

Before the Board of Directors of the  
East Garrison Community Services District, State of California

Agreement No. A-10567

cc: PAUL G.  
E.G. FILE  
NICK N.  
TRISH L. (ORIGINALS)  
NICK B.  
GAIL H.

- a. Approve an Interim Funding Agreement by and between the East Garrison Partners I, LLC and East Garrison Community Services District in compliance with Conditions of Approval 196, 197, 198, and 200 to Combined Development Permit No. PLN030204, located at East Garrison; and
- b. Authorize the Chair of the Board of Directors of the East Garrison Community Services District to execute the Interim Funding Agreement.....)

Upon motion of Supervisor Potter, seconded by Supervisor Calcagno, and carried by those members present, effective July 18, 2006, the Board hereby:

- a. Approves an Interim Funding Agreement by and between the East Garrison Partners I, LLC and East Garrison Community Services District in compliance with Conditions of Approval 196, 197, 198, and 200 to Combined Development Permit No. PLN030204, located at East Garrison; and
- b. Authorizes the Chair of the Board of Directors of the East Garrison Community Services District to execute the Interim Funding Agreement.

PASSED AND ADOPTED on this 18th day of July, 2006, by the following vote, to wit:

AYES: Supervisors Calcagno, Lindley, Smith and Potter

NOES: None

ABSENT: Supervisor Armenta

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73 on July 18, 2006.

Dated: July 25, 2006

Lew C. Bauman, Clerk of the Board of Supervisors,  
County of Monterey, State of California

By Cynthia Juarez  
Cynthia Juarez, Deputy

**INTERIM FUNDING AGREEMENT BY AND BETWEEN  
EAST GARRISON PARTNERS I, LLC AND  
EAST GARRISON COMMUNITY SERVICES DISTRICT**

THIS AGREEMENT ("AGREEMENT") is entered into on July 18, 2006 ("Effective Date"), by and between the EAST GARRISON PARTNERS I, LLC, a California limited liability Company ("EGP"), and the EAST GARRISON COMMUNITY SERVICES DISTRICT, a community services district formed pursuant to Government Code section 61000 *et seq* ("EGCSD") (each a "Party" and collectively, the "Parties").

**RECITALS**

A. On October 4, 2005, the County certified a Final Supplemental Environmental Impact Report, with mitigation measures ("FSEIR") and approved a Specific Plan, Vesting Tentative Map, Combined Development Permit and related entitlements, including Conditions of Approval (PLN0302040, collectively, the "Development Approvals") for the development of approximately 244 acres of the former Fort Ord in the unincorporated area of the County as a mixed-use development consisting of approximately 1400 residential units, commercial space in a town center, an arts habitat in an historic district, parks, recreation and open space, and public facilities and services ("East Garrison"). As of October 4, 2005, the Redevelopment Agency of the County ("Agency") approved and entered into a Disposition and Development Agreement ("DDA") for the acquisition and development of East Garrison by EGP pursuant to the Development Approvals in cooperation and with the assistance of the Agency and the County.

B. Pursuant to Part F of Attachment 4 to the DDA, the Parties thereto contemplated the formation of a CSD to administer and provide to East Garrison certain public services necessary for the development of East Garrison pursuant to the Development Approvals and the DDA in a manner that does not have a negative fiscal impact on the County. Part F of Attachment 4 to the DDA also provides that EGP will advance the reasonable costs for the formation of the CSD to comply with the Development Approvals, subject to reimbursement by the CSD.

C. On October 10, 2005, the Monterey County Local Agency Formation Commission adopted Resolution 05-20 approving the formation of EGCSD pursuant to the CSD Law (Government Code section 61000 *et seq.*) and special legislation for EGCSD codified as Government Code section 61014.5.

D. EGP has assisted in the formation of the CSD and is cooperating with the CSD and the County in the formation of the East Garrison Financing Authority to act as a Community Facilities District ("CFD") and impose special taxes for the financing and maintenance of certain public improvements benefiting East Garrison. EGP has also agreed to form one or more homeowners associations ("HOAs") to be responsible for costs of certain public services and maintenance not assumed by the CSD, CFD, or County for East Garrison.

