

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

Agreement No. A-10562

- a. Approve Slurry Seal Agreement with East Garrison Partners I, LLC in compliance with Condition of Approval 240 to the Combined Development Permit No. PLN030204, located at East Garrison; and)
- b. Authorize the Chair to execute the Slurry Seal Agreement.....)

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

- a. Approves a Slurry Seal Agreement with East Garrison Partners I, LLC in compliance with Condition of Approval 240 to the Combined Development Permit No. PLN030204, located at East Garrison; and
- b. Authorizes the Chair to execute the Slurry Seal 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 FUNDING OF SLURRY SEAL**

[File No. PLN030204; Condition of Approval 240]

This Agreement ("Agreement") is made and entered as of July 18, 2006, 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 240 ("Condition 240") to the Combined Development Permit for East Garrison provides:

"Applicant shall enter into an agreement to fund any shortfall in assessments necessary to slurry seal all public streets and pavement areas seven years after final acceptance. The Agreement shall provide for bonding as necessary. Where applicant is required to provide security by the conditions of this Combined Development Permit, applicant shall provide improvement security in the form of a one hundred percent (100%) performance, labor and materials bond or a one hundred percent (100%) letter of credit."

C. The Parties desire to enter into this Agreement to fulfill Condition 240 relating to the slurry seal of certain public streets and pavement areas that are perimeter to East Garrison ("Public Streets") as further set forth herein.

AGREEMENT

(1) DEFINITIONS

- (a) **Slurry Seal.** "Slurry Seal" shall consist of mixing asphaltic emulsion, aggregate, set-control additives and water and spreading the mixture on a surfacing of pavement to

maintain streets and pavement areas as prepared and applied in accordance with Caltrans Standard Specifications, Section 37-2 for Slurry Seal and as directed by the Resident Engineer.

- (b) **Perimeter Public Streets.** "Perimeter Public Streets" means those Public Streets identified as Perimeter Public Streets in Exhibit A, "Public Streets," attached hereto and incorporated herein by reference.
- (c) **Public Streets.** "Public Streets" means those streets within East Garrison that are, or will be, used by the general public, regardless of ownership, as identified in Exhibit A, "Public Streets." Perimeter Public Streets are a subset of Public Streets, and are included within the definition of Public Streets, as used in this Agreement. Alleys and driveways are expressly excluded from the definition of Public Streets.
- (d) **Available Assessments.** "Available Assessments" means funds available from assessments for the first application of Slurry Seal to the Public Streets and collected for such purpose, from the East Garrison Homeowner's Association ("HOA").
- (e) **Gap Funding.** "Gap Funding" means the total costs for the first application of Slurry Seal to each of the Public Streets identified in Exhibit A seven (7) years after final acceptance of the Perimeter Public Streets or final inspection of the other Public Streets by the County (whichever is applicable) less the total amount of Available Assessments.

(2) SLURRY SEAL OF PUBLIC STREETS

- (a) Pursuant to the County's maintenance standards for public streets and pavement areas, the County shall, in its reasonable discretion, select the Slurry Seal product and the contractor(s), if any, to apply the Slurry Seal to the Public Streets seven (7) years after the County's acceptance of each of the Perimeter Public Streets or final inspection of each of the other Public Streets by the County (whichever is applicable).
- (b) Upon written notice being given by EGP to the County of the formation of the HOA, the HOA shall assume responsibility for providing funds for the one time application of Slurry Seal to the Public Streets. In accordance with Condition 240, EGP shall be responsible to provide for the Gap Funding, if necessary, to the HOA as further set forth herein.
- (c) The County shall give written notice to EGP and the HOA of its intention to first apply Slurry Seal to each Public Street no less than ninety (90) days nor more than one hundred twenty (120) days prior to the commencement of the engineering work for the first Slurry Seal of such Public Street. The notice shall include a detailed cost estimate of the total cost of the first Slurry Seal of such Public Street (including, but not limited to, costs of engineering, preparation of specifications and bid documents,

the public bid contract for such work and contract administration, inspection and acceptance of such work; and a reasonable contingency).

