RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Redevelopment Agency of the
County of Monterey
Office of Community Development
County Administrative Offices
168 West Alisal
Salinas, CA 93901

Recorded for the Benefit of
The Redevelopment Agency of
The County of Monterey
Pursuant to Government
Code Section 6301

DISPOSITION AND DEVELOPMENT AGREEMENT

(TOGETHER WITH EXCLUSIVE NEGOTIATION
RIGHTS TO CERTAIN PROPERTY)

By and Between

REDEVELOPMENT AGENCY OF THE
COUNTY OF MONTEREY

and

EAST GARRISON PARTNERS I, LLC

for the
East Garrison Project
Fort Ord, County of Monterey

Monterey County Redevelopment Project

TABLE OF CONTENTS

[TO BE CONFORMED IN FINAL DOCUMENT]

Attachments

LIST OF DEFINED TERMS, WHERE FIRST USED

[TO BE INSERTED IN APPROVED EXECUTION DRAFT]

DISPOSITION AND DEVELOPMENT AGREEMENT
(TOGETHER WITH EXCLUSIVE NEGOTIATION RIGHTS
TO CERTAIN PROPERTY)

THIS AGREEMENT (this "Agreement") is entered into as of the _____ day of _____ _____, 2005 (the "Effective Date"), by and between the REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY (the "Agency") and EAST GARRISON PARTNERS I, LLC (the "Developer") (each a "Party", collectively the "Parties"). The COUNTY OF MONTEREY (the "County") has consented to this Agreement as set forth in the Consent and Agreement of the County appended hereto following the signature pages. The Agency and the Developer agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Background and Purpose of This Agreement

1. [§101.a] Background

(a) The United States Department of the Army ("Army") military facility known as Fort Ord in the County of Monterey was officially closed pursuant to the federal Defense Base Closure and Realignment Act of 1990 (Public Law 101-510) ("Federal Base Closure Act"), and became federal surplus property available for disposition by the Army subject to the provisions of federal law including the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("CERCLA") under which Fort Ord was placed on the National Priority List as a "superfund" site.

(b) Federal property is not subject to State or local planning laws or building codes, and State law and local laws do not control or govern the disposition of federal surplus property except as specially provided by federal law.

The Federal Base Closure Act and implementing regulations of the Department of Defense have created procedures for the participation of affected local jurisdictions in the planning and disposition process. The State or local jurisdictions are required to designate a "redevelopment authority" to act as a military base reuse authority for purposes of the transfer of property at the closed military base, and adopt a base reuse plan, through a comprehensive public process involving all stakeholders, to be approved by the federal government to guide the disposition and reuse of the closed military base.

(c) The California Legislature, in response to the Federal Base Closure Act process, has adopted special legislation governing the planning, reuse and redevelopment of closed military bases, including but not limited to:

(i) The Military Base Reuse Authority Act (Government Code Sections 67800 et seq. (adopted Stats. 1994, Chap. 1165 (A.B. 759)). This State legislation authorizes counties and cities to establish and designate a separate public corporation as a redevelopment authority to act as a military base reuse authority (Section 67811) to plan for, finance, and manage the transition of the military base from military to civilian use. The board of the authority is required to adopt a reuse plan and a 5-year capital improvement program

"which shall be the official local plan for the reuse of the base for all public purposes…." (Section 67840.) Local general plans are then required to be submitted to the board of the authority for conformance with the reuse plan, as well as local zoning for conformity with the board-certified local general plan. (Sections 67840.1 and 67840.4.) The Legislature has found and declared that the "planning, financing, and management of the reuse of military bases is a matter of statewide importance, and that the powers and duties granted to the authority by this title shall prevail over those of any local entity, including any city or county…" (Section 67812.)

(ii) The Local Reuse Authority ("LRA") (Government Code Sections 65050 et seq., or Sections 67800 et seq.). The LRA is established pursuant to applicable State law or pursuant to special State legislation (Stats. of 1997, Chap. 898). This State legislation authorizes specific military bases to establish a local reuse authority and provides, for those military bases without specific reuse authority designation, procedures for establishing an LRA. Pursuant to Government Code Section 65050, Fort Ord is a recognized military base for which the Fort Ord Reuse Authority was designated as the separate public corporation to plan for, finance and manage the Fort Ord transition from a military facility to a civilian facility.

(iii) Amendments to the California Environmental Quality Act ("CEQA") (Public Resources Code sections 21000 et seq.). CEQA requirements for the environmental impact reports ("EIR") were amended as they apply to reuse plans for closed military bases, and subject to certain requirements, to allow agencies to analyze significant impacts in the context of physical conditions that were in effect at the time the decision for closure or realignment became final as opposed to existing conditions at the time of preparation of the EIR (Public Resources Code Section 21083.8.1).

(iv) Amendments to the CRL. The Community Redevelopment Law ("CRL") (Health and Safety Code Sections 33000 et seq.) was amended to provide for the expedited adoption of redevelopment plans for closed military bases (Health and Safety Code Section 33492.5), with special provisions for Fort Ord (Health and Safety Code Section 33492.70) that authorize the establishment and authority of the Redevelopment Agency of Fort Ord (Health and Safety Code Section 33492.70), but this provision has not been implemented, and the adoption of redevelopment plans by local jurisdictions for their territory within the boundaries of Fort Ord, which provisions have been implemented. Such provisions require that redevelopment plans adopted by local jurisdictions at Fort Ord be consistent with the Fort Ord Reuse Plan (Health and Safety Code Section 33492.73).

(d) California courts have held that pursuant to the federal law governing military base closures and the disposition and reuse of surplus military property, and State laws implementing the federal law, the transfer of surplus military property does not make the property subject to all local planning and zoning laws but only those laws that are consistent with the reuse plan approved by the federal government. (*See Save Our NTC, Inc. v. City of San Diego, et al.* (2003) 105 Cal.App.4th 285, modified on denial of rehearing, 105 Cal. App. 4th 1381c.)

2. [§101.b] Fort Ord Reuse Authority Act

(a) The California Legislature has adopted special legislation to create the Fort Ord Reuse Authority ("FORA") as the governmental structure for the planning and reuse of Fort Ord, at the request of the County of Monterey and the cities in the County affected by the closure of Fort Ord (Government Code Sections 67650 et seq.) ("FORA Act"). Pursuant to the FORA Act, the County and cities have established the FORA, an independent public agency (Government Code Sections 67656, 67657), with a governing board of 13 representing the County of Monterey and the cities of Carmel, Del Rey Oaks, Marina, Sand City, Monterey, Pacific Grove, Salinas, and Seaside (Section 67660), with a number of ex officio non-voting members (Section 67661).

(b) FORA's purpose is to plan for, finance, and manage the transition of Fort Ord from military to civilian use (Section 67658).

(c) FORA was required to adopt a comprehensive reuse plan (the "Fort Ord Reuse Plan") approved by the federal government, including land use, transportation, circulation, conversions, capital improvements and other elements, as the "official plan for the reuse of the base for all pubic purposes, including all discussions with the Army and other federal agencies, and for purposes of planning, design, and funding by all state agencies." (Section 67675.) FORA officially adopted the Fort Ord Reuse Plan on June 30, 1997, following certification of a Final Environmental Impact Report for the Fort Ord Reuse Plan and adoption of a statement of overriding considerations pursuant to CEQA, following the filing of an environmental impact statement by the federal government (Public Resources Code, Section 21625.9).

(d) The Fort Ord Reuse Plan is designated under the FORA Act as the official local plan for all purposes related to planning, disposition, reuse and redevelopment of the former Fort Ord (Government Code Section 67675).

(e) Upon adoption of the Fort Ord Reuse Plan local jurisdictions were required to amend and submit to FORA their general plans for a determination of conformity with the Fort Ord Reuse Plan, and to conform their zoning regulations to the FORA approved amended general plans. (Sections 67675 to 67675.7, inclusive.) The County prepared its General Plan Amendment on or about November 20, 2001, and FORA found the County General Plan Amendment was consistent with the Fort Ord Reuse Plan by adopting Resolution No. 02-3 on or about January 18, 2002.

(f) FORA is authorized to accept the transfer of property at Fort Ord from the Army and to dispose of such property by sale, lease or other disposition at full market value or at less than full market value, in compliance with applicable federal regulations, in order to facilitate the rapid and successful transition of Fort Ord to civilian use. "Except for property transferred to the California State University; or to the University of California, that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan [the Fort Ord Reuse Plan] adopted or revised pursuant to Section 67675." (Sec. 67678(f); emphasis added.)

(g) FORA has adopted a Master Resolution, as amended which, among other matters, implements requirements that all land use and development approvals of local jurisdictions be consistent with the Fort Ord Reuse Plan.

(h) FORA and the County entered into an Implementation Agreement, dated as of January 9, 2001, providing, among other matters, procedures for FORA's acquisition of Fort Ord property from the Army and transfer to local jurisdictions and for review by FORA of the financial terms of disposition of such property by local jurisdictions and requiring a covenant that such property only be used and developed in a manner consistent with the Fort Ord Reuse Plan.

(i) As mandated by the special provisions of the CRL relating to Fort Ord (Health and Safety Code Sections 33492.70 et seq.), the County adopted the Redevelopment Plan for the Fort Ord Redevelopment Project Area, on February 19, 2002, by Ordinance No. 4136 (the "Redevelopment Plan") for the reuse and redevelopment of Fort Ord lands in the unincorporated area of the County. Pursuant to Health and Safety Code Section 33492.73, FORA found the Redevelopment Plan to be consistent with the Fort Ord Reuse Plan. Pursuant to Section 8 of Ordinance No. 4136, the Agency is charged with carrying out the Redevelopment Plan.

3. [§101.c] Purpose of this Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the disposition and development of certain real property (the "Site", as identified in Section 104 hereof) included within the boundaries of the Fort Ord Redevelopment Project Area (the "Redevelopment Project Area").

The Agency plans to take title to the Site from FORA, which has received or will receive title to the Site, as an economic development conveyance, from the Army. The Site is therefore subject to certain covenants, restrictions and disclosures contained in the Army Deed and FORA Deed (both as defined in Section 202) which will be applicable, as incorporated or referenced, in the Agency's deed to the Developer together with other matters acceptable to the Developer pursuant to Section 202. The Parties assume, and the transaction contemplated by this Agreement assumes, that the conveyance of title to the Site from the Army to FORA and from FORA to the Agency will be at no cost to either of the transferees.

The development of the Site pursuant to the Development Approvals (as defined below) and this Agreement (the "Project") and the fulfillment generally of this Agreement are in the vital and best interests of the County, and the health, safety, and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

Construction of the Project will substantially improve the economic and physical conditions in the Site and the County lands in accordance with the purposes and goals of the Reuse Plan, the General Plan (as referenced below) and the Redevelopment Plan.

As of _____, the Agency, County and Developer entered into an Exclusive Negotiating Rights Agreement (as amended and extended, the "ENRA"). Pursuant to the ENRA, the Agency, County and Developer entered into an Option Agreement, dated as of February 4,

2003, as the same has been extended from time to time (the "Option Agreement"). This Agreement is entered into pursuant to and in furtherance of certain provisions of the Option Agreement. Notwithstanding the foregoing, the Parties acknowledge that this Agreement differs in certain respects from certain terms of the Option Agreement. Upon mutual execution and delivery of this Agreement, this Agreement shall supersede and replace the Option Agreement which shall be hereby terminated, except to the extent that certain provisions thereof expressly remain in effect as set forth in Sections 202 (22) (l) (xvii) and 704 through 708 hereof.

In connection with the actions contemplated in the Option Agreement, the County has approved, for the development of the Site:

1. Certification of a Final Subsequent Environmental Impact Report ("FSEIR"), including project-specific mitigation measures adopted by County (Resolution No. _____, adopted on _____).

2. Mitigation Monitoring and Reporting Program ("MMRP") adopted by the County Board of Supervisors (Resolution No. _____, adopted on _____).

3. The East Garrison Specific Plan ("Specific Plan") approved by the County Board of Supervisors (Resolution No. _____, adopted on _____).

4. General Plan text amendments approved by the County Board of Supervisors (Resolution No. _____ adopted on _____).

5. Zoning Ordinance text and map amendments adopted by the County Board of Supervisors (Ordinance No. _____ adopted on _____).

6. Combined Development Permit, including Conditions of Approval, comprising a standard subdivision (Vesting Tentative Map) to create parcels for up to 1400 dwelling units (plus up to 70 second ("carriage") accessory building spaces, each on the same lot as a residential unit), commercial uses, and public uses, use permit for tree removal, general development plan, use permit to allow development on slopes over thirty percent (30%), and Design Approval including approval of a Pattern Book, approved by County Board of Supervisors (Resolution No. _____, adopted on _____).

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

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

All such documents, each as may be amended from time to time, together with the Subsequent Development Approvals and Vested Elements, each as defined in the Development Agreement, collectively are referred to herein as the "Development Approvals".

It is the purpose and intent of this Agreement, among others, to provide for the terms and conditions (including consideration payable by the Developer) for the disposition and development of the Site; to establish appropriate terms and conditions to assure that development of the Site will be in accordance with the Development Approvals; and to set forth the requirements, terms and conditions of financing to be provided by the Developer, the Agency and others in connection with the development of the Site. Accordingly, all maps, plans and drawings submitted by the Developer or others, and all approvals required, for development of the Site, including, but not limited to, development plans, infrastructure design and financing plans, construction plans for building permits, the formation of special financing districts (including community facilities districts and community services districts), commitments pertaining to the financing and/or construction of improvements and facilities by entities other than the Agency such as FORA and the Marina Coast Water District ("MCWD"), and the dedication or reservation of land or improvements for public use (including, but not limited to, utilities, roads, parks, schools and related public uses), shall be reviewed, given and/or administered by the County and its designated personnel in accordance with the Development Approvals, and, except for any action required to be taken by the Agency pursuant to this Agreement, the Agency shall have no jurisdiction over such matters and shall rely upon and be bound by the actions and approvals of the County pertaining thereto or other agencies as provided pursuant to the Development Approvals.

Inasmuch as this Agreement, in substantial part, provides for funding of the development of the Site from private sources, public financing mechanisms and Agency tax increment financing for public, affordable housing and certain nonprofit elements of the Project, it constitutes a contract, obligations and evidence of indebtedness within the meaning and scope of Government Code Section 53511 in that it provides a means of satisfying financial obligations above referenced to benefit the County, Agency and the public generally in the community, and finality as to the respective obligations of the Agency and Developer is required for the financial operations of the Agency and the County and in order to ensure the redevelopment of the Site for public benefit.

