westerly boundary lines of said Parcel 1

26. North 82°11'12" West, 129.05 feet to a 1/2" iron rebar tagged LS 5992 at the most easterly corner of said Parcel 1; thence

27. North 87°36'47" West, 288.46 feet to a 3/4" iron pipe tagged LS 5992 at the northwest corner of said Parcel 1; thence

28. Along a non-tangent curve to the right, the center of which bears North 74°13'03" West, 380.00 feet, for an arc length of 85.91 feet, with a radius of 380.00 feet, through a central angle of 12°57'10" to a 3/4" iron pipe tagged LS 3880 at an angle point in the boundary of said Parcel 1; thence leaving the boundary of said Parcel 1 and the boundary of said Abrams Park

29. South 33°11'20" West, 59.02 feet; thence

30. Along a non-tangent curve to the right, the center of which bears North 52°21'26 West, 380.00 feet, for an arc length of 217.81 feet, with a radius of 380.00 feet, through a central angle of 32°50'29"; thence

31. Along a tangent curve to the left, for an arc length of 41.27 feet, with a radius of 25.00 feet, through a central angle of 94°34'38"; thence

32. Along a tangent curve to the right for an arc length of 69.37 feet, with a radius of 40.00 feet, through a central angle of 99°21'56", thence

33. South 75°16'21" West, 67.77 feet; thence

34. South 14°55'04" West, 157.57 feet to the northerly boundary line of "Abrams I," as it is shown on that certain map recorded in Volume 25 of Surveys at Page 26, Monterey County Records; thence along the northerly and westerly boundary lines of said Abrams I and the southerly boundary of said Abrams Park

35. South 78°37'08" West, 63.35 feet; thence

36. South 84°26'20" West, 30.00 feet; thence

37. South 88°30'54" West, 30.00 feet; thence

38. South 86°37'24" West, 30.00 feet; thence

39. South 82°27'02" West, 90.00 feet; thence

40. South 86°12'25" West, 30.00 feet; thence

41. South 87°53'22" West, 120.00 feet; thence

42. South 86°47'47" West, 30.00 feet; thence

43. South 82°26'41" West, 30.00 feet; thence

44. South 77°55'58" West, 60.00 feet; thence

45. South 75°04'03" West, 30.00 feet; thence

46. South 70°22'42" West, 30.00 feet; thence

47. South 64°49'52" West, 32.39 feet; thence leaving said southerly boundary of Abrams Park and continuing along the northerly boundary of said Abrams I

48. South 59°07'17" West, 43.12 feet; thence

49. South 62°05'44" West, 39.27 feet; thence

50. South 69°16'44" West, 61.93 feet; thence

51. North 63°00'49" West, 23.83 feet; thence

52. North 79°14'15" West, 22.51 feet; thence

53. South 89°57'14" West, 46.90 feet; thence

54. North 72°29'22" West, 50.25 feet; thence

55. North 57°44'09" West, 36.83 feet; thence

56. North 48°26'26" West, 38.66 feet; thence

57. North 59°29'10" West, 58.20 feet; thence

58. North 53°37'47" West, 29.88 feet; thence

59. North 31°04'57" West, 34.50 feet; thence

60. North 34°46'28" West, 51.48 feet; thence

61. Along a non-tangent curve to the right, the center of which bears North 50°02'48" West, 1350.00 feet, for an arc length of 420.79 feet, with a radius of 1350.00 feet, through a central angle of 17°51'32" to a 1" iron pipe tagged LS 3304 at an angle point on the southerly boundary of said Abrams Park; thence along said southerly boundary of Abrams Park and continuing along the boundary of said Abrams I

62. South 33°40'31" East, 303.50 feet; thence

63. Along a tangent curve to the left for an arc length of 444.41 feet, with a radius of 482.00 feet, through a central angle of 52°49'39"; thence leaving said southerly boundary of Abrams Park and continuing along the boundary of said Abrams I

64. South 14°00'00" East, 366.18 feet (shown on said map of Abrams I as 365.17 feet) to the northerly boundary line of Parcel 1, as it is shown on that certain map recorded in Volume 20 of Surveys at Page 91, Monterey County Records; thence along the northerly boundary lines of said Parcel 1

65. South 76°00'00" West, 437.50 feet; thence leaving said northerly boundary of Parcel 1

66. North 14°00'00" West, 258.82 feet; thence

67. Along a tangent curve to the left, for an arc length of 151.95 feet, with a radius of 442.50 feet, through a central angle of 19°40'31"; thence

68. North 33°40'31" West, 519.42 feet to a point on the boundary of said Abrams Park from which the 1" iron pipe tagged LS 3304 at the end of course numbered 61 above, bears North 62°59'22" East, 233.08 feet; thence along the southerly boundary of Abrams Park

69. Along a non-tangent curve to the left, the center of which bears South 29°46'56" East, 2410.00 feet, for an arc length of 327.72 feet, with a radius of 2410.00 feet, through a central angle of 7°47'29"; thence

70. South 52'25'35 West, 318.71 feet; thence

71. Along a tangent curve to the right for an arc length of 780.73 feet with a radius of 1400.00 feet, through a central angle of 31°57'06" to an angle point in the boundary of said Abrams Park; thence leaving the boundary of said Abrams Park

72. Along a tangent curve to the right for an arc length of 10.94 feet, with a radius of 1400.00 feet, through a central angle of 0°26'52";thence

73. South 07°48'25" East, 562.19 feet to the northerly boundary line of Parcel 1, as it is shown on that certain map recorded in Volume 20 of Surveys at Page 91, Monterey County Records; thence along the northerly boundary lines of said Parcel 1

74. South 76°00'00" West, 171.29 feet; thence

75. Along a tangent curve to the right for an arc length of 662.51 feet, with a radius of 550.00 feet, through a central angle of 69°01'00"; thence

76. North 34°59'00" West, 924.88 feet; thence

77. Along a tangent curve to the right with a length of 513.97 feet, with a radius of 1920.00 feet, through a central angle of 15'20'15"; thence

78. North 50°19'17" West, 475.64 feet to the easterly boundary line of the future right of way of California Boulevard, 100 feet wide; thence leaving said northerly boundary of Parcel 1 and along said future right of way

79. North 42°50'14" East, 36.96 feet; thence

80. Along a tangent curve to the right for an arc length of 329.40 feet, with a radius of 949.00 feet, through a central angle of 19°53'16"; thence

81. North 62°43'30" East, 274.51 feet; thence

82. Along a tangent curve to the left for an arc length of 508.99 feet, with a radius of 850.99 feet, through a central angle of 34°16'11"; thence

83. North 28°27'26" East, 1037.75 feet; thence

84. Along a tangent curve to the right with a length of 125.20 feet, with a radius of 1874.00 feet, through a central angle of 3°49'40"; thence

85. North 32°17'06" East, 177.99 feet to the northerly boundary line of Fort Ord as it is shown on that certain map entitled "Perimeter Boundary of Fort Ord" recorded

in Volume 19 of Surveys at Page 31, Monterey County Records; thence along said northerly boundary

86. South 57°42'54" East, 2275.12 feet to the Point of Beginning.

Containing a gross area of 252.22 acres, more or less.

Excepting therefrom three parcels as described in the Assignment of Easements on Former Fort Ord and Ord Military Community, County of Monterey, and Quitclaim Deed for Water and Wastewater Systems from the Fort Ord Reuse Authority and the Marina Coast Water District recorded November 7, 2001 as Recorder's Serial No. 200194583, Official Records, and being more particularly described as follows:

Main Booster Station
20/29-4976-EAGFA

BEGINNING at a point with coordinate of North: 2,137,860.00, East : 5,742,410.00, from which the Point of Beginning of the 252.22 acre parcel described above bears North 80°59'58" East, 2726.56 feet; thence along the following courses and to the coordinates as shown in the document referred to above

1. South 58°23'33" East, 457.93 feet to a point with a coordinate of North: 2,137,620.00, East : 5,742,800.00; thence
2. South 40°36'05" West, 368.78 feet to a point with a coordinate of North: 2,137,340.00, East : 5,742,560.00; thence
3. North 56°18'36" West, 468.72 feet to a point with a coordinate of North: 2,137,600.00, East : 5,742,170.00 ; thence
4. North 42°42'34" East, 353.84 feet to the point of Beginning.

Containing an area of 3.79 acres.

Jefferson Lift Station
21-6130-EAGFA

BEGINNING at a point with coordinate of North: 2,137,997.21, East : 5,745,290.96, from which the Point of Beginning of the 252.22 acre parcel described above bears North 33°00'34" West, 345.05 feet; thence along the following courses and to the coordinates as shown in the document referred to above

1. South 02°35'16" West, 76.69 feet to a point with a coordinate of North: 2,137,920.59, East : 5,745,287.50; thence
2. South 87°24'44" East, 76.17 feet to a point with a coordinate of North: 2,137,917.15, East : 5,745,363.59; thence

Legal Description For Marina Heights

3. North 02°35'16" East, 76.69 feet to a point with a coordinate of North: 2,137,993.77, East : 5,745,367.06; thence
4. North 87°24'44" West, 76.17 feet to the point of Beginning.

Containing an area of 0.13 acres.

San Pablo Lift Station
21-6225-EAGFA

BEGINNING at a point with coordinate of North: 2,139,147.99, East: 5,746,080.84, from which the Point of Beginning of the 252.22 acre parcel described above bears South 48°37'18" West, 1303.18 feet; thence along the following courses and to the coordinates as shown in the document referred to above

1. North 70°21'27" West, 272.57 feet to a point with a coordinate of North: 2,139,239.62, East : 5,745,824.13; thence
2. South 32°18'18" West, 47.80 feet to a point with a coordinate of North: 2,139,199.22, East : 5,745,798.59; thence
3. South 70°21'27" East 286.37 feet to a point with a coordinate of North: 2,139,102.95, East : 5,746,068.29; thence
4. North 15°34'15" East 46.76 feet to the point of Beginning.

Containing an area of 0.30 acres.

Leaving a net area of 248.00 acres.

EXHIBIT B
CERTIFICATE OF COMPLETION

Recording Requested By
And When Recorded Mail To:

Cypress Marina Heights, L.P.
2716 Ocean Park Blvd., Suite 3025
Santa Monica, CA 90405

CERTIFICATE OF COMPLETION

Pursuant to Section 7.7 of the Option Agreement (the "Agreement"), dated as of _____, 2002, by and among the Redevelopment Agency of the City of Marina, a public body, corporate, and politic (the "Agency"), the City of Marina, a municipal corporation and Cypress Marina Heights, L.P. a California limited partnership (the "Developer"), the Agency certifies that the Developer has met its obligations under Article 7 of the Agreement with respect to the portion of the Project identified in Attachment 1 attached hereto. This Certificate of Completion: (1) shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance the Improvements (as defined in the Agreement) or any part thereof, (2) shall not constitute evidence of compliance with the prevailing wage requirements of California Labor Code Sections 1720 *et seq.*, and the federal Davis-Bacon Act wage requirements, if applicable, and (3) shall not be deemed either a notice of completion under the California Civil Code or a certificate of occupancy.

REDEVELOPMENT AGENCY OF THE CITY OF MARINA

By: _____

Its: _____

Date: _____

EXHIBIT C

RECORDING REQUESTED PURSUANT
TO GOVERNMENT CODE SECTION 27383

When Recorded Mail To:

Marina Redevelopment Agency
_____
_____
Attn: Executive Director

RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

MARINA HEIGHTS AFFORDABLE OWNERSHIP PROGRAM

Owner:_____

Property:_____

Purchase Price:_____

This Resale Restriction Agreement and Option to Purchase (the "Agreement") is entered into as of this ___ day of _____, 200_, by and between the Marina Redevelopment Agency (the "Agency") and _____ (referred to in this Agreement sometimes as "Buyer" and sometimes as "Owner").

RECITALS

A. Buyer intends to purchase the property located in Marina Heights in the City of Marina, County of Monterey, and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"). The Property is one of the Marina Heights Bridge Units. The Buyer is required by the Agency to execute this Agreement as a condition to Buyer's purchase of the Property. The Buyer has agreed to execute and comply with this Agreement in consideration of the Cypress Marina Heights, L.P.'s agreement to sell the Property to the Buyer at a reduced price which is below the fair market value of the Property. The Agency has been designated by the City as the appropriate public agency to administer the Marina Heights Bridge Ownership Program.

B. The purpose of this Agreement is to place resale controls on the Property and to require the payment of any excess proceeds of sale to the Agency for use in other affordable housing programs. This Agreement also provides the Agency an option to purchase the Property

at a restricted price, given in consideration of the economic benefits to the Buyer resulting from purchase of the Property at a below market price under the Marina Heights Bridge Program.

C. The Buyer is receiving a first mortgage loan (the "First Mortgage Loan") from _____ (the "First Lender"). The First Mortgage Loan is secured by a deed of trust dated _____, 20__, executed by the Buyer in favor of First Lender and recorded in the County of Monterey on _____, 20__, and assigned Recorder's Serial No. _____ (the "First Mortgage Deed of Trust").

D. In order to protect the Agency's financial interest and its program of providing affordable housing, the Agency has required the Owner to execute a promissory note (the "Agency Note") in its favor in addition to this Agreement.

E. This Agreement and the Agency Note shall be secured by a deed of trust on the Property (the "Agency Deed of Trust"). This Agreement and the Agency Deed of Trust shall be subordinate to the lien of the First Mortgage Deed of Trust.

F. The purpose of this Agreement is to place resale controls on the Property by providing the Agency an option to purchase the Property at a restricted price and to ensure that the Buyer complies with the Marina Heights Bridge Program requirements.

NOW, THEREFORE, in consideration of the benefits received by the Buyer and the Agency hereunder, the Buyer and the Agency agree, as follows:

1. DEFINITIONS

The following terms are specially defined for this Agreement and their definitions can be found in the sections indicated below:

A. "Agreement" - First sentence of the Agreement on Page 1

B. "Agency" - First sentence of the Agreement on Page 1

C. "Agency Note" – Recital D

D. "Agency Deed of Trust" - Recital E

E. "Agency Option" - Section 10

F. "Buyer" or "Owner" – First sentence of the Agreement on Page 1

G. "Eligible Capital Improvements" - Section 11A(2)

H. "Eligible Purchaser" - Section 12B

I. "Excess Sales Proceeds" - Section 13

J. "Fair Market Value" - Section 11B

K. "First Agency Response Notice" - Section 8

L. "First Lender" - Recital C

M. "First Mortgage Deed of Trust" - Recital C

N. "First Mortgage Loan" - Recital C

O. "Market Purchaser" - Section 12E

P. "Marketing Period" - Section 12A

Q. "Maximum Sales Price" - Section 11

R. "Owner" or "Buyer" - First sentence of the Agreement on Page 1

S. "Owner's Notice of Failure to Locate Eligible Purchaser" - Section 12E

T. "Owner's Notice of Intent to Transfer" - Section 7

U. "Property" - Recital A and Section 2

V. "Restricted Future Sales Price" - Section 11A

W. "Second Agency Response Notice" - Section 12E

X. "Transfer" - Section 6

2. DESCRIPTION OF PROPERTY

This Agreement concerns the real property commonly known as _____ _____, Marina, California _____, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Property").

