

PROPERTY CONVEYANCE AGREEMENT NO. A-\_\_\_\_\_

between the  
REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY  
and the  
COUNTY OF MONTEREY

THIS AGREEMENT, entered into this 22<sup>nd</sup> day of March, 2011, by and between the County of Monterey (“County”) and the Redevelopment Agency of the County of Monterey, (“Agency”) is made with reference to the following facts and circumstances:

RECITALS

A. The military installation at Fort Ord was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; 10 U.S.C. Section 2687 note).

B. The Fort Ord Reuse Authority (“FORA”), created pursuant to California Government Code Section 67650 et seq., and the United States of America entered into the *Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California*, dated the 20th day of June 2000, as amended (“MOA”), setting forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California.

C. FORA adopted a Fort Ord Base Reuse Plan (“Base Reuse Plan”) on June 13, 1997, which established goals and objectives, and established land use/development designations for all property located within the former Fort Ord and encompassed by the MOA.

D. FORA entered into an *Implementation Agreement* with the County, dated May 8, 2001, whereby the County agreed to receive certain properties in the former Fort Ord, pursuant to certain terms and conditions, including compliance with the MOA, related to the ultimate disposition and redevelopment of such properties.

E. On February 19, 2002, by Ordinance No. 4136, the County adopted the *Redevelopment Plan for the Fort Ord Redevelopment Project Area for the County of Monterey* (“Redevelopment Plan”).

F. Said Ordinance conferred upon the Agency the authority and obligation to implement the Redevelopment Plan and alleviate blight within the Fort Ord Redevelopment Project Area (“Project Area”).

G. On August 15, 2006 the County Board of Supervisors approved Resolution No. 06-243 authorizing conveyance of certain lands in the unincorporated area of the former Fort Ord within the Project Area directly from FORA to the Agency.

H. To assist in implementing the Redevelopment Plan, on April 10, 2007 the Agency adopted a Five-Year Implementation Plan for the Fort Ord Redevelopment Project Area (“Implementation Plan”) pursuant to Section 33490 of the Redevelopment Law.

I. In accordance with the Redevelopment Plan, the Implementation Plan, the Implementation Agreement, and Resolution No. 06-243, the Agency has acquired certain parcels of real property within the Project Area (each of which is referred to as a “Parcel”, and collectively are referred to as the “Property” as more particularly described in the attached Exhibit A).

J. In furtherance of the goals and objective of the Redevelopment Plan, the Implementation Plan, the Implementation Agreement, and the MOA, the Agency desires to convey the Property to the County, and the County desires to acquire the Property from the Agency. The Agency and the County desire to enter into this Agreement to effectuate the transfer of the Property by the Agency to the County in order to ensure compliance with the intent and purpose behind the MOA and the FORA Base Reuse Plan, and to establish the Parties’ mutual agreement regarding the redevelopment of the Property.

K. Following the conveyance the County intends to continue to meet its obligations under the Implementation Agreement regarding the use of the Property in furtherance of the Redevelopment Plan, the Base Reuse Plan, and the Implementation Plan.

L. Section 33220(g) of the Redevelopment Law authorizes the County to acquire land from the Agency, with or without consideration, and upon the terms as the County and Agency may determine.

M. The Agency may convey property to the County pursuant to Section 33432 of the Redevelopment Law.

N. Pursuant to Section 15004(b)(2)(A) of the Guidelines for the implementation of CEQA, this Agreement is exempt from the requirements of CEQA because the future use of the Property is conditioned upon CEQA compliance as a condition of the development thereof.

NOW, THEREFORE, the County of Monterey and the Redevelopment Agency of the County of Monterey hereby agree as follows:

1. Conveyance. Subject to the terms and conditions set forth below, the Agency agrees to convey, and the City agrees to accept, conveyance of the Property.

2. Consideration for Conveyance. The Agency shall convey the Property to the County in consideration for the County’s binding obligation to cause the development of the Parcels in accordance with the terms and conditions of the MOA, the Implementation Agreement, the Base Reuse Plan and the Redevelopment Plan, plus the sum of One Dollar (\$1.00) per Parcel.

3. Method of Conveyance. As soon as practicable following execution of this Agreement, the Agency shall convey the Property to the County by quitclaim deed (“Deed”) for each Parcel, substantially in the form of the attached Exhibit B as modified to correspond to the deed of transfer from FORA to Agency for each parcel, to be recorded in the official records of the County Recorder of the County of Monterey. The date of execution of the Deed is referred to in this Agreement as the Conveyance Date. Ad valorem property taxes and assessments, if any, shall be prorated as of the Conveyance Date. The Agency shall pay all costs of conveyance.