B. [§102] <u>The Redevelopment Plan</u>

This Agreement and the development of the Project as contemplated herein, is in accordance with the provisions of the Redevelopment Plan that was approved and adopted on February 19, 2002, by the Board of Supervisors of the County by Ordinance No. 4136 (as referenced in Section 101.b.(i) hereof), which Ordinance contained certain findings, including among others that the Redevelopment Plan conformed to and was consistent with the Fort Ord Reuse Plan and the General Plan of the County as amended November 20, 2001 (as referenced in Section 101.b.(e) hereof), including, but not limited to, the Housing Element of the General Plan. The Redevelopment Plan, as it now exists, and as it may be subsequently amended pursuant to Section 701, is incorporated herein by reference and made a part hereof as though fully set forth herein.

C. [§103] The Redevelopment Project Area

The Redevelopment Project Area is located in the unincorporated area of former Fort Ord, County of Monterey, California, and the exact boundaries thereof are specifically described in the Redevelopment Plan.

D. [§104] The Site

The Site, generally known as East Garrison Track Zero, is that portion of the Redevelopment Project Area shown on the Map of the Site (Attachment No. 1-A hereto) and is more particularly described in the Legal Description of the Site (Attachment No. 2 hereto), consisting of approximately 244 acres. The Site also includes the MCWD Parcels shown on Attachment No. 17 hereto. The Site consists of three phases of development to be developed concurrently or sequentially as determined by Developer (as generally shown on the Phasing Map, Attachment No. 1-B) as Phases 1, 2 and 3, each of which shall be deemed a separate "Phase" for certain purposes of this Agreement, and reference to the "Site" herein shall be to, as applicable, the entire Site or each Phase thereof as development is undertaken and completed in such Phase. The Site excludes certain lands and buildings to be retained by the Agency for public use and/or conveyed by the Agency to a nonprofit corporation for purposes of preserving certain historic buildings in Phase 3. A list of the foregoing parcels, and the Town Center and Fire Station parcels which are being conveyed to the Developer as part of the Site, is set forth in Exhibit 2 to Attachment No. 9 hereto.

E. [§105] Parties to This Agreement

1. [§106] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 et seq.). The office of the Agency is located at County Administrative Offices, County of Monterey, 168 West Alisal, Salinas, CA 93901, Fax: (831) 786-1342. "Agency," as used in this Agreement, includes the Redevelopment Agency of the County of Monterey and any assignee of or successor to all of its rights, powers and responsibilities with respect to jurisdiction over the Site and, if applicable, the Option Parcels (as defined in Section 705 hereof). The Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency as to matters of administration and interpretation of this Agreement and the reviews, consents and approvals required by the Agency under this Agreement, except for matters expressly required in this Agreement to be acted upon by the Agency Governing Board or the County's Board of Supervisors; provided that the Executive Director, in his or her sole discretion, may refer any matter under this Agreement to the Agency Governing Board for action in a timely manner and as may be required by the Agency under this Agreement.

2. [§107] The Developer

The Developer is East Garrison Partners I, LLC, a California limited liability company, the members of which are Woodman Development Company, LLC ("Woodman"), and Lyon East Garrison Company I, LLC ("Lyon"). The principal office of the

Developer is located at c/o Woodman Development Company, LLC, 24571 Silver Cloud Court, Suite 101, Monterey, California, 93940, Fax: (831) 674-2441. Wherever the term "Developer" is used herein, such term shall include any permitted nominee, transferee, assignee or successor in interest as herein provided.

The Developer is a single-purpose limited liability company formed for the purpose of planning the Project, pursuing and obtaining entitlements, acquiring the Site and causing the development of the Site. The Developer has submitted its limited liability company operating agreement ("Operating Agreement") to the Agency for the Agency's review and approval prior to closing. Any change in the managing members of the Developer (other than Woodman or Lyon) shall require approval of the Agency which shall not be unreasonably withheld, conditioned or delayed; provided that this restriction shall not preclude the members from agreeing in or pursuant to the Operating Agreement for the allocation or delegation to one or the other of specific functions and responsibilities pertaining to the implementation of the Project provided such provisions of the Operating Agreement, if not included in the Operating Agreement as reviewed and approved by the Agency, have been reviewed and reasonably approved by the Agency. Any change adding any new member (not already a member of the Developer or an Affiliate (as defined in Section A.3.f.(i) of Attachment No. 4 hereto) of a member of the Developer) or any new financial partner admitted to the Developer (other than a pre-approved lender on the list of pre-approved lenders listed on Attachment No. 11 hereto) must be approved by the Agency, as must any other material changes in the material provisions of the Operating Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

The Agency agrees that the Developer shall be deemed the master developer of the Site and, in consultation with Agency and County staff, shall be authorized to speak on behalf of and promote the development of the Site before public agencies and in the community, provided that the Developer cannot purport to speak on behalf of the Agency or the County. The Developer intends to serve as the land development entity and intends to build or cause the build out of all major infrastructure and obtain all land use and Development Approvals for the Site. The Agency acknowledges that the Developer may sell portions of the Site at fair market value (as determined in accordance with the provisions of Section A.3.f. of Attachment No. 4 hereto) to its members or their Affiliates and to merchant homebuilders, who will build and market housing thereon, and other portions of the Site to nonprofit corporations or other parties, who will develop and/or operate such other portions of the Site. The Developer presently intends that at least one-half of the market rate housing units to be built on the Site will be built by the members of Developer or their Affiliates, who shall take conveyance of development pads or lots for such purpose at fair market value in an arms-length transaction determined in accordance with the methodology set forth in Section A.3.f. of Attachment No. 4 hereto.

The qualifications and identity of the Developer, including, but not limited to, its members, are of particular concern to the Agency, and it is because of such qualifications and concerns, among other reasons, that the Agency has selected the Developer to carry out the Project described in this Agreement. Agency in selecting Developer has determined that Developer as constituted upon the execution of this Agreement has the necessary experience, skill, capacity and financial capability to develop the Project, and to fund and pay for or cause to

be funded and paid for (i) the amount of the Initial Land Payment (as defined in Part A of Attachment No. 4 hereto); (ii) the amount necessary to pay the development costs including the cost of infrastructure improvements and the cost of inclusionary housing to be developed in accordance with Sections 4 and 5 of Attachment 9 hereto; (iii) the estimated impact and mitigation fees payable to the County; and (iv) the community facilities district fees payable to FORA. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth in this Agreement. The Agency may declare a default and exercise its remedies for such default, including termination of this Agreement, if there is any transfer of the interest of Developer in material violation of the express restrictions on transfer in this Agreement.

Except as otherwise expressly permitted by this Agreement, the Developer shall not, prior to completion of development of any portion of the Site as evidenced by a Certificate of Completion pursuant to Section 320 hereof for such portion of the Site, assign all or any part of this Agreement with respect to such portion of the Site without the prior written approval of the Agency's Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed if such assignment is approved by the County pursuant to the terms of the Development Agreement. It shall not be unreasonable for the Agency to withhold such approval if the proposed assignee fails to demonstrate to the reasonable satisfaction of the Agency that it possesses the financial resources and development experience necessary to develop such portion of the Site assigned in accordance with this Agreement, and to satisfy the indemnification obligations in Sections 204, 321 and 610 to be assumed by such assignee. Except as otherwise provided in this Agreement, for an approved assignment to be effective, the Developer and assignee shall enter into an assignment and assumption agreement with the Agency ("Assignment and Assumption Agreement," which may be included as part of the assumption agreement entered into pursuant to the Development Agreement with respect to such assignment), whereby the assignee assumes the obligations of the Developer under this Agreement which are assigned with respect to the vertical development of the applicable assigned portion of the Site, and, upon such assignment becoming effective, Developer shall be released from all obligations under this Agreement with respect to such portion of the Site being assigned, except with respect to any guaranty of completion of very low and low income affordable housing, if applicable, provided by William Lyon Homes, Inc., in its sole and absolute discretion under Section B.7. of Attachment No. 3 hereto. Any such Assignment and Assumption Agreement shall be substantially in the form set forth in Attachment No. 16 hereto, and the Agency shall not unreasonably withhold its consent to any such Assignment and Assumption Agreement. The Executive Director of the Agency shall administer the provisions of this Section 107, including the approval and execution on behalf of the Agency of all Assignment and Assumption Agreements, and no review or action by the Agency Board shall be required.

Notwithstanding the provisions of this Section 107 and Section 312, the following assignments or transfers of this Agreement and portions of the Site shall be permitted:

(a) the sale or lease of residential units within the Project, for occupancy upon completion;

(b) the sale or lease of any non-residential improvements in the Project to tenants or end-users, for occupancy upon completion;

(c) a transfer of the Town Center mixed-use commercial and residential parcels, and the rights and obligations under this Agreement pertaining thereto, to Woodman Development Company, LLC, or a special purpose Affiliate ("Assignee"), as further defined in and as such transfer is referenced in Section G.2 of Attachment No. 4 hereto, which transfer shall have the effect of substituting Assignee as the "Developer" under this Agreement with respect to the Town Center and relieving the Developer of any rights or obligations with respect to the Town Center;

(d) a transfer of any portion of the Site to a member of the Developer or an Affiliate of the Developer or of a member of the Developer;

(e) a transfer of a portion of the Site to an Agency-approved affordable housing developer, including a Rental Affordable Housing Developer (as defined in Section 4 of Attachment No. 9) for the development of deed-restricted affordable housing, including Artspace with respect to affordable housing in the Historic District;

(f) a transfer of lots (subject only to the usual subdivision improvements to be provided by such merchant builders) to third party merchant builders meeting the following minimum requirements: (i) a minimum net worth of at least Two Million Dollars ($2,000,000), (ii) construction of at least 250 homes in northern California during the preceding five years, and (iii) demonstrating to the reasonable satisfaction of the Agency that it has secured financing commitments, subject to the customary conditions, in an amount sufficient to construct its vertical development obligations; provided the builder entity shall maintain its legal existence for at least two years following the issuance of a Certificate of Completion (as defined in Section 320 hereof) for the last of its homes to be built, shall also maintain its minimum net worth at all times during construction and for the two year period above, and shall allow the Agency to inspect its financial records pertaining thereto at reasonable times and upon reasonable notice not more often than twice a year;

(g) a transfer of title of all or any portion of the Site (including, if requested by the Developer, a direct conveyance of the Site or such portion thereof from the Agency at close of escrow for the Site), for financing purposes under Section 314, to one or more of the lenders ("Title Holder") on the list of the Pre-Approved Lenders set forth in Attachment No. 11 hereto, subject to the obligation of the Developer to take title to such portions of the Site for horizontal development and subsequent transfers for vertical development; provided that such Title Holder shall hold title subject to all of the terms of this Agreement and the Developer shall at all times remain responsible for the obligations of the Developer under this Agreement; and provided, further, that the Agency shall have reviewed the terms of the transaction documents between the Developer and such Title Holder and, in the exercise of its sole and absolute discretion, shall have approved the entire financing transaction as well as the transfer of title to the Title Holder;

(h) any transfers between the Developer and the County and/or Agency or other federal, state or local public entity or utility company in order to facilitate the development of the Project as designated in the Development Approvals;

provided, that no transfer permitted under (d), (e) or (f), above, shall be effective until the transferee has entered into an Assignment and Assumption Agreement as required hereunder (and any transfer of the Town Center parcels or portions thereof under (c) for residential development, above, shall also require an Assignment and Assumption Agreement).

Following the issuance of a Certificate of Completion pursuant to Section 320 hereof as to the Site or any Phase or portion thereof, the provisions of this Section 107 and Sections 312-319 hereof shall be of no further effect with respect to the Site or such Phase or portion thereof, as applicable and the Development Agreement shall govern the transfer or assignment of the Site or such Phase or portion thereof covered by the Certificate of Completion.

F. [§108] Special Phasing Conditions: Income-Restricted Affordable Housing

In order to assure that the development of the income-restricted affordable housing units required for the Project occurs in a timely manner relative to the development of the market rate housing units in the Project, the market rate housing units shall be subject to the Phasing Requirements set forth in Attachment No. 3 hereto.

II. [§200] DISPOSITION OF THE SITE

A. [§201] Sale and Purchase

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to use its diligent good faith efforts to assure that the Implementation Agreement between FORA and the County is carried out and to acquire the Site from FORA, provided that any reasonable expenses incurred by the Agency in enforcing the Implementation Agreement shall promptly be reimbursed by the Developer to the extent not reimbursed under other agreements with Agency or County, and if the Agency does acquire the Site, to sell it to the Developer, and the Developer agrees to purchase the Site from the Agency for development in phases in accordance with the Development Approvals and this Agreement and for a land price (the "Land Payment") in the amount and to be paid in the manner set forth in Part A of the Financial Terms as set forth in Attachment No. 4 hereto. To facilitate orderly and efficient demolition of structures, grading, site preparation and infrastructure installation, which shall include both backbone infrastructure and in-tract infrastructure required for recording of final maps, all of which may occur in phases, the entire Site (including all Phases) will be sold and conveyed to the Developer in a single conveyance.

The Agency acknowledges that the Developer, prior to conveyance of the Site, intends to seek approval from FORA, the County and/or Agency to enter onto the Site, pursuant to Section 203 hereof, to conduct inspection and deconstruction and preliminary site preparation activities, such as sampling, testing and surveys, but not grading or tree removal without the express written consent of the County in its sole discretion.

The County and Agency acknowledge that the Developer intends, following conveyance of the Site, to initially conduct mass grading of multiple phases of the Site, followed by the installation of infrastructure and site preparation in the following estimated sequence dependent upon the anticipated scheduling of vertical development: first, as necessary for the Phase 1 vertical development, second, as necessary for the Phase 2 vertical development and third, as necessary for the Phase 3 vertical development, pursuant to approved grading plans for grading and pursuant to infrastructure improvement plans for infrastructure, all subject to prior approval by the County consistent with the Development Approvals.

The Developer acknowledges and understands that the Site will be conveyed to the Developer for purposes of development pursuant to this Agreement and not for speculation in undeveloped land.