3. BUYER CERTIFICATIONS; OWNER OCCUPANCY REQUIREMENT

The Buyer certifies that the financial and other information previously provided in order to qualify to purchase the Property is true and correct as of the date first written above. The Buyer shall occupy the Property as the Buyer's principal place of residence. The Buyer shall be

considered as occupying the Property if the Buyer is living in the unit for at least ten (10) months out of each calendar year. The Buyer shall provide an annual written certification to the Agency that the Buyer is occupying the Property as his or her principal place of residence.

4. LEASING OF PROPERTY

The Buyer shall not lease the Property to another party. Any lease in violation of this Agreement is prohibited and shall constitute a Default under this Agreement.

5. MAINTENANCE AND INSURANCE REQUIREMENTS

A. The Buyer shall maintain the Property, including landscaping, in good repair and in a neat, clean and orderly condition and will not commit waste or permit deterioration of the Property.

B. The Buyer shall maintain a standard all risk property insurance policy equal to the replacement value of the Property (adjusted every five (5) years by appraisal, if requested by the Agency), naming the Agency as an additional insured. Additional insurance requirements are set forth in Section 5 of the Agency Deed of Trust.

6. RESTRICTIONS ON RESALE OF THE PROPERTY

Any Transfer of the Property will be subject to the provisions of this Agreement including, without limitation, the Agency Option described in Section 10 below. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. Transfers by devise or inheritance to an existing spouse, Domestic Partner, child, surviving joint tenant, or a spouse as part of a dissolution proceeding, or in connection with marriage, shall not be considered a Transfer for the purposes of this Agreement, but all such transferees shall continue to be bound by the requirements of this Agreement. For purposes of this Section 6, "Domestic Partners" shall mean two unmarried people, at least eighteen (18) years of age, who have lived together continuously for at least one (1) year and who are jointly responsible for basic living expenses incurred during their domestic partnership. Domestic Partners may not be persons related to each other by blood or adoption such that their marriage would be barred in the state of California. For purposes of this section, an individual shall be considered a domestic partner of Owner upon presentation of an affidavit or other acceptable evidence by Owner to the Agency.

7. NOTICE OF INTENDED TRANSFER; PREPARATION OF PROPERTY FOR SALE

A. In the event the Owner intends to Transfer or vacate the Property, the Owner shall promptly give the Agency written notice of such intent (the "Owner's Notice of Intent to Transfer"). The Owner's Notice of Intent to Transfer shall be sent to the Agency by certified mail, return receipt requested at the address provided in Section 31 of this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the Agency to determine the Restricted Future Sales Price of the Property, including the following information:

(1) the address of the Property;

(2) the date of purchase of the Property by the Owner;

(3) the purchase price of the Property paid by the Owner at the time of his/her purchase;

(4) a copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Property;

(5) if Owner has made Eligible Capital Improvements to the Property that he/she wishes to include in the calculation of Restricted Future Sales Price, a description of the improvements, the date the improvements were made, a copy of the letter granting prior Agency approval of the improvements, evidence of cost of the improvements, and an appraisal of the value added to the Property by the Eligible Capital Improvements;

(6) the date on which Owner intends to vacate Property;

(7) the date the Property will be placed on the market; and

(8) the name and phone number of the person to contact to schedule inspection of the Property by the Agency.

B. The Owner may not wish to contract with a real estate broker to sell the Property until the Owner has received the First Agency Response Notice pursuant to Section 8A below, as the services of a broker will not be required if the Agency exercises the Agency Option to purchase the Property pursuant to Sections 8A and 10 below.

C. Following delivery to the Agency of the Owner's Notice of Intent to Transfer, the Owner shall prepare the Property for sale, as follows:

(1) within thirty (30) days of delivery of the Owner's Notice of Intent to Transfer, the Owner shall obtain and deliver to the Agency a current written report of inspection of the Property by a licensed structural pest control operator;

(2) within the sooner of (a) sixty (60) days from the date of delivery of the Owner's Notice of Intent to Transfer, or (b) prior to close of escrow on the Transfer, the Owner shall repair all damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests;

(3) within thirty (30) days of the date of the Owner's Notice of Intent to Transfer, the Owner shall allow the Agency, or its designee, to inspect the Property to determine its physical condition;

(4) if the Property is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer;

(5) in the event of Agency purchase of the Property, the Owner shall permit a final walk-through of the Property by the Agency in the final three (3) days prior to close of escrow on the Transfer.

8. AGENCY RESPONSE TO OWNER'S NOTICE OF INTENDED TRANSFER

The Agency shall respond in writing (the "First Agency Response Notice") to the Owner's Notice of Intent to Transfer within sixty (60) days of Agency receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7 above. The Agency Response Notice shall inform the Owner of the Agency's election to proceed under one of the following two alternatives:

A. Agency Exercise of Agency Purchase Option. The First Agency Response Notice may notify the Owner that the Agency elects to exercise the Agency Option to purchase the Property, as granted in Section 10 below, and shall include the Agency's calculation of the Maximum Sales Price to be paid by the Agency pursuant to Section 11 below and the Transaction Fee to be paid by the Owner pursuant to Section 10 below.

B. Owner Sale at Restricted Sale Price to Eligible Purchaser. Alternatively, the First Agency Response Notice may notify the Owner that the Agency will not at this time exercise the Agency Option to purchase the Property and that the Owner may proceed to sell the Property to an Eligible Purchaser at a price not to exceed the Maximum Sales Price, pursuant to the procedure set forth in Section 12 below. In this event, the First Agency Response Notice shall include the following information: (1) the maximum qualifying income for an Eligible Purchase; (2) the certifications required of an Eligible Purchaser; and (3) the Maximum Sales Price the Owner may receive for the Property, calculated by the Agency pursuant to Section 11 below.

9. OWNER ACKNOWLEDGMENT OF AGENCY RESPONSE NOTICE

No later than seven (7) days following the date of the First Agency Response Notice, the Owner shall acknowledge in writing to the Agency that he/she has received the Agency Response Notice and still intends to Transfer the Property.

10. AGENCY PURCHASE OPTION

The Owner agrees that the Agency shall have the option to purchase the Property (the "Agency Option") for an amount equal to the lesser of: (i) the Fair Market Value of the Property; or (ii) the Restricted Future Sales Price as set forth in Section 11 of this Agreement. The Agency may, instead of purchasing the Property itself, assign its right to purchase the Property pursuant to the Agency Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser. The Owner shall pay the Agency a transaction fee equal to six percent (6%) of the sales price if the Agency (or its assignee) exercises the Agency Option and purchases the Property. The Agency Option may be exercised at two separate times as follows:

a. The Agency Option may be exercised by the Agency in the First Agency Response Notice, as described in Section 8A above, to be sent by the Agency to the Owner within sixty (60) days of the Agency's receipt of a complete Owner's Notice of Intent to Transfer. If the First Agency Response Notice notifies the Owner that the Agency will exercise the Agency Option to purchase, the Agency shall purchase the Property within ninety (90) days of the date of the First Agency Response Notice.

b. The Agency Option may also be exercised by the Agency in the Second Agency Response Notice (as described in Section 12E below), to be sent by the Agency to the Owner within fifteen (15) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser. If the Second Agency Response Notice states that the Agency will exercise the Agency Option, the Agency shall purchase the Property within seventy-five (75) days of the date of the Second Agency Response Notice.

11. DETERMINATION OF MAXIMUM SALES PRICE FOR AGENCY PURCHASE OR RESTRICTED SALE

If the Agency exercises the Agency Option, or if the Owner sells to an Eligible Purchaser, the maximum sales price (the "Maximum Sales Price") that the Owner shall receive from the Agency or the Eligible Purchaser for purchase of the Property shall be the Restricted Future Sales Price or the Fair Market Value, whichever is less.

A. Restricted Future Sales Price.

(1) The Restricted Future Sales Price of the Property means the sales price of the Property at the time of purchase by the Owner, which was _____ Dollars ($_____), increased by the lower of (i) the percentage of increase in the Median Income, or (ii) the percentage increase in the CPI, from the date of the original purchase of the Property by the Owner to the date of receipt by the Agency of the Owner's Notice of Intent to Transfer, and, where applicable, adjusted pursuant to subsection (2) below to reflect the value of capital improvements or the cost of deferred maintenance. "Median Income" shall refer to the median yearly income, adjusted for a household size of _____, in Monterey County, as published by the California Department of Housing and Community Development ("HCD"), or, in the event such income determination is no longer published by HCD, or has not been updated for a period of at least eighteen (18) months, the Agency may use or develop such other reasonable method as it

may choose in order to determine the median yearly income in Monterey County. "CPI" means the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland Bay Area.

(2) Where applicable, the Restricted Future Sales Price shall include an upward adjustment reflecting the value of any substantial structural or permanent fixed improvements which the Owner has made to the Property after Owner's purchase of the Property. No such adjustment shall be made except for improvements: (a) made or installed by the Owner which conformed with applicable building codes at the time of installation; (b) approved in writing in advance by the Agency or its designee; and (c) whose initial costs exceed one percent (1%) of the purchase price paid for the Property by the Owner. Improvements meeting the above requirements are referred to in this Agreement as "Eligible Capital Improvements." The adjustment to the Restricted Future Sales Price for such Eligible Capital Improvements shall be limited to appraised increases in value to the Property as a result of the improvements (pursuant to an appraisal performed as described in Section 11B below), including any depreciation in value of the capital improvements since the time of installation, and not the cost of construction of the improvements to the Property. The Restricted Future Sales Price shall include a downward adjustment, where applicable, in an amount necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the City of Marina Building Code, as well as any other repairs needed to put the Property into a "sellable condition". Items necessary to put a Property into sellable condition shall be determined by the Agency or its designee, and may include cleaning, painting and making needed structural, mechanical, electrical, plumbing and fixed appliance repairs and other deferred maintenance repairs.

B. Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Property (the "Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Restricted Future Sales Price exceeds the Fair Market Value in order to determine the Maximum Sales Price pursuant to Section 11; (2) where the Owner is selling the Property to a Market Purchaser at an unrestricted price pursuant to Section 12E; (3) where the parties wish to determine the value of Eligible Capital Improvements in order to calculate the Restricted Future Sales Price pursuant to Section 11A; and (4) where the Owner wishes to refinance the First Mortgage Loan as described in Section 23 below. If it is necessary to determine the Fair Market Value of the Property, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the Agency. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be paid by the Owner, unless the appraisal is obtained from a new purchaser. In the event that the Owner has made capital improvements to the Property (which have been approved in advance by the Agency pursuant to Section 11A of this Agreement) which have increased the value of the Property or if damage or deferred maintenance has occurred while the Owner owned the Property which has decreased the value of the Property, the appraisal shall specifically ascribe a value to these adjustment factors and state what the fair market value of the Property would be without such adjustments by utilizing the procedures outlined in Section 11A above for calculating the Restricted Future Sales Price. Nothing in this section shall preclude the Owner and the Agency from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this section.

12. SALE OF PROPERTY BY OWNER IF AGENCY DOES NOT EXERCISE AGENCY OPTION TO PURCHASE

In the event the First Agency Response Notice notifies the Owner to proceed to sell the Property to an Eligible Purchaser at a price not exceeding the Maximum Sales Price, the Owner may proceed to sell the Property in compliance with the following requirements:

A. Marketing Period. The Owner shall have sixty (60) days from the date of the First Agency Response Notice (the "Marketing Period") to market the Property and find an Eligible Purchaser. During the Marketing Period, the Owner shall use bona fide good faith efforts to sell the Property to an Eligible Purchaser in compliance with this Section 12, including keeping the Property in an orderly condition, making the Property available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the Agency's form of disclosure statement summarizing the terms of the buyer's resale agreement. If the Owner has not located an Eligible Purchaser within this sixty (60)-day marketing period, the Owner may request an additional sixty (60)-day marketing period. A proposed purchaser ("Proposed Purchaser") who the Owner believes will qualify as an Eligible Purchaser shall be referred to the Agency for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the Agency:

(1) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Property as his or her principal place of residence throughout his or her ownership. Co-signers are not required to occupy the Property.

(2) Agreement to Sign Resale Restriction Agreement and to Cooperate with Agency. The Proposed Purchaser shall agree to sign a resale restriction agreement restricting future resale of the Property and shall agree to cooperate fully with the Agency in promptly providing all information requested by the Agency to assist the Agency in monitoring the Proposed Purchaser's compliance with the resale restriction agreement.

(3) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed _____ percent (___%) of the median yearly income, adjusted for household size, for a household in Monterey County as published by the California Department of Housing and Community Development ("HCD") pursuant to Health and Safety Code Section 50093. In the event such income determinations are no longer published by HCD, or are not updated for a period of at least eighteen (18) months, the Agency shall provide other income determinations which are reasonably similar with respect to method of calculation to those previously published by HCD. The income of a household shall be calculated in accordance with 25 California Code of Regulations Section 6914 or a successor state housing regulation that sets forth a method of calculation of household income.

C. Maximum Sales Price. The purchase price for the sale of the Property by the Owner to the Eligible Purchaser shall not exceed the Maximum Sales Price calculated by the Agency pursuant to Section 11 above, as set forth in the First Agency Response Notice.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the Agency:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) A signed financial statement of the Proposed Purchaser in a form acceptable to the Agency and any other supporting documentation requested by the Agency. The financial information shall be used by the Agency to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Property. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(4) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the Agency that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the Agency. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the Agency. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the Agency, the Agency shall have the right to foreclose on the Property or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the Agency and its designee harmless and reimburse the Agency's and its designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed buyer's resale agreement and deed of trust from the Proposed Purchaser in forms provided by the Agency. The recordation of the new deed of trust and buyer's resale agreement shall be a condition of the Agency's approval of the proposed sale.

(6) the name of the title company escrow holder for the sale of the Property, the escrow number, and name, address, and phone number of the escrow officer.

(7) Upon the close of the proposed sale, certified copies of the recorded Agency deed of trust and buyer's resale agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the Agency may reasonably request.

E. Failure To Locate Eligible Purchaser; Unrestricted Sale. If, despite bona fide good faith marketing efforts, the Owner is unable to locate an Eligible Purchaser during the Marketing Period and any extensions to the Marketing Period granted by the Agency, the Owner shall provide written notice to the Agency of this fact (the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within fifteen (15) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser, the Agency shall provide a second response notice to the Owner (the "Second Agency Response Notice") stating either (1) that the Agency will exercise the Agency Option to purchase the Property pursuant to Section 10, or (2) that the Owner may Transfer the Property to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at an unrestricted price (supported by an MAI or other qualified appraisal), but shall pay all Excess Sales Proceeds to the Agency as set forth in Section 13 below. If the Owner Transfers the Property pursuant to this Section 12E, the purchaser shall not be required to execute a buyer's resale agreement, and the Agency shall reconvey the liens of this Agreement and the Agency Deed of Trust from the Property, provided that the Owner pays the Excess Sales Proceeds to the Agency pursuant to Section 13 below. The Owner shall provide the Agency with the following documentation associated with such a Transfer:

(1) the name and address of the purchaser;

(2) the final sales contract and all other related documents which shall set forth all the terms of the sale of the Property, including a HUD-1 Settlement Statement. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(3) a written certification, from the Owner and the Market Purchaser in a form acceptable to the Agency that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the Agency. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the Agency. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the Agency, the Agency shall have the right to foreclose on the Property or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the Agency and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) a copy of the MAI or other qualified appraisal for the Property.

(5) upon the close of the proposed sale, a copy of the final sales contract, HUD-1 Settlement Statement, escrow instructions, and any other documents which the Agency may reasonably request.

