

Before the Board of Supervisors in and for the County of Monterey, State of California

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

Agreement No. A-10565

- a. Approve an Erosion Control and Maintenance of Facilities Agreement with East Garrison Partners I, LLC in compliance with Conditions of Approval 210 and 235 to Combined Development Permit No. PLN030204, located at East Garrison; and)
- b. Authorize the Chair to execute the Erosion Control and Maintenance of Facilities Agreement.....)

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

- a. Approves an Erosion Control and Maintenance of Facilities Agreement with East Garrison Partners I, LLC in compliance with Conditions of Approval 210 and 235 to Combined Development Permit No. PLN030204, located at East Garrison; and
- b. Authorizes the Chair to execute the Erosion Control and Maintenance of Facilities 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

**AGREEMENT BETWEEN THE
COUNTY OF MONTEREY AND EAST GARRISON PARTNERS
FOR EROSION CONTROL AND MAINTENANCE OF FACILITIES**

[File No. PLN030204; Conditions of Approval 210 and 235]

This Agreement ("Agreement") is made and entered as of _____, by and between the COUNTY OF MONTEREY (the "County") and EAST GARRISON PARTNERS I, LLC, a California Limited Liability Company ("EGP"), (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. Condition of Approval 210 ("Condition 210") to the Combined Development Permit for East Garrison provides, in part:

"Develop and enter into an agreement and provide security for maintenance of the erosion control plan prior to obtaining authorization for grading."

C. Condition of Approval 235 ("Condition 235") to the Combined Development Permit for East Garrison provides, in part::

"Enter into an agreement with the County subject to the approval of the Directors of Public Works, Planning and Building Inspection, Water Resources Agency, and County Counsel that provides for the protection of down stream facilities from sediment; the maintenance of plantings, maintenance and restoration of slopes, maintenance of retention/detention/sedimentation ponds, maintenance of drainage system improvements installed as part of the Grading Permit; and the restoration of on and off site damages caused by the grading activities. Security shall be provided in the form of a performance bond for 100% of the grading and erosion control cost, a labor and materials bond for 50% of the labor and materials costs, and a maintenance bond for 100% of the estimated cost of annual maintenance of the graded area."

D. The Parties desire to enter into this Agreement to fulfill the above provision of Condition 210 and Condition 235 relating to the maintenance of erosion control facilities as further set forth herein.

AGREEMENT

(1) DEFINITIONS

(a) "Erosion Control Plan" means the plan required by Condition 210 and Monterey County Code section 16.12.060 that indicates the methods for the control of runoff, erosion, and sediment movement during grading and building activities.

(b) "Grading Permit" means the permit required by Monterey County Code chapter 16.08.

(2) EROSION CONTROL PROCEDURES

(a) An Erosion Control Plan shall be prepared in accordance with the provisions of the Monterey County Code, prior to the issuance of a Grading Permit.

(b) In order to satisfy the requirements of Condition 235, in addition to the requirements set forth in the Monterey County Code, the Erosion Control Plan shall also provide for the protection of down stream facilities from sediment; the maintenance of plantings; the maintenance and restoration of slopes; the maintenance of retention/detention/sedimentation ponds; the maintenance of drainage system improvements installed as part of grading activities; and the restoration of on and off site damages caused by the grading activities.

(c) All erosion control procedures shall be installed in a timely manner in accordance with the Erosion Control Plan

(3) SECURITY.

(a) Security for grading and erosion control shall be provided separately for each phase of East Garrison and prior to the commencement of grading activities within each phase of East Garrison, as more particularly set forth herein below.

(b) Security for grading activities within each phase of East Garrison, and to be undertaken pursuant to a Grading Permit for such phase, shall be provided in the form of a performance bond for 100% of the grading cost, a labor and materials bond for 50% of the labor and materials costs, and a maintenance bond for 100% of the estimated cost of annual maintenance of the graded area and maintenance of drainage system improvements installed as part of the Grading Permit for such phase.

(c) Security for activities required by the Erosion Control Plan within each phase of East Garrison shall be provided in the form of a performance bond for 100% of the

erosion control cost, a labor and materials bond for 50% of the labor and materials costs, and a maintenance bond for 100% of the estimated cost of annual maintenance of erosion control improvements, including retention/detention/sedimentation ponds, within such phase. Those erosion control improvements subject to annual maintenance, and the annual maintenance to be performed, shall be set forth in the Erosion Control Plan.

(4) INDEMNIFICATION.

