

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

Agreement No. A-10563

- a. Approve a Fair Share Contribution and Reimbursement Relating to Traffic Improvements Agreement with East Garrison Partners I, LLC in compliance with Conditions of Approval 186 and 187 to Combined Development Permit No. PLN030204, located at East Garrison; and)
- b. Authorize the Chair to execute the Fair Share Contribution and Reimbursement Agreement Relating to Traffic Improvements.....)

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

- a. Approves a Fair Share Contribution and Reimbursement Relating to Traffic Improvements Agreement with East Garrison Partners I, LLC in compliance with Conditions of Approval 186 and 187 to Combined Development Permit No. PLN030204, located at East Garrison; and
- b. Authorizes the Chair to execute the Fair Share Contribution and Reimbursement Relating to Traffic Improvements Agreement.

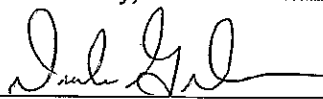
PASSED AND ADOPTED on this 18th day of July 2006, by the following vote, to-wit:

AYES: Supervisors Calcagno, Lindley, Potter, and Smith
 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 
 Darlene Drain, Deputy

**AGREEMENT BETWEEN THE
COUNTY OF MONTEREY AND EAST GARRISON PARTNERS
FOR FAIR SHARE CONTRIBUTION AND REIMBURSEMENT
RELATING TO TRAFFIC IMPROVEMENTS**

[File No. PLN030204; Conditions of Approval 186 and 187]

THIS AGREEMENT is entered into on July 18, 2006, by and between EAST GARRISON PARTNERS I, LLC, a California Limited Liability Company ("EGP"), and the COUNTY OF MONTEREY ("County"), (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 186 ("COA 186") to the Combined Development Permit for East Garrison provides, in part, that EGP shall pay its fair share contribution towards certain off-site improvements identified in Condition 186 ("COA 186 Improvements") through the payment of traffic impact fees to the County at the time of issuance of building permits.

C. Pursuant to COA 186, if any COA 186 Improvements are in the future included in the Fort Ord Reuse Authority Capital Improvement Program ("FORA CIP"), then the fair share contribution will be satisfied by the payment of the FORA impact fee.

D. Condition of approval 187 ("COA 187") to the Combined Development Permit for East Garrison provides, in part, that all on-site and off-site road and traffic improvements constructed by EGP, to the extent funded directly or indirectly by EGP (collectively, "COA 187 Improvements"), shall be eligible for fair share reimbursement from future development benefiting from the facilities, except to the extent that such improvements are (i) funded by traffic impact fees paid by EGP or (ii) the subject of FORA fee credits in favor of EGP.

E. COA 187 provides that EGP shall prepare and execute an agreement, prior to recordation of a final map, that provides reimbursement to EGP for the fair share proportionate costs of the COA 187 Improvements.

- F. The Parties desire to enter into this Agreement to achieve the following purposes:
1. To establish EGP's fair share of the COA 186 Improvements and the method of applying any adjustment to the traffic impact fees.
 2. To identify the full list of COA 187 Improvements.
 3. To establish EGP's fair share of the COA 187 Improvements, the fair share to be collected from benefited third party developers ("TPD"), if any, and the fair share to be paid to EGP from other first available funding sources. "Other first available funding sources" as used in this Agreement are those funding sources that provide revenue to the County of Monterey Resource Management Agency Public Works Capital Improvement Program.
 4. To set forth the process by which the County will reimburse EGP for COA 187 Improvements.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, County and EGP hereby agree as follows:

A. COA 186 IMPROVEMENTS

1. **Construction.** County shall apply the funds collected from EPG pursuant to this Agreement only for the construction of the COA 186 Improvements identified in Exhibit A.

2. **Fair Share Contribution.**

(a) EGP's shall pay its fair share of the actual Total Project Costs of the COA 186 Improvements. EGP's fair share for each of the COA 186 Improvement is a percentage of the actual Total Project Costs, as set forth in Exhibit A. As used in this Agreement, "Total Project Costs" means the costs of designing, permitting, managing, insuring, bonding, inspecting and constructing an improvement, and includes other incidental costs of constructing the improvement.

(b) EGP shall satisfy the obligation set forth in Section 2(a) above through the payment of traffic impact fees to the County at the time of issuance of building permits. As set forth in COA 186, the traffic impact fees shall be \$205 per residential unit; \$423 per 1,000 square feet commercial use; and \$99 per 1,000 square feet artist/cultural/educational uses. The traffic impact fees are based on 2005 dollars and shall be updated annually based on the Engineering News Record Building Cost Index for the San Francisco area (as defined in Part 4 of Attachment 4 to the DDA, the "ENR Cost Index").