13. PAYMENT TO AGENCY OF EXCESS SALES PROCEEDS

If the Owner Transfers the Property at an unrestricted price pursuant to Section 12E above, or if the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the Agency. For purposes of this Agreement, "Excess Sales Proceeds" shall mean ninety-four percent (94%) of the amount by which the gross sales proceeds received by the Owner from the new purchaser exceed the Maximum Sales Price for the Property (in the amount that was stated in the First Agency Response Notice). This amount shall be a debt of the Owner to the Agency, evidenced by this Agreement and the Agency Note, and secured by the Agency Deed of Trust. The Owner acknowledges that the Agency shall have no obligation to cause reconveyance of this Agreement or of the Agency Deed of Trust until the Excess Sales Proceeds are paid to the Agency. The Agency shall utilize the Excess Sales Proceeds for Agency affordable housing programs. The Owner and the Agency acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the Agency is intended to cause the Owner to receive the same net sales proceeds (following payment by Owner of a standard broker's commission) from sale of the Property at an unrestricted price to an Market Purchaser as the Owner would receive from sale of the Property to the Agency or to an Eligible Purchaser at the Maximum Sales Price.

14. REPAYMENT OF AGENCY NOTE

If the Agency exercises the Agency Option to purchase the Property, the outstanding amount of principal and interest due under the Agency Note shall be paid to the Agency in the form of a credit against the purchase price to be paid by the Agency to the Owner. If the Agency assigns the Agency Option to a third party, or if the Owner Transfers the Property to any other person or entity, including an Eligible Purchaser or a Market Purchaser, the outstanding principal and interest due under the Agency Note shall be repaid pursuant to the Agency Note and shall not be credited against the purchase price.

15. DEFAULTS

A. The following events shall constitute a Default by the Owner under this Agreement:

(1) The Agency determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Property or in connection with its obligations under this Agreement;

(2) The Owner fails to owner occupy the Property, as required pursuant to Section 3 above, and such failure continues following written notice by the Agency and sixty (60) days opportunity to cure following the date of such notice.

(3) The Owner makes a Transfer in violation of this Agreement;

(4) The Owner otherwise fails to comply with the requirements of this Agreement and such violation is not corrected to the satisfaction of the Agency within ten (10) days after the date of written notice by the Agency to the Owner of such violation; or

(5) A notice of default is issued under the First Mortgage Loan or other financing secured by the Property.

(6) A lien is recorded against the Property other than the lien of a bone fide mortgage loan.

B. Upon a declaration of Default by the Agency under this Agreement, the Agency may:

(1) Declare the Agency Note and all Excess Sales Proceeds immediately due and payable without further demand, declare a default under the Agency Note, and may invoke the power of sale under the Agency Deed of Trust;

(2) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(3) Declare a Default under the Agency Note and Agency Deed of Trust and pursue all Agency remedies under the Agency Deed of Trust; and

(4) Exercise the Agency Purchase Option Upon Default as described in Section 17 below.

16. NOTICE OF DEFAULT AND FORECLOSURE

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property shall be recorded by the Agency in the Office of the Recorder of the County of Monterey for the benefit of the Agency. The Agency may declare a Default under this Agreement upon receipt of any notice given to the Agency pursuant to Civil Code Section 2924b, and may exercise its rights as provided in Sections 15 and 17.

In the event of default and foreclosure, the Agency shall have the same right as the Owner to cure defaults and redeem the Property prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the Agency to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the Agency failed to file the request for notice of default, the Agency's right to purchase the Property shall commence from the date a notice of default is given by the Agency to the Owner.

17. PURCHASE OPTION UPON DEFAULT

Notwithstanding, and in addition to, the remedies provided the Agency in Section 15, and the Agency Option provided to the Agency in Section 10, the Owner hereby grants to the Agency the option to purchase the Property following written notice by the Agency to the Owner of the declaration of a Default by the Agency under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from purchase and ownership of the Property made possible by the Marina Heights Affordable Ownership Program.

The Agency shall have thirty (30) days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this Section 17. Not later than ninety (90) days after the notice is given by the Agency to the Owner of the Agency's intent to exercise its option under this Section 17, the Agency shall purchase the Property for the Maximum Sales Price calculated in the manner set forth in Section 11.

18. NONLIABILITY OF THE AGENCY

A. No Obligation to Exercise Option. The Agency shall have no obligation to exercise any option granted it under this Agreement. In no event shall the Agency become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 10 and 17 nor shall the Agency be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the Agency is solely that of an owner and an administrator of an Agency affordable housing program, and that the Agency does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Property or any other matter. The Agency and the City owe no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the Agency or the City for any loss, damage or

other matter arising out of or resulting from any condition of the Property and will hold the Agency and the City harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the Agency and the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the Agency or City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement, the Agency Note or the Deed of Trust; or (2) the failure at any time of any of Owner's representations to the Agency to be true and correct.

19. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Sales Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the Agency in consideration of the benefits received by the Owner through purchase of the Property under the Marina Heights Affordable Ownership Program.

20. RESTRICTION ON INSURANCE PROCEEDS

If the Property is damaged or destroyed and the Owner elects not to rebuild or repair the Property, the Owner shall pay the Agency the portion of any insurance proceeds received by the Owner for such destruction or damage which is in excess of the Maximum Sales Price calculated pursuant to Section 11 above.

21. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the Property and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the Agency and its successors, until the earlier of (i) fifty (50) years from the date of this Agreement, or (ii) the date of Transfer of the Property to the Agency or another purchaser in compliance with this Agreement (including execution by the purchaser of a new copy of this Agreement).

22. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the Agency and their respective successors.

23. SUBORDINATION

Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Property in compliance with Section 24 of this Agreement.

Notwithstanding any other provision hereof, the provisions of this Agreement and the Agency Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the Agency Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the Agency Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the Agency has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the Agency shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

24. REFINANCE OF FIRST MORTGAGE LOAN

The Agency agrees to subordinate this Agreement and the Agency Deed of Trust to a deed of trust securing a refinanced First Mortgage Loan provided that, following such refinance, the principal amount of all debt secured by the Property will not exceed ninety percent (90%) of the Maximum Sales Price determined in accordance with Section 11 above.

25. NONDISCRIMINATION

The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

26. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS

This Agreement shall not diminish or affect the rights of the Agency under the Agency Deed of Trust.

Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the California Housing Finance Agency ("CHFA"), United States Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), the Federal HOME Loan Mortgage Corporation ("FHLMC"), or the Veterans Administration ("VA") under the First Mortgage Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Property in compliance with Section 24 above.

Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect upon the occurrence of one of the following events:

A. Title is acquired by CHFA, HUD, FNMA, FHLMC, VA, the First Lender or another party upon foreclosure of a deed of trust to the First Lender or CHFA, or a deed of trust insured by HUD or guaranteed by VA.

B. Title is acquired by another party by a deed in lieu of foreclosure of the First Lender, CHFA, FNMA, or FHLMC deed of trust.

27. HUD FORBEARANCE RELIEF

Notwithstanding other provisions of this Agreement, the Agency Option on Default pursuant to Section 17 above shall not be exercised by the Agency when a deed of trust insured by HUD is secured by the Property, and: (i) the owner is undergoing consideration by HUD for assignment forbearance relief; or (ii) the owner is undergoing consideration for relief under HUD's Temporary Mortgage Assistance Payment (TMAP) program.

28. INVALID PROVISIONS

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

29. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of California. The venue for any legal action pertaining to this Agreement shall be Monterey County, California.

30. NO WAIVER

No delay or omission in the exercise of any right or remedy of Agency upon any default by Owner shall impair such right or remedy or be construed as a waiver. The Agency's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the Agency's right thereafter to enforce the provisions of the Agreement. The Agency shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the Agency.

31. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

To the Owner:

At the address of the Property.

To the Agency:

Marina Redevelopment Agency
_____
Marina , CA 9_____
Attn: Executive Director

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

32. INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Property and to insure to the extent possible that its sales price and mortgage payment remain affordable to lower income households.

33. EXHIBITS

Any exhibits referred to in this Agreement are incorporated in this Agreement by such reference.

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

AGENCY:

Marina Redevelopment Agency

By: _____

Title: _____
(Type Name and Title)

BUYER:

_____

_____
(Type Name)

_____

_____
(Type Name)

STATE OF CALIFORNIA)
) ss
COUNTY OF MONTEREY)

On _____, 2002, before me, _____, personally appeared _____ _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____.

STATE OF CALIFORNIA)
) ss
COUNTY OF MONTEREY)

On _____, 2002, before me, _____, personally appeared _____ _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

EXHIBIT A

Legal Description of the Property)

EXHIBIT D

Schedule of Benchmarks

1.	Receipt of Permits and Approvals and expiration of contest and appeal periods	June 30, 2004
2.	Submission of Construction Plan Drawings for first phase of infrastructure	December 31, 2004
3.	Submission of the financing plan for first phase of infrastructure	Expiration of Option Term
4.	Close of Escrow	Within 60 days of exercise of the Option
5.	Development of Homes	
	106 homes including 9 Bridge Homes	December 31, 2005
	106 homes including 9 Bridge Homes	December 31, 2006
	106 homes including 9 Bridge Homes	December 31, 2007
	106 homes including 9 Bridge Homes	December 31, 2008
	106 homes including 9 Bridge Homes	December 31, 2009

106 homes including 9 Bridge Homes	December 31, 2010
106 homes including 9 Bridge Homes	December 31, 2011
106 homes including 9 Bridge Homes	December 31, 2012
106 homes including 9 Bridge Homes	December 31, 2013
96 homes including 4 Bridge Homes	December 31, 2014

EXHIBIT D

EXHIBIT E

CITY IMPACT AND MITIGATION FEES - PER RESIDENTIAL UNIT

Final Map Plan Check Fee $135.00

Grading Plan Check and Permit Fee.....$30.00

Subdivision Improvement Plan Check & Inspection Fee.....$500.00

Encroachment Permit Fee.....$50.00

Traffic Signal Fee.....$85.00

Park Development Fee.....$2,224.00

City Development Fee (for former Fort Ord Area).....$3,813.00

Building Permit Fees:

- Permit..... $1,977.19
- Plan Check.....$1,286.17
- SMIP..... $25.53
- BDT.....$59.32

TOTAL.....$10,185.21

G:\MARINA\Abrams Park\cityfeesexhibit.wpd

OPTION EXERCISE NOTICE

Cypress Marina Heights, L.P. (***"Developer"***) gives notice pursuant to Section 3.1.2. of that certain Option Agreement (***"Agreement"***) dated as of _____, 2002, by and among the Redevelopment Agency of the City of Marina (***"Agency"***), the City of Marina, and Developer, that as of the date of this notice set forth below, Developer exercises the Option to purchase the Project Site. Terms used in this Option Exercise Notice shall have the same meanings as in the Agreement. Developer represents that all conditions precedent to exercise of the Option, as contained in Section 3.2 of the Agreement have been satisfied by Developer or waived by Agency.

Cypress Marina Heights, L.P.,
a California limited partnership

By_____

_____

Date:_____

EXHIBIT F

EXHIBIT G

Example Calculation of Profit Participation

The attached cash flow is an example of the calculation of the Profit Participation as defined in Section 6.3. The example calculation is intended to be used solely as a tool to understand and implement the Profit Participation and is not intended to reflect the actual monthly costs or revenues of the Project.

The calculation requires the following steps:

1. Upon Project Completion as defined in Section 6.3, Gross Cash Receipts (A) and Development Costs (B) are input in an Excel file (or other comparable spreadsheet program) on a monthly basis pursuant to financial statements of the Developer.

2. The Development Costs are subtracted from the Gross Cash Receipts to arrive at the Unleveraged Cash Flow (C).

3. An IRR calculation is made on the monthly cash flow using the IRR formula in Excel or other spreadsheet program, as detailed in Section 6.3.3 (D). Note that in early years of the Project, there is insufficient Unleveraged Cash Flow to calculate a meaningful IRR. In the example, the first month of Unleveraged IRR shown is June of Year 4 (-6.9%).

4. The Profit Participation begins at the point in time when the Unleveraged IRR reaches 20%. The Profit Participation is equal to 15% of the Unleveraged Cash Flow from that point in time. In the example, the first month the Unleveraged IRR exceeds 20% is November of Year 5. The Profit Participation in that month is equal to 15% of Unleveraged Cash Flow in that month (15% of $760,000, or $114,000).

5. The Profit Participation is calculated in this first month and every month thereafter until Project Completion (E).

6. In the example, the total Profit Participation is $7,500,000, which is the total of monthly Profit Participation from November of Year 5 to December of Year 11, the assumed month of Project Completion in the example. The Profit Participation is paid by the developer at the Project Completion.

Exhibit
Example Calculation of Profit Participation
Payment
Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 1 Jan	Year 1 Feb	Year 1 March	Year 1 April	Year 1 May	Year 1 June	Year 1 July	Year 1 Aug	Year 1 Sept	Year 1 Oct	Year 1 Nov	Year 1 Dec	Year 2 Jan
A	Gross Cash Receipts	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$3,930,000
B	(Less) Development Costs	($10,600,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($4,110,000)
C	Unleveraged Cash Flow	($10,600,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($50,000)	($180,000)
	Cumulative Unleveraged Cash Flow	($10,600,000)	($10,650,000)	($10,700,000)	($10,750,000)	($10,800,000)	($10,850,000)	($10,900,000)	($10,950,000)	($11,000,000)	($11,050,000)	($11,100,000)	($11,150,000)	($11,330,000)
D	Unleveraged IRR													
E	Profit Participation Payment	15.0%												
	Cumulative Profit Participation													

EXHIBIT G

PREPARED BY: KEYSER MARSTON ASSOCIATES, INC.
FILENAME: ParticipationCalculation8-22-02; Sheet1; 10/18/2002; 11:13 AM; RTK

Exhibit
Example Calculation of Profit Participation
Payment
Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 2 Feb	Year 2 March	Year 2 April	Year 2 May	Year 2 June	Year 2 July	Year 2 Aug	Year 2 Sept	Year 2 Oct	Year 2 Nov	Year 2 Dec	Year 3 Jan	Year 3 Feb
A	Gross Cash Receipts	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$3,930,000	$5,230,000	$5,230,000
B	(Less) Development Costs	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,110,000)	($4,740,000)	($4,740,000)
C	Unleveraged Cash Flow	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	($180,000)	$490,000	$490,000
	Cumulative Unleveraged Cash Flow	($11,510,000)	($11,690,000)	($11,870,000)	($12,050,000)	($12,230,000)	($12,410,000)	($12,590,000)	($12,770,000)	($12,950,000)	($13,130,000)	($13,310,000)	($12,820,000)	($12,330,000)
D	Unleveraged IRR													
E	Profit Participation Payment													
	Cumulative Profit Participation													

EXHIBIT C

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Exhibit
Example Calculation of Profit Participation Payment
Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 3 March	Year 3 April	Year 3 May	Year 3 June	Year 3 July	Year 3 Aug	Year 3 Sept	Year 3 Oct	Year 3 Nov	Year 3 Dec	Year 4 Jan	Year 4 Feb	Year 4 March	Year 4 April
A	Gross Cash Receipts	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$5,230,000	$4,370,000	$4,370,000	$4,370,000	$4,370,000
B	(Less) Development Costs	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($4,740,000)	($3,500,000)	($3,500,000)	($3,500,000)	($3,500,000)
C	Unleveraged Cash Flow	$490,000	$490,000	$490,000	$490,000	$490,000	$490,000	$490,000	$490,000	$490,000	$490,000	$870,000	$870,000	$870,000	$870,000
	Cumulative Unleveraged Cash Flow	($11,840,000)	($11,350,000)	($10,860,000)	($10,370,000)	($9,880,000)	($9,390,000)	($8,900,000)	($8,410,000)	($7,920,000)	($7,430,000)	($6,560,000)	($5,690,000)	($4,820,000)	($3,950,000)
D	Unleveraged IRR														
E	Profit Participation Payment														
	Cumulative Profit Participation														