(a) EGP agrees that it will defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees in connection with any erosion, flooding, stormwater runoff, grading or discharge as a result of EGP's installation of horizontal improvements for the East Garrison project, except to the extent caused by the sole negligence or willful misconduct of the County, its officers, agents, employees or contractors. This indemnification includes the cost of independent outside counsel if engaged by the County to defend any such action. EGP will reimburse the County for any and all court costs, fines, penalties or attorney's fees, to the extent allowed by law, which the County may be required to pay by a court as a result of such action. The County, may, at its sole discretion, participate in the defense of such action, but such participation shall not relieve EGP of its obligations under this section.

(b) EGP shall secure the performance of the above indemnification by providing a performance bond or letter of credit from an accredited financial institution in the amount of one million dollars (\$1,000,000) in a form acceptable to the County. Such performance bond or letter of credit shall remain in effect for a period of three (3) year after the completion and acceptance of EGP's horizontal improvements for East Garrison, as evidenced by a final certificate of completion issued by the Agency for such horizontal improvements pursuant to the DDA. The provision of security by EGP under this Section (4)(b) shall be a condition of acceptance of any facilities by the County.

(c) Prior to the issuance of a final certificate of completion issued by the Agency for horizontal improvements, EGP shall be required to maintain bodily injury and property damage insurance in accordance with the provisions of Section 305 of the DDA, including the ten- (10-) year period ("tail") for filing of claims following any such event. This subsection (c) of this Section (4) is not intended to impose any additional insurance obligations on EGP, but to acknowledge that such coverage shall be in place during the construction of horizontal improvements in order to protect the County, and other named insureds, from the types of claims referenced in subsection (a) of this Section (4).

(d) The County shall promptly notify EGP of any claim, action or proceeding covered by this indemnification provision, and the County shall cooperate fully in the defense thereof.

(5) TERM OF AGREEMENT.

The term of this Agreement shall commence upon the execution hereof by the Parties and shall terminate upon the completion of all of the horizontal improvements for East Garrison, as evidenced by a final certificate of completion issued by the Agency for such horizontal improvements pursuant to the DDA.

(6) EFFECT OF HEADINGS

The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect hereof.

(7) SUCCESSORS AND ASSIGNS

Whenever either EGP or the County is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties, and functions that are presently vested in EGP, or the County, and all agreements and covenants required hereby to be performed by or on behalf of EGP or the County shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

(8) BENEFITS OF AGREEMENT

Nothing contained herein, expressed, or implied, is intended to give to any person other than EGP, or the County any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of EGP, or the County shall be for the sole and exclusive benefit of the Parties.

(9) SEVERABILITY CLAUSE

If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of EGP or the County shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed severable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. EGP and the County hereby declare that they would have executed this Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause, and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses, or phrases, hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable, or invalid.

(10) AMENDMENT IN WRITING

This Agreement may only be modified, amended or changed by written agreement of the Parties.

(11) GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of California.

(12) EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(13) WAIVER

The failure by either Party to enforce any term or provision of this Agreement will not constitute a waiver of that term or provision, or any other term or provision. No waiver of any term or provision of this Agreement, by either Party, will be deemed or will constitute a waiver of any other provision of this Agreement, and no waiver will constitute a continuing waiver unless otherwise expressly provided in writing.

(14) COMPLIANCE WITH LAWS

EGP and County, at their own expense, will observe and comply with all laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments and other lawful governmental bodies, relating to the Parties' respective activities under this Agreement. Each Party agrees to pay all claims, fines, penalties, and damages that may in any manner arise out of or be imposed because of its failure to comply with the foregoing covenant and agrees to hold the other Party harmless from any loss, damage, cost, or expense imposed or recovered because of any such breach. Either Party's violation of such covenant will be grounds for the immediate termination of this Agreement by the other Party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

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: MEMBER

By: WACA

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

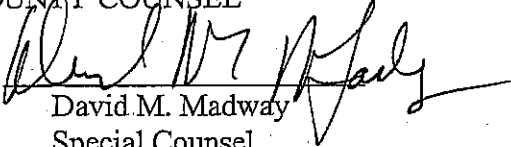
By: [Signature]

Its: ASSISTANT SECRETARY

COUNTY OF MONTEREY

By: 
JERRY SMITH, CHAIR
Monterey County Board of Supervisors

APPROVED AS TO FORM:
COUNTY COUNSEL

By: 
David M. Madway
Special Counsel