B. [§201.a] Deposit

The Developer shall, prior to or simultaneously with the execution of this Agreement by the Agency, place into an escrow account with the Escrow Agent (as defined in Section 202) for the benefit of the Agency a deposit of cash or certified check in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000) (the "Deposit") as security for the performance of the obligations of the Developer to be performed prior to the credit and/or return of the Deposit to the Developer as provided herein, or its retention by the Agency as liquidated damages if permitted by the express terms of this Agreement.

The Deposit shall be placed in an interest bearing account, and any interest earned or accrued thereon shall become part of the Deposit.

Upon termination of this Agreement by the Agency prior to conveyance of the Site, as more specifically provided in Section 511 expressly allowing for retention of the Deposit by the Agency, the Deposit (including all interest earned or accrued thereon) shall be paid to the Agency as liquidated damages as provided therein and such liquidated damages shall be the sole remedy of the Agency as further provided in Section 511.

Upon termination of this Agreement by the Developer as provided in Section 510, the Deposit (including all interest earned or accrued thereon) shall be returned to the Developer.

Upon the issuance of a Certificate of Completion for the development of the last phase of horizontal development pursuant to Section 320 of this Agreement, the full amount of the Deposit of ONE HUNDRED THOUSAND DOLLARS ($100,000) (plus all interest earned or accrued thereon) shall be returned to the Developer.

C. [§202] Escrow; Title; Conditions Precedent to Conveyance

(1) The Agency and Developer shall open an escrow with Chicago Title Company or First American Title Company, or any other escrow company approved by the Agency and the Developer, as escrow agent (the "Escrow Agent"), in the County of Monterey, California, within the time established in the Schedule of Performance attached hereto as Attachment No. 5, for the purchase and conveyance of the Site. The Agency and Developer shall exercise mutual best efforts to complete the conveyance of the Site within 60 days of the

satisfaction of all of the conditions precedent referenced in this Section 202 of this Agreement including, without limitation, subsection 22 thereof. This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The Agency and the Developer shall mutually provide such additional escrow instructions as shall be necessary and consistent with this Agreement; provided that in the event of any inconsistency between such additional escrow instructions and this Agreement, the provisions of this Agreement shall control. Upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the Agency and to the Developer prior to opening the escrow, the Escrow Agent is empowered to act under this Agreement and shall carry out its duties as Escrow Agent hereunder. Satisfaction of the requirements of this Section 202 shall be a condition precedent to the Developer's obligation under this Agreement to close escrow and take title to the Site.

Subject to the Agency's approval, in its sole discretion as provided in subsection (g) of Section 107, the Developer may direct the Escrow Agent that upon the satisfaction of all of the requirements of this Section 202 for close of escrow title to the Site or any portion thereof shall be conveyed from the Agency directly to a Title Holder (as defined in subsection (g) of Section 107), in which event the Agency deed (Attachment No. 7 hereto) and the provisions of this Section 202 shall be modified as necessary to effectuate the transfer of title from the Agency to the Title Holder, provided that the Developer shall remain fully responsible for the obligations of the Developer under this Agreement, and provided further that the Agency shall have approved transfer of title to Title Holder in its sole and absolute discretion.

(2) Within the time set forth in the Schedule of Performance (Attachment No. 5 hereto), the Agency shall submit to the Developer for review and approval a preliminary title report (the "Preliminary Title Report") issued by Chicago Title Company or First American Title Company or any other title company approved by the Agency and the Developer (the "Title Company"). The Developer shall approve or disapprove the Preliminary Title Report within the time established in the Schedule of Performance. The Agency and Developer will mutually approve certain title exceptions, including but not limited to a lien for the FORA fees, after the execution of this Agreement and within the time set forth in the Schedule of Performance (Attachment No. 5 hereto) (the "Approved Title Exceptions") and Developer's approval or disapproval of the Preliminary Title Report shall pertain only to exceptions to title which are not Approved Title Exceptions. Failure by the Developer to either approve or disapprove within such time shall be deemed a disapproval.

(3) In the event the Developer disapproves or is deemed to have disapproved any exception(s) to the title reflected in the Preliminary Title Report, the Agency shall have thirty (30) days to either modify or remove the disapproved exception(s); provided the Developer may not disapprove any exception unless such exception is not consistent with the terms of this Agreement or would materially impede (or increase the costs of) development of the Site as contemplated by the Development Approvals, including, but not limited to, the Specific Plan and Development Agreement. If the Agency determines that it is not feasible to, or in its sole and absolute discretion elects not to, modify or remove any disapproved exception(s), the Developer, at its sole election, may act to remove such disapproved title exception(s). Any costs incurred by the Developer, at its sole election, to remove any disapproved title exception(s) not removed by the Agency shall result in an adjustment to the Land Payment; provided, however, any such

adjustment shall not exceed in any event, without the consent of the Agency, the aggregate sum of $100,000; and provided, further, that any such adjustment shall not exceed the reasonable cost of removing such disapproved exception(s).

(4) As a condition precedent to closing, the Agency shall convey to the Developer good and marketable fee simple title to the Site, free and clear of all recorded liens, encumbrances, assessments, leases and taxes, or rights of possession in any party; provided, however, that the Site shall be subject to such easements and matters of record reflected on the Preliminary Title Report to the extent approved by the Developer.

(5) As a condition precedent to closing, the Developer shall deliver into escrow to the Escrow Agent the following payments, fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not later than two (2) business days prior to the scheduled date for the close of escrow:

(a) The amount of the Initial Land Payment (as defined in Part A of Attachment No. 4)for the Site (subject to adjustment, if any, provided in subsection (3) above) in the amount and manner provided in Part A of Attachment No. 4;

(b) The amount of any due and unpaid Agency or County invoices pursuant to the Reimbursement Agreement (as defined in Section 707);

(c) The premium for the title insurance policy for the Site plus any special endorsements requested by the Developer unless otherwise paid for by the Agency pursuant to subsection (3) above;

(d) Recording fees for any documents to be recorded in connection with conveyance of the Site;

(e) Any State, County or City documentary transfer tax for the Site; and

(f) Except for Agency costs set forth in subsection (6), below, all other costs of escrow for the Site, including the escrow fee.

(6) As a condition precedent to closing, the Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not later than two (2) business days prior to the scheduled date for the close of escrow:

(a) Ad valorem taxes, if any, upon the Site for any time prior to conveyance of title; and

(b) If applicable, any costs incurred by the Title Company at the request of the Agency to remove any disapproved exception(s) to title pursuant to subsection (3) of this Section 202.

(7) As a condition precedent to closing, the Agency shall timely and properly execute, acknowledge and deliver to Escrow Holder not later than two (2) business days prior to the scheduled date for the close of escrow the deed conveying to the Developer title to the Site in substantially the form set forth in Attachment No. 7 hereto.

(8) As a condition precedent to closing, the Title Company shall have irrevocably committed to providing, and concurrently with recordation of the deed for the Site, the Title Company shall provide and deliver to the Developer or irrevocably and unconditionally commit to provide and deliver, a title insurance policy issued by the Title Company insuring that the title to the Site is vested in the Developer in the condition required by subsection (4) of this Section 202. The title insurance policy shall be for an ALTA standard form coverage, with endorsements or extended coverage policy if and as requested by Developer in the reasonable exercise of its business judgment, in an amount to be determined by the Developer. The Title Company shall provide the Agency with a copy of the title insurance policy.

(9) The Developer shall pay for all premiums for title insurance coverage, including any special endorsements or extended coverage that may be requested by the Developer unless otherwise paid for by the Agency pursuant to subsection (3) above.

(10) Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the Agency and shall be paid and satisfied on the closing to the extent then outstanding. All ad valorem taxes and assessments levied with respect to the Site for any period commencing after closing of the escrow for the Site shall be paid by the Developer. Notwithstanding the foregoing, the Developer agrees that the Site may be subject to a lien for the FORA Fees (as referenced in Part C of Attachment No. 4).

(11) The Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements of record to the extent approved by Developer.

(12) The Escrow Agent shall record the deed for the Site on the close of escrow in accordance with the terms and provisions of this Agreement. Possession of the Site shall be delivered to the Developer concurrently with the conveyance of title thereof, except that limited access to the Site by the Developer may be permitted before conveyance of title as permitted in Sections 203 and 706.

(13) Subject to Section 604 of this Agreement, the satisfaction of all conditions precedent to conveyance under this Section 202, including, without limitation, under subsection (22), and the timely closing of escrow, the Developer shall accept title and possession of the Site on or before the date specified in the Schedule of Performance (Attachment No. 5 hereto).

(14) The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred other than the FORA PLL (as defined in Section 204) with respect to Developer's interest in the Site.

(15) Upon receiving a written certification from both the Agency and the Developer that the conditions for conveyance to the Developer of title to the Site have either been satisfied or waived and instructing the Escrow Agent to close escrow as to the Site, the Escrow Agent is authorized to:

(a) Pay and charge the Agency and the Developer, respectively, for any fees, charges and costs payable under this Section 202. Before such payments are made, the Escrow Agent shall notify the Agency and the Developer, at least four business days prior to the close of escrow, of the fees, charges and costs necessary to clear title and close the escrow;

(b) Disburse funds to the parties entitled thereto when the conditions of the escrow have been fulfilled by the Agency and the Developer; and

(c) Record any instruments delivered through the escrow, as necessary or proper, to vest title in the Site to the Developer in accordance with the terms and provisions of this Agreement and deliver the recorded deed to the Developer and other documents to the parties entitled thereto.

(16) All funds received in the escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general interest bearing escrow account or interest bearing accounts with any state or national bank doing business in the State of California for the benefit of the Party depositing the funds into escrow. Such funds may be transferred from time to time to any other such general interest bearing escrow account or interest bearing accounts maintained by the Escrow Holder. All disbursements shall be made by check or wire transfer of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month.

(17) Any amendment of these escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

(18) All communications from the Escrow Agent to the Agency or the Developer shall be directed to both the Agency and Developer to the addresses and in the manner established in Sections 105 and 601 of this Agreement for notices, demands and communications between the Agency and the Developer.

(19) Quitclaim Deed (Termination). Upon opening of escrow pursuant to this Section 202, the Developer shall deposit with the Escrow Agent a quitclaim deed fully executed and acknowledged, in substantially the form attached hereto as Attachment No. 8-A, Form of Quitclaim Deed (Termination), quitclaiming to the Agency all right, title and interest of the Developer under this Agreement as to the Site not already conveyed to the Developer in the event this Agreement is terminated by the Agency pursuant to Section 511 of this Agreement. Subject to the provisions of subsection (20) below relating to objections, the Escrow Agent shall deliver the quitclaim deed to the Agency not sooner than ten (10) days after receipt by the Escrow Agent (with evidence of concurrent delivery to the Developer) of a written notice and certification by the Agency that this Agreement has been terminated by the Agency pursuant to Section 511 of this Agreement.

(19.a) Quitclaim Deed (Reverter). Upon opening of escrow pursuant to this Section 202, the Developer shall deposit with the Escrow Agent a quitclaim deed fully executed and acknowledged, in substantially the form attached hereto as Attachment No. 8-B, Form of Quitclaim Deed (Reverter), quitclaiming to the Agency all right, title and interest of the Developer under this Agreement as to the Site in the event this Agreement is terminated by the Agency pursuant to Section 512 of this Agreement. Subject to the provisions of subsection (20) below relating to objections, the Escrow Agent shall record the quitclaim deed not sooner than ten (10) days after receipt by the Escrow Agent (with evidence of concurrent delivery to the Developer) of a written notice and certification by the Agency that this Agreement has been terminated by the Agency pursuant to Section 512 of this Agreement.

(20) Liability of Escrow Agent. The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under this Section 202.

If escrow is not in condition to close before the time for conveyance established above, either party who then shall have fully performed the acts to be performed by it before the conveyance of title may, in writing, enforce this Agreement in the manner set forth in Section 508 hereof. Thereupon all obligations and liabilities of the parties under this Agreement shall be governed by the provisions set forth in Section 508 hereof. If either the Agency or the Developer has not fully performed the acts to be performed by it before the time for conveyance established above, no termination or demand for return of money, paper or documents including the Quitclaim Deed (Termination) referenced in subsection (19) above or the Quitclaim Deed (Reverter) referenced in subsection (19.a) above shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address and in the manner specified in Section 601 of this Agreement. If any objections are raised within the 10-day period specified in subsections (19) or (19.a), above, or this subsection (20), the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by both the Agency and the Developer or upon failure thereof by a court of competent jurisdiction. Nothing in this subsection (20) shall be construed to impair or affect the rights or obligations of the Agency or the Developer to other remedies set forth in Article V hereof.

(21) Preparation of Survey. The parties contemplate that a survey will be prepared by the Army or FORA for the conveyance of the Site from the Army to FORA. The Agency shall promptly provide the Developer with a copy of any such survey. Any other survey of the Site (if not prepared by the Army or FORA) required for conveyance from the Agency to the Developer shall be prepared by the Developer at its expense and submitted to the Agency for its approval, which shall not be unreasonably withheld, conditioned or delayed.