EXHIBIT G

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Exhibit
Example Calculation of Profit Participation
Payment
Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 4 May	Year 4 June	Year 4 July	Year 4 Aug	Year 4 Sept	Year 4 Oct	Year 4 Nov	Year 4 Dec	Year 5 Jan	Year 5 Feb	Year 5 March	Year 5 April	Year 5 May	Year 5 June
A	Gross Cash Receipts	$4,370,000	$4,370,000	$4,370,000	$4,370,000	$4,370,000	$4,370,000	$4,370,000	$4,370,000	$4,350,000	$4,350,000	$4,350,000	$4,350,000	$4,350,000	$4,350,000
B	(Less) Development Costs	($3,500,000)	($3,500,000)	($3,500,000)	($3,500,000)	($3,500,000)	($3,500,000)	($3,500,000)	($3,500,000)	($3,590,000)	($3,590,000)	($3,590,000)	($3,590,000)	($3,590,000)	($3,590,000)
C	Unleveraged Cash Flow	$870,000	$870,000	$870,000	$870,000	$870,000	$870,000	$870,000	$870,000	$760,000	$760,000	$760,000	$760,000	$760,000	$760,000
	Cumulative Unleveraged Cash Flow	($3,080,000)	($2,210,000)	($1,340,000)	($470,000)	$400,000	$1,270,000	$2,140,000	$3,010,000	$3,770,000	$4,530,000	$5,290,000	$6,050,000	$6,810,000	$7,570,000
D	Unleveraged IRR		-6.9%	-4.0%	-1.3%	1.1%	3.4%	5.5%	7.4%	9.0%	10.6%	12.0%	13.3%	14.6%	15.8%
E	Profit Participation Payment		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
	Cumulative Profit Participation		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0

EXHIBIT G

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Payment
Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 5 July	Year 5 Aug	Year 5 Sept	Year 5 Oct	Year 5 Nov	Year 5 Dec	Year 6 Jan	Year 6 Feb	Year 6 March	Year 6 April	Year 6 May	Year 6 June	Year 6 July	Year 6 Aug
A	Gross Cash Receipts	$4,350,000	$4,350,000	$4,350,000	$4,350,000	$4,350,000	$4,350,000	$3,890,000	$3,890,000	$3,890,000	$3,890,000	$3,890,000	$3,890,000	$3,890,000	$3,890,000
B	(Less) Development Costs	($3,590,000)	($3,590,000)	($3,590,000)	($3,590,000)	($3,590,000)	($3,590,000)	($3,250,000)	($3,250,000)	($3,250,000)	($3,250,000)	($3,250,000)	($3,250,000)	($3,250,000)	($3,250,000)
C	Unleveraged Cash Flow	$760,000	$760,000	$760,000	$760,000	$760,000	$760,000	$640,000	$640,000	$640,000	$640,000	$640,000	$640,000	$640,000	$640,000
	Cumulative Unleveraged Cash Flow	$8,330,000	$9,090,000	$9,850,000	$10,610,000	$11,370,000	$12,130,000	$12,770,000	$13,410,000	$14,050,000	$14,690,000	$15,330,000	$15,970,000	$16,610,000	$17,250,000
D	Unleveraged IRR	16.9%	18.0%	19.0%	20.0%	20.9%	21.8%	22.4%	23.1%	23.7%	24.3%	24.9%	25.5%	26.0%	26.5%
E	Profit Participation Payment	$0	$0	$0	$0	$114,000	$114,000	$96,000	$96,000	$96,000	$96,000	$96,000	$96,000	$96,000	$96,000
	Cumulative Profit Participation	$0	$0	$0	$0	$114,000	$228,000	$324,000	$420,000	$516,000	$612,000	$708,000	$804,000	$900,000	$996,000

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Payment
Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 6 Sept	Year 6 Oct	Year 6 Nov	Year 6 Dec	Year 7 Jan	Year 7 Feb	Year 7 March	Year 7 April	Year 7 May	Year 7 June	Year 7 July	Year 7 Aug	Year 7 Sept	Year 7 Oct
A	Gross Cash Receipts	$3,890,000	$3,890,000	$3,890,000	$3,890,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000	$3,280,000
B	(Less) Development Costs	($3,250,000)	($3,250,000)	($3,250,000)	($3,250,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)
C	Unleveraged Cash Flow	$640,000	$640,000	$640,000	$640,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000	$250,000
	Cumulative Unleveraged Cash Flow	$17,890,000	$18,530,000	$19,170,000	$19,810,000	$20,060,000	$20,310,000	$20,560,000	$20,810,000	$21,060,000	$21,310,000	$21,560,000	$21,810,000	$22,060,000	$22,310,000
D	Unleveraged IRR	27.0%	27.5%	27.9%	28.3%	28.5%	28.6%	28.8%	28.9%	29.1%	29.2%	29.4%	29.5%	29.6%	29.7%
E	Profit Participation Payment	$96,000	$96,000	$96,000	$96,000	$37,500	$37,500	$37,500	$37,500	$37,500	$37,500	$37,500	$37,500	$37,500	$37,500
	Cumulative Profit Participation	$1,092,000	$1,188,000	$1,284,000	$1,380,000	$1,417,500	$1,455,000	$1,492,500	$1,530,000	$1,567,500	$1,605,000	$1,642,500	$1,680,000	$1,717,500	$1,755,000

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Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 7 Nov	Year 7 Dec	Year 8 Jan	Year 8 Feb	Year 8 March	Year 8 April	Year 8 May	Year 8 June	Year 8 July	Year 8 Aug	Year 8 Sept	Year 8 Oct	Year 8 Nov	Year 8 Dec
A	Gross Cash Receipts	$3,280,000	$3,280,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000	$3,370,000
B	(Less) Development Costs	($3,030,000)	($3,030,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)	($3,110,000)
C	Unleveraged Cash Flow	$250,000	$250,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000	$260,000
	Cumulative Unleveraged Cash Flow	$22,560,000	$22,810,000	$23,070,000	$23,330,000	$23,590,000	$23,850,000	$24,110,000	$24,370,000	$24,630,000	$24,890,000	$25,150,000	$25,410,000	$25,670,000	$25,930,000
D	Unleveraged IRR	29.9%	30.0%	30.1%	30.2%	30.3%	30.4%	30.5%	30.6%	30.7%	30.8%	30.9%	31.0%	31.1%	31.2%
E	Profit Participation Payment	$37,500	$37,500	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000	$39,000
	Cumulative Profit Participation	$1,792,500	$1,830,000	$1,869,000	$1,908,000	$1,947,000	$1,986,000	$2,025,000	$2,064,000	$2,103,000	$2,142,000	$2,181,000	$2,220,000	$2,259,000	$2,298,000

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Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 9 Jan	Year 9 Feb	Year 9 March	Year 9 April	Year 9 May	Year 9 June	Year 9 July	Year 9 Aug	Year 9 Sept	Year 9 Oct	Year 9 Nov	Year 9 Dec	Year 10 Jan	Year 10 Feb
A	Gross Cash Receipts	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$3,350,000	$2,850,000	$2,850,000
B	(Less) Development Costs	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($3,030,000)	($1,270,000)	($1,270,000)
C	Unleveraged Cash Flow	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$320,000	$1,580,000	$1,580,000
	Cumulative Unleveraged Cash Flow	$26,250,000	$26,570,000	$26,890,000	$27,210,000	$27,530,000	$27,850,000	$28,170,000	$28,490,000	$28,810,000	$29,130,000	$29,450,000	$29,770,000	$31,350,000	$32,930,000
D	Unleveraged IRR	31.3%	31.4%	31.5%	31.6%	31.6%	31.7%	31.8%	31.9%	32.0%	32.1%	32.1%	32.2%	32.5%	32.9%
E	Profit Participation Payment	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$48,000	$237,000	$237,000
	Cumulative Profit Participation	$2,346,000	$2,394,000	$2,442,000	$2,490,000	$2,538,000	$2,586,000	$2,634,000	$2,682,000	$2,730,000	$2,778,000	$2,826,000	$2,874,000	$3,111,000	$3,348,000

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City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 10 March	Year 10 April	Year 10 May	Year 10 June	Year 10 July	Year 10 Aug	Year 10 Sept	Year 10 Oct	Year 10 Nov	Year 10 Dec	Year 11 Jan	Year 11 Feb	Year 11 March	Year 11 April
A	Gross Cash Receipts	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$2,850,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000
B	(Less) Development Costs	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($1,270,000)	($110,000)	($110,000)	($110,000)	($110,000)
C	Unleveraged Cash Flow	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$1,580,000	$990,000	$990,000	$990,000	$990,000
	Cumulative Unleveraged Cash Flow	$34,510,000	$36,090,000	$37,670,000	$39,250,000	$40,830,000	$42,410,000	$43,990,000	$45,570,000	$47,150,000	$48,730,000	$49,720,000	$50,710,000	$51,700,000	$52,690,000
D	Unleveraged IRR	33.2%	33.5%	33.7%	34.0%	34.3%	34.5%	34.7%	35.0%	35.2%	35.4%	35.5%	35.6%	35.7%	35.8%
E	Profit Participation Payment	$237,000	$237,000	$237,000	$237,000	$237,000	$237,000	$237,000	$237,000	$237,000	$237,000	$148,500	$148,500	$148,500	$148,500
	Cumulative Profit Participation	$3,585,000	$3,822,000	$4,059,000	$4,296,000	$4,533,000	$4,770,000	$5,007,000	$5,244,000	$5,481,000	$5,718,000	$5,866,500	$6,015,000	$6,163,500	$6,312,000

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Marina Heights Project
City of Marina

ALL INPUTS ARE HYPOTHICAL FOR EXAMPLE CALCULATION ONLY

		Year 11 May	Year 11 June	Year 11 July	Year 11 Aug	Year 11 Sept	Year 11 Oct	Year 11 Nov	Year 11 Dec	Total
A	Gross Cash Receipts	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$1,100,000	$428,640,000
B	(Less) Development Costs	($110,000)	($110,000)	($110,000)	($110,000)	($110,000)	($110,000)	($110,000)	($110,000)	($368,030,000)
C	Unleveraged Cash Flow	$990,000	$990,000	$990,000	$990,000	$990,000	$990,000	$990,000	$990,000	$60,610,000
	Cumulative Unleveraged Cash Flow	$53,680,000	$54,670,000	$55,660,000	$56,650,000	$57,640,000	$58,630,000	$59,620,000	$60,610,000	
D	Unleveraged IRR	35.9%	36.0%	36.1%	36.2%	36.3%	36.4%	36.5%	36.6%	
E	Profit Participation Payment	$148,500	$148,500	$148,500	$148,500	$148,500	$148,500	$148,500	$148,500	$7,500,000
	Cumulative Profit Participation	$6,460,500	$6,609,000	$6,757,500	$6,906,000	$7,054,500	$7,203,000	$7,351,500	$7,500,000	

Participation Summary	
Total Unleveraged Cash Flow	$60,610,000
(Less) Unleveraged Cash Flow Prior to 20% Unleveraged IRR	($10,610,000)
Basis of Profit Participation	$50,000,000
Profit Participation Percentage	15%
Total Profit Participation	$7,500,000

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EXHIBIT G

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FILENAME: ParticipationCalculation8-22-02; Sheet1; 10/18/2002; 11:13 AM; RTK

EXHIBIT H

WHEN RECORDED RETURN TO:

CYPRESS MARINA HEIGHTS, L.P.
(Address)

QUITCLAIM DEED FOR A PORTION OF ABRAMS HOUSING

THIS DEED, made and entered into between the REDEVELOPMENT AGENCY OF THE CITY OF MARINA (hereinafter referred to as the "Grantor"), and the CYPRESS MARINA HEIGHTS, L.P., a California limited partnership, (hereinafter referred to as the "Grantee"),

WITNESSETH THAT:

WHEREAS, the Secretary of the Army may convey surplus property to the Local Redevelopment Authority, at a closing military installation, for economic development purposes pursuant to the power and authority provided by Section 2905(b)(4) of the DBCRA and the implementing regulations of the Department of Defense (32 CFR Part 91);

WHEREAS, the City of Marina, by application, requested an economic development conveyance of portions of the former Fort Ord, California consistent with the redevlopment plan prepared by the Fort Ord Reuse Authority ("FORA");

WHEREAS, United States of America (hereinafter referred to as "United States" or "Army"), and FORA have entered into a Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California, dated the 20th day of June, 2000 ("MOA") and MOA Amendment No. 1, dated the 23rd day of October, 2001 which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California;

WHEREAS, the California State Historic Preservation Officer determined on May 5, 1994, that no structures, monuments, or other property within the subject Property, as hereinafter defined, were identified as having any historical significance;

WHEREAS, former Fort Ord, California, has been identified as a National Priority List Site under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") of 1980, as amended, the Grantor has provided the Grantee with a copy of the Fort Ord Base Federal Facility Agreement ("FFA") and all amendments thereto entered into by United States Environmental Protection Agency ("EPA") Region IX, the State of California, and the Department of the Army that were effective on November 19, 1990;

WHEREAS, an Installation-Wide Multispecies Habitat Management Plan for former Fort Ord, California ("HMP") dated December, 1994 as revised and amended by the *"Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California"* dated April 1997, has been developed to assure that disposal and reuse of former Fort Ord lands is in compliance with the Endangered Species Act ("ESA"), 16 U.S.C. 1531 *et seq.* Timely transfer of these lands and subsequent implementation of the HMP is critical to ensure effective protection and conservation of the former Fort Ord lands' wildlife, and plant species, and habitat values while allowing appropriate economic redevelopment of former Fort Ord and the subsequent economic recovery of the local communities;

WHEREAS, Section 334 of Public Law 104-201 allows, with the concurrence of the Governor of the State of California and the approval of the Administrator of the EPA, for deferral of the requirement of 42 USC 9620(h)(3)(A)(ii)(I) prior to completion of all the necessary environmental remediation actions required under the CERCLA, which concurrences have been received.

WHEREAS, pursuant to Section 334 of Public Law 104-201 FORA received certain real property situated in the City of Marina, County of Monterey, State of California, from the United States of America by Quitclaim Deed ("USA Deed"), reserving to the United States certain exclusions, restrictions, stipulations and covenants, and burdening FORA with certain obligations, said deed dated _____, 2002, duly recorded in the County of Monterey, Office of the County Recorder, at Reel _____, Page _____;

WHEREAS, FORA conveyed to Grantor its interest in a portion of the land it received through the USA Deed, reserving to the United States and FORA certain exclusions, restrictions, stipulations and covenants, and burdening FORA with certain obligations, said deed dated _____, 2002, duly recorded in the County of Monterey, Office of the County Recorder, at Reel _____, Page _____;

WHEREAS, by means of this Quitclaim deed, the Grantor is hereby conveying, subject to the exclusions, restrictions, stipulations, and covenants and burdens contained in the USA Deed, its interest in a portion of the land it received from FORA to Grantee;

NOW, THEREFORE, the Grantor, for good and valuable consideration does hereby **grant, remise, release, and forever quitclaim** unto the Grantee, its successors and assigns, all such interest, rights, title, and claim as the Grantor has in and to a portion of the land it received from FORA consisting of approximately 248 acres (the "Property"), more particularly described in Exhibit A, which is attached hereto and made a part hereof.