E. As contemplated by Condition of Approval 197 ("Condition 197") to the Combined Development Permit for East Garrison, EGCS D and EGP expect that EGCS D's projected revenues will be sufficient to pay for the operating costs of EGCS D at the build out of East Garrison. Nevertheless, the District and EGP anticipate that the operating costs of EGCS D during the early fiscal years of the development of East Garrison, because of the timing of development on tax rolls and EGCS D's collection of revenues, may exceed EGCS D's operating revenues, excluding any amount EGP is obligated to pay under this Agreement, for those years ("Operating Budget Shortfalls"). In order to further the project, and in accordance with Condition 197, EGP shall advance financial assistance to EGCS D in the amount of the Operating Budget Shortfalls ("Interim Funding") during this period as set forth herein.

F. Pursuant to that certain Urban Services Agreement by and between EGCS D and the County executed on \_\_\_\_\_, 2006 ("Urban Services Agreement"), EGCS D has committed to providing certain public services to benefit East Garrison ("EGCS D Obligations") in accordance with an Operating and Maintenance Program ("OMP") prepared pursuant to Condition of Approval 196 ("Condition 196") prior to recordation of the first final map for East Garrison.

G. Pursuant to Condition of Approval 198 ("Condition 198") for recordation of the first final map for East Garrison, EGP is obligated as the landowner of the property within the boundaries of East Garrison to develop and implement an OMP for EGCS D. The levy of special taxes by the CFD, as referenced in Recital D above, and the allocation of funding responsibilities between the CFD, County, EGCS D and HOA(s) as provided in the Urban Services Agreement, together with this Agreement, are deemed to satisfy the requirements of Condition 198 and no further levy of a fee on parcels or a recorded notice is required.

H. The Parties intend this Agreement to effectuate EGP's obligation under Condition 198 to levy a fee on parcels within East Garrison to fund the preparation of the OMP, and the County to be an express third party beneficiary hereto. For purposes of this Agreement, EGCS D agrees that only those parcels which are subject to the lien of the CFD shall be subject to the fee for completion of the OMP.

I. The Parties agree that it is necessary and desirable to enter into this Agreement to enable EGCS D to provide public services in fulfillment of EGCS D's Obligations during the period that East Garrison is developing, and to define EGP's obligation for the funding of the CSD's Operating Budget Shortfalls.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises and provisions set forth herein, the Parties hereby agree as follows:

1. Term. Subject to the conditions of this Agreement set forth in Section 15, the term of this Agreement shall commence on the Effective Date and shall terminate upon EGCSO's reimbursement in full of the Interim Funding advanced by EGP.

2. Advance of Interim Funding.

a. Interim Funding Commitment. EGP agrees that it shall advance Interim Funding during the term of this Agreement. As used herein, operating costs shall include but shall not be limited to the expenses incurred by EGCSO in the conduct of its business and in fulfilling EGCSO's obligations to provide public services, but shall not include capital expenditures for public facilities that are the responsibility of the CFD, the Agency, or the County under the DDA. EGCSO shall use the Interim Funding for those operating costs. EGP will also fund the preparation and implementation of the OMP pursuant to Conditions 196, 197, 198 and 200.

b. Annual Budget Requirements. The EGCSO Board of Directors shall prepare an annual fiscal year budget consistent with relevant State statutes and standards, including the requisite public review and hearings. A "fiscal year" shall mean the 12 month period commencing on July 1 and ending on June 30. The objective of the annual budget shall be (1) to provide public services on an annual basis that are commensurate with the extent of development within EGCSO at the time; (2) to maximize but not exceed the annual revenues available to EGCSO not including any amount EGP is obligated to pay under this Agreement; and (3) to assure the protection of the public health and safety. EGCSO will present EGP with its operating budget for the fiscal year, showing budgeted operating costs, budgeted revenues excluding any amount EGP is obligated to pay under this Agreement, and the Operating Budget Shortfall, if any. If the EGCSO Board of Directors determines that EGCSO's operating costs will exceed available revenues other than any funds EGP is obligated to pay under this Agreement, EGCSO shall give notice thereof to EGP. EGP will have an opportunity to request that the EGCSO Board of Directors modify public services in order to reduce the proposed budget to an amount that does not exceed the revenues available to EGCSO excluding any amount EGP is obligated to pay under this Agreement. If, after considering EGP's request, the EGCSO Board of Directors determines that an Operating Budget Shortfall remains, EGP will be required to provide Interim Funding. In preparing its first annual budget, EGCSO may include as an operating cost those remaining unreimbursed costs, if any, EGCSO incurred in connection with completing EGCSO's organization in the year preceding the start of the fiscal year for which EGCSO is preparing this budget.