The Agency and the City shall execute any and all documents reasonably necessary or appropriate to close the conveyance of the Property pursuant to the terms of this Agreement.

4. Condition of Property. In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the Parties acknowledge and agree that the Agency has provided the County with all information in its possession regarding the existence and/or release of hazardous substances on or beneath the Property, and that the provision of such information constitutes the written notice required to be given by the Agency to the County pursuant to Health and Safety Code Section 25359.7(a).

5. Indemnification. The Agency shall indemnify, defend and hold the County harmless from 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) imposed upon or incurred by or asserted against the County and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any hazardous materials in, on, above, or under any Parcel prior to the time of the Conveyance Date; (b) any actual or proposed investigation, assessment, remediation, or monitoring of any hazardous materials, under, on, or above any Parcel prior to the Conveyance Date, whether or not any such activity is voluntary or pursuant to court or administrative order; (c) any past, present, or threatened non-compliance or violation of any hazardous materials laws, any order of any governmental authority issued under any hazardous materials laws as a result of any hazardous materials in, on, above, or under any Parcel prior to the time of the Conveyance Date; (d) third party claims concerning hazardous material relating to matters that initially arose prior to the time of the Conveyance Date; or (e) any third party claims relating to matters that arose before the Conveyance Date. Each indemnified party may make all reasonable decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). The Agency shall pay immediately upon the County’s demands any amounts owing under this indemnity.

6. Representations and Warranties. The Agency represents, warrants, and covenants to the County, as of the date of this Agreement and as of the Conveyance Date, as follows:

(a) No Condemnation. To the best of the Agency’s knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property, or any portion thereof, nor does the Agency have any knowledge that any such action is contemplated.

(b) No Proceedings. To the best of the Agency's knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the Property or the Agency's title to the Property. Except as may be found in the Quit Claim Deeds pursuant to which the Agency took title, the Agency has not received notice from any public agency or entity with respect to any future proceeding or basis for any future proceeding against or affecting the Property or any part of the Property, or concerning any existing or potential, past, present, or future toxic or hazardous material or condition at the Property.

(c) Title. The Agency is the owner of the Property and has marketable and insurable title to the Property free of restrictions, leases, liens, and other encumbrances, except for the matters identified in Exhibit C and stated in the Quit Claim Deed. During the term of this Agreement, the Agency shall not convey or accept any offer to convey the Property or any portion of the Property, nor shall the Agency encumber or permit encumbrance of the Property in any way, nor grant any property, contract, or occupancy right relating to the Property or any portion thereof, without the prior written consent of the County, which may be withheld in the County's absolute and sole discretion.

7. Operation of the Property.

(a) Prior to the Conveyance Date. Prior to the Conveyance Date, the Agency shall maintain the Property in its current condition.

(b) After the Conveyance Date. After the Conveyance Date, and prior to the disposition of the Parcels to a Third Party Developer, the County shall maintain the Parcels in their respective current conditions. To the extent that certain Parcels are subject to Disposition and Development Agreements or other existing agreements with respect to the redevelopment of the property, including leases, the County shall take title to the Property subject to such agreements, and hereby agrees to abide by the terms of such agreements with respect to the provisions regarding conveyance of the Parcels subject thereto.

8. No Brokers. Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealing, or communication, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorney's fees, if necessary, arising out of the broker's or finders' claim.

9. County Discretion. Nothing in this Agreement, including, but not limited to, the conveyance of the Property by the Agency to the County, limits the County's discretion in complying with all applicable requirements of CEQA, or considering any requested land use or other approvals related to the development of the Property, whether by a Third Party Developer or otherwise. The Board of Supervisors retains ultimate discretion in approving, denying, or

conditioning any approval needed for any Proposed Development by any Third Party Developer, or otherwise.

10. General Provisions.

(a) Headings. The title and headings of the various sections hereof are intended for means of reference and are not intended to place any constriction of the provisions hereof.

(b) Invalidity. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision hereof shall be valid and enforceable to the fullest extent permitted by law.

(c) No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, which is entered into solely for the benefit of the County and Agency.

(d) Entire Agreement. Together with the resolutions approving this Agreement, the terms of this Agreement are intended by the Parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and its approving resolutions constitute the exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. No provision of this Agreement may be amended except by an Agreement in writing signed by the Parties hereto or their respective successors in interest. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

(f) Time of the Essence. Time is of the essence in this Agreement.