I. PROPERTY DESCRIPTION:

The Property includes:

A. All buildings, facilities, roadways, and other improvements, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon,

B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, privileges and not otherwise excluded herein, and

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

II. APPURTENANT EASEMENTS:

A. The Army has declared and granted to FORA and its successors and assigns, including Grantee a perpetual and assignable non-exclusive access easement over, across, under, and through all paved roads retained by the Army for access purposes, which easements shall run with the land and be perpetually in full force and effect.

B. The Grantee agrees to the following terms and conditions:

1. except in the case of an emergency, Grantee will provide the fee owner of the land subject to an easement, prior notice of its entry onto the easement area;

2. in the utilization of any easement rights granted herein, exercise due care in the performance of excavations and other work required herein and restore the easement lands following such work to a safe and usable condition;

3. to comply with all applicable federal, state and local laws and regulations;

4. to pay the United States the full value for all damages to the lands or other property of the United States caused by the Grantee or its employees, contractors, or employees of the contractors arising from its use, occupancy, or operations within the easement areas, provided that all work done as authorized under this grant of easement shall not be considered as damages to lands; and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the easements, except where such liability arises as a result of acts of the United States, its employees, or contractors, or where the easements are granted hereunder to a state or other governmental agency which has no legal power to assume such liability with respect to damages caused by it to lands and property, in which case such agency in lieu therefore agrees to pay all such damages;

5. to allow the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the Grantee, so long as such occupancy and use does not compromise the ability of the Grantee to use the easements for their intended purposes, as set forth herein;

6. that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

7. that any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms

and conditions of the original grant of easement;

8. that, unless otherwise provided, no interest granted shall give the Grantee any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder;

9. that a rebuttable presumption of abandonment of any of the easements is raised by the failure of the Grantee to use for any continuous two (2) year period an easement for the purpose for which it was granted hereby; and that, in the event of such abandonment, the Grantor or its successor will notify the Grantee of its intention to terminate the easement for abandonment sixty (60) days from the date of the notice, unless prior to the end of said sixty (60) day period the Grantee either resumes its use of the easement or demonstrates conclusively that said resumption of use will occur within a reasonable amount of time thereafter, not to exceed an additional ninety (90) day period (for purposes of this subparagraph, flow of non-potable water through the piping system shall constitute continuous use of the easement); and

10. to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless the requirement is waived in writing by the fee owner.

III. EXCLUSIONS AND RESERVATIONS:

This conveyance is made subject to the following EXCLUSIONS and RESERVATIONS:

A. The Property is taken by the Grantee subject to any and all valid and existing recorded outstanding liens, licenses, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record.

B. The Army reserves a perpetual unassignable right to enter the Property for the specific purpose of treating or removing any unexploded shells, mines, bombs, or other such devices deposited or caused by the Grantor.

C. Access to USA Media Group, LLC, or its successor in interest, TV cable lines is reserved until expiration of its existing franchise agreement, November 19, 2005.

D. The reserved rights and easements set forth in this Section are subject to the following terms and conditions:

1. to comply with all applicable federal law and lawful existing regulations;

2. to allow the occupancy and use by the Grantee, its successors, assigns, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe utilization thereof by the Army, so long as such occupancy and use does not compromise the ability of the Army, FORA or Grantor to use the easements for their intended purposes, as set forth herein;

3. that the easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

4. that any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;

5. that, unless otherwise provided, no interest granted shall give the Army any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and

6. to restore any easement area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the Grantee.

E. United States reserves mineral rights that United States owns presently or may at a future date be determined to own, with the right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the Property.

TO HAVE AND TO HOLD the Property unto the Grantee and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity, as follows:

IV. "AS IS, WHERE IS"

The Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee, except as required pursuant to applicable law or as otherwise stated herein, by the Grantee as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the United States to make any alterations, repairs, or additions, and the United States shall not be liable for any latent or patent defects in the Property. This section shall not affect the Army's responsibility under CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION herein.

V. FEDERAL FACILITIES AGREEMENT (FFA)

By accepting this Deed, the Grantee acknowledges that the Grantee has read the FFA, and recognizes that, should any conflict arise between the terms of the FFA and the terms of this Deed, the FFA will take precedence. Notwithstanding any other provisions of this Deed, the United States, FORA or the Grantor assumes no liability to the Grantee should implementation of the FFA interfere with the Grantee's use of the Property. Army shall give Grantee reasonable notice of its actions required by the FFA and Army shall, consistent with the FFA, and at no additional cost to the Army, endeavor to minimize the disruption of the Grantee's, its successors' and assigns' use of the Property.

The Grantee shall have no claim on account of any such interference against the United States, FORA or the Grantor or any officer, agent, employee, or contractor thereof.

VI. CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION

A. Pursuant to Section 120(h)(3) of CERCLA, as amended, 42 U.S.C. Section 9601 *et seq.*, the Finding of Suitability for Early Transfer ("FOSET") attached hereto and made a part hereof as Exhibit D, and an environmental baseline survey ("EBS") known as Community Environmental Response Facilitation Act report, which is referenced in the FOSET, sets forth the environmental condition of the Property. The FOSET sets forth the basis for the Grantor's determination that the Property is suitable for transfer. The Grantee is hereby made aware of the notifications contained in the EBS and the FOSET. The Grantee has inspected the Property and accepts the physical condition and current level of environmental hazards on the Property and deems the Property to be safe for the Grantee's intended use. The United States has represented that the Property is environmentally suitable for transfer to Grantee subject to the Army's obligations pursuant to CERCLA for the purposes identified in the Final Fort Ord Base Reuse Plan dated December 12, 1994, as amended on June 13, 1997, as approved by the Fort Ord Reuse Authority. If, after conveyance of the Property to Grantee, there is an actual or threatened release of a hazardous substance on the Property, or in the event that a hazardous substance is discovered on the Property after the date of the conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, Grantee or its successor or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to Army's activities, ownership, use, presence on, or occupation of the Property, or the activities of Army contractors and/or agents. Grantee, its successors and assigns, as consideration for the conveyance, agrees to release Army from any liability or responsibility for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, where such hazardous substance placed on the property by the Grantee, or its agents or contractors, after the conveyance, to the Grantee and not placed by the Grantor.

B. All response actions necessary to protect human health and the environment will be the responsibility of the Army, with respect to any hazardous substance remaining on the Property as a result of presence, storage, release, or disposal prior to the date of conveyance.

C. Any additional remedial action found to be necessary after the date of conveyance, with regard to such hazardous substances remaining on the Property which are either not currently known to the Army or do not now require remediation, shall be conducted by the Army. This covenant shall not apply to the extent that the person or entity to whom the Property is transferred is a potentially responsible party under CERCLA with respect to such hazardous substances.

D. Grantee covenants that the Army, its officers, agents, employees, contractors and subcontractors, in accordance with section 120(h) of CERCLA as amended, reserves a right of access to any and all portions of the Property for purposes of environmental investigation, remediation, or other corrective actions found to be necessary after the date of the conveyance of the Property. The Grantee agrees to cooperate with the Army in good faith to minimize any conflict between necessary environmental investigation and remediation activities and Grantee's or any sublessee operations. Any inspection, survey, investigation, or other response or remedial action will to the extent practicable, be

coordinated with representatives designated by Grantee. Pursuant to this reservation, the Army and its officers, agents, employees, contractors, subcontractors shall have the right (upon reasonable notice to the Grantee or the then owner and any authorized occupant of the Property) to enter upon the Property, and perform surveys, drillings, test pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to installation of monitoring and extraction wells, and other treatment facility.

E. The Army has covenanted that upon completion of any removal or remediation action that removes the risk giving rise to any restriction on future use or any limitation of activities contained in a deed or lease for the Property or in any other document relating to the Property, the Army, without any payment of funds by the United States, agrees to cooperate with the Grantee, its successors or assigns, in any application, permit, easement or effort to obtain approval from appropriate Federal, state or local authorities for the purpose of removing any such restriction or limitation, which the Grantee, its successors or assigns, shall seek to remove or eliminate.

F. The Army has recognized its obligation to hold harmless, defend, and indemnify the Grantee and any successor, assignee, transferee, lender, or lessee of the Grantee or its successors and assigns, as required and limited by Section 330 of the National Defense Authorization Act of 1993, as amended (Pub. L. No. 102-484), and to otherwise meet its obligations under Federal law.

G. Without the expressed written consent of the Army in each case first obtained, neither the Grantee, its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee, its successors or assigns, shall interfere with any response action being taken on the Property by or on behalf of the Army, or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located, over, through, or across any portion of the Property.

H. The Army has warranted that when all response actions to protect human health and the environment with respect to any substance remaining on the Property on the date of transfer have been taken, the Army shall execute and deliver to the Grantee an appropriate document containing a warranty that that all such response actions have been taken. The making of the warranty shall be considered to satisfy the requirements of CERCLA 120(h)(3)(a)(ii)(I).

VII. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee is hereby informed and does acknowledge that friable and nonfriable asbestos or asbestos-containing material ("ACM") have been found on the Property, as described in the EBS and referenced asbestos surveys. The interior asbestos does not present a "release or threat of release into the environment" as defined by CERCLA.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Army, FORA or Grantor assume no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, which arises from exposure after the date of transfer to the Grantee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to

contact of any kind whatsoever with asbestos on the Property, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of ACM, as identified in the FOSET or found within buildings or structures on the Property. The Grantee agrees to provide the Army and regulators with a copy of all final reports pertaining to the remediation of any or all ACM identified in the FOSET or found within buildings or structures on the Property.

C. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration ("OSHA") and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

D. The Grantee acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto

E. No warranties, either express or implied, are given with regard to the condition of the property, including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Grantee to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States, with respect to any asbestos hazards or concerns.

F. The Grantee further agrees to indemnify and hold harmless the United States, Grantor, their officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property which exposure occurs after this conveyance of the Property to the Grantee or any future remediation or abatement of asbestos or the need therefor. The Grantee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

VIII. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

A. The Grantee and its successors and assigns are hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, available for use by residents; and buildings visited regularly by the same child, six years of age or under, on at least

two difference days within any week, including day-care centers, preschools and kindergarten classrooms; but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint or lead-based paint hazards, and the condition of painted surfaces is contained in the *U. S. Army Environmental Hygiene Agency, Industrial Hygiene Survey No. 55-71-R25A-94 Lead-Based Paint Inspection in Military Housing Fort Ord, California, 1 November 1993 – 11 March 1994 (June 1994)*, the *Draft Report of Patton Park Lead Based Paint Risk Assessment, Fort Ord, California (December 2000)* and the EBS, which have been provided to the Grantee. All purchasers must also receive the federally approved pamphlet on lead poisoning prevention. Buildings constructed prior to 1978 are assumed to contain lead-based paint. Buildings constructed after 1977 are assumed to be free of lead-based paint. No other surveys or studies assessing the possible presence of lead-based paint in former or existing buildings on the Property were performed by the Army. The Grantee hereby acknowledges receipt of the information described in this Subparagraph.

C. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Deed.

D. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property, as defined in paragraph A, above, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

E. The Grantee shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Perform a Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment; (2) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 residential real property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and (8) Send a copy of the clearance documentation to the Grantor.

F. In complying with these requirements, the Grantee covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the property for residential purposes. The Grantee

covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

G. The Grantee further agrees to indemnify and hold harmless the Grantor, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes, after the date of transfer.

IX. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF PESTICIDES AND COVENANT

A. The Grantee is hereby informed and does acknowledge that pesticides may be present on the Property. To the best of the Army's, FORA's and Grantor's knowledge, the presence of pesticides does not currently pose a threat to human health or the environment, and the use and application of any pesticide product by the Army was in accordance with its intended purpose, and in accordance with CERCLA section 107 (i), which states:

> "No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*). Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance."

B. Upon request, the Army has agreed to furnish to the Grantee any and all records in its possession related to the use of the pesticides necessary for the continued compliance by the Grantee with applicable laws and regulations related to the use of pesticides.

C. The Grantee covenants and agrees that its continued possession, potential use and continued management of the Property, including any demolition of structures, will be in compliance with all applicable laws relating to hazardous substance/pesticides and hazardous wastes.

X. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF POLYCHLORINATED BIPHENYLS ("PCBs")

PCBs have been used widely as coolants and lubricants in transformers, capacitors, and other electrical equipment like fluorescent light ballasts. EPA considers PCBs to be probable cancer-causing chemicals in humans. PCB and PCB-contaminated items that will be disposed, must be stored in a hazardous waste storage facility. The Grantee is hereby informed that fluorescent light ballasts containing PCBs may be present on the Property. The PCB containing equipment does not currently pose a threat to human health or the environment. All PCB equipment is presently in full compliance with applicable laws and regulations. The Grantee agrees that its continued possession, use and management of any PCB containing equipment will be in compliance with all applicable laws relating to

PCBs and PCB containing equipment and that the United States, FORA and Grantor shall assume no liability for the future remediation of PCB contamination or damages for personal injury, illness or disability or death to the Grantee, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition or any activity causing or leading to contact of any kind whatsoever with PCB containing equipment after the date of transfer. The Grantee agrees to be responsible for any remediation of PCB containing equipment found to be necessary on the Property resulting from its use or possession thereof. This section is to serve as notice of the potential presence of PCBs on the Property. This notice is applicable to all buildings that contain fluorescent light ballasts.

XI. NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER

A. The groundwater beneath Parcels E4.1.1, E4.2, E4.3.1, and E17 is contaminated with volatile organic compounds ("VOCs"), primarily trichloroethene ("TCE"), associated with Operable Unit 2 ("OU2"). The maximum estimated concentration of TCE in the groundwater beneath the Property is 43.7 ug/L. The maximum estimated concentrations at or above aquifer cleanup levels ("ACLs") of chemicals of concern frequently detected in the groundwater plume associated with OU2 in June 1999 are listed in the table below, the quantity released of these compounds is unknown.

Chemical Name	Regulatory Synonym	CASRN*	RCRA Waste Number	Concentrations (ug/l)	ACL
1,1-Dichloroethane	Ethane, 1,1-dichloro	75343	U076	ND	5.0
1,2-Dichloroethane	Ethane, 1,2-dichloro	107062	U077	ND	0.5
Cis-1,2-Dichloroethene	Ethene, 1,2-dichloro(E)	156605	U079	19.2	6.0
1,2-Dichloropropane	Propane, 1,2-dichloro	78875	U083	ND	1.0
Chloroform	Methane, trichloro	67663	U044	3.47	2.0
Tetrachloroethene	Ethene, tetrachloro	127184	U210	12.7	3.0
Trichloroethene	Ethene, trichloro	79016	U228	43.7	5.0
Vinyl chloride	Ethene, chloro	75014	U043	0.762	0.1

B. This notice is provided pursuant to CERCLA 120(h)(1) and (3). A pump-and-treat groundwater remediation system for OU2 is in place and shown to be operating effectively. Drilling of water wells or use or access to groundwater beneath the Property is prohibited. A Covenant to Restrict Use of Property ("CRUP") within the "Groundwater Protection Zone" has been established between the United States Army, the State of California ("DTSC") and the California Regional Water Quality Control Board, Central Coast Region.