(c) If any COA 186 Improvement becomes part of the FORA CIP program, then EGP's fair share contribution will be satisfied by the payment of the FORA impact fee. The County's traffic impact fee shall be reduced by an amount equal to EGP's fair share of such COA 186 Improvement, and such reduction shall be applied equally to the remaining residential units within East Garrison. The reduction shall only be applied to residential units. For example, if a COA 186

Improvement with an estimated total project cost of \$300,000, of which EGP's fair share is 10%, becomes part of the FORA CIP, and 700 residential units have not yet been built, then the traffic impact fee for residential units would be reduced by \$42.86 ($\$205 - \$42.86 = \162.14, assuming no construction cost index adjustment).

3. FORA CIP. Pursuant to Sections 2.9.2 and 2.9.4 of the Development Agreement between the County and EGP, the County shall use diligent best efforts, without expenditure of any County funds, and assist Developer, in obtaining inclusion in the FORA CIP, to the extent not already included, offsite roads and traffic improvements to be funded by FORA (including without limitation, the COA 186 Improvements), and for EGP to receive credits against FORA fees for those improvements directly funded by Developer.

B. COA 187 IMPROVEMENTS

1. Total Project Costs. A portion of the actual Total Project Costs (as defined in section 2(a) above) for each of the COA 187 Improvements, to the extent funded directly or indirectly by EGP, shall be reimbursed to EGP in the manner set forth below.

2. Submission of Documentation.

(a) Upon completion of each of the COA 187 Improvements funded directly or indirectly by EGP, subject to acceptance thereof by County, EGP shall be entitled to reimbursement for the actual Total Project Costs of such COA 187 Improvement, plus the amount of any payments by EGP to the County for County's cost, minus any FORA fee credits in favor of EGP, minus EGP's fair share percentage of responsibility for such COA 187 Improvement ("EGP Fair Share Responsibility"), subject to review of the actual Total Project Costs by County. The actual Total Project Costs of a COA 187 Improvement, plus the amount of any payments by EGP to the County for County's costs, minus the EGP Fair Share Responsibility is the fair share reimbursement owed to EGP ("Fair Share Reimbursement"). The EGP Fair Share Responsibility and the Fair Share Reimbursement for each COA 187 Improvement is set forth in Exhibit B.

(b) Such Fair Share Reimbursement for each COA 187 Improvement shall accrue interest, on the unpaid balance, from time to time, from the date the COA 187 Improvement is completed by EGP, subject to acceptance by the County, at the rate of the annual increase of the ENR Cost Index, as defined in Section A.2.(b) hereof.

(c) Upon completion of each COA 187 Improvement, EGP shall submit documentation to County evidencing the actual Total Project Costs of the COA 187 Improvement, including any documentation reasonably requested by County. EGP shall keep full and accurate books of account and records of such Total Project Costs in accordance with generally accepted accounting principles, and such records shall be maintained until two (2) years after reimbursement to EGP for the costs of the COA 187 Improvement.

3. Fair Share Reimbursement.

(a) County shall require each TPD, if any (as defined in Recital F3. above) to pay to the County its determined fair share of the Fair Share Reimbursement, plus accrued interest, for the applicable COA 187 Improvement prior to the issuance of a building permit for the property of the TPD. Such fair share shall be determined by (i) multiplying the percentage of benefit for the TPD identified in Exhibit B by the Fair Share Reimbursement for the COA 187 Improvement; (ii) multiplying the percentage of benefit for the TPD identified in Exhibit B by the accrued interest on the Fair Share Reimbursement; and (iii) adding these two amounts.

(b) County shall keep complete and accurate records showing (i) the Fair Share Reimbursement for each of the COA 187 Improvements that have been completed by EGP, (ii) the accrued interest under this Fair Share Reimbursement, (iii) any amounts paid to EGP to date, (iv) the source of any amounts paid to EGP, and (v) the unpaid balance of the Fair Share Reimbursement still owed to EGP.

(c) Within ten (10) days after the end of each month, County shall remit to EGP any amounts collected from TPD's for each eligible COA 187 Improvement, in accordance with the formula set forth in Section 3(a) above, during such month ("Monthly Payment"), along with a statement showing the information identified in Section 3(b) above.

(d) The Monthly Payment and statement shall be provided to EGP each month until EGP has been paid in full the Fair Share Reimbursement, as set forth in Section B.2.(b) hereof.

C. GENERAL PROVISIONS

1. **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.