c. Time, Manner, and Amount of Advances. EGP will advance Interim Funding to EGCSO as follows:

i. Within 30 days of receipt of EGCSO's first final operating budget for the fiscal year that shows an Operating Budget Shortfall, EGP shall deposit the Interim Funding into a deposit account ("Deposit Account") that EGCSO will establish. EGCSO will maintain the Deposit Account separately from EGCSO's general funds.

ii. EGCSO shall withdraw such funds from the Deposit Account as are necessary to pay the portion of its Operating Budget Shortfalls for which EGCSO has no

other funds available to do so. Within 20 days after the end of each 3-month period, EGCS D shall provide EGP with a report of the amounts EGCS D has withdrawn from the Deposit Account during the preceding quarter. Within 30 business days thereafter, EGP shall make an additional deposit to the Deposit Account to restore the Deposit Account to the lesser of the sum of the initial deposit or 110% of the then remaining Operating Budget Shortfall for such fiscal year. At the end of such fiscal year, any remaining amount in the Deposit Account shall be returned to EGP or, at EGP's election, applied to the Deposit Account to fund any projected Operating Budget Shortfalls for the next fiscal year.

d. EGP's Maximum Obligation.

The Maximum Obligation of EGP under this Agreement for any given EGCS D fiscal year during the term of this Agreement shall not exceed the amount of EGCS D's budget for operating costs for that fiscal year pursuant to Section 2.b. without the prior written consent of EGP, except that EGCS D may amend its budget without EGP's prior written consent to deal with emergency situations. In the event that EGCS D requests Interim Funding in any fiscal year that exceeds the amount budgeted therefore (including any emergencies referred to in the preceding sentence), EGP shall determine, in its sole discretion, whether or not to advance such Interim Funding.

e. Termination of Obligation to Provide Interim Funding. EGP's obligation to provide Interim Funding shall terminate upon the earlier of the following:

i. The last day of the fiscal year in which the County has issued a certificate of occupancy for the last market rate residential unit to be developed in Phase 3 of East Garrison; or

ii. The first day of the first fiscal year following issuance of the first residential building permit in Phase 3 in which EGCS D's projected available revenues from all sources (whether or not EGCS D elects to raise all of such revenues) that both (1) exceed 115 percent of EGCS D's projected operating costs and (2) are forecast to equal or exceed EGCS D's projected operating costs for the balance of the build out of East Garrison.

f. Suspension of Obligation to Provide Interim Funding. EGP may suspend or otherwise reduce its obligation to provide Interim Funding for any period of:

i. EGCS D's material uncured default on any provision of this Agreement; or

ii. The material failure of EGCS D or any successor entity to provide the public services to East Garrison in fulfillment of EGCS D's obligations under the Urban Services Agreement.

g. Development Deferral. If EGP determines that a significant event has occurred which causes a delay in development of East Garrison, including but not limited to a decline in market demand that warrants curtailment of development or that makes continued development economically infeasible, or due to unanticipated delays caused by regulatory

agencies, or other cause of excused delay set forth in Section 604 of the DDA, EGP and EGCS D may meet and confer in good faith to decide upon an appropriate adjustment of EGCS D's budget that reflects any reduction in level of services required by EGCS D as a result of such delays.

h. Amendment to the Interim Funding Commitment. Any request of EGCS D for an amendment to the Interim Funding commitment shall include a detailed written description justifying the request, specifying particular uses of funds, and identifying the consequences of EGP's inaction.

i. Interim Funding Dispute. If EGP takes exception to any Interim Funding amount requested for reimbursement, EGP shall, within 30 days after EGP's receipt of the invoice in dispute, deliver to EGCS D a written notice of protest explaining the basis for the dispute. The Parties shall promptly meet to review the dispute and resolve it on a mutually acceptable basis.

3. EGCS D Reimbursement of EGP.

a. Reimbursement of Interim Funding. EGP may request EGCS D to reimburse EGP for all of the Interim Funding advanced by EGP pursuant to this Agreement with interest at the rate of the greater of (i) the private commercial interest rate charged by Wells Fargo Bank in San Francisco, plus one percent (1%), or (ii) eight percent (8%) per annum, compounded quarterly, on the unpaid principal amount of the Interim Funding outstanding from time to time (the "Reimbursement Amount").

b. Time and Manner of Reimbursement. Upon receipt of EGP's request for reimbursement, EGCS D shall make reimbursement payments to EGP at such time and in such manner as is reasonably feasible in light of EGCS D's projected operating costs and revenues.