C. Without the express written consent of the Army in each case first obtained, neither the Grantee, its successors of assigns, nor any other person or entity acting for or on behalf of the Grantee, its successors of assigns, shall interfere with any response action being taken on the Property by or on behalf of the Army, or interrupt, relocate, or interfere with any remediation system now or in the future

located on, over, through, or across any portion of the Property.

D. The Army has reserved a nonexclusive easement to allow continued access for itself and the regulatory agencies to permit necessary groundwater monitoring at wells located on the Property and the installation of new treatment or monitoring wells if required for the pump and treat operations. Furthermore, tampering with the groundwater monitoring wells is prohibited.

XII. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

Based on a review of existing records and available information, none of the buildings or land proposed for transfer is known to contain unexploded ordnance. In the event the Grantee, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify the local Police Department and the Directorate of Law Enforcement at the Presidio of Monterey and competent Army or Army designated explosive ordnance personnel will be dispatched promptly to dispose of such ordnance at no expense to the Grantee.

XIII. ENDANGERED SPECIES

The Grantee, its successors or assigns shall comply with the requirements, if any and if applicable, of the Fort Ord Installation-Wide Multi-species Habitat Management Plan ("HMP") for Former Fort Ord, California.

A. The Property is within HMP Development Areas. No resource conservation requirements are associated with the HMP for these parcels. However, small pockets of habitat may be preserved within and around the Property.

B. The Biological Opinion identifies sensitive biological resources that may be salvaged for use in restoration activities within reserve areas, and allows for development of the Property.

C. The HMP does not exempt the Grantee from complying with environmental regulations enforced by federal, state, or local agencies. These regulations could include obtaining the Endangered Species Act ("ESA") (16 U.S.C. sections 1531-1544 *et seq.*) Section 7 or Section 10(a) permits from the U.S. Fish and Wildlife Service ("USFWS"); complying with prohibitions against take of listed animals under ESA Section 9, complying with prohibitions against the removal of listed plants occurring on federal lands or the destruction of listed plants in violation of any state laws; complying with measures for conservation of state-listed threatened and endangered species and other special-status species recognized by California Department of Fish and Game ("DFG") under the California ESA, or California Environmental Quality Act ("CEQA"); and , complying with local land use regulations and restrictions.

D. The HMP serves as a management plan for both listed and candidate species, and is a prelisting agreement between the USFWS and the local jurisdiction for candidate species that may need to be listed because of circumstances occurring outside the area covered by the HMP.

E. Implementation of the HMP would be considered suitable mitigation for impacts to HMP species within HMP prevalent areas and would facilitate the USFWS procedures to authorize

incidental take of these species by participating entities as required under ESA Section 10. No further mitigation will be required to allow development on the Property unless species other than the HMP target species are proposed for listing or are listed.

F. The HMP does not authorize incidental take of any species listed as threatened or endangered under the ESA by entities acquiring land at the former Fort Ord. The USFWS has recommended that all non federal entities acquiring land at former Fort Ord apply for ESA Section 10(a)(1)(B) incidental take permits for the species covered in the HMP. The definition of "take" under the ESA includes to harass, harm, hunt, shoot, wound, pursue, kill, trap, capture, or collect, or attempt to engage in any such conduct. Although the USFWS will not require further mitigation from entities that are in conformance with the HMP, those entities without incidental take authorization would be in violation of the ESA if any of their actions resulted in the take of a listed animal species. To apply for a Section 10(a)(1)(B) incidental take permit, an entity must submit an application form (Form 3-200), a complete description of the activity sought to be authorized, the common and scientific names of the species sought to be covered by the permit, and a conservation plan (50 CFR 17.22[b]).

G. FORA and Grantor have signed the HMP dated April 1, 1997 and the Grantee acknowledges that it will cooperate with adjacent property owners in implementing mitigation requirements identified in the HMP for adjacent sensitive habitat areas.

XIV. AIR NAVIGATION RESERVATION AND RESTRICTIONS

The Monterey Airport and the former Fritzsche Airfield now known as the Marina Municipal Airport are in close proximity of the Property. Accordingly, in coordination with the Federal Aviation Administration, the Grantee, covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property wherein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

XV. ENFORCEMENT AND NOTICE REQUIREMENT

A. The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, the local governments, FORA, and the lands retained by the Grantor and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of California, the local governments, and by the Grantee, and its successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this deed against the Grantee, or its successors and assigns, shall only apply with respect to the Property conveyed herein and held by such Grantee, its successors or assigns, and only with respect to matters occurring during the period of time such Grantee, its successors or assigns, owned or occupied such Property or

any portion thereof.

B. The Grantee, its successors or assigns, shall neither transfer the Property, nor any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion, to the extent applicable to the Property or any portion thereof, of the environmental protection provisions contained in this Deed: Exclusions and Reservations, Federal Facilities Agreement (FFA); CERCLA Covenants, Notice, and Environmental Remediation; Notice of the Presence of Asbestos and Covenant; Notice of the Presence of Lead-Based Paint; Notice of the Potential for the Presence of Pesticides and Covenant; Notice of the Potential for the Presence of Polychlorinated Biphenyls (PCBs); Notice of the Presence of Contaminated Groundwater; Ordnance and Explosives; Endangered Species, and Air Navigation Reservation and Restrictions, Enforcement and Notice Requirement, and shall require the inclusion, to the extent applicable, of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

C. The obligations imposed in this Paragraph upon the successors or assigns of Grantee shall only extend to the property conveyed to any such successor or assign.

XVI. NOTICE OF NON-DISCRIMINATION

With respect to activities related to the Property, the Grantee covenants for itself, its successors and assigns, that the Grantee, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. Section 794). The Army shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

XVII. ANTI-DEFICIENCY ACT STATEMENT

The Army's obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the Army in violation of the Anti-Deficiency Act.

XVIII. GENERAL PROVISIONS

A. LIBERAL CONSTRUCTION. Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. SEVERABILITY. If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to

be invalid, as the case may be, shall not be affected thereby.

C. NO FORFEITURE. Nothing contained herein will result in a forfeiture or reversion of title in any respect.

D.. CAPTIONS. The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

E. RIGHT TO PERFORM. Any right which is exercisable by the Grantee, and its successors and assigns, to perform under this Deed may also be performed, in the event of default by the Grantee, or its successors and assigns, by a lender of the Grantee and its successors and assigns.

XIX. THE CONDITIONS, RESTRICTIONS, AND COVENANTS

The conditions, restrictions, and covenants set forth in this deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the Grantee verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the United States or Army, and all references in this deed to United States or Army shall include their successor in interest. The United States may agree to waive, eliminate, or reduce the obligations contained in the covenants, **PROVIDED, HOWEVER**, that the failure of the United States or its successor to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

XX. LIST OF EXHIBITS

The following listed Exhibits are made a part of this Deed:

Exhibit A: Legal Descriptions of the Property

IN WITNESS WHEREOF, the Grantor, the **REDEVELOPMENT AGENCY OF THE CITY OF MARINA**, has caused these presents to be executed on this _____ day of _____, 2002.

REDEVELOPMENT AGENCY OF THE CITY OF MARINA

By_____

James E. Perrine, Chair

STATE OF CALIFORNIA)
)ss
COUNTY OF MONTEREY)

On _____ before me, _____, a Notary Public, personally appeared James E. Perrine personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed this instrument.

WITNESS my hand and official seal.

_____

Signature [SEAL]

ACCEPTANCE:

The CYPRESS MARINA HEIGHTS, L.P., GRANTEE, hereby accepts this Quitclaim Deed for itself, its successors and assigns, subject to all of the conditions, reservations, restrictions and terms contained therein.

IN WITNESS WHEREOF, the GRANTEE, the CYPRESS MARINA HEIGHTS, L.P., has caused these presents to be executed this _____ day of _____ 2002.

By_____
(Name and Title)

STATE OF CALIFORNIA)
)ss
COUNTY OF MONTEREY)

On _____ before me, _____, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed this instrument.

WITNESS my hand and official seal.

_____

Signature [SEAL]

EXHIBIT I

List of Pre-Approved Builders

John Laing Homes

Standard Pacific Homes

William Lyon Homes

Monterey Development Group

EXHIBIT J

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____

Attention: _____

(Space Above For Recorder's Use)

ASSIGNMENT AND ASSUMPTION AGREEMENT

[LOT OR LOTS _____]

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into as of _____, by and between CYPRESS MARINA HEIGHTS, L.P., a California limited partnership ("Assignor") and _____, a _____ ("Assignee"), with reference to the following facts and circumstances:

RECITALS:

A. Assignor is the Developer under that certain Option Agreement dated _____, 2002 (the "Option Agreement") between and among Assignor, the Redevelopment Agency of the City of Marina, a public body, corporate and politic (the "Agency") and the City of Marina, a California municipal corporation (the "City"). A true and correct copy of the Memorandum of Option Agreement is attached as Exhibit A hereto and incorporated herein by this reference.

B. The Option Agreement grants to Assignor an option to acquire certain real property within the Fort Ord Redevelopment Project Area No. 3 in the City of Marina, and more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the "Marina Heights Project").

C. Assignor has exercised its option to acquire the Marina Heights Project and the Close of Escrow has occurred in accordance with the Option Agreement.

D. Assignor and Assignee have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____ (the "Purchase Agreement") pursuant to which Assignor has agreed to sell to Assignee and Assignee has agreed to purchase from Assignor Lots _____ within the Marina Heights Project, as more particularly

described in Exhibit C attached hereto and incorporated herein by this reference (the "Acquired Lots").

E. Section 8.1.2.d of the Option Agreement allows Assignor to transfer or sell lots within the Marina Heights Project to certain transferees, provided that the transferee executes this Agreement and complies with certain terms, conditions, covenants and agreements which are described in Exhibit C attached hereto (the "Schedule of Rights Assigned to and Obligation Assumed by a Transferee under the Marina Heights Option Agreement," which is sometimes hereinafter referred to as the "Schedule").

F. Assignor desires to transfer and Assignee desires to assume the rights and obligations described in the Schedule applicable to the Acquired Lots in connection with the purchase and sale of the Acquired Lots.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

AGREEMENT:

1. Incorporation of Recitals. The hereinabove Recitals are true and correct and are hereby incorporated into this Agreement by reference.

2. Defined Terms. Capitalized terms that are not otherwise defined herein shall have the meanings assigned to them in the Memorandum of Option Agreement or Exhibit C.

3. Incorporation of Schedule. All of the terms, conditions and covenants set forth in the Schedule are hereby incorporated into this Agreement by reference.

4. Assignment. Subject to the terms and conditions set forth in this Agreement, Assignor assigns, transfers, conveys and sets over unto Assignee all of the rights of the Developer as set forth in Exhibit C which inure to the benefit of or pertain to the Acquired Lots.

5. Assumption. Except as expressly set forth in Section 6 hereinbelow, Assignee expressly assumes all of the obligations of the Developer described in Exhibit C that relate to, affect or pertain to the Acquired Lots.

6. Obligations Not Assumed. Assignor and Assignee acknowledge and agree that the following obligations of the Developer under the Option Agreement shall not be assumed by Assignee under this Agreement, and such obligations shall remain the obligations of Assignor (the "Retained Obligations"):

a. the Development of the Infrastructure Improvements: and

b. the Profit Participation Payment;

7. Covenant against Discrimination and Segregation. Assignee covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Acquired Lots nor shall Assignee or any person claiming under or through Assignee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees of the land.

8. Indemnity in Favor of Assignor. From and after the execution of this Agreement, Assignee hereby agrees to indemnify, defend, protect, and hold harmless Assignor and any and all representatives of Assignor from and against all losses and liabilities related directly or indirectly to, or arising out of or in connection with: (i) any Developer Event of Default caused by the failure of Assignee to perform its obligations described in the Memorandum of Option Agreement or Exhibit C (ii) any of Assignee's activities on the Acquired Lots (or the activities of the agents, employees, representatives, guests, or independent contractors of Assignee on the Acquired Lots), or (iii) any act or omission by Assignee related to the performance of its obligations described in the Memorandum of Option Agreement or Exhibit C, or which may otherwise arise from the use, possession or disposition of the Acquired Lots by Assignee regardless of whether such losses and liabilities shall accrue or be discovered before or after termination or expiration of this Agreement, except to the extent such losses or liabilities are caused solely by Assignor.

9. Notices, Demands and Communications Between the Parties. All notices, requests, demands and other communications given or required to be given hereunder shall be in writing and personally delivered or sent by United States, first-class, certified or registered mail, return receipt requested, or sent by nationally recognized courier service, such as Federal Express. The parties may deliver notice to each other by electronically transmitted facsimile copies ("FAX"), provided that such FAX notice is followed within forty-eight (48) hours by any type of notice otherwise provided for in this paragraph. Any notice shall be duly addressed to the parties as follows:

If to Assignor:

Cypress Marina Heights L.P.
2716 Ocean Park Blvd., Suite 3025
Santa Monica, CA 90405
Attn: Charles R. Lande
Telephone: (310) 314-2590
Telecopy: (310) 314-2592

With a Copy To:

Cypress Marina Partners L.P.
c/o Colony Capital
1999 Avenue of the Stars, Suite 1200
Los Angeles, CA 90067
Telephone: (310) 282-8820
Telecopy: (310) 282-8808

With a Copy To:

Allen Matkins Leck Gamble & Mallory, LLP
515 South Figueroa Street
Seventh Floor
Los Angeles, CA 90071-3398
Attn: Michael L. Matkins, Esq.
Telephone: (213) 622-5555
Telecopy: (213) 620-8816

And To:

Allen Matkins Leck Gamble & Mallory, LLP
515 South Figueroa Street
Seventh Floor
Los Angeles, CA 90071-3398
Attn: Sonia J. Ransom, Esq.
Telephone: (213) 622-5555
Telecopy: (213) 620-8816

If to Assignee:

_____
_____
_____
Attn: _____
Telephone: (___) _____
Telecopy: (___) _____

With a Copy to:

_____
_____
_____
Attn: _____
Telephone: (___) _____
Telecopy: (___) _____

And to:

Redevelopment Agency Executive Director
City of Marina
211 Hillcrest
Marina, CA 93933
Attn: Anthony Altfeld
Telephone: (831) 883-3672
Telecopy: (831) 883-3675

With a Copy to:

Goldfarb & Lipman
1300 Clay Street, 9th Floor
Oakland, CA 94612
Attn: Karen Tiedemann, Esq.
Telephone: (510) 836-6336
Telecopy: (510) 836-1035

10. Entire Agreement, Waivers and Amendments. This Agreement is executed in duplicate counterpart originals, each of which is deemed to be an original. This Agreement, together with the Schedule and all attachments and exhibits hereto, and the Purchase Agreement constitutes the entire understanding and agreement of the parties hereto. This Agreement and the Purchase Agreement, collectively, integrate all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties, whether written or oral, with respect to all or any part of the subject matter hereof. Each party acknowledges and represents that it is relying on no representations by the other party other than those expressly set forth, or referred to, in this Agreement. Any waiver, extension or modification of any provision of this Agreement must be in writing and signed by the party to be charged.