(22) Additional Conditions Precedent to Conveyance. In addition to the foregoing, satisfaction of the following conditions are conditions precedent to the obligation of the Agency to convey, and the Developer to accept conveyance of, the Site, except to the extent mutually waived in writing by the Agency and Developer or by the party for whose sole benefit the condition exists:

(a) The Developer shall provide evidence or certification reasonably satisfactory to the Agency that the Developer has obtained all Development

Approvals required for initial commencement of mass grading and horizontal improvements to the Site (subject to early entry onto the Site pursuant to Section 203);

(b) FORA has found the Project consistent with the Fort Ord Reuse Plan and has approved the financial terms of this Agreement;

(c) With respect to mass grading and initial infrastructure costs, to the extent that mass grading and/or infrastructure is to be financed (with the exception of any Mello-Roos financing), in whole or in part, with equity and/or loans or lines of credit, Developer has demonstrated the availability of such equity and/or source of such loans or lines of credit (which if from a pre-approved lender listed in the Attachment No. 11 hereto, shall be deemed approved as to source);

(d) The Developer has demonstrated that an approved grading permit with appropriate addenda, if any, is ready to be issued, subject only to conveyance of the Site to the Developer, or, at the option of the Developer, a pre-grading permit or other such approval by the County to commence pre-development activities on the Site;

(e) Developer has received a "will serve" letter or other assurance satisfactory to the Developer and the County, from the MCWD (as defined in Section 101.c.) for a firm and timely supply of 470 acre feet of potable water annually for the Project on the entire Site (which the County shall have allocated as part of the Development Approvals);

(f) Developer has entered into an agreement with FORA addressing the issues described in Section C of Attachment No. 4 hereto, except to the extent waived by the Developer;

(g) Developer has taken actions necessary on its part for the County to initiate the formation of a Community Services District ("CSD") to the extent necessary to establish fiscal neutrality, as referenced in Section K of Attachment No. 4 hereto;

(h) Developer has complied with all the conditions of the Historic Covenant (as defined in Section 3 of Attachment No. 9), with respect to providing for the review by the State Historic Preservation Officer ("SHPO") of the Specific Plan provisions for the Historic District;

(i) Developer, County and Agency have entered into an agreement with Artspace or another non-profit corporation to rehabilitate and operate certain buildings in conjunction with Arts Habitat in the Historic District, as referenced in Section 3 of Attachment No. 9 hereto;

(j) Developer has entered into preliminary agreements (which agreements shall include requirements for submission of financing plans and satisfaction of other conditions) with Mid Peninsula Housing Coalition, CHISPA, Artspace, Inc., or other non-profit housing developers reasonably satisfactory to the Agency and Developer, for construction of the very low and low income restricted units to be developed in Phases 1, 2 and 3, respectively;

(k) Developer has entered into a contract with the Salinas

Rural Fire District for the construction and equipping of a fire station on the Site, consistent with the Development Approvals, as referenced in Section 8.(i) of Attachment No. 9 hereto; and

(l) In addition, other conditions to closing are the following:

(i) FORA has agreed to the timing, financing and construction or deconstruction and infrastructure for which FORA is responsible, including fee credits, to the satisfaction of the County, Agency and Developer (which agreement may be included as part of the FORA agreement under subsection (22)(f), above).

(ii) No challenges, referenda, initiative, litigation or administrative appeal has been filed and/or is pending with respect to the Development Approvals and/or this Agreement, including, without limitation, FORA actions, the FSEIR, the Specific Plan, the Development Agreement or actions of any public entities required in order to implement the Development Approvals or this Agreement, and the time period for the filing of any such challenge, referenda, initiative, litigation or administrative appeal has expired.

(iii) The Army shall have conveyed, or shall be prepared to convey concurrently with the close of escrow for conveyance to the Developer under this Agreement, title to the Site to FORA by quitclaim deed (the "Army Deed") in form and substance acceptable to the Agency and the Developer, and under a Finding of Suitability to Transfer ("FOST") satisfactory to the Developer in its sole discretion and subject only to such terms and conditions as shall be satisfactory to the Developer in its sole discretion, which shall include, but not be limited to, Developer's satisfaction that any Hazardous Substances (as defined in Section 204 hereof) or dangerous conditions on the Site have been removed or remediated to a level acceptable to local, Federal and State agencies having jurisdiction over the Site or any portion thereof to permit unrestricted residential use, and that the Army Deed contains the covenants and warranties under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and "Section 330" (P.L. 102-484) indemnifications, running to the benefit of subsequent transferees of the Site or any portion thereof.

(iv) FORA shall have conveyed, or shall be prepared to convey concurrently with the close of escrow for conveyance to the Developer under this Agreement, title to the Site, including the MCWD Parcels, as shown in Attachment No. 17, to the Agency by quitclaim deed (the "FORA Deed") in form and substance acceptable to the Agency and the Developer, subject only to such terms and conditions as shall be satisfactory to the Developer in its sole discretion.

(v) The Department of Toxic Substances Control of the California Environmental Protection Agency ("DTSC") and the Central Coast Regional Water Quality Control Board ("RWQCB") and other environmental enforcement agencies having jurisdiction over the Site or any portion thereof shall have issued no further action letters (each an "NFA Letter") or have otherwise approved the development of the Site to a standard for unrestricted residential use for Phases 1 and 2, and subject to compliance with an agreement with respect to land development activities in Phase 3, will issue such NFA Letter or shall have otherwise approved Phase 3 for unrestricted residential use subject only to such restrictions or requirements as are acceptable to the Developer in its sole discretion.

(vi) The Agency and/or Developer shall have entered into a mutually satisfactory agreement with DTSC concerning any matters (such as lead based paint in soils) as may be required by the Developer in its sole discretion.

(vii) The FORA PLL shall have been obtained by FORA and be in effect, to the satisfaction of the Agency and the Developer; the County and Agency shall have been allocated coverage under the FORA PLL to their satisfaction and shall be named additional insureds with respect to such coverage; and the Developer, its members, and successors, transferees and assigns shall be named additional insureds under the FORA PLL as to coverage and other terms satisfactory to the Developer in its sole discretion.

(viii) Any excess environmental insurance desired by the Developer shall have been obtained to its satisfaction.

(ix) The MCWD shall have committed or entered into agreements with the County or the Developer for the transfer of the MCWD Parcels, as shown in Attachment No. 17, and the financing, timing and provision of public facilities, including water and sewer, to serve the Site, to the satisfaction of the County and the Developer.

(x) The County, at the request of the Developer, shall have commenced formation of a community facilities district ("CFD") and shall have commenced preparation of a financing plan, consistent with Section E of Attachment No. 4, for the construction, maintenance and operation of specified infrastructure and public facilities by the CFD to implement the Development Approvals to the satisfaction of the County and the Developer as provided in Section E of Attachment No. 4.

(xi) The County, at the request of the Developer, shall have submitted an application to the Local Agency Formation Commission and shall have commenced formation of a Community Services District ("CSD"), and the Developer and the County shall have commenced preparation of a financing plan for the installation, maintenance and operation of certain public facilities and the provision of certain public services to implement the Development Approvals to the satisfaction of the County and the Developer.

(xii) The Local Agency Formation Commission shall have received an application for the annexation of the Site to the Salinas Rural Fire District.

(xiii) The Army, FORA, the Agency or the County, as the case may be, shall have granted rights of entry, easements or other licenses or rights, by agreement or otherwise, over lands outside the Site which are necessary for development of the Site in accordance with the Development Approvals, to the satisfaction of the Agency and the Developer.

(xiv) The Developer and the Agency shall have agreed to the form of the Developer's Progress Reports referred to in Attachment 4, Para. 3(g)(i).

(xv) The Developer, Agency and County shall have entered into Project Reimbursement Agreement as required under Section 707.

(xvi) Agency shall have approved the initial financing for the horizontal development, and, in the exercise of its approval of the initial financing for horizontal development under this Agreement, a subordination agreement with a horizontal lender approved by the Agency (unless a lender on the list of Pre-Approved Lenders in Attachment No.11), in form mutually acceptable to the Agency, Developer and such horizontal lender, containing, among other matters, provisions governing the rights and obligations, if any, of the horizontal lender and the application and enforcement of the Agency's remedies hereunder in the event of a default by the Developer under its loan or under the terms of the DDA, as a material inducement for the horizontal lender to make its loan to the Developer for the horizontal improvements, in whole or in part; and, in conjunction therewith, the Agency shall also have approved , in its sole and absolute discretion, to the reasonable satisfaction of the Developer, a draft of provisions which would be acceptable to the Agency for any subordination agreement with a lender for a loan for vertical development, at such time as negotiations with such a lender are commenced by a vertical developer.

(xvii) Until all of the above conditions are satisfied or waived as provided herein and the closing occurs, the obligations of the County and Agency under Section 6, subsections (a), (d), (e), (f), (g), (h), (i), and (j) of the Option Agreement shall remain in full force and effect.

D. [§203] Preliminary Work by Developer

Following the conveyance of the Site from the Army to FORA and prior to the conveyance of title from the Agency to the Developer, representatives of or consultants or agents for the Developer shall have the right of access to the Site at all reasonable times and after reasonable notice to the Agency pursuant to a right of entry granted by FORA for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, and subject to compliance with other applicable regulatory requirements, to proceed with demolition and other preliminary site preparation activities, such as sampling, testing and surveys, as approved by FORA and the County, but not including tree removal or grading without the express written consent of the County in its sole discretion. The Developer shall have access to all data and information on the Site available to the Agency, but without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

Copies of data, surveys and tests obtained or made by the Developer on the Site or any portion thereof shall be filed with the Agency. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

The right of entry from FORA shall also cover entry into those lands and buildings to be retained by the Agency or to be conveyed by the Agency to others (i.e. Historic District buildings) which have been excluded from the Site, as referenced in Section 104 hereof.

E. [§204] "AS IS" Conveyance; Release by Developer

Subject to the applicable provisions of Section 202, including, but not limited to, subsections (3), (4) and (22) (l) (iii) through (viii), and as a condition precedent to the close of

escrow for the Site, the Site shall be conveyed from the Agency to the Developer in its "AS IS" condition but with an assignment to the Developer of warranties, indemnifications and covenants given by the United States Government (acting by and through the Department of the Army) to FORA and/or the Agency, together with certifications or agreements in place from local, State and Federal agencies having jurisdiction over the Site or any portion thereof, that the Site has been remediated of Hazardous Substances (as defined below) to a level permitting unrestricted residential use. The Agency will assign the warranties and indemnifications received from the Army and FORA, if any, and obtain the above certifications or agreements from local, State and Federal agencies having jurisdiction.

Effective upon the close of escrow for the Site, the Developer shall be deemed to waive, release, acquit and forever discharge the Agency and the County only (and not the Army or FORA), their officers, directors, employees or agents, or any other person acting on behalf of the Agency or County, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Developer may have or which may arise in the future on account of or in any way resulting from or in connection with the condition of title to the Site or any conditions on the Site, including, but not limited to, the presence of any Hazardous Substance(s) on, in, under, from, or affecting or otherwise resulting from operations or activities on the Site or any law or regulation applicable thereto, including, but not limited to, the application to the Site of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq., as amended, and any similar state or local law, provided, however, that the foregoing waiver and release shall not apply to the extent such condition of title, conditions on the Site and/or such Hazardous Substances have been actually caused or released by the Agency or the County or their respective officers, directors, employees or agents, or by any other person acting on behalf of the Agency or County or, with the knowledge and/or consent of the Agency or County, by the holder of any possessory interest or any other approval, permit or authorization, express or implied, granted by the Agency or County (collectively "Related Parties"), or to the extent the Agency, County or their respective Related Parties otherwise had actual knowledge of and did not disclose to the Developer or concealed from the Developer such conditions of title, conditions of the Site or Hazardous Substances. Developer acknowledges that it is familiar with Section 1542 of the California Civil Code which reads:

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

Developer acknowledges that the release contemplated by this Section includes unknown claims, and except as otherwise provided hereinabove, Developer waives the benefit of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section.

DEVELOPER INITIALS _____

Because the Agency anticipates it will convey the Site to the Developer simultaneously with receiving conveyance from FORA, the Agency contemplates that it will have no

remediation obligations whatsoever with respect to the Site. Under such conditions the Agency is conveying the Site on an "AS IS" basis to Developer, and will cooperate in facilitating the assignment of covenants and warranties it receives from the Army and/or FORA. Since the Agency and the Developer negotiated the terms of and entered into the Option Agreement, FORA has obtained base-wide environmental liability insurance ("FORA PLL") providing for the County, Agency and the Developer to be eligible to be allocated a portion of the base-wide coverage as a Named Insured under the FORA PLL. The Parties contemplate that they will each, as the case may be, rely upon their status as Named Insureds under the FORA PLL to provide basic protection from environmental liability and costs resulting from pre-existing hazardous conditions of the Site, and any of the Parties may also seek "excess coverage" environmental insurance over and above that provided in the FORA PLL on such terms and at such cost as they may individually desire. In addition, the Agency shall rely on and diligently seek to enforce for its own benefit and, at the request of Developer, for the benefit of Developer and any successor or assign (consistent with its FORA PLL coverage) the covenants, warranties and indemnifications from the Army under the Army Deed to FORA and under the FORA Deed to the Agency and shall also assert, as applicable, its governmental immunities from liability from claims or costs.

Indemnity. Without limiting the generality of the indemnification set forth in Section 610 according to its terms but as a separate and distinct obligation, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Agency) the Agency, the County, their board members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer or its contractors to comply with any laws relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Substances into, on, under or from the Site first occurring after the Developer has accepted conveyance of the Site or if the Developer performs work pursuant to a right of entry prior to conveyance, after the Developer obtains a right of entry; (2) the presence or any releases or discharges of any Hazardous Substances (including unexploded ordnance) into, on, under or from the Site first occurring while the Developer is owner of or in possession of the Site or portion thereof; or (3) any activity carried on or undertaken by the Developer on or off the Site subsequent to the conveyance of the Site or any portion thereof to the Developer or subsequent to the entry by the Developer onto the Site or any portion thereof pursuant to a right of entry, whichever is later, and whether by the Developer, or employees, agents, contractors or subcontractors of the Developer or any third persons at any time occupying or present on the Site with the permission of the Developer (other than the Agency, County or their respective Related Parties), in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances at any time located or present on or under the Site (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any contamination on or under Site, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Substances, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, provided such contamination first arises or

occurs while Developer is the owner of or in possession of the Site. The foregoing indemnity shall not apply to the extent that any such conditions on the Site and/or the presence, storage, release or discharge of Hazardous Substances (including unexploded ordnance) are attributable solely to the County or Agency or their respective Related Parties, or concerning which the Agency or County or their respective Related Parties otherwise had actual knowledge and was not disclosed to the Developer or was concealed by the County or Agency or their respective Related Parties.

No Limitation. Except as otherwise expressly provided in this Section 204, the Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 610, are in no way limited or otherwise affected by any information the Agency may have concerning the Site and/or the presence within the Site of any Hazardous Substances, whether the Agency obtained such information from the Developer or from its own investigations.

Environmental Work. The Developer shall be responsible for performing the work of any investigation and remediation which may be required by applicable law on the Site in order to develop the Project, except with respect to those conditions and Hazardous Substances excepted from the Developer's indemnification obligations including, without limitation, those referenced in the last sentence of the paragraph above entitled Indemnity. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation and the Developer. The Developer shall notify the Agency promptly upon discovery of any actionable levels of Hazardous Substances, and upon any release thereof, and shall consult with the Agency in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. The Developer shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Substances. The investigation and remediation work shall be carried out in accordance with all applicable laws and such other procedures and processes as may be described in this Agreement. The foregoing provision of this paragraph shall be interpreted and applied consistent with and in compliance with the procedures of and policies of the FORA PLL under which the Agency or the Developer is a named insured with respect to the Site or other portion or Phase thereof.