c. Obligation to Secure Funding for Reimbursement. EGCS D shall take all actions under law to ensure that it secures funding for its operating costs, and, subject to Article 3.b, to enable EGCS D to pay the Reimbursement Amount. In this regard, EGCS D will act in accordance with such agreements or permits that limit the total assessment or taxation of private properties within the CSD, but otherwise will take all lawful actions to maximize funds available to it to pay its operating costs and the Reimbursement Amount from all sources including but not limited to CSD assessments, fees and charges; improvement, general obligation or revenue bonds, or other debt financing; and other means of financing, including Federal, State, regional, and local funding sources.

d. Project Costs and Project Revenues. By way of information only, this subsection d. is included in this Agreement to explain the application of the definitions of "Project Costs" and "Project Revenues" as used in Part A, Sections 3.d. and 3.e. of Attachment No. 4 to the DDA in order to determine the amount of Participation Payments due by EGP to the Agency under Part A of Attachment No. 4 to the DDA.

i. "Project Costs" as defined in Part A., Section 3.d. of Attachment No. 4 to the DDA shall include the amount of the Interim Funding advanced by EGP under this Agreement, as of the date of each advance by EGP of the Interim Funding amount; and

ii. "Project Revenues" as defined in Part A., Section 3.e. of Attachment No. 4 to the DDA shall include (x) the amount of reimbursement payments received by EGP from EGCSO under this Agreement as of the date of receipt by EGP of each such payment; and (y) if, at the time of the final accounting for Participation Payments under Part A of Attachment No. 4 to the DDA, EGCSO has not reimbursed EGP the full Reimbursement Amount, "Project Revenues" shall also include the value, as of the date of the final accounting, of that unpaid amount of the Reimbursement Amount, determined by discounting such amount to the then present value ("Present Value") at a discount rate of twenty-two and one-half percent (22.5%).

4. Obligations of EGCSO to EGP. In consideration of EGP entering into this Agreement, EGCSO agrees as follows:

a. Development of East Garrison. To cooperate with EGP in the progressive and timely development of East Garrison in accordance with the Conditions of Approval, the Urban Services Agreement, Development Approvals and the DDA through the full range of EGCSO's powers.

b. Services. To provide and/or fund the public services allocated to it as EGCSO obligations under the Urban Services Agreement to East Garrison in a timely and responsive manner as demand develops. EGCSO shall not enter into any amendment to the Urban Services Agreement which may frustrate the intent of this Agreement.

c. Services and Improvements Funded by EGP. To refrain from providing to any areas outside of East Garrison, without the approval of EGP, any available capacity or allocation of services or capital improvements which EGP has funded, or that will impair EGCSO's ability to meet its obligations under this Agreement.

d. Annexation. To the extent permitted by law, to approve annexations, if any, requested by EGP within EGCSO's Sphere of Influence as approved by the Monterey County Local Agency Formation Commission, subject to the payment of reasonable annexation fees and EGP's compliance with all reasonable conditions of annexation as determined by EGCSO.

5. Independent Actions of EGCSO. Nothing in this Agreement shall be construed as abrogating to EGP any governmental authority or powers of EGCSO, nor shall EGP be liable for the manner in which EGCSO exercises its authority or powers.

6. Default; Remedies; Termination. Failure or unreasonable delay by any Party to perform any material term, provision, or condition of this Agreement for a period of 90 days after written notice thereof is mailed by certified mail from any Party shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. If the nature of the alleged default is that it cannot reasonably be cured within the 90-day period, the commencement of the cure within the time period and the diligent prosecution to completion of the cure shall be deemed a cure within the period. If the default is cured within 90 days, then no default shall exist and the noticing Party shall take no further action.

7. Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal law or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Litigation attacking the validity of this Agreement, any of the Development Approvals, or any permit, ordinance, entitlement, or other action of a governmental agency necessary for the development of East Garrison shall be deemed to create an excusable delay as to any Party. Upon the request of any Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the Parties.

8. Venue. Legal actions shall be initiated in the Superior Court of Monterey County.

9. Attorneys' Fees. If legal action by any Party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorney's fees and court costs.

10. Hold Harmless Agreement.

a. EGCSD. EGCSD hereby agrees to defend and hold harmless EGP and its officers, agents, employees, and representatives against and from any and all claims, costs, and liabilities for any personal injury, death, or property damage which arise directly or indirectly from EGCSD's performance or from the performance of EGCSD's contractors, subcontractors, agents or employees, under or in furtherance of this Agreement.

b. EGP. EGP hereby agrees to defend and hold harmless EGCSD and its officers, agents, employees, and representatives against and from any and all claims, costs, and liabilities for any personal injury, death, or property damage which arise directly or indirectly from EGP's performance or from the performance of EGP's contractors, subcontractors, agents or employees, under or in furtherance of this Agreement.