2. **Term.** The term of this Agreement shall start on the day and year duly executed by all Parties and shall remain in effect until the earlier of the following dates: (1) when all the terms and conditions contained in this Agreement have been satisfied, or (2) when EGP ceases to exist as a legal entity and has no successors in interest or assignees of the rights conferred by this Agreement, or (3) that date of EGP's final Participation Payment to the Agency under Part A, Section 3 of Attachment No. 4 to the DDA.

3. **Modification.** Modifications or amendments to this Agreement shall be in writing and executed by all Parties.

4. **Assignment.**

(a) This Agreement and all of the terms and conditions contained herein shall inure to the benefit of and bind the successors and assigns of County and EGP. Nothing contained herein restricts or prohibits the sale or other transfer of property.

(b) Any and all rights to receive reimbursement for the funding or construction of improvements, as set forth in this Agreement, are personal to EGP and are not transferred upon the sale of real property within East Garrison.

5. **Entire Agreement.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to the subject matter hereof.

6. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

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

8. **Other Agreements.** This Agreement is not intended to, and shall not, cancel, supersede, modify, or otherwise affect any other agreements that have been, or may be made, or any approvals or permits that have been issued between or by any Party regarding East Garrison, the COA 186 Improvements or the COA 187 Improvements.

9. **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.

SIGNATURE PAGES FOLLOW

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

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: 

Its: PRES.

By: 

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: 

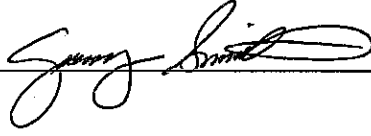
Its: VICE PRESIDENT

By: 

Its: MICHAEL A. MCHILLEN
ASSISTANT SECRETARY

COUNTY

COUNTY OF MONTEREY

By: 
Its: _____

APPROVED AS TO FORM:

COUNTY COUNSEL

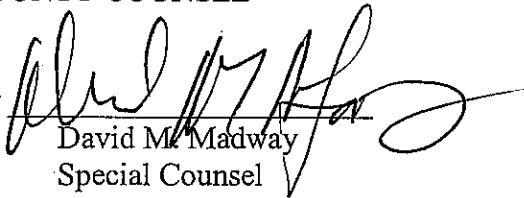
By: 
David M. Madway
Special Counsel

EXHIBIT A**COA 186 Improvements and Designation of EGP Fair Share Contributions**

Improvement	Estimated Total Project Cost in 2005 Dollars	EGP's Percentage of Actual Total Project Costs	Amount
Reservation Road widening between Portola Drive and Highway 68	\$270,000	15.30%	\$41,310
SR 183 between Cooper Road and Espinosa Road	\$11,700,000	2.20%	\$257,400
Highway 1 SB Ramps/Reservation Road traffic signal and intersection improvements	\$600,000	0.75%	\$4,500
Highway 1 SB Ramps/Imjin Parkway traffic signal and intersection improvements	\$800,000	1.31%	\$10,480
SR 68 WB Ramps/Reservation Road intersection improvements	\$300,000	1.61%	\$4,830
SR 68 EB Ramps/Reservation Road intersection improvements	\$300,000	3.33%	\$9,990

EXHIBIT B

COA 187 Improvements, Designation of Fair Share Responsibility

Improvement	EGP Fair Share Percentage of Total Project (to the extent not eligible for FORA fee credit)	Reimbursement Percentage Owed to EGP by Future Development
Signal and intersection improvements at Reservation Road/Davis Road	24%	76. %
Signal and intersection improvements at Reservation Road/Watkins Gate	*100%	*0%
	**36 %	**64%
Signal and intersection improvements at Reservation Road/Center Entrance Road	*100%	*0%
	**28%	**72%
Signal and intersection improvements at Reservation Road/New Inter-Garrison Road Connector	23%	77%
Construction of the new Inter-Garrison Road Connector from Inter-Garrison Road to Reservation Road	30%	70%
Inter-Garrison traffic signal (in lieu of the previously designed roundabout)	56%	44%

* Signal, acceleration lanes, deceleration lanes, and left turn channilization eligible for "Fair Share" reimbursement from East Garrison (EG) Phase II pending traffic study. The "Fair Share" percentage for EG Phase II will be based on future forecasted traffic volumes.

** Reservation Road widening eligible for "Fair Share" reimbursement from future development.

**Example of Reimbursement for Actual Total Project Costs
using 30% EGP "fair share"**

Actual Project Costs	\$2,250,000
FORA Fee Credit	\$2,000,000
Amount not eligible for FORA Fee Credit	\$ 250,000
EGP's "Fair Share" Responsibility of non eliglbe Project Costs- 30%	\$ 75,000
EGP's Eligible Reimbursement from Future Development - 70%	\$ 175,000