For the purposes of this Agreement, "Hazardous Substances" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code Sections 25316 and 25281(h), all chemicals listed pursuant to the California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under any federal, state or local law, regulation or ordinance governing hazardous wastes, wastewater discharges, drinking water, air emissions, Hazardous Substance release or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements.

Successors and Assigns. The provisions of this Section 204 shall be binding upon successors and assigns of the Developer, including Affiliates, with respect to portions of the Site transferred to them, and shall be incorporated into every Assignment and Assumption Agreement entered into pursuant to Section 107 hereof; provided, that Developer shall have no liability or indemnification obligations under this Section 204 with respect to such portions of the Site after transfer to a successor or assign under Section 107 hereof.

F. [§205] Agency Financial Assistance; Developer's Evidence of Financing

(1) The Agency shall provide financial assistance for the development of the public improvements and facilities, inclusionary housing and certain nonprofit elements of the Project to be developed on the Site in the manner and within the times set forth in the Financial Terms (Attachment No. 4).

(2) If the Developer, through a third party, finances the acquisition and development of all or any portion of the Site and related activities, such financing shall be subject to the approval of the Agency, which approval will not be unreasonably withheld, delayed or conditioned by the Agency (and which shall be deemed approved as to source if from one or more pre-approved lenders listed in Attachment No. 11 (the "List of Pre-Approved Lenders")); provided, however, that the Agency shall accept and be bound by financing mechanisms, including but not limited to, a CFD and a CSD, adopted or approved by the County pursuant to the Development Approvals.

Subject to Section 604, no later than the time specified in the Schedule of Performance (Attachment No. 5 hereto), the Developer shall submit to the Agency a written certification that the Developer has invested not less than Five Million Dollars ($5,000,000) in the planning and development of the Site and that it has the ability to finance or obtain financing, subject to customary conditions, for the balance of the costs to be incurred by the Developer for the horizontal development of the Site, taking into consideration any financial assistance provided by the Agency pursuant to Section 205 (1) hereof and financing mechanisms adopted or approved by the County, from one or more pre-approved lenders listed in the List of Pre-Approved Lenders (Attachment No. 11 hereto) or from another lender reasonably approved by the Agency. The Agency has pre-approved the List of Pre-Approved Lenders, attached hereto as Attachment No. 11.

The Agency shall act reasonably to approve or disapprove the Developer's evidence of approvals and financing within the times set forth in the Schedule of Performance (Attachment No. 5 hereto). Failure by the Agency to approve or disapprove within such time shall be deemed an approval. Any disapproval shall be in a writing delivered to Developer and shall state the reasons therefor.

III. [§300] DEVELOPMENT OF THE SITE

A. [§301] Development of the Site by the Developer

1. [§302] Scope of Development

Subject to Section 604, the Developer agrees to maintain, plan and develop or cause the development of the Site in accordance with the terms of the Development Approvals as referred to in the Scope of Development, Attachment No. 9 hereto; provided, however, the Development Approvals shall govern and control in the event of any conflict with the Scope of Development (Attachment No. 9 hereto).

Notwithstanding anything to the contrary in the Redevelopment Plan, the Agency agrees that all plan and design review for construction and development of the Site shall be undertaken by the County (in its role of assisting the Agency in carrying out the Redevelopment Plan) in administering the Development Approvals in implementation of the Redevelopment Plan.

2. [§303] Cost of Construction

Subject to Sections 107 and 604, the total cost of entitling and developing the Site and constructing all horizontal improvements thereon shall be borne by the Developer or its assigns, except for work expressly set forth in Sections 205 and 310 and Attachments No. 4 and No. 9 of this Agreement to be performed or paid for by the Agency, or work to be performed or paid for through other financing mechanisms or by others.

3. [§304] Construction Schedule

Subject to Sections 107 and 604, after the conveyance of title to the Site to the Developer, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Site in accordance with this Agreement and the Development Approvals. Subject to Sections 107 and 604, the Developer shall begin and complete all such construction and development within the times specified in the Schedule of Performance (Attachment No. 5 hereto) or such reasonable extension of said dates as may be granted by the Agency or as provided in Section 604 of this Agreement. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency; provided that the Agency shall agree to reasonable revisions to accommodate Enforced Delay (Section 604) or to conform specific provisions of this Agreement to the Development Approvals.

4. [§305] Bodily Injury, Property Damage and Workers' Compensation Insurance

Prior to the commencement of horizontal construction on the Site, the Developer, through one or more of its members, at the sole election of Developer, shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of commercial general liability insurance in the amount of at least TEN MILLION DOLLARS ($10,000,000) combined single limit for bodily injury and property damage and TWENTY-FIVE

MILLION DOLLARS ($25,000,000) general aggregate limit, with an endorsement naming the Agency and County as additional or coinsureds. The Developer shall, upon request, also furnish or cause to be furnished to the Agency and the County evidence satisfactory to the Agency and the County that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. All insurance policies maintained in satisfaction of this Section 305 shall contain a provision requiring the insurance carrier to provide thirty (30) days written notice of any cancellation or termination to the Agency and the County. The obligations set forth in this Section 305 shall remain in effect only until a final Certificate of Completion has been issued for the completion of horizontal development for the entire Site as hereinafter provided in Section 320, or the Developer no longer has an interest in the Site, whichever first occurs, with a ten- (10-) year period ("tail") for filing of claims following any such event.

The Developer may satisfy the requirements of this Section 305 by obtaining an endorsement naming the Agency and the County as additional insureds to any insurance maintained by the Developer pursuant to the Development Approvals to the extent such insurance otherwise satisfies the requirements of this section.

Insurance requirements for vertical development to be met by vertical developers shall be based on industry standards for the type and scale of vertical development and shall comply with the limits included in the Assignment and Assumption Agreement (Attachment No. 16 hereto).

5. [§306] County and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all permits that may be required by the County or any other governmental agency affected by such construction, development or work. The Agency shall provide all assistance reasonably deemed appropriate by the Agency to the Developer in securing these permits.

6. [§307] Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency and the County shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Agency or the County shall be those who are so identified in writing by the Executive Director of the Agency. The Agency and the County shall indemnify the Developer and defend and hold it harmless from any damage caused or liability arising out of the sole negligence or willful misconduct of the Agency or the County or their respective Related Parties (as defined in Section 204 hereof) during the exercise of this right to access.

7. [§308] Local, State and Federal Laws

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards, including the payment of prevailing wages as provided in Section 321 hereof, if and to the extent required.

8. [§309] Antidiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will comply with all the applicable federal, state or local antidiscrimination laws.

B. [§310] Responsibilities of the Agency

The Agency, without expense to the Developer or assessment or claim against the Site, shall perform, or cause to be performed, all work specified herein and in the Scope of Development (Attachment No. 9 hereto) for the Agency to perform or cause to be performed by others within the times specified in the Schedule of Performance (Attachment No. 5).

The Agency and County shall diligently cooperate with the Developer and use their best efforts to provide, subject without limitation to any applicable requirements for environmental review that may be required, or cause to be provided (by the Army, FORA, the County or others), such easements, licenses, dedications and rights-of-way or other rights of entry to, and use of, property outside of the Site, to facilitate the development of the Site. To the extent that such rights are required to comply with the terms of this Agreement or the Development Approvals, the obtaining of such rights shall be a condition to close of escrow for the Site.

The Agency shall diligently attempt to satisfy the conditions for conveyance of the Site set forth in Section 202 hereof, including but not limited to, those conditions precedent to be satisfied by the Agency pursuant to Subsection (22) of Section 202, and shall cooperate with the County and the Developer to secure the satisfaction of all other conditions precedent to the conveyance of the Site, including conditions requiring action or approvals by the County and other government entities.

The Agency shall at all times cooperate with the Developer and County in carrying out and effectuating the Development Approvals and shall undertake its responsibilities under this Agreement in a reasonable and timely manner.

C. [§311] Taxes, Assessments, Encumbrances and Liens

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title for the Site and delivery of possession thereof to the Developer. Subject to the provisions of Section 314 below, prior to the issuance of a Certificate of Completion for the Site or a Phase or any portion thereof, the Developer shall not place or allow to be placed on the Site or such Phase or portion thereof, as applicable, any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. The Developer shall remove or have removed any unpermitted levy or attachment made on the Site

(or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder.

Nothing herein contained shall be deemed to prohibit the Developer or its successors or assigns from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto; provided, however, that for a period of five (5) years following the issuance by the Agency of the allocation bonds to finance all or a part of its obligations under this Agreement, the Developer or a successor or assign undertaking vertical development on the Site (exclusive of home buyers or purchasers or tenants of completed buildings) shall not contest the assessor's valuation of taxable property owned by it to obtain a reduction in such assessed valuation below that amount of the property valuation for property tax purposes relied upon by the Agency to project Agency receipt of annual tax increment to support the issuance of tax allocation bonds by the Agency, if as a direct result of such reduction in the assessed value of the property the Agency will experience a shortfall in its receipt of the amount of tax increment below the amount required to make annual debt service payments and maintain required debt service ratios under such tax allocation bonds ("Bond Deficiency"). If the Developer or a successor or assign undertaking vertical development on the Site shall be in violation of the preceding sentence, then, in such event and for so long as such violation continues and there is a Bond Deficiency resulting therefrom, the Developer or such successor or assign, as applicable, shall make annual payments directly to the Agency, as in lieu property tax payments ("In Lieu Property Tax Payments") in the amount of such Bond Deficiency but in no event greater than the amount (when added to the amount of property taxes payable with respect to the property) that would have been paid in property taxes had the assessed valuation of the property not been successfully contested. The provision of this Section shall be included in every Assignment and Assumption Agreement with an approved assignee under Section 107 hereof and shall be binding upon such assignees irrespective of whether such provisions are included in the Assignment and Assumption Agreement. The Developer shall not be responsible or liable hereunder for a violation of this Section by an approved assignee.

D. [§312] Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement

Subject to the provision of Section 314 below, after conveyance of title and prior to the issuance by the Agency of a Certificate of Completion for the Site or any portion thereof pursuant to Section 320, the Developer shall not, except as expressly permitted by Section 107 of this Agreement, sell, transfer, convey, assign or lease the whole or any part of the Site not covered by a Certification of Completion or the existing buildings or improvements thereon without the prior written approval of the Agency which shall not be unreasonably withheld, conditioned or delayed. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion for the Site or any portion thereof for which a Certificate of Completion has been issued. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, or prohibit or restrict the sale or leasing of any part or parts of a building or structure conditioned upon completion of said improvements as evidenced by a Certificate of Completion, or to restrict any construction financing therefor.

In the absence of specific written agreement by the Agency, no such transfer or assignment or approval by the Agency shall be deemed to relieve the Developer or any other party from any obligations under this Agreement until completion of development as evidenced by the issuance of a Certificate of Completion for the Site or a portion thereof unless the Agency has approved an Assignment and Assumption Agreement with respect to such transaction pursuant to Section 107.

E. [§313] Security Financing; Rights of Holders

1. [§314] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development

Notwithstanding Sections 107, 311 and 312 of this Agreement, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing (including the financing transaction referenced in subsection (g) of Section 107 which financing transaction the Agency may approve or disapporve in its sole and absolute discretion) are permitted before issuance of any Certificate of Completion, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the entitlement, development and/or construction of improvements on the Site or any Phase or portion thereof and any other expenditures necessary and appropriate to develop the Site or any Phase or portion thereof under this Agreement and the Development Approvals, subject to the Agency's reasonable approval with respect to mortgage and deed of trust financing transactions, but provided that any sale and lease-back financing, as well as any financing of the type described in subsection (g) of Section 107 shall be subject to the approval of the Agency in its sole and absolute discretion. The Developer shall notify the Agency in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Certificate of Completion for the Site or any Phase or portion thereof. The Developer shall not enter into any such conveyance for financing without the prior written approval of the Agency (unless the lender shall be one of the twenty-five (25) largest banking or financial institutions doing business in the State of California, or one of the twenty-five (25) largest insurance lending institutions in the United States qualified to do business in the State of California or a lender on the List of Pre-approved Lenders attached hereto as Attachment No. 11), which approval the Agency agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity as reasonably determined by the Agency. Such lender shall be deemed approved unless rejected in writing by the Agency within ten (10) days after notice thereof to the Agency by the Developer. In any event, the Developer shall promptly notify the Agency of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached to the Site or any Phase or portion thereof prior to the issuance of a Certificate of Completion for the Site, or such Phase or portion thereof, whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development, including equity financing and mezzanine financing.

2. [§315] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete any improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for the Site be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. [§316] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer under this Agreement, the Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the Agency therefor. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence 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. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 316 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 316. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in the Development Approvals, including, but not limited to, this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform or cause to be performed such obligations. 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.

4. [§317] Failure of Holder to Complete Improvements

In any case where, six (6) months after default by the Developer in completion of construction of improvements under the Development Approvals, including, but not limited to, this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site or any Phase or portion thereof has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder of all amounts owing the holder under the mortgage, deed of trust and/or other security documents creating a lien or encumbrance upon the Site or any Phase or portion thereof and related documents, including, without limitation any unsecured and/or unpaid

interest, costs and/or penalties. If the ownership of the Site has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance of the Site from the holder to the Agency upon payment to the holder of all amounts that were and/or are still owing the holder under its mortgage, deed or trust and/or other security documents creating a lien or encumbrance upon the Site or portion thereof and related documents, including, without limitation, any unsecured and/or unpaid interest, costs and/or penalties.

5. [§318] Right of Agency to Cure Mortgage, Deed of Trust or Other Security Interest Default

In the event of a default or breach by the Developer under a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of development under the Development Approvals, including, but not limited to, this Agreement, and if the holder has not exercised its option to complete the development, the Agency may cure the default prior to completion of any foreclosure if such cure by the Agency is permitted under the terms of a mortgage, deed of trust or other security interest. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses reasonably incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject and subordinate to all mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

F. [§319] Right of the Agency to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title to the Site and prior to the issuance of a Certificate of Completion pursuant to Section 320 hereof, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances not permitted on the Site under this Agreement, the Agency shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale.