- (d) Within forty-five (45) days of receipt of such notice EGP or the HOA shall determine if Available Assessments will cover the total costs included with the notice and shall certify such determination to the County. If it is determined that the Available Assessments are insufficient, then within thirty (30) days of such determination, EGP shall remit to the HOA the total amount of Gap Funding. In the event that EGP disputes the calculation of Gap Funding, EGP shall notify the County within fourteen (14) days of such determination and the Parties shall meet and confer within five (5) days thereafter in an effort to resolve the dispute relating to the calculation of Gap Funding. EGP shall pay the Gap Funding to the HOA, as determined by the County after making and conferring with EGP, within ten (10) days following the County's final determination
- (e) Not later than thirty (30) days prior to the commencement of the engineering work, upon notice from the County the HOA shall be required to deposit into an interest-bearing escrow account in the name of the County cash funds equal to the total costs included in the notice from the County under subsection (c), above, with authorization to the County to draw upon such funds as necessary to pay the costs of the Slurry Seal of the Public Streets. Upon completion of the work and acceptance thereof by the County and payment by the County of all costs of the work, the HOA shall be entitled to withdraw any remaining funds in the escrow account for its own use and the County shall promptly return to the HOA any funds withdrawn by the County from the escrow account and not required to pay for costs of the work. If EGP has provided Gap Funding to the HOA, as required hereunder, EGP shall not look to the County for any reimbursement of its Gap Funding.
- (f) It is anticipated that the HOA shall annually budget sufficient funds necessary to provide for the full costs of the first application of Slurry Seal to the Public Streets. The Parties agree that currently it is estimated that the Available Assessments will fully fund the costs of the first application of Slurry Seal to the Public Streets and no Gap Funding from EGP will be necessary. Prior to the approval of first Final Map for East Garrison, EGP shall provide to the County an estimate of the Available Assessments for the costs of the first application of Slurry Seal to the Public Streets. If at any time during the term of this Agreement, the County determines, based on reasonable evidence of HOA budget projections, that Available Assessments will not fully fund the estimated costs of the first application of Slurry Seal to the Public Streets and Gap Funding will be required, EGP shall provide security, in a form acceptable to the County, for the estimated amount of Gap Funding within thirty (30) days of receipt of a request for security from the County.

(3) TERM OF AGREEMENT.

The term of this Agreement shall commence upon the execution hereof by the Parties. This Agreement shall terminate upon the County's completion of the application of Slurry Seal to the Public Streets, approximately seven (7) years after acceptance of the Perimeter Public Streets or final inspection of the other Public Streets by the County (whichever is applicable), and EGP's payment to the County of the total Gap Funding hereunder. The Parties anticipate that termination of this Agreement shall occur prior to December 31, 2016, subject to extension to the extent the Public Streets are not completed by December 31, 2009. Nothing in this Agreement shall preclude the right of EGP to terminate this Agreement at any time by providing payment to the HOA for the Gap Funding in advance of the County's work of first application of Slurry Seal to the Public Streets, based on projected costs and projected Available Assessments.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) AMENDMENT IN WRITING

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

(9) GOVERNING LAW

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

(10) 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.

(11) 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.

(12) 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.

(13) CONDITION OF THIS AGREEMENT.

This Agreement shall be effective, and is conditioned upon, the transfer of the East Garrison Site (as "Site" is defined in the DDA) to EGP.

SIGNATURE PAGES FOLLOW

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: 

Its: PRES.

By: WACA

Its: Treasurer

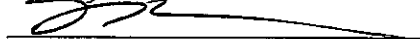
and

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: 

Its: VICE PRESIDENT

By: 

Its: ASSISTANT SECRETARY

COUNTY OF MONTEREY

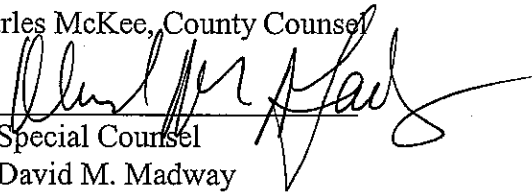
By: 

Its: _____

APPROVED AS TO FORM:

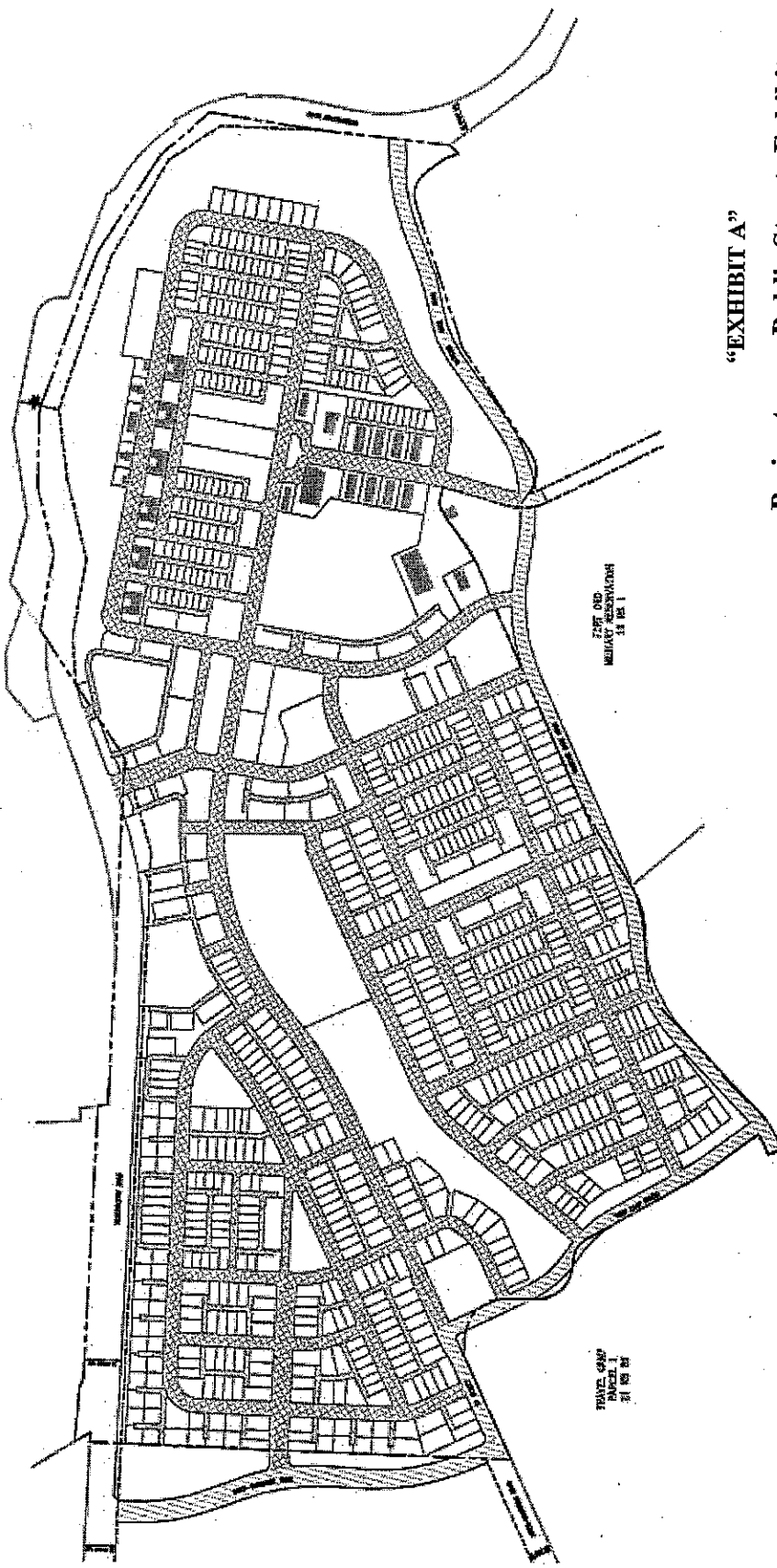
Charles McKee, County Counsel

By



Special Counsel

David M. Madway

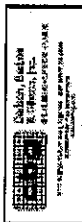




"EXHIBIT A"

Perimeter vs. Public Streets Exhibit

EAST GARRISON

WARRANT COUNTY COLLEGEVILLE



- LEGEND**
-  Perimeter Public Streets Maintained by the HOA
 -  Public Streets Maintained by the HOA