(g) Exhibits. All exhibits attached hereto are incorporated in this Agreement.

(h) Actions of the Parties. Whenever this Agreement calls for or permits an Agency approval, determination, consent, election, or waiver, the written approval, determination, consent, election, or waiver of the Director of the Redevelopment and Housing Office shall constitute the approval, determination, consent, election, or waiver of the Agency, without further authorization required from the Agency Board of Directors. Whenever this Agreement calls for or permits County approval, determination, consent, election, or waiver, the written approval, determination, consent, election, or waiver of the County Administrative Officer or his/her designee shall constitute the approval, determination, consent, election, or waiver of the County, without further authorization required by the Board of Supervisors.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

REDEVELOPMENT AGENCY OF THE  
COUNTY OF MONTEREY

COUNTY OF MONTEREY

By: \_\_\_\_\_  
Jane Parker, Chair  
Board of Directors

By: \_\_\_\_\_  
Jane Parker, Chair  
Board of Supervisors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:  
AGENCY COUNSEL

Approved as to form:  
COUNTY COUNSEL

By: \_\_\_\_\_  
DEPUTY

By: \_\_\_\_\_  
DEPUTY

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

LIST OF AGENCY-OWNED PROPERTY TO BE TRANSFERRED TO THE COUNTY

Assessor's Parcel No.	COE Parcel No.	Area	Location
031-101-039	E8a.1.2	21 acres	Imjin Parkway/Abrams Dr – development parcel, portion leased to Ord Market
031-101-040	E8a.1.3	3 acres	Imjin Parkway – landfill border habitat reserve
031-101-041	E8a.1.4	30 acres	MST/Whispering Oaks development & landfill border habitat reserve
031-101-042	E8a.1.5	22 acres	Landfill border habitat reserve
031-101-056	E8a.1.1.2	85 acres	Intergarrison Rd - MST/Whispering Oaks development & landfill border habitat reserve
031-101-058	E4.6.2	16 acres	Imjin Parkway widening - portion leased to Ord Market
031-161-010	L23.3.3.1	58 acres	East Garrison II development parcel
Portion of 031-161-019	L23.3.2.2	64 acres	East Garrison II development parcel
Portion of 031-161-019	L23.3.3.2	32 acres	East Garrison II development parcel

**EXHIBIT B**  
**FORM OF QUITCLAIM DEED**

RECORDING REQUESTED BY )  
AND WHEN RECORDED RETURN TO: )  
)  
Monterey County )  
Resource Management Agency )  
Redevelopment & Housing Office )  
168 W. Alisal St., 3rd Floor )  
Salinas, CA 93901 )  
Attention: Nick Nichols, Civil Engineer )  
)

No Fee per Govt. Code 6103

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No Documentary Transfer Tax Required -  
Acquiring Agency is a Political Subdivision  
of the State of California  
(Revenue & Taxation Code 11922)

Space above this line for Recorder's use

**QUITCLAIM DEED**  
(APN\_\_\_\_\_)

THIS QUITCLAIM DEED ("Deed") is made as of the \_\_\_ day of \_\_\_\_\_, between the REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY (the "Grantor") and the COUNTY OF MONTEREY (the "Grantee").

WHEREAS, The United States of America ("Government") was the owner of certain real property, improvements and other rights appurtenant thereto together with all personal property thereon, located on the former Fort Ord, Monterey County, California, which was utilized as a military installation; and

WHEREAS, The military installation at Fort Ord was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; 10 U.S.C. § 2687 note); and

WHEREAS, the Fort Ord Reuse Authority (FORA) and the Government entered into the *Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California*, dated the 20th day of June 2000, as amended ("MOA"), which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California; and

WHEREAS, pursuant to the MOA, the Government conveyed to FORA certain former Fort Ord property know as Parcel \_\_\_\_ (APN \_\_\_\_\_), by quitclaim deed dated \_\_\_\_\_ and recorded in the County of Monterey, California on \_\_\_\_\_, Series Number \_\_\_\_\_ ("Government Deed"); and



WHEREAS, pursuant to the Implementation Agreement between FORA the Grantee dated May 8, 2001, and Board of Supervisors Resolution No. 06-243 dated August 15, 2006, FORA conveyed to the Grantor said Parcel \_\_\_\_\_ (APN \_\_\_\_\_), by quitclaim deed dated \_\_\_\_\_ and recorded in the County of Monterey, California on \_\_\_\_\_, Series Number \_\_\_\_\_ (“FORA Outdeed”).

