

EXHIBIT D

**ADVANCE FUNDING AGREEMENT
BETWEEN BMC EG VILLAGE, LLC AND
THE COUNTY OF MONTEREY
FOR PREVAILING WAGE COMPLIANCE
AT THE EAST GARRISON PROJECT AT FORT ORD**

THIS ADVANCE FUNDING AGREEMENT (this "Agreement") is entered into as of March 26, 2013 (the "Execution Date") by and between the County of Monterey ("County") and BMC EG Village, LLC a Delaware limited liability company ("Buyer"). The Buyer and County may each be referred to herein as a "Party" or collectively as the "Parties".

RECITALS

A. The Buyer has acquired all of the rights, title and interest to the property and development rights for that the Parcels identified in Exhibit 1 (hereinafter, the "Parcels"), and considered part of the development of a residential mixed use project known as East Garrison (hereinafter, the "Project"), located on the former Fort Ord, pursuant to an Assignment and Assumption Agreement dated March __, 2013.

B. The Buyer has acknowledged the assumption of certain obligations pursuant to a Disposition and Development Agreement ("DDA"), specifically including the obligation to pay prevailing wages for all construction on the Parcels as well as the obligation to bear the County's costs of monitoring and reporting to ensure compliance with prevailing wage requirements.

C. The intent of this Agreement is to provide funding to the County for certain reasonable and necessary costs of County staff and consultants in ensuring compliance with the prevailing wage requirements with respect to the Parcels.

D. A fundamental premise of this Agreement is that nothing is to be construed as a representation, promise, or commitment on the part of County to give special treatment to, or exercise its discretion favorably for any actions related to ensuring compliance with prevailing wage obligations, or to the Project in general, in exchange for Buyer's obligation to advance costs incurred pursuant to this Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES
CONTAINED IN THIS AGREEMENT, COUNTY AND BUYER AGREE AS FOLLOWS:**

1. Funding Obligation.
 - 1.01. Buyer agrees to advance funds to the County in the time and manner, and subject to the conditions, set forth in this Agreement, for Administrative Costs (as described below) incurred on and after the date escrow closes on the transfer of the Parcels to Buyer, and reasonably related to carrying out the responsibilities of the County in ensuring compliance with the prevailing wages provision of the DDA (Section 321). Administrative Costs include but are not limited to all costs reasonably incurred by the County (including costs of consultants pertaining thereto, pursuant to Section 1.02) in receiving, reviewing, monitoring and reporting services ("Services") related to prevailing wage payroll records by

Buyer and Buyer's building trade contractors performing work on vertical construction of improvements on the Parcels.

- 1.02 County shall provide Buyer with a copy of any consultant's agreement and related scope of work for services performed with respect to Buyer's Parcels.

2. Payment of Funds.

- 2.01. Forthwith upon approval of this Agreement and execution hereof by the authorized representatives of the parties, the Buyer will deposit Twenty-five Thousand Dollars (\$25,000) into a special fund to be established and maintained by the County, and to be known as the "BMC EG Village East Garrison Prevailing Wage Services Fund." The County is authorized to disburse amounts from said fund, from time to time, to pay for incidental costs and expenses incurred by the County and its consultant in connection with Services under this Agreement. The County may disburse amounts from said fund to other appropriate funds or accounts of the County to reimburse the County for the reasonable cost of staff time devoted to said Services, as well as to pay third party invoices from consultants retained to assist the County or Agency in such Services.

In the event that the balance in said fund is drawn down to an amount of less than \$10,000, the County may notify the Buyer of such fact, and the Buyer shall forthwith provide the County with an additional deposit of \$25,000 to assure the continued availability of funds for the payment of such Services.

In the event that additional deposits are necessary beyond the initial deposit, any unexpended amounts of such additional deposits shall be returned to Buyer, within 60 days of the end of the term of this Agreement, consistent with Section 6 (Term).

3. Review of Costs.

- 3.01. The County recognizes