11. Successors and Assigns. The terms, obligations and benefits of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

12. Relationship. The relationship of the parties under this Agreement is purely that of independent parties acting at arms' length in good faith for their mutual benefit, and no relationship of partnership, joint venture, co-ownership, principal and agent or otherwise is intended or shall be construed or inferred.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

"ASSIGNOR":

CYPRESS MARINA HEIGHTS, L.P.,
a California limited partnership

By: Chadmar/Watt Marina Partners LLC, a California limited liability, its General Partner

By: Chadmar Marina Partners LLC, a California limited liability company, Manager

By: _____
Name: Charles R. Lande
Title: Manager

"ASSIGNEE":

_____,
a _____

By: _____
Name: _____
Title: _____

SCHEDULE OF RIGHTS ASSIGNED TO AND OBLIGATIONS ASSUMED BY A TRANSFEREE UNDER THE MARINA HEIGHTS OPTION AGREEMENT

The following provisions set forth the rights assigned to and obligations assumed by Assignee under the Assignment and Assumption Agreement. Capitalized terms that are not otherwise defined herein shall have the meanings assigned to them in the Assignment and Assumption Agreement.

I. DEFINITIONS.

"**Agency**" means the Redevelopment Agency of the City of Marina.

"**Assignee Event of Default**" shall have the meaning assigned in Section VII.A. of this Schedule.

"**Assignment and Assumption Agreement**" means the Agreement to which this Schedule is attached.

"**CEQA**" means the California Environmental Quality Act, as amended.

"**Certificate of Completion**" means a certificate in substantially the form attached hereto as **Attachment 1**, to be provided by the Agency upon satisfactory completion of the Improvements on the Assigned Lots.

"**City**" means the City of Marina, a municipal corporation.

"**CPI Increase**" means any increase in the "**Consumer Price Index**" (as defined below) for the twelve (12) month period prior to each January 1st during the term of the Option Agreement (the "**Adjustment Date**"). As used herein, the term "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose statistical area (CPI-U) (1982-84 = 100) (the "**Index**") published by the United States Department of Labor, Bureau of Labor Statistics. To determine the CPI Increase, the Index most recently published and available to the public on the Adjustment Date (the "**Adjustment Index**") shall be compared with the Index used as the Adjustment Index on the prior Adjustment Date (or in the case of the first adjustment, the Index most recently published prior to the date of this Agreement) (the "**Prior Index**"). If the Adjustment Index has increased over the Prior Index, the CPI Increase, expressed as a percentage or as a whole number and decimal fraction (carried to the third decimal place and rounded up if the third decimal place is .005 or greater and rounded down if the third decimal place is less than .005), shall be determined by dividing the Adjustment Index by the Prior Index. In the event the Index is changed so that the base year differs from that used for the Prior Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. In the event the Index is discontinued or revised during the term of this Agreement, such other governmental index or computation with which it is replaced shall be used.

"**Development Agreement**" means a statutory development agreement prepared in accordance with Government Code Section 65864 et seq.

"**Development Costs**" means all third party out-of-pocket costs and expenses paid by the Assignee to acquire, own, hold or develop all or any part of the Acquired Lots, which shall include reasonable development fees, management fees or other amounts paid by Assignee to affiliates of Assignee for services rendered in connection with the Acquired Lots. Development Costs shall exclude (i) the repayment of the principal and interest of any loan obtained by the Assignee; and, (ii) any distributions, preferred return or other capital return to the members of the Assignee.

"**FORA**" means the Fort Ord Reuse Authority, a California public corporation, created pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code.

"**FORA Agreement**" means that certain Memorandum of Agreement between the United States of America, acting by and through the Secretary of Army, United States Department of the Army, and FORA for the sale of portions of the former Fort Ord located in Monterey County, California, dated as of June 20, 2000.

"**FORA Base Reuse Plan**" means the Fort Ord Reuse Plan developed and adopted June 19, 1997 pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code.

"**FORA Impact Fee**" shall have the meaning assigned in Section III.B. of this Schedule.

"**General Plan**" means the City of Marina General Plan dated July 2001.

"**Governmental Authority Event of Default**" shall have the meaning assigned in Section X.B. of this Schedule.

"**Infrastructure**" means on-site and off-site improvements required for construction of the Marina Heights Project, including but not limited to, streets, roads, drainage, sanitary sewer, water, electrical, communication and other utilities.

"**Permits and Approvals**" means all planning, zoning, land use, subdivision permits and approvals and any other discretionary permits, certifications and approvals, whether granted conditionally or unconditionally, including compliance with CEQA, which: (1) are subject to determination or review by any councils, boards, commissions or hearing officers; and (2) are governed by the applicable general plan, zoning ordinances, zoning maps, subdivision ordinances, or federal, state and local laws and regulations; and (3) must be obtained in order to proceed with the Development of the Acquired Lots. The term "Permits and Approvals" shall not include applying for or receiving any grading permits, demolition permits, building permits, sewer permits or other similar permits or approvals to perform actual physical work on the Acquired Lots.

"**Proposed Transfer**" shall have the meaning assigned in Section V.B. of this Schedule.

Recession" means an economic recession as determined by the National Bureau of Economic Research, or any successor organization charged with the duty of determining the state of the

United States economy. "**Redevelopment Plan**" means the Marina Redevelopment Agency Redevelopment Plan, Redevelopment Project Area Number 3, Former Fort Ord Redevelopment Project dated April 1999, as amended from time to time.

"**Resale Restriction Agreement**" means a resale restriction agreement to encumber a Bridge Home in substantially the form is attached to this Schedule as **Attachment 2**.

"**Residential Improvements**" means the improvements on the Acquired Lots, excluding Infrastructure.

"**Schedule of Benchmarks**" means a timeline for the Assignee's obligations under the Assignment and Assumption Agreement which have been agreed upon by Assignor and Assignee and approved by the Agency, and attached to this Schedule as **Attachment 3**.

"**Transfer Documents**" shall have the meaning assigned in Section V.B. of this Schedule.

"**Unavoidable Delays**" shall mean delays beyond the control of the party claiming the same and are limited to the following: (a) delay attributable to acts of God, strikes or labor disputes; (b) delay attributable to the actions or inaction of any governmental agency other than the City or the Agency that unreasonably delays development of the Acquired Lots; (c) delays of the City in processing the Permits and Approvals beyond the periods of time established therefor in the Development Agreement; (d) delay attributable to inclement weather or earthquake resulting in suspension of Acquired Lots work for safety purposes, i.e., heavy rainfall; (e) delay attributable to inability to procure or a general shortage of labor, equipment, materials or supplies in the open market, or failure of transportation (but not attributable to a mere increase in price); (f) delay caused by acts of a public enemy, terrorism, insurrections, riots, mob violence, sabotage, and malicious mischief, casualty or earthquake causing substantial damage to previously constructed improvements; or (g) delay in performance of any term, covenant, condition or obligation under this Assignment and Assumption Agreement by one party as a result of default or delays of any other party whether in rendering approvals or otherwise. In each case (a) through (g) aforesaid, "Unavoidable Delays" shall include the consequential delays resulting from any such cause or causes. For the purpose of this definition, a cause shall be beyond the control of the party whose performance would otherwise be obligated only if such cause would prevent or hinder the performance of an obligation by any reasonable person similarly situated and shall not apply to causes peculiar to the party claiming the benefit of an Unavoidable Delay (such as the failure to order materials in a timely fashion).

LIST OF ATTACHMENTS

(a) "Attachment 1" means the form of Certificate of Completion.

(b) "Attachment 2" means the form of Resale Restriction Agreement.

(c) "Attachment 3" means the Schedule of Benchmarks.

(d) "Attachment 4" means the Schedule of City Impact Fees.

II. DEVELOPMENT/CONSTRUCTION OF IMPROVEMENTS.

A. Development of the Acquired Lots. Assignee intends to proceed with the development of the Acquired Lots in accordance with the Schedule of Benchmarks and the Permits and Approvals. Subject to the provisions of this Schedule, Assignee has the right to proceed with the development of the Acquired Lots as Assignee deems appropriate within the exercise of its sole and subjective business judgment in accordance with the Permits and Approvals, the Schedule of Benchmarks and the Assignment and Assumption Agreement.

B. Schedule of Benchmarks. Assignee shall begin development of the Acquired Lots and proceed with construction within the times specified in the Schedule of Benchmarks or such reasonable extension of said dates as may be granted by the Agency.

C. Sale of Bridge Homes. **[If none are required, this section will be deleted.]**

_____ (__) single family homes to be developed on the Acquired Lots shall be sold for an average purchase price of Two Hundred and Fifty Five Thousand Dollars ($255,000) per home (the "**Bridge Home Purchase Price**"), as such price may be increased annually beginning on January 1, 2004 by the CPI Increase (each such home shall be a "**Bridge Home**"). The Bridge Homes shall be sold subject to the Resale Restriction Agreement.

D. Certificate of Completion.

(i) After completion of construction of a portion of the Improvements on the Acquired Lots in compliance with the Permits and Approvals and the Assignment and Assumption Agreement, the Agency shall, promptly following written request therefor, furnish a Certificate of Completion for that portion of the Improvements. The Agency shall not unreasonably withhold the Certificate of Completion. Such Certificate of Completion shall be, and shall so state that it is conclusive determination of satisfactory completion of Assignee's construction obligations pursuant to the Assignment and Assumption Agreement for that portion of the Improvements.

(ii) If the Agency refuses or fails to furnish a Certificate of Completion after written request therefor, the Agency shall, within fourteen (14) days after delivery of the written request, provide Assignee with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action Assignee must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or material for landscaping, the Agency will issue its Certificate of Completion upon the posting by Assignee with the Agency of a bond or other collateral in the form acceptable to the Agency and in an amount representing one hundred twenty-five percent (125%) of the full value of the work not yet completed.

E. Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Assignee to any holder of a mortgage, trust deed or other security instrument. Such Certificate of Completion shall not be construed as a Notice of Completion as described in California Civil Code Section 3093.

III. FEES.

A. FORA Impact Fees. Assignee shall pay to FORA all impact and mitigation fees adopted by FORA with respect to the use and development of former Fort Ord lands that are applicable to the development of the Acquired Lots, which fees for all of the Improvements as of July 1, 2002 are Thirty-Five Thousand Three Hundred Nineteen Dollars ($35,319.00) per residential unit (the "**FORA Impact Fee**"), as such Fee may be increased annually by FORA. Such FORA Impact Fee shall be payable by Assignee in proportional increments in connection with the issuance of building permits by the City for residential units on the Acquired Lots which shall completely satisfy any obligation of Assignee to pay a pro rata portion of the special tax lien levied within the FORA Basewide Community Facilities District.

B. City Impact Fees. Assignee shall pay to the City all City-imposed impact and mitigation fees with respect to the development of the Acquired Lots. Such fees are set forth on Attachment 4 which is attached hereto and incorporated herein by this reference. Such fees shall be payable by Assignee to the City in proportional increments at the time of the issuance of building permits by the City for residential units on the Acquired Lots.

IV. LEGAL COMPLIANCE REQUIREMENTS.

A. Compliance with Laws. The Acquired Lots shall be developed in compliance with all applicable laws or regulations. In performing the obligations described in the Assignment and Assumption Agreement, Assignee is an independent contractor and not the agent of the City or the Agency. Neither the City nor the Agency shall have any responsibility for payment to any contractor or supplier of Assignee.

B. Local Hiring Requirements. Assignee shall follow the guidelines of the local hiring requirement of FORA and the City.

C. Obligation to Refrain from Discrimination. Assignee covenants and agrees for itself, its successors, and assigns, and for every successor in interest to the Acquired Lots or any part thereof, that, other than as permitted by law, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, age, handicap, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Acquired Lots.

D. Anti-Discrimination During Construction. Assignee agrees that it shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin in the Development of the Acquired Lots.

E. Nondiscrimination. Assignee shall refrain from restricting the rental, sale or lease of the Acquired Lots or any portion thereof, on the basis of sex, age, handicap, marital status, race, color religion, creed, ancestry or national origin of any person.

F. Mandatory Language in All Subsequent Deeds, Leases and Real Property Conveyance Contracts. All deeds, leases or other real property conveyance contracts entered

into by Assignee on or after the date of execution of the Assignment and Assumption Agreement as to any portion of the Acquired Lots or the Improvements shall contain the following language:

(i) In Deeds:

"Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees in the property herein conveyed. The foregoing covenant shall run with the land."

(ii) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that his lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, or employees in the land herein leased."

(iii) In Real Property Conveyance Contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees of the land."

G. Effect and Duration of Covenants. Following Development of the Acquired Lots in accordance with the terms of the Assignment and Assumption Agreement and after issuance of the Certificate of Completion for the Improvements, each of the rights, duties and obligations of Assignee, the City and the Agency shall be deemed to have been satisfied under the Assignment and Assumption Agreement, and Assignee and its successors in interest to the Acquired Lots shall have no further obligations with respect to the matters provided for in the Assignment and Assumption Agreement with the exception of the following, each of which shall be set forth in particularity in any document of transfer or conveyance by Assignee:

(i) The FORA Base Reuse Plan, which shall remain in effect until its expiration;

(ii) The anti-discrimination and non-segregation requirements set forth hereinabove which shall remain in effect in perpetuity; and

(iii) The requirements regarding the Bridge Homes or any other restricted housing, if applicable, as set forth in the Assignment and Assumption Agreement and the Resale Restriction Agreement.

V. SUBSEQUENT TRANSFERS.

The Acquired Lots may not be transferred, in whole or in part, without the written consent of the Agency and the Assignor, which consent shall not be unreasonably withheld.

A. Permitted Transfers. Notwithstanding the foregoing, the Agency and the Assignor have each agreed that its prior written approval shall not be required for the following Transfers (each, a "**Permitted Transfer**"):

(i) the assignment to any trustee by way of a deed of trust in favor of holder or beneficiary under such deed of trust, or the absolute or collateral assignment, pledge, grant or transfer to such holder, of the Assignee's right, title and interest in, to and under the Assignment and Assumption Agreement for the purpose of creating an encumbrance on or security interest in such interest pursuant to Section VI of this Schedule, or to or by any such holder or other purchaser in connection with its acquisition of the Acquired Lots by foreclosure or deed in lieu of foreclosure and disposition of the Acquired Lots; or

(ii) the transfer, sale or rental to the general public of residential units constructed on the Acquired Lots; or

(iii) the granting of easements or permits to facilitate the development of the Acquired Lots; or

(iv) any mortgage or deed of trust encumbering the Acquired Lots given by Assignee in accordance with the Assignment and Assumption Agreement.

B. Transfer Consent Procedures. At any time Assignee desires to effect a Transfer requiring the consent of the Agency and the Assignor under this Assignment and Assumption Agreement (a "**Proposed Transfer**"), Assignee shall request consent from the Agency and the Assignor in writing and shall submit to the Agency and the Assignor all proposed agreements and documents (collectively, the "**Transfer Documents**") memorializing, facilitating, and evidencing the Proposed Transfer. The Agency agrees to notify Assignee in writing of its decision on Assignee's request for consent to such Proposed Transfer within thirty (30) days after Assignee's submittal of the Transfer Documents. The Agency's failure to notify Assignee of its disapproval of the Proposed Transfer within such time period shall be deemed to constitute the Agency's disapproval of such Proposed Transfer. The Assignor agrees to notify Assignee in writing of its decision of Assignee's request for consent to such Proposed Transfer within thirty (30) days after Assignee's submittal of the Transfer Documents. The Assignor's failure to notify

Assignee of its approval of the Proposed Transfer within such time period shall be deemed to constitute the Assignor's disapproval of such Proposed Transfer. In the event the Agency and the Assignor each consents to a Proposed Transfer pursuant to this Section V.B., then such Transfer shall not be effective unless and until the Agency and the Assignor each receives a copy of a legally binding and executed Assignment and Assumption Agreement in recordable form which shall run with the land, in substantially the form of the Assignment and Assumption Agreement or a legally binding purchase and sale agreement in form and content acceptable to the Agency and the Assignor. Upon the effectiveness of any Transfer, Assignee shall be fully relieved and released of each of its duties and obligations under the Assignment and Assumption Agreement with respect to the portion of the Acquired Lots transferred subsequent to the effective date of such Transfer.