**WITNESSETH**

The **Grantor**, for and in consideration of the sum of one dollar (\$1.00) plus other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, releases and quitclaims to the **Grantee**, its successors and assigns forever, all such interest, right, title, and claim as the **Grantor** has in and to Parcel \_\_\_\_\_ (approximately \_\_\_\_\_ acres), more particularly described in Exhibit “A,” attached hereto and made a part hereof (“Property”) and including the following:

A. All buildings, facilities, roadways, and other improvements, including the storm drainage systems and the telephone system infrastructure, and any other improvements thereon,

B. All appurtenant easements and other rights appurtenant thereto, permits, licenses, and privileges not otherwise excluded herein, and

C. All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

The Government Deed conveying the Property to the **Grantor** was recorded prior to the recordation of this Deed. In its transfer of the Property to **FORA**, the Government provided certain information regarding the environmental condition of the Property conveyed under the Government Deed including without limitation the Finding of Suitability for Transfer, Former Fort Ord, California, Track 0 Plug-in Group D, Track 1 Plug-in East Garrison Areas 2 and 4 NE, and Track 1 Plug-in Groups 1-5 Parcels (FOST 10) (August 2007) (“FOST 10”), and an environmental baseline survey (EBS) known as the Community Environmental Response Facilitation Act report, which is referenced in FOST 10. The **Grantor** has no knowledge regarding the accuracy or adequacy of such information. FOST 10 sets forth the basis for the Government’s determination that the Property is suitable for transfer. The Grantee is hereby made aware of the notifications contained in the EBS and FOST 10.

The italicized information below is copied verbatim (except as discussed below) from the Government Deed conveying the Property to **FORA** and **Grantor**. The **Grantee** hereby acknowledges and assumes all responsibilities applicable to the Property placed upon the **Grantor** under the terms of the aforesaid Government Deed, including the Environmental Protection Provisions at Exhibit “C” to the Government Deed, which are attached hereto and made a part hereof as Exhibit “B” to this Deed and **Grantor** grants to **Grantee** all benefits with regard to the Property under the terms of the aforesaid Government Deed. Within the italicized information only, the term “**Grantor**” shall mean the Government, and the term “**Grantee**” shall mean the Fort Ord Reuse Authority (“FORA”); to avoid confusion, the words “the Government”

have been added in parenthesis after the word “**Grantor**”, and “FORA” has been added in parenthesis after the word “**Grantee**”.

## **II. EXCLUSIONS AND RESERVATIONS**

*This conveyance is made subject to the following **EXCLUSIONS** and **RESERVATIONS**:*

*A. The Property is taken by the Grantee (“FORA”) subject to any and all valid and existing recorded outstanding liens, leases, easements, and any other encumbrances made for the purpose of roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements of record; and any unrecorded easements and any other encumbrances made for the limited purpose of roads, streets, utility systems, and pipelines set forth in Exhibit “E.”*

*B. The Grantor (“the Government”) reserves a right of access to any and all portions of the Property for environmental investigation and remediation or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor (“the Government”). These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or such access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and its officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable notice to the Grantee (“FORA”), or the then owner and any authorized occupant of the Property) to enter upon the Property and conduct investigations and surveys, to include drillings, test-pitting, borings, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. The Grantee (“FORA”) agrees that notwithstanding any other provisions of this Deed, the Grantor (“the Government”) assumes no liability to the Grantee (“FORA”), the then owner, or any other person, should the Grantor’s (“the Government”) exercise of its rights hereunder interfere with the Grantee’s (“FORA”) use of the Property, such interference to be avoided by Grantor (“the Government”) to the extent reasonably practicable.*

*C. The reserved rights and easements set forth in this section are subject to the following terms and conditions:*

*1. Grantee (“FORA”) is to comply with all applicable Federal law and lawful existing regulations;*

*2. The Grantor (“the Government”) is to allow the occupancy and use by the Grantee (“FORA”), its successors, assigns, permittees, or lessees of any part of the easement areas not actually occupied or required for the purpose of the full and safe*

utilization thereof by the Grantor (“the Government”), so long as such occupancy and use does not compromise the ability of the Grantor (“the Government”) to use the easements for their intended purposes, as set forth herein;

3. The easements granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easements unless approved in writing by the fee holder of the land subject to the easement;

4. Any transfer of the easements by assignment, lease, operating agreement, or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of the original grant;

5. Unless otherwise provided, no interest reserved shall give the Grantor (“the Government”) any right to remove any material, earth, or stone for consideration or other purpose except as necessary in exercising its rights hereunder; and

6. The Grantor (“the Government”) is to restore any easement or right of access area so far as it is reasonably possible to do so upon abandonment or release of any easement as provided herein, unless this requirement is waived in writing by the then owner of the Property.