G. [§320] Certificate of Completion

Upon completion of all construction and development to be completed by the Developer under this Agreement or the Development Approvals upon the Site or any Phase or portion thereof (including, without limitation, individual facilities, improvements, buildings and structures separately owned or financed), the Agency shall furnish the Developer with a Certificate of Completion, substantially in the form attached hereto as Attachment No. 12, with respect to the Site or applicable Phase or portion thereof, within thirty (30) days following written request therefor by the Developer. A Certificate of Completion shall also be provided by the Agency upon completion of all construction and development of all or a portion of the Site or any portion of any Phase thereof by an approved assignee, transferee or successor in interest or any lender of Developer. Any such Certificate(s) of Completion shall be executed in such form as to permit it to be recorded in the Office of the County Recorder of Monterey County.

A Certificate of Completion shall be, and shall so state that it is, a conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site or such applicable Phase or portion thereof and of full compliance with the terms hereof. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or such Phase or portion thereof covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer, including without limitation those contained in Sections 401-405 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site or any Phase or portion thereof, neither the Agency, the County nor any other person shall have any rights, remedies or controls with respect to the Site or such Phase or portion thereof that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to the Site or applicable Phase or portion thereof shall be as set forth in the grant deed of the Site from the Agency to the Developer, which shall be in accordance with the provisions of Sections 401-405 of this Agreement.

The Agency shall not unreasonably withhold, delay or condition the issuance of any Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the Site or applicable Phase or portion thereof after written request from the Developer, the Agency shall, within thirty (30) days after receipt of such 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 unavailability of specific items or materials for landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond by the Developer with the Agency in an amount representing a fair value of the work not yet completed. If the Agency shall have failed to provide such written statement within said thirty (30) day period (which may be extended by mutual written consent), the Developer shall be deemed entitled to the Certificate of Completion and the Agency shall be obligated to provide same.

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 or any issuer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

H. [§321] Prevailing Wages

When improvements identified below are considered to be a Public Work for purposes of prevailing wages under State law when constructed by the Developer or any successor or assign, the Developer or such successor or assign shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the improvements as those wages are determined pursuant to Labor Code Sections 1720 *et seq*. and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 *et seq*. and implementing regulations of the Department of Industrial Relations.

The Developer or any such successor or assign shall cause its contractors and/or subcontractors to post at the site of the work the applicable prevailing wages and to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. The applicable per diem prevailing wages shall be available to Developer and its contractors by the State Department of Industrial Relations. The improvements to which this section may apply are as follows:

> All work for which prevailing wages are required to be paid under the FORA Master Resolution; and
>
> Any construction of vertical improvements for which prevailing wages are required to be paid under Labor Code Sections 1720 *et seq*.;

provided, that the foregoing provisions shall not be deemed a determination by either the Agency or the Developer that any element of the vertical improvements will or will not be subject to prevailing wages, and provided, further, that a determination that an improvement is a Public Work for purposes of prevailing wages shall not mean that such improvement is a Public Work under State law for any other purpose, because certain private construction may be subject to prevailing wages under State Law merely by reason of a source of public funding involved in the construction but not be subject, by way of example, to public competitive bidding requirements.

From time to time, the Developer may request a determination by the State Department of Industrial Relations (which the Agency may join in) whether prevailing wage requirements are or are not applicable to certain improvements or construction to be undertaken by the Developer or others in connection with the development of the Site or a Phase or portion thereof. If the Department determines, or if it is determined under the FORA Master Resolution, that prevailing wages must be paid, successors and assigns of the Developer shall, as a condition to closing escrow on parcels to be transferred for vertical development, include in their building trades construction contracts for vertical construction, in such form as shall be reasonably required by the Agency and County, provisions for bi-weekly or other periodic reporting to and monitoring by the County of payroll records, and providing the County with the right, after noltice and a 30-day cure period, to stop work or take other remedial action against a building trades contractor (but not with respect to work being performed by other contractors) in the event of an uncured violation of the law requiring the payment of prevailing wages by such building trades contractor. The County's reasonable costs of such reporting and monitoring shall be borne by the vertical developer and/or its contractor(s) and reimbursed to the County.

Developer or any such successor or assign, as applicable, shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency and County against any claim for claims, losses, liabilities, damages, compensation, fines, penalties, causes of action, administrative and judicial proceedings and orders, judgments, remedial action or requirements, enforcement actions of any kind, and all costs and expenses incurred therewith (including but not limited to reasonable attorneys' fees and costs) or other amounts arising out of the failure or alleged failure of the Developer or such successor or assign, or their contractors and subcontractors, to pay prevailing wages pursuant to the first paragraph of this Section 321. Developer in giving this indemnification acknowledges the provisions of Labor Code Section 1781 and specifically waives any protection, rights or claims against the Agency that may accrue

to the Developer pursuant to Labor Code Section 1781. Following a permitted assignment of a portion of the Site pursuant to Section 107 hereof, Developer's assignee shall be subject to and assume the obligations of this Section 321 with respect to the portion of the Site subject to the assignment, and Developer shall be relieved of such obligations with respect to construction by its assignee. Nothing in this Section 321 shall be construed to relieve contractors or subcontractors of the Developer or any successor or assign from their respective obligations to comply with applicable prevailing wage and labor laws.

IV. [§400] USE OF THE SITE

A. [§401] Uses

The Developer covenants and agrees for itself, its successors, its assigns, its transferees and every successor in interest that during construction and thereafter, the Developer and its successors, transferees and assignees shall devote the Site and Phases thereof to the uses specified in the Redevelopment Plan, the deed from the Agency to the Developer, the Development Approvals and this Agreement for the periods of time specified therein; provided that in the event of any conflict between the foregoing, the Development Approvals shall govern and control. The foregoing covenant shall run with the land for the period set forth in Section 404 hereof.

B. [§402] Obligation to Refrain From Discrimination

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it 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 Site. The foregoing covenants shall run with the land.

C. [§403] Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of the Site or any Phase or portion thereof on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. As required by Section 33337 of the Health and Safety Code (a part of the Community Redevelopment Law), all such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, 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 in the premises herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 in the premises herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, 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 premises."

D. [§404] Effect and Duration of Covenants

Except as otherwise provided in this Agreement (including, without limitation, Sections 312, 314 and 320), the covenants contained in this Agreement and the deed shall remain in effect until the termination date of the Redevelopment Plan as such Redevelopment Plan may be amended pursuant to the provisions of Section 701. Under Section 1100.2 of the Redevelopment Plan, the Redevelopment Plan terminates 30 years from the date the County Auditor certifies to the Director of Finance, pursuant to Health and Safety Code Section 53492.9, as the date of the final day of the first fiscal year in which One Hundred Thousand Dollars ($100,000) or more of tax increment funds from the Redevelopment Project Area are or have been paid to the Agency. When the date of termination of the Redevelopment Plan is established, the Agency shall issue a recordable instrument setting forth such date for purpose of this section and the Redevelopment Plan, and such date shall be inserted in all deeds and other instruments referring to such date. The covenants against discrimination shall remain in effect in perpetuity. Further, environmental covenants or indemnifications by the Army and/or FORA for their grantees, transferees and successors and assigns shall also remain in place in perpetuity. The covenants established in this Agreement and the grant deed shall, without regard to technical

classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, the Developer and any successor in interest to the Site or any part thereof.

The Agency and the Developer are each deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the Agency and the Developer without regard to whether the Agency or the Developer has been, remains or is an owner of any land or interest therein in the Site, any parcel or subparcel, or in the Redevelopment Project Area. The Agency and the Developer shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled.

E. [§405] Rights of Access – Public Improvements and Facilities

During the term of this Agreement, the Agency, for itself and for the County and other public agencies and their respective Related Parties, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer, and the Agency shall indemnify, defend and hold the Developer harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the Agency or the public agency responsible for the entry.

Before any entry on the Site or any part thereof by the Agency, County, other public entity, or their respective Related Parties (as defined in Section 204 hereof) the Agency shall provide or cause to be provided evidence to the reasonable satisfaction of the Developer that the Agency, County or other public entity, and their respective Related Parties, as the case may be, has and will maintain in effect property damage and liability insurance or self insurance adequate to insure the entry or activities of the Agency, County other public entity, and their respective Related Parties as the case may be, under this section, which insurance, or comparable self insurance, shall be not less than One Million Dollars ($1,000,000) combined single limit, for bodily injury and property damages, and Five Million Dollars ($5,000,000) general aggregate limit, naming the Developer as additional or co-insured (or in the case of self insurance, covering the Developer) with respect to such entry.

V. [§500] DEFAULTS, REMEDIES AND TERMINATION

A. [§501] Defaults – General

Subject to the provisions of Section 513 and to the extensions of time set forth in Section 604, failure or delay by either party to perform any term or provision of this Agreement when required by the express terms of this Agreement constitutes a default under this

Agreement. The party who so fails or delays must immediately upon receipt of notice of default commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default until after giving such notice and the expiration of the applicable cure period. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§502] Legal Actions

1. [§503] Institution of Legal Actions

Subject to the provisions of Sections 513 and 604, in addition to any other rights or remedies, and following delivery of the required notices of default and expiration of the applicable cure or other periods provided for hereunder, either Party may institute legal action to cure, correct or remedy any default, or recover damages, subject to Section 507, for any default, or to obtain any other remedy consistent with the terms and purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Monterey, State of California.

2. [§504] Applicable Law; Interpretation

The laws of the State of California shall govern the interpretation and enforcement of this Agreement (without regard to choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State).

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.

3. [§505] Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Clerk of the Board of Supervisors or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. [§506] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§507] Damages

If the Developer or the Agency defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. Subject to the provisions of Sections 513 and 604, if the default is not cured or commenced and be diligently proceeding to be cured by the defaulting party within the applicable time periods set forth in Sections 510 and 511 or otherwise within sixty (60) days after service of the notice of default, the defaulting party shall be liable to the other party for damages caused by such default which damages shall be limited to:

(1) Liquidated Damages to which the Agency may be entitled under Section 511;

(2) Amounts then accrued and owed by one Party to the other Party and not paid at the time of default; and

(3) In addition, if all conditions precedent in Section 202 to be fulfilled by the Developer for the close of escrow for conveyance of the Site have been satisfied or waived in accordance with this Agreement, but the Agency has willfully failed to fulfill any condition precedent in Section 202 to be fulfilled by the Agency or the Agency has otherwise willfully failed to convey the Site to the Developer in violation of this Agreement, then the Developer may pursue specific performance or, at its sole discretion, elect to terminate this Agreement and pursue litigation against the Agency for recovery of the amount of the Developer's pre-development and pre-conveyance costs paid or incurred prior to the termination of this Agreement; provided, however, that: (a) in no event shall the Agency be liable for monetary damages in excess of Fifteen Million Dollars ($15,000,000) and (b) the Developer may recover any damages awarded only from the net proceeds resulting from a sale or transfer of the Agency's interests in the Site or portion thereof (which sale or transfer shall be for an amount not less than the fair market value of the Site or portion thereof at the time of such sale or transfer by the Agency), and not from any of the Agency's other assets.

E. [§508] Specific Performance

If the Developer or the Agency defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. Subject to the provisions of Sections 513 and 604, if the default is not commenced to be cured by the defaulting party within the applicable time periods set forth in Sections 510 and 511 or otherwise within sixty (60) days of service of the notice of default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

F. [§509] Remedies and Rights of Termination Prior to Conveyance of the Site to the Developer

1. [§510] Termination by the Developer

Subject to the provisions of Sections 513 and 604, in the event that prior to conveyance of title to the Site to the Developer:

a. The Developer is not in default under Section 511 and any of the conditions precedent to conveyance of the Site are not satisfied by the times set forth in this Agreement, and such failure is not cured within sixty (60) days after written notice from Developer or, if such failure cannot be reasonably cured within such 60-day period, the Agency is not reasonably acting to cure such failure in a timely manner; or

b. The Agency does not tender conveyance of the Site or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within sixty (60) days after written demand by the Developer or, if such failure cannot be reasonably cured within such 60-day period, the Agency is not reasonably acting to cure such failure in a timely manner; or

c. The Agency is in default under any other provisions of this Agreement and such default is not cured within the applicable time period under Section 501, 507 or 508 hereof;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency. Upon such termination, Developer shall retain, and shall not be deemed to have waived, any and all remedies (including but not limited to Section 507 hereof) available to Developer under this Agreement or the Development Approvals arising from the circumstances giving rise to Developer's termination of this Agreement, and the Deposit referenced in Section 201.a (including any interest earned or accrued thereon) shall be returned to the Developer.

2. [§511] Termination by the Agency

Subject to the provisions of Sections 513 and 604, in the event that prior to conveyance of title to the Site to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site in violation of this Agreement;

b. There is a change in the ownership or identity of the Developer or the parties in control of the Developer in violation of the provisions of Section 107 hereof;

c. Subject to Section 604 of this Agreement, the Developer does not satisfy the requirements of Section 202(22)(c) of this Agreement;

d. Subject to Section 604 of this Agreement, the Developer does not pay the Initial Land Payment and take title to the Site under tender of conveyance by the Agency after satisfaction of all conditions precedent pursuant to this Agreement;

e. The Developer is in breach or default with respect to any other material obligation of the Developer under this Agreement; and

f. If any default or failure referred to in subdivision c., d., or e. of this Section shall not be cured within sixty (60) days after the date of written demand by the Agency or, if such default cannot be reasonably cured within such 60-day period, the Developer is not reasonably acting to cure such default in a timely manner;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency, may, at the option of the Agency, be terminated by the Agency by written notice thereof to the Developer; provided, however, that prior to the Agency's giving notice to terminate this Agreement, the Agency Governing Board and the County Board of Supervisors shall hold a joint public hearing (with reasonable notice to and an opportunity to be heard by the Developer) on the decision to terminate this Agreement and consideration of the reasons therefor and alternatives to termination including, without limitation, opportunities available to continue or mutually renegotiate terms of this Agreement with Developer's members and lenders.

In the event of termination of this Agreement pursuant to this Section 511, the Agency shall have (except as provided in Section 507 hereof) no further rights against the Developer, and the Developer shall have no further obligations, with respect to the Site; provided that the Agency may retain the Deposit as liquidated damages for the Developer's default under this Section 511.

IN THE EVENT OF TERMINATION UNDER THIS SECTION 511 IN CONNECTION WITH A DEVELOPER DEFAULT OCCURRING PRIOR TO CONVEYANCE, THE DEPOSIT MAY BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES FOR SUCH DEVELOPER DEFAULT AND AS AGENCY'S PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER.