11. Miscellaneous Provisions.

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

b. Other Necessary Acts. Each Party shall execute and deliver to the other all other further instruments and documents as may be reasonably necessary to carry out this Agreement

c. Amendment of Agreement. This Agreement may only be amended in writing by the original Parties, or their successors in interest. The Parties shall cooperate in effecting needed amendments, if any, to this Agreement.

d. Binding on Successors. All of the provisions, agreements, rights, powers, terms, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns.

e. Notices. All payments and notices under this Agreement or otherwise required by law shall be made to:

EGP: East Garrison Partners, I, LLC  
Attention: Ian Gillis  
24571 Silver Cloud, Suite 101  
Monterey, CA 93940  
Telephone (831) 647-2440  
Facsimile (831) 647-2442

With a copy to: Joe Coomes  
McDonough Holland & Allen PC  
555 Capitol Mall, 9th Floor  
Sacramento, CA 95814  
Telephone (916) 444-3900  
Facsimile (916) 444-8334

EGCSD: East Garrison Community Services District  
Attention: Director of Public Works  
168 West Alisal Street, Second Floor  
Salinas, CA 93901  
Telephone (831) 755-4800  
Facsimile (831) 755-4958

A Party may change its address by giving notice in writing to the other Party. Thereafter notices, demands, and other pertinent correspondence shall be address and transmitted to the new address.

12. Cooperation in the Event of Legal Challenge. If any legal or equitable action or other proceeding is brought by any third Party, including any governmental entity or official, challenging the validity of any provision of this Agreement or any action taken or decision made hereunder, the Parties shall cooperate in defending the action or proceeding, and the cost and expense of the defense, including, but not limited to attorney's fees, shall be split equally between the Parties. In the event the Parties are unable to select mutually agreeable legal counsel to defend the action or proceeding, each Party may select its own legal counsel at each Party's expense.

13. Third Party Litigation. If any Party is required to initiate or defend any action or proceeding with a third party, including, without limitation, any cross-complaint, counterclaim,

or third-party claim, because of the other Party's commission of any event of default, or other breach of or failure to perform this Agreement, then the Party bringing or defending the action shall be entitled to recover its costs and expenses incurred in the action, including reasonable attorneys' fees, from the other Party.

14. Entire Agreement. This Agreement constitutes the full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the Parties.

15. Conditions of this Agreement. This Agreement, including the obligations of EGP hereunder, are expressly conditioned upon: (1) the transfer of the East Garrison Site (as "Site" is defined in the DDA) to EGP and (2) the DDA remaining in full force and effect as to EGP and its successors and assigns and not being terminated, in whole or in part, including, but not limited to, by revesting of title to the Site or any part thereof in the Agency after transfer to EGP. In the event of any such termination of the DDA or revesting of title to the Site or any part thereof in the Agency after transfer to EGP, the obligations of EGP (and the corresponding obligations of the other parties which are dependent or conditioned upon the obligations of EGP) under this Agreement shall automatically terminate without further action by the parties but only as to those obligations applicable to the portions of the Site for which the DDA is terminated or title is revested in the Agency where no horizontal development or transfer to vertical developers has been made by EGP.

Executed as of the Effective Date:

**[SIGNATURE PAGES FOLLOW]**

**EGP:**

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: [Signature]

Its: PRESIDENT

By: [Signature]

Its: Treasurer

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: [Signature]

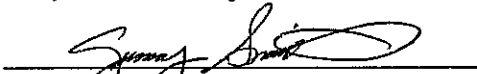
Its: VICE PRESIDENT

By: [Signature]

Its: ASSISTANT SECRETARY

**EGCSD:**

**EAST GARRISON COMMUNITY SERVICES  
DISTRICT, a Community Services District**

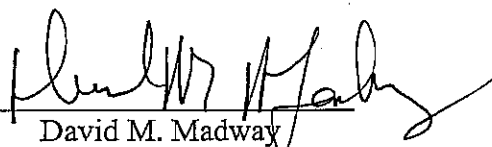
By: 

Chair, Board of Directors

**JERRY SMITH, CHAIR**  
Monterey County Board of Supervisors

APPROVED AS TO FORM:

COUNTY COUNSEL

By: 

David M. Madway  
Special Counsel