D. The Grantor (“the Government”) reserves mineral rights that Grantor (“the Government”) owns with the right of surface entry in a manner that does not unreasonably interfere with Grantee’s (“FORA”) development and quiet enjoyment of the Property.

**TO HAVE AND TO HOLD** the Property granted herein to the Grantee (“FORA”) and its successors and assigns, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the Grantor (“the Government”), either in law or in equity and subject to the terms, reservations, restrictions, covenants, and conditions set forth in this Deed.

**III. PROPERTY COVERED BY COVENANT AND ACCESS RIGHTS MADE PURSUANT TO SECTION 120(h)(4)(D) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. § 9620(h)(4)(D)):**

For the Property, Grantor (“the Government”) provides the following covenants and retains the following access rights:

A. **Covenant Pursuant to Section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(i)):**

1. Pursuant to section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(4)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this Deed for contamination existing on the Property prior to the date of this Deed shall be conducted by the United States.

2. This warranty shall not apply in any case in which the person or entity to whom the Property or any portion thereof is transferred is a potentially responsible party with respect to the Property or any such portion thereof. For purposes of this warranty, Grantee ("FORA") shall not be considered a potentially responsible party solely due to a hazardous substance remaining on the Property on the date of this instrument. Further, the Grantor ("the Government") shall not be relieved of any obligation under CERCLA to perform any remedial action found to be necessary after the date of this Deed with regard to any hazardous substances remaining on the Property as of the date of this Deed if the Grantee ("FORA") is subsequently determined to be a potentially responsible party with respect to hazardous substances placed on the Property after the date of this Deed.

**B. Access Rights Pursuant to Section 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(ii)):**

1. Pursuant to section 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(ii)), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property after the date of transfer of the Property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws, related to the Fort Ord Installation Restoration Program (IRP), Military Munitions Response Program (MMRP), or Federal Facility Agreement (FFA), as amended, and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee ("FORA"), its successors and assigns, and shall run with the land.

2. In exercising such easement and right of access, the United States shall provide the Grantee ("FORA") or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means, but without significant additional costs to the United States, to avoid and to minimize interference

*with the Grantee's ("FORA") and the Grantee's ("FORA") successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee ("FORA") nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.*

*3. In exercising such easement and right of access, neither the Grantee ("FORA") nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this covenant. In addition, the Grantee ("FORA"), its successors and assigns, shall not interfere with any response action or corrective action conducted by the Grantor ("the Government") on the Property.*

#### **IV. "AS IS"**

*The Grantee ("FORA") acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. Except as otherwise provided herein, the Grantee ("FORA") understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor ("the Government") as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee ("FORA"), and no claim for allowance or deduction upon such grounds will be considered. Nothing in this "As Is" provision will be construed to modify or negate the Grantor's ("the Government") obligation under the CERCLA Covenant or any other statutory obligations.*

#### **V. POST-TRANSFER DISCOVERY OF CONTAMINATION**

*Grantee ("FORA"), its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor ("the Government") from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed and not attributable to the activities of Grantor ("the Government"), where such substance or product was placed on the Property by the Grantee ("FORA"), or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor's ("the Government") responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's ("the Government") indemnification obligations under applicable laws.*

## **VI. ENVIRONMENTAL PROTECTION PROVISIONS**

*The Environmental Protection Provisions are at Exhibit "C", which is attached hereto and made a part hereof. These provisions are intended to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at the former Fort Ord. The Grantee ("FORA") shall not transfer or lease the Property or any portion thereof, or grant any interest, privilege, or license whatsoever in connection with the Property, or any portion thereof, without the inclusion of the Environmental Protection Provisions contained herein to the extent applicable to the Property or a portion thereof, and shall require the inclusion of the applicable Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license concerning the Property or the applicable portion thereof.*