C. Successive Transfer. The provisions of Section V.B. hereof shall apply to each Proposed Transfer. In the event that any of Assignee's obligations under this Assignment and Assumption Agreement are to be assumed by a transferee, such obligations shall be set out in substantially the form of this Assignment and Assumption Agreement or a legally binding purchase and sale agreement, as applicable.

D. Termination of Restrictions on Transfer. The restrictions set forth in this Section V shall terminate upon the issuance of a Certificate of Completion with respect to the portion of the Improvements constructed.

VI. MORTGAGEE PROTECTION.

A. Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. Assignee's breach of any of the covenants or restrictions contained in the Assignment and Assumption Agreement shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value as to the Acquired Lots, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to the Option Agreement or the Assignment and Assumption Agreement, but, the terms, conditions, covenants, restrictions and reservations of the Assignment shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Acquired Lots, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

B. Whenever the City or the Agency shall deliver a notice or demand to Assignee with respect to any breach or default by Assignee under the Assignment and Assumption Agreement, the City or Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any first mortgage or deed of trust who has previously made a written request to the City or Agency for special notice hereunder. No notice of default to Assignee shall be effective against any such holder unless given to such holder as aforesaid. Such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option within ninety (90) days after receipt of the notice, to cure or remedy any such monetary default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession, such holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within a reasonable period of time as necessary to remedy or cure such default of Assignee, and shall comply with all other obligations of

Assignee under the Assignment and Assumption Agreement. Any such holder properly completing such improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency. Nothing contained herein shall be deemed to permit or authorize such holder to undertake or continue the Development of the Acquired Lots (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed Assignee's obligations under the Assignment and Assumption Agreement by written agreement satisfactory to the City and the Agency. The holder, in that event, must agree to fulfill, in the manner provided in the Assignment and Assumption Agreement, the obligations under the Assignment and Assumption Agreement to which the lien or title of such holder relates and submit evidence satisfactory to the City and the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements in accordance herewith shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency with respect to the Improvements on the Acquired Lots.

C. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development. Any reference herein to the "holder" of a mortgage or deed of trust shall be deemed also to refer to a lessor under a sale and leaseback.

D. Noninterference with Holders. The provisions of the Assignment and Assumption Agreement do not limit the right of holders to foreclose or otherwise enforce any mortgage, deed of trust, or other security instrument encumbering the Acquired Lots and the Improvements, or the right of holders to pursue any remedies for the enforcement of any pledge or lien encumbering the Acquired Lots; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance, or sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns, and the Acquired Lots, shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants of the Assignment and Assumption Agreement and all documents and instruments recorded pursuant to the Option Agreement.

VII. EVENTS OF DEFAULT/REMEDIES.

A. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute an "**Assignee Event of Default**":

(i) Assignee conveys the Acquired Lots except as permitted under the Assignment and Assumption Agreement.

(ii) Assignee breaches any material provision of the Assignment and Assumption Agreement.

(iii) Assignee violates the Assignment and Assumption Agreement with respect to the Bridge Homes, if applicable.

(iv) Assignee breaches any material provision of the Development Agreement or any other agreement with the City or the Agency related to the Acquired Lots.

(v) Subject to any Unavoidable Delays, Assignee willfully and knowingly refuses to proceed with the development of the Acquired Lots within the times specified in the Schedule of Benchmarks.

B. Assignor Remedies. Upon the happening of any event described above, the Assignor shall first notify in writing Assignee of Assignee's purported breach or failure. Assignee shall have thirty (30) days from receipt of such notice to cure such breach or failure or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such to completion which shall, in any event, not exceed ninety (90) days from the date of receipt of the notice to cure, unless extended by the Agency. If Assignee does not cure within such period, then the event shall constitute an "Assignee Event of Default" and the Assignor shall be afforded all of the remedies available to the Assignor at law or in equity.

C. Agency Remedies. Upon the happening of any event described in Section VII.A(v) above, the Agency shall first notify in writing Assignee of the Assignee's purported breach or failure. Assignee shall have thirty (30) days from receipt of such notice to cure such breach or failure or if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such to completion which shall, in any event, not exceed one hundred eighty (180) days from the date of receipt of the notice to cure. If Assignee does not cure within such period, then the Agency shall have, subject to the limitations set forth below, an option to repurchase (the "**Repurchase Option**") the Acquired Lots or that portion of the Acquired Lots upon which development has not commenced or for which a Certificate of Completion has not been issued (the "**Parcel to be Repurchased**"). Subject to Section VII.C(i) below, the Repurchase Option must be exercised by the Agency within six (6) months of the date the Agency notifies Assignee in writing that it is in default hereunder.

(i) Repurchase Price. The purchase price for the Parcel to be Repurchased (the "**Repurchase Price**"), which shall be paid in cash, shall be the lesser of (a) the prorated purchase price paid by Assignee for the Parcel to be Repurchased plus the prorated Development Costs or (b) the fair market value of the Parcel to be Repurchased. In the event the Agency exercises the Repurchase Option for a Parcel to be Repurchased and the parties are unable to agree on the amount of the Repurchase Price, the parties shall mutually select an appraiser to prepare an appraisal which shall determine the Repurchase Price. The parties agree that Development Costs shall be allocated to the Parcel to be Repurchased in an equitable manner.

(ii) Limitations.

(a) The Agency shall not exercise the Repurchase Option during a Recession that adversely affects the housing market; provided however, the period of such Recession shall toll the time that the Agency may act to exercise the Repurchase Option under Section VII.C., so that the Agency shall have a period of six (6) months to exercise the Repurchase Option after the conclusion of such Recession.

(b) Such Repurchase Option shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

i. Any mortgage, deed of trust or other security financing instrument with respect to the Parcel to be Repurchased; or

ii. Any rights or interests provided in this Assignment and Assumption Agreement for the protection of the holder of a mortgage, deed of trust or other security financing with respect to the Parcel to be Repurchased.

D. Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

VIII. DISPUTE RESOLUTION.

A. Mediation. In the event that a dispute arises between Assignee and any of Assignor, the City or the Agency in connection with the Assignment and Assumption Agreement or any other document, instrument or agreement affecting the Acquired Lots, before resorting to any other legal remedy, such parties shall attempt in good faith to resolve any such controversy or claim by mediation conducted by a mediator, or a panel of mediators of a size appropriate to the scope of the dispute (but not exceeding three (3) in any event), in accordance with the Commercial Mediation Rules of the American Arbitration Association.

B. Judicial Reference. If any party to the Assignment and Assumption Agreement commences a lawsuit for a dispute arising under this Assignment and Assumption Agreement or any other document, instrument or agreement affecting the Acquired Lots, 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. Assignee shall not 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:

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

(ii) 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).

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

(iv) 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.

(v) 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.

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

(vii) 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.

(viii) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

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

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

(xi) 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.

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

(xiii) 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. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial.

C. Institution of Legal Actions. In addition to any other rights or remedies provided in the Assignment and Assumption Agreement, a non-defaulting party may institute legal action to cure, correct or remedy any default, to recover damages for any Event of Default, or to obtain any other remedy consistent with the purpose of the Assignment and Assumption Agreement.

IX. INSURANCE.

A. Throughout Development of the Acquired Lots, Assignee shall take out and maintain, at no cost or expense to the City or Agency, with a reputable financially responsible insurance company acceptable to the City or Agency, comprehensive broad form general public liability insurance, insuring Assignee against claims and liability for personal injury, death, or property damage arising from the use, occupancy, condition, or operation of the Acquired Lots and the Improvements thereon, which insurance shall provide combined single limit protection,

including contractual liability, in a form and amount and with a company acceptable to the City and the Agency. Such insurance shall name the City and Agency and their respective officers, directors, officials, employees, and servants (collectively "**Representatives**"), as additional insureds.

B. Before commencement of any demolition or construction work on the Acquired Lots, or any portion thereof, Assignee shall also procure or cause to be procured, and shall maintain in force until completion of said work (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company acceptable to the City and Agency, and (ii) workers' compensation insurance covering all persons employed in connection with work on the Acquired Lots, or any portion thereof. Said builder's risk insurance shall cover Improvements in place and all material and equipment at the Acquired Lots furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

C. Assignee shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Acquired Lots or otherwise pursuant to the Assignment and Assumption Agreement carries workers' compensation insurance as required by law.

D. With respect to each policy of insurance required above, Assignee shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on the insurance carrier's form setting forth the general provisions of the insurance coverage.

E. All such policies required by this Section shall be non-assessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by the Agency or the City, (ii) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Agency and the City, and (iii) neither the Agency, nor the City shall be liable for any premiums or assessments.

X. INDEMNITIES/LIMITS ON LIABILITY.

A. Indemnity in favor of Assignor, the City and the Agency. From and after the execution of the Assignment and Assumption Agreement, Assignee hereby agrees to indemnify, defend, protect, and hold harmless Assignor, the City and the Agency and any and all representatives of the City and the Agency, from and against all losses and liabilities related directly or indirectly to, or arising out of or in connection with: (i) any Assignee Event of Default, (ii) any of Assignee's activities on the Acquired Lots (or the activities of Assignee's agents, employees, lessees, representatives, licensees, guests, invitees, contractors, subcontractors, or independent contractors on the Acquired Lots), including without limitation the construction of any Improvements on the Acquired Lots, or (iii) any act or omission by Assignee related to its performance under the Assignment and Assumption Agreement, or which may otherwise arise from Assignee's ownership, use, possession, improvement, operation or disposition of the Acquired Lots, regardless of whether such losses and liabilities shall accrue or be discovered before or after termination or expiration of the Assignment and Assumption

Agreement, except to the extent such losses or liabilities are caused by the City, FORA, or the Agency.

B. No Personal Liability for City or Agency Representatives. No representative of the City or the Agency shall be personally liable to Assignee, or any successor in interest of Assignee, in the event of any Governmental Authority Event of Default or for any amount which may become due from the City or the Agency, as the case may be, or any successor in interest, on any obligation under the terms of the Assignment and Assumption Agreement.

C. No Personal Liability for Assignee Representatives. No representative of Assignee shall be personally liable to the City or Agency, or any successor in interest of the City or Agency, in the event of any Assignee Event of Default or for any amount which may become due from Assignee, as the case may be, or any successor in interest, on any obligation under the terms of the Assignment and Assumption Agreement.

XI. MISCELLANEOUS.

A. Public Relations. Assignee shall reasonably cooperate in publicizing the proposed Development of the Acquired Lots.

B. Confidentiality. Unless otherwise specifically required by law and subject to a standard of reasonableness, Assignee shall not disclose (except to their own and to the other party's employees, officers, directors, agents, advisors, lenders, investors, counsel and consultants) information regarding any other party related to the Development of the Acquired Lots which is not already public and which has been delivered to such party pursuant to the terms hereof. Assignee shall require its employees, officers, directors, agents, advisors, lenders, investors, counsel and consultants to abide by the confidentiality provisions set forth in this paragraph.

C. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of the Assignment and Assumption Agreement.

D. Acceptance of Service of Process. If any legal action is commenced by Assignee against the City or Agency, service of process on the City or Agency shall be made by personal service upon the City Manager or City Clerk of the City, or in such other manner as may be provided by law. If any legal action is commenced by the City or Agency against Assignee, service of process on Assignee shall be made by personal service on Assignee, or in such other manner as may be provided by law, whether made within or without the State of California.

E. Inaction Not a Waiver of Default. Except as expressly provided in the Assignment and Assumption Agreement to the contrary, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as waiver of any default or of any such rights or remedies, or deprive any such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

F. Public Agency Rights of Access to the Acquired Lots. Upon no less than five (5) business days written notice, the City and other public agencies, without charge or fee, shall have the right to enter the Acquired Lots or any part thereof at all reasonable times (i.e., during construction, between the hours of 8:00 a.m. and 4:00 p.m.), or without notice during or at any time during any emergency, for the purposes of inspecting the work being performed at the Acquired Lots and for the purposes of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities, if any, located on the Acquired Lots.

G. Approvals by the City, the Agency, Assignor and Assignee. Unless expressly provided herein to the contrary, wherever the Assignment and Assumption Agreement requires the City, the Agency, Assignor or Assignee to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not unreasonably be withheld.

H. Estoppel Certificates from the City and the Agency. Within twenty (20) days after receipt of a written request from Assignor or Assignee, the City and the Agency shall deliver to Assignee an estoppel certificate in form reasonably satisfactory to Assignor, Assignee, the City and the Agency.

I. Agency as Third Party Beneficiary. The parties acknowledge and agree that the Agency is a third party beneficiary of this Assignment and Assumption Agreement and shall have the power to exercise all rights and remedies of the Agency directly against Assignee.

AGREED TO AND ACKNOWLEDGED BY:

CITY OF MARINA	REDEVELOPMENT AGENCY OF THE CITY OF MARINA
By: _____	By: _____
Its: _____	Its: _____

EXHIBIT K

MEMORANDUM OF OPTION AGREEMENT

Recording Requested By and
When Recorded Return To:

CYPRESS MARINA HEIGHTS, L.P.

_____

_____

Attn.: _____

This Memorandum of Option Agreement (*"Memorandum"*) is entered into as of this _____ day of _____, 2002, by and between the Redevelopment Agency of the City of Marina, a public body, corporate and politic (*"Agency"*), the City of Marina, a California municipal corporation (*"City"*) and Cypress Marina Heights, L.P., a California limited partnership (*"Developer"*).

RECITALS

A. Agency intends to acquire in fee simple all of that certain real property consisting of about _____ acres located in the City of Marina, County of Monterey, State of California and particularly described in Exhibit A, attached hereto and incorporated by this reference (*"Project Site"*).

B. Agency, City and Developer have entered into that certain Option Agreement dated as of _____, 2002 (*"Option Agreement"*), pursuant to which Agency has granted to Developer an Option to purchase the Project Site on and subject to the terms and conditions set forth therein.

C. Agency, City, and Developer desire to execute this Memorandum and cause the same to be recorded in the Official Records of Monterey County, California for the purpose of providing third parties with notice of the Option Agreement. Terms used in this Memorandum shall have the same meanings as set forth in the Option Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agency grants to Developer an option to purchase the Project Site upon the terms and conditions set forth in the Option Agreement, which is incorporated herein and made a part hereof by this reference.

2. The sole purpose of this Memorandum is to give notice of the Option Agreement and all of its terms, covenants and conditions to the same extent as if the Option

Agreement were fully set forth herein, and this Memorandum is subject to all of the terms, conditions and provisions of the Option Agreement.

3. If a deed conveying the Project Site to Developer is not recorded in the official records of Monterey County, California on or before _____, this Memorandum shall for all purposes be considered null and void and it shall be conclusively presumed that Developer no longer has any legal or equitable interest in the Project Site.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF MARINA,
a public body, corporate and politic

By: _____
_____

CITY:

CITY OF MARINA,
a California municipal corporation

By: _____
_____

DEVELOPER:

CYPRESS MARINA HEIGHTS, L.P.,
a California limited partnership

By: _____
_____

[attach acknowledgements]

EXHIBIT K

EXHIBIT A TO MEMORANDUM OF OPTION AGREEMENT
DESCRIPTION OF THE PROJECT SITE