IF THE DEVELOPER SHOULD DEFAULT UNDER THIS SECTION 511, MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE APPLICABLE AMOUNTS OR PORTIONS OF THE DEPOSIT SET FORTH ABOVE IN THIS SECTION 511 AND HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE APPLICABLE AMOUNTS OR PORTIONS OF SUCH DEPOSIT AS SET FORTH ABOVE IN THIS SECTION 511 SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR THE APPLICABLE DEVELOPER DEFAULT(S) UNDER THIS SECTION 511, AND NOT AS A PENALTY, AND SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE AGENCY WITH RESPECT TO THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH UNDER THIS SECTION 511. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW, AS LIMITED BY SECTION 507 HEREOF.

THE DEVELOPER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

DEVELOPER:

By: _____

AGENCY:

By: _____

G. [§512] Right of Reverter

Subject to the provisions of Sections 513 and 604, the Agency shall have the right to re-enter and take possession of the conveyed Site or any Phase or portion thereof from Developer with all improvements thereon (the "Revested Parcel"), and revest in the Agency the

estate previously conveyed to the Developer ("right of reverter") if after conveyance to Developer of title to the Site or such Phase or portion thereof and prior to the issuance of the Certificate of Completion therefor, the Developer shall, as to the Revested Parcel:

a. Fail to commence construction of approved improvements on the Site or such Phase or portion thereof within the time set forth in the Schedule of Performance (Attachment 5 hereto) (unless such failure results from an Enforced Delay under Section 604 hereof or was caused by the Agency or County); for purposes of this provision, the Developer shall be deemed to "commence construction" when and only when the Developer has commenced rough grading on the Site or such Phase or portion thereof pursuant to a permit issued by the County for the construction of the improvements provided for herein;

b. Once construction has been commenced in accordance with subparagraph a above, fail to diligently prosecute construction of the improvements through completion within the applicable time set forth in the Schedule of Performance, where such failure has not been cured within ninety (90) days after written notice thereof from the Agency (unless such failure results from an Enforced Delay under Section 604 hereof or was caused by the Agency or County);

c. Abandon or substantially suspend construction of the improvements for a period of ninety (90) days after written notice of such abandonment or suspension from the Agency or, if such failure cannot be reasonably cured within such ninety (90) day period, failure to reasonably act to cure such failure in a timely manner (unless such abandonment or failure was caused by the Agency or County or resulted from an Enforced Delay under Section 604 hereof);

d. Without the prior written consent of Agency, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site or any Phase or portion thereof, except for any sale, transfer, disposition, assignment or encumbrance that is expressly permitted by the terms of this Agreement;

e. If any event under a. through d., above, is caused by or is attributable to a successor, assignee or transferee of the Developer under an Assignment and Assumption Agreement, and the Developer shall fail, within ninety (90) days of written notice from the Agency either: (a) to commence to enforce the Developer's

remedies under the Assignment and Assumption Agreement to cause such successor, assignee or transferee to cure the failure, or (b) to commence to act to repurchase the Site or Phase or portion thereof and vest title in the Developer who shall have, upon such repurchase and revesting, a reasonable period of time to either (x) cure such failure or (y) resell the Site or Phase or portion thereof repurchased by the Developer to another assignee or transferee pursuant to an Assignment and Assumption Agreement approved by the Agency; and

f. Provided, however, that prior to the Agency's exercising its right of reverter under this Section 512, the Agency Governing Board and the County Board of Supervisors shall hold a joint public hearing (with reasonable notice to and an opportunity to be heard by the Developer) on the decision to exercise its right of reverter under this Section 512, and consideration of the reasons therefor and alternatives to such action by the Agency, including, without limitation, opportunities available to continue or mutually renegotiate terms of this Agreement with Developer's members and lenders.

Such right of reverter shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments;

3. Any rights or interests of bondholders or other parties under financing mechanisms adopted or approved by the County as part of the Development Approvals.

4. Upon revesting in the Agency of title to the Revested Parcel as provided in this Section 512, the Agency shall, pursuant to its responsibilities under state law, use its best efforts to resell the Revested Parcel as soon as possible, in a commercially reasonable manner and for not less than its fair reuse value and consistent with the objectives of such law and of the Redevelopment Plan, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing such improvements as are acceptable to the Agency in accordance with the uses specified for the Revested Parcel in the Redevelopment Plan and in a manner satisfactory to the Agency. Upon such resale of the Revested Parcel the proceeds thereof shall be applied as follows:

(a) First, to reimburse the Agency on its own behalf or on behalf of the County for all costs and expenses reasonably incurred by the Agency, including but not limited to salaries of personnel and legal fees directly incurred in connection with the recapture, management, and resale of the Revested Parcel (but less any income derived by the Agency from

any part of the Revested Parcel); all taxes and installments of assessments incurred and payable prior to resale, and water and sewer charges with respect to the Revested Parcel incurred and payable prior to sale; any payments made or required to be made to discharge any encumbrances or liens, except any FORA liens, existing on the Revested Parcel at the time of revesting of title in the Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred which are necessary or required to preserve the value or protect the Revested Parcel or any part thereof; and any amounts otherwise owing the Agency by the Developer and its successors or transferees.

(b) Second, to reimburse the Developer, its successors or transferees, up to the amount equal to the sum of the following:

a. The Land Payment or portion thereof for the Revested Parcel paid by the Developer; plus

b. The amounts of any Participation Payments for the Revested Parcel paid to the Agency pursuant to Section A.3. of Attachment No. 4 hereto; plus

c. Pre-development and development costs paid or incurred by the Developer for the Revested Parcel; plus

d. All other costs pertaining to the acquisition or development of the Revested Parcel, including but not limited to premiums and self-insured retentions for insurance (including the FORA PLL and any Developer excess or supplemental environmental insurance coverage), and loans made by the Developer to the Agency and not repaid;

e. Payments made by the Developer pursuant to financing mechanisms adopted or approved by the County as part of the Development Approvals, and the costs actually incurred by the Developer for on-site labor and materials for the construction of the improvements existing or in process on the Revested Parcel or applicable portion thereof at the time of the repurchase, reentry and repossession, exclusive of amounts financed.

Included with the above amounts shall be the fair market value of the improvements the Developer has placed on the Revested Parcel, less any gains or income withdrawn or made by the Developer from the Revested Parcel or the improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this subsection (b) shall not exceed the fair market value of the Revested Parcel together with the improvements thereon as of the date of the default or failure which gave rise to the Agency's exercise of the right of reverter.

(c) Any balance remaining after such reimbursements shall be retained by the Agency as its property.

H. [§513] Dispute Resolution; Legal Action.

1. Informal Resolution. If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to judicial reference or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. Except for actions for indemnification, the Parties acknowledge and accept that they are waiving their right to a jury trial to the extent such waiver is authorized by the Legislature in response to the decision of the California Supreme Court in *Grafton Partners v. Superior Court of Alameda County* (August 2005).

VI. [§600] GENERAL PROVISIONS

A. [§601] Notices, Demands and Communications Between the Parties

Formal written notices, demands, correspondence and communications between the Agency and the Developer shall be sufficiently given if delivered personally (including delivery by private courier), by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of the Agency and the Developer set forth in Section 105 hereof. Such written notices, demands, correspondence, and communications may be sent in the same manner to such persons and addresses the Agency or the Developer may from time to time designate in writing.

B. [§602] Conflicts of Interest

No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration as a brokerage fee or real estate commission for obtaining this Agreement.

C. [§603] Nonliability of Agency or Developer Officials and Employees

No member, official or employee of the Agency shall be personally liable to the Developer in the event of any default or breach by the Agency or for any amount that may become due to the Developer or on any obligations under the terms of this Agreement.

No direct or indirect member, official or employee of the Developer shall be personally liable to the Agency in the event of any default or breach by the Developer or for any amount which may become due to the Agency or on any obligation under the terms of this Agreement.

D. [§604] Enforced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default ("Enforced Delay") where delays or defaults are resulting from war; acts of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; environmental conditions (including, but not limited to, Hazardous Substances or munitions or explosives of concern ("MEC" or "UXO")) existing or discovered on or affecting the Site, and any delay caused or resulting from the investigation or remediation of such conditions, whether the responsibility of the Army, Developer or other parties; litigation which enjoins construction or other work on the Site, causes a lender to refuse to fund a loan or accelerate payment on a loan, or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Site or to suspend construction or other work on the Site; unusually severe weather; inability to secure necessary labor, materials or tools (provided that Developer has reasonably attempted to obtain such materials on a timely basis); delays of any contractor, subcontractor or supplier; acts or the failure to act of any public or governmental agency or entity (assuming such agency or entity was timely requested to act or otherwise has a duty to act) (except that acts or the failure to act of the Agency or the County shall not excuse performance by the Agency or County); moratorium, as defined in Government Code Section 66452.6(f); or any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform. Enforced Delay also includes, without limitation: (1) a drop of twenty-five percent (25%) or more (based on the most current edition of the Ryness report for Monterey County or comparable market report if the Ryness Report is not available) in market demand and absorption rate for sales of residential lots or homes in those market demand and absorption assumptions made in the Developer's financial projections reviewed and accepted by the Agency prior to the close of escrow, or (2) an increase in interest rates to a rate equal to 10% or more for construction and permanent financing or home mortgage interest rates, or (3) national or international economic or monetary conditions (including, but not limited to, those caused by acts of war or terrorism) materially adversely affecting the supply and/or cost of investment capital assumed to be available for the Project in the Developer's financial projections reviewed and accepted by the Agency prior to the close of escrow, (4) environmental conditions, pre-existing or discovered, delaying the construction or development of the Site or any portion

thereof, (5) litigation or administrative proceedings challenging this Agreement, the Project or the Development Approvals, and (6) the inability of Developer or a Rental Affordable Housing Developer or their respective members or assignees, despite reasonable and timely efforts, to obtain tax credit allocations and/or bond financing on reasonable terms for the low and very low income affordable housing to meet the inclusionary housing requirements of the Project, provided that nothing in this Section 604 shall excuse the failure of the Developer to meet phasing requirements under Sections B.2 through B.6 of Attachment No. 3 to this Agreement. If such phasing requirements are not met, and William Lyon Homes, Inc. provides a completion guaranty pursuant to Section B.7 of Attachment No. 3, the obligations of William Lyon Homes, Inc. under such guaranty shall be subject to Enforced Delay under this Section 604.

An extension of time for any such cause shall only be for the period of the Enforced Delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

Notwithstanding the foregoing paragraph, the time for completion of any action by the Agency or Developer pursuant to this Agreement shall constitute an Enforced Delay and shall be automatically extended for such additional period of time as may be required to complete: (1) compliance and certification of compliance with CEQA, or (2) any pending application for consideration by the County or Agency with respect to an approval by the County or Agency relating to any such action, provided that the Developer has timely taken all reasonable actions to obtain any such approval or action.

In the event extensions of time of performance for events of Enforced Delay shall exceed two (2) years, except for Enforced Delays as a result of litigation, moratoria, acts of war, terrorism or insurrection, or environmental conditions (including the presence, release or required remediation of Hazardous Substances or MEC or UXO), the Parties shall meet and confer on mutually acceptable ways or modifications to the Project to proceed with development notwithstanding the event or events causing such Enforced Delay. In the event the Parties are unable to agree, the question of whether a further extension of the period of Enforced Delay is reasonable under the circumstances shall be presented to the Agency Governing Board (with reasonable notice to and an opportunity to be heard by the Developer), which may then decide either to grant an extension or proceed with its remedies under this Agreement, including termination, subject to the rights of the Parties under Section 513.

E. [§605] Inspection of Books and Records

The Agency has the right, upon not less than seventy-two (72) hours written notice, at reasonable times and at its own expense, but not more often than once a year or more frequently if the Agency provides reasonable reasons therefore in its notice to inspect, subject to the requirement that the Agency keep such material confidential except as to the matters which are matters of public record, the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement, exclusive of communications subject to legal privilege. Developer shall retain its books and records pertaining to the development of the

Project for a period of three (3) years following the issuance of the last Certificate of Completion for improvements by the Developer in the Project.

The Developer also has the right, upon not less than seventy-two (72) hours written notice, at reasonable times but not more often than once a year or more frequently if Developer provides reasonable reasons therefore in its notice, to inspect, subject to the requirement that the Developer keep such material confidential except as to the matters which are matters of public record, the books and records of the Agency pertaining to the Site as pertinent to the purposes of this Agreement, exclusive of communications subject to legal privilege. Agency shall retain its books and records pertaining to the development of the Project for a period of three (3) years following the issuance of the last Certificate of Completion for improvements by the Developer in the Project.

F. [§606] Plans and Data

If the Developer does not proceed with the purchase and development of the Site, and if this Agreement is terminated by the Agency pursuant to Section 511 hereof, the Developer shall deliver to the Agency any and all plans and data concerning the Site (unless Developer is precluded by the terms of any contract with any third party provider from doing so), and the Agency or any other person or entity designated by the Agency shall be free to use such plans and data, including plans and data previously delivered to the Agency, for any reason whatsoever without cost or liability therefor to the Developer or any other person.

G. [§607] Attorneys' Fees

Should any action or proceeding under Section 513 be brought arising out of this Agreement including, without limitation, any action for declaratory or injunctive relief or arising out of the termination of this Agreement, each Party shall bear its own costs and any attorneys' fees.

H. [§608] No Third Party Beneficiaries

The Agency and the Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

I. [§609] [Intentionally Deleted]

J. [§610] General Indemnity

The Developer shall indemnify, defend, and hold the Agency and the County, its directors, officers, employees, agents, and its successors and assigns harmless against all claims which arise from events occurring in connection with entry onto, ownership of, occupancy in, or construction on the Site by the Developer or the Developer's contractors, subcontractors, agents or employees. This indemnity obligation shall not extend to the extent of any claim arising from the sole negligence or willful misconduct of the Agency, County or their respective Related Parties (as defined in Section 204 hereof) or the Agency's or County's failure to perform its obligations under this Agreement, and shall survive termination of this Agreement. The

indemnity under this Section 610 shall not apply to circumstances or acts or activities of the Developer where an indemnification for such acts or circumstances or activities is provided to the Agency and/or County under Section 204 hereof or other provisions of this Agreement or under the Development Approvals. This indemnity shall survive the termination of this Agreement.

K. [§611] Mechanics' Liens

The Developer shall indemnify the Agency and hold the Agency harmless against and defend the Agency in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Project by the Developer. This indemnity obligation shall survive the termination of this Agreement but shall not apply in the case where the Agency reacquires a portion of the Site pursuant to Section 512 in which case the Agency's rights shall be governed by Section 512.