## **VII. AIR NAVIGATION RESERVATION AND RESTRICTIONS**

*The Monterey Peninsula Airport and the former Fritzsche Army Airfield, now known as the Marina Municipal Airport, are in close proximity to the Property. Accordingly, in coordination with the Federal Aviation Administration, the Grantee ("FORA") covenants and agrees, on behalf of itself, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.*

## **VIII. ENFORCEMENT AND NOTICE REQUIREMENT**

*The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, the local governments, and the lands retained by the Grantor ("the Government") and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of California, the local governments, and by the Grantee ("FORA"), and its successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this Deed against the Grantee ("FORA"), or its successors and assigns, shall only apply with respect to the Property conveyed herein and held by such Grantee ("FORA"), its successors or assigns, and only with respect to matters occurring during the period of time such Grantee ("FORA"), its successors or assigns, owned or occupied such Property or any portion thereof.*

## **IX. NOTICE OF NON-DISCRIMINATION**

*The Grantee (“FORA”) covenants for itself, its successors and assigns, that the Grantee (“FORA”), that the Grantee (“FORA”), and its successors, and assigns shall not discriminate upon the basis of race, color, religion, age, gender, handicap, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon, in violation of the provisions of Title VI of the Civil Rights Acts of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); and the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 794). This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The Grantor (“the Government”) shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.*

The responsibilities and obligations placed upon, and the benefits provided to, the **Grantor** by the Government shall run with the land and be binding on and inure to the benefit of all subsequent owners of the Property unless or until such responsibilities, obligations, or benefits are released pursuant to the provisions set forth in the MOA and the Government Deed. **Grantee** and its successors and assigns, respectively, shall not be liable for any breach of such responsibilities and obligations with regard to the Property arising from any matters or events occurring after transfer of ownership of the Property by **Grantee** or its successors and assigns, respectively; provided, however, that each such party shall, notwithstanding such transfer, remain liable for any breach of such responsibilities and obligations to the extent caused by the fault or negligence of such party.

### **General Provisions:**

A. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. **Severability.** If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

C. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of title in any respect.

D. **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

E. Right to Perform. Any right which is exercisable by the **Grantee**, and its successors and assigns, to perform under this Deed may also be performed, in the event of non-performance by the **Grantee**, or its successors and assigns, by a lender of the **Grantee** and its successors and assigns.

The conditions, restrictions, and covenants set forth in this Deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the **Grantee** verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the **Grantor**, and all references in this Deed to **Grantor** shall include its successors in interest. The **Grantor** may agree to waive, eliminate, or reduce the obligations contained in the covenants, PROVIDED, HOWEVER, that the failure of the **Grantor** or its successors to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the **Grantee**, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

*[Signature Pages Follow]*



IN WITNESS WHEREOF, the Grantor, the REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, has caused this Deed to be executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

REDEVELOPMENT AGENCY  
OF THE COUNTY OF MONTEREY

By: \_\_\_\_\_  
Jane Parker, Chair  
Board of Directors

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, (name of notary public) personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

ACCEPTANCE:

In Testimony Whereof, witness the signature of the COUNTY OF MONTEREY, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ hereby accepts and approves this Deed for itself, its successors and assigns, and agrees to all the conditions, reservations, restrictions, and terms contained therein.

COUNTY OF MONTEREY

By: \_\_\_\_\_  
Jane Parker. Chair  
Board of Supervisors

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, (name of notary public) personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

ATTACHMENT NO. 1  
PROPERTY LEGAL DESCRIPTION

ATTACHMENT NO. 2  
QUITCLAIM DEED FROM FORT ORD REUSE AUTHORITY TO AGENCY

## EXHIBIT C

### LIST OF RESTRICTIONS, LEASES, LIENS, AND OTHER ENCUMBRANCES ON AGENCY-OWNED PROPERTY TO BE TRANSFERRED TO THE COUNTY

1. Disposition, Development and Lease Agreement between Redevelopment Agency of the County of Monterey and Darryl Choates, dated September 5, 2006 (portions of Parcels 031-101-039 and 031-101-058)
2. Memorandum of Agreement Regarding Habitat Management on Portions of the Landfill Site at the former Fort Ord, California, among Fort Ord Reuse Authority, the Redevelopment Agency of the County of Monterey and Cypress Marina Heights L.P., dated December 29, 2008 (portions of Parcels 031-101-040, 031-101-041 and 031-101-056)
3. Memorandum of Understanding Between Monterey Salinas Transit and the Redevelopment Agency of the County of Monterey dated September 22, 2009 (portions of Parcels 031-101-041 and 031-101-056)