L. [§612] Government Functions of Agency; No Joint Venture or Third Party Liability

In entering into and enforcing the terms of this Agreement the Agency shall be deemed to be exercising discretionary governmental functions and responsibilities for public purposes delegated to it under the CRL, including, but not limited to, carrying out the Redevelopment Plan and, pursuant to Health and Safety Code §§ 33435 through 33439, inclusive, the imposition of obligations upon the Developer and its successors and assigns with respect to the use and construction of improvements on the Site and the provision for covenants or conditions running with the land (subject to Section 404 of this Agreement) to assure development of the Site in accordance with this Agreement, the Redevelopment Plan and the CRL. Nothing in this Agreement nor any of the actions by the Agency pursuant to this Agreement shall be construed as creating a joint venture or other active involvement by the Agency in the private development of the Site which would give rise to a claim by any third party or governmental agency against the Agency for injury or damages arising out of the activities of the Developer or a successor or assign under this Agreement.

VII. [§700] SPECIAL PROVISIONS

A. [§701] Amendment of Redevelopment Plan

The Agency staff agrees that for a period commencing on the Effective Date of this Agreement and continuing until the completion of the development of the Site in its entirety, staff will not recommend any amendment to the Redevelopment Plan which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly affects the use or development of the Site or otherwise extends the duration of any of the covenants contained in this Agreement or the deed conveying the Site to the Developer without the prior written consent of the Developer, which shall not be unreasonably withheld, conditioned or delayed provided such recommended amendment will not materially interfere with the use, development, operation and/or maintenance of the Site (including, without limitation, costs of developing the Site) consistent with the Development Approvals. In no event

shall any amendment to the Redevelopment Plan change or modify the Agency's tax increment pledge under Section 703 below or any other financial obligations of the Agency, without the express written consent of the Developer in its sole and absolute discretion.

B. [§702] Amendments to this Agreement

The Developer and the Agency agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein, and are consistent with applicable law, including CEQA.

C. [§703] Agency Tax Increment Pledge

To the fullest extent permitted by law, during the term of this Agreement, the obligations of the Agency under Sections 205 and 310 and the Financial Terms (Attachment No. 4) of this Agreement constitute contractual obligations of the Agency according to their terms and are secured by a pledge of (and constitute an indebtedness of the Agency for purposes of carrying out the Redevelopment Plan which indebtedness is payable solely out of) taxes that are or will be levied by or for the benefit of taxing agencies in that portion of the Redevelopment Project Area which comprises the Site and which are available to the Agency pursuant to Health and Safety Code Section 33670 (b), subject to the limitations (including payments to FORA and other taxing agencies) of the Redevelopment Plan. From time to time, if feasible under the circumstances in the independent judgment of the Agency's bond consultants, the Agency, at the Developer's request, shall issue its tax allocation bonds to repay such indebtedness owed to the Developer in whole or in part. Except for the limitations in the Redevelopment Plan, such pledge and indebtedness of the Agency under this Section 703 shall be senior to any Agency bond indebtedness or other indebtedness or form of obligation incurred after the date of approval by the Agency of this Agreement.

D. [§704] Option Agreement; Continuing Provisions

Certain provisions of the Option Agreement are continued in effect as part of this Agreement as modified, restated and set forth in or expressly referenced in the Attachments hereto. In addition, other provisions of the Option Agreement are given continuing effect as part of this Agreement pursuant to this Section 704, including those set forth in Sections 705, 706, 707 and 708 below.

1. [§705] Rights to Exclusive Negotiations: Option Parcels. [Source: based on Sections 2 and 6 (j) of Option Agreement].

Under the Fort Ord Reuse Plan, the County lands included in the Redevelopment Project Area have received an allocation of 3,100 homes plus a hotel and business park, programmed for the East Garrison and Parker Flats areas. The development of the Site will represent the first phase of these County lands. The lands at East Garrison and Parker Flats, exclusive of the Site, are referred to herein (and in the Development Agreement) for purposes of rights granted Developer under this Section, as the "Option Parcels," and are shown on the maps set forth in Attachment Nos. 13A and 13B hereto.

The Agency and Developer acknowledge that Monterey Peninsula College ("MPC") has relinquished any rights to a site in East Garrison in exchange for a site in Parker Flats.

The Agency and the Developer agree to continue to investigate the feasibility of developing the Option Parcels, in whole or in part, and except as provided below, the Developer shall have the exclusive right, subject to this Agreement and the Development Agreement not being terminated for uncured default on the part of Developer in accordance with the respective terms thereof, to negotiate with the Agency regarding the Option Parcels for a period of four (4) years from the date of this Agreement, provided that if, in the reasonable judgment of the Agency, reasonable progress is being made in such negotiations, the period of exclusive negotiations may be extended for an additional period not to exceed an additional two (2) years.

The Agency and the Developer acknowledge that it may be necessary to provide a school site and an area for Native American uses either on lands at East Garrison outside of (and not including) the Site or on other lands at Fort Ord (not including the Site) within the jurisdiction of the County. The Agency and the Developer further acknowledge that as of the date of this Agreement the Agency is contemplating the conveyance of portions of Parker Flats to a private developer of an equestrian facility (the "Equestrian Developer"). If, by August 4, 2008**,** negotiations with the Equestrian Developer do not result in a binding agreement with the Agency providing for the conveyance of a portion of Parker Flats to the Equestrian Developer, then the exclusive negotiation rights of the Developer under this Section shall also include that portion of Parker Flats and such portion of Parker Flats shall no longer be considered by the Agency for an equestrian center or any other purpose without the express written consent of the Developer which consent may be withheld by the Developer in its sole and absolute discretion.

If pursuant to this Section the Agency and the Developer successfully conclude negotiations and reach agreement for the acquisition and development of the Option Parcels, in whole or in part, they shall incorporate such agreement into a new agreement, subject to applicable procedures required by the Agency, including CEQA compliance, and subject to the obtaining of necessary approvals from the County for land use and development entitlements, and Agency shall use its good faith reasonable efforts to assist Developer in obtaining such approvals from the County.

During the term of this Agreement the Agency and County agree that they shall not consider, negotiate or accept any oral or written inquiries, proposals or offers from any other parties, entities or sources with respect to all or any portion of the Site or the Option Parcels, in whole or in part (including, without limitation, for the use, leasing, acquisition or development thereof); provided, that the Agency and County may negotiate with the Equestrian Developer during the time period allowed in this Section with respect to relocating equestrian uses to a portion of Parker Flats, and the Agency and County may respond to inquiries over the status of the Site and the Option Parcels by referring to the existence of this Agreement and the provisions of this Section without further comment or expression of opinion.

Nothing in this Section shall be deemed to impose upon either the Agency or the Developer any obligation to conclude or enter into binding agreements with respect to the negotiations for the Option Parcels undertaken pursuant to this Section if, after good faith negotiations, they are unable to reach agreement.

2. [§706] Interim Property Management. [Source: based on Section 5 (c) of Option Agreement].

In the sole event that back-to-back closings of the conveyance of the Site from FORA to the Agency and from the Agency to the Developer are not possible, the Agency and Developer shall negotiate in good faith mutually acceptable terms of an agreement (a "Property Management Agreement"), to be effective as of the date the Agency accepts title to the Site or portion thereof from FORA, for the Developer to maintain and manage to minimum standards the Site or such Agency-owned portion thereof, from time to time, at Developer's reasonable expense, to be determined by Developer in its sole discretion, during the period it is owned by the Agency and prior to its conveyance to the Developer or earlier termination of the Developer's rights to receive such conveyance. The Agency acknowledges and agrees that the Property Management Agreement shall be for the sole purpose of relieving the Agency of costs of managing and maintaining the Site while it is owned by the Agency and that such Agreement shall not provide Developer with any other interest in the Site or with any beneficial use of the Site, except as otherwise permitted under this Agreement. The Parties acknowledge that it may not be possible for the Parties to reach agreement on the terms of a Property Management Agreement. Therefore, the Parties contemplate that the Property Management Agreement shall be expressly conditioned upon a requirement that the Property Management Agreement shall not result in the imposition of any possessory interest taxes or other taxes (including, without limitation, both general and special taxes), charges, levies, assessments, or any easements, liens or encumbrances unauthorized by this Agreement (collectively, "Impositions"), unless expressly agreed to by Developer in it sole business judgment.

A condition to the effectiveness of such an interim Property Management Agreement shall be that the Developer's undertakings thereunder on behalf of the Agency are covered to the satisfaction of the Developer and the Agency under the FORA PLL obtained by FORA as referenced in Section 204 hereof.

3. [§707] Reimbursement Agreement. [Source: based on Section 5 (e) of Option Agreement].

Pursuant to the Option Agreement the Developer has entered into an agreement with the Agency and County (the "Reimbursement Agreement") for the Developer to reimburse the Agency and the County for certain of their budgeted expenses relating to the planning for, negotiation of documents, and their respective costs prior to the conveyance of the Site to the Developer for development. Prior to and as condition to close of escrow under Section 202, the Developer shall have entered into a new reimbursement agreement for the Project with the Agency and the County, to the reasonable satisfaction of the Agency and the County ("Project Reimbursement Agreement"). The Reimbursement Agreement shall remain in full force and effect until the effective date of the Project Reimbursement Agreement. The Project Reimbursement Agreement shall provide for the Developer and its successors and

assigns to reimburse the Agency and the County for reasonable and necessary costs of Agency and County staff and consultants in providing services in order to timely process, administer and implement this Agreement and the Development Approvals, including but not limited to, any services of County or Agency staff or consultants specifically requested by the Developer for such purpose or any services of County or Agency staff and consultants deemed necessary by the County Administrative Office or the Agency Executive Director for such purpose. Examples of such costs include, but are not limited to, costs of reviewing reports under Section A.3.g. (subject to a cap to be mutually agreed upon) of Attachment No. 4 to this Agreement and the costs of negotiating and drafting agreements with Artspace for the rehabilitation and operation of the Historic District and the costs of any litigation or administrative proceedings challenging the approval of this Agreement or the Development Approvals or their implementation. The Project Reimbursement Agreement shall include terms similar to those in the Reimbursement Agreement referred to in the first sentence of this Section 707 and shall not duplicate reimbursement for costs recovered by the Agency and County under other provisions of this Agreement or from the imposition of processing fees for Development Approvals under the Development Agreement.

4. [§708] No Third Party Rights to Use or Possession of the Site or Option Parcels. [Source: based on Sections 5 (c) and 6 (k) of Option Agreement].

The Agency and County acknowledge and agree that, as a material inducement to the Developer to undertake the commitments under the Option Agreement, this Agreement and the other Development Approvals, the Developer is relying on the timely transfer of the Site (and, if mutually agreed to during the period of exclusive negotiations under Section 705 above, the Option Parcels) free from all right, title and interest (including, without limitation, right of possession) of and by third parties that could impair the Developer's ability to construct the infrastructure and develop the Site and/or the Option Parcels, and subject only to the Approved Title Exceptions and any other title exceptions approved by the Developer. Accordingly, so long as this Agreement and the other Development Approvals are in effect the Agency and the County agree not to license, lease or provide for any rights of use or possession in the Site or the Option Parcels in favor of any third parties without the prior written consent of the Developer, which consent may be granted or denied by the Developer in the exercise of its reasonable discretion. The Agency and County further agree not to consent (if such consent is sought) to FORA's licensing, leasing or providing for any rights of possession with respect to the Site or the Option Parcels by third parties without the prior written consent of the Developer, which consent may be granted or denied in the exercise of its reasonable discretion; provided that, prior to conveyance of portions of the Site or Option Parcels to the Developer, the Agency, County or FORA may permit the entry of third parties on such unconveyed portions of the Site and Option Parcels for purposes related to health and safety without the consent of the Developer, provided Developer shall have no liability in connection therewith.

VIII. [§800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement shall be executed in four (4) duplicate originals, each of which shall be deemed to be an original. This Agreement comprises pages 1 through ___, inclusive, and Attachment Nos. 1 through ___, attached hereto and incorporated herein by reference, all of

which constitute the entire understanding and agreement of the parties with respect to the subject matter of this Agreement.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Any waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and the Developer, and any amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

The Parties may agree to record a mutually satisfactory Memorandum of this Agreement in the Records of the Monterey County Recorder in lieu of recording this entire Agreement.

[SIGNATURE PAGE TO FOLLOW]

_____, 2005

AGENCY:

REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY

By:_____
Executive Director

By:_____
Secretary

[ADD ACKNOWLEDGMENTS
IF AGREEMENT WILL BE RECORDED]

DEVELOPER:

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

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

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

By:_____
John Anderson
President

and

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

By: William Lyon Homes, Inc., a California
corporation, as its managing member

By: _____
Its: _____

By: _____
Its: _____

[ADD ACKNOWLEDGMENTS
IF AGREEMENT WILL BE RECORDED]

CONSENT AND AGREEMENT OF THE COUNTY OF MONTEREY

In implementation of the Redevelopment Plan for the Fort Ord Redevelopment Project Area and to facilitate the planning and implementation of development of the East Garrison and Parker Flats areas, the County of Monterey hereby consents to the terms of the foregoing Disposition and Development Agreement (Together with Exclusive Negotiation Rights to Certain Property) (the "DDA") between the Redevelopment Agency of the County of Monterey (the "Agency") and East Garrison Partners I, LLC (the "Developer"), and does hereby agree, for itself and its officers, departments, boards and agencies:

1. To cooperate with the Agency and the Developer in implementing the provisions of the DDA;

2. To consider and act upon, in a timely and good faith manner, the matters submitted to it by the Agency and/or Developer;

3. To undertake, in a timely and good faith manner, subject to applicable legal requirements, those obligations, responsibilities and actions required of the County under and in furtherance of the DDA and to satisfy the conditions precedent to the conveyance of the Site to the Developer pursuant to the DDA, provided that nothing in the DDA shall constrain or limit the County in the lawful exercise of its discretion in accordance with CEQA and its regulatory responsibilities; and

4. To be bound by and comply with the terms of the DDA, to the extent expressly required under the DDA, including but not limited to Section 310 and the Financial Terms (Attachment No. 4) of the DDA, in the implementation of the Development Agreement and Development Approvals (as defined in the DDA).

COUNTY OF MONTEREY

Dated: as of _____ By: _____

Its: _____

[ADD ACKNOWLEDGMENTS
IF AGREEMENT WILL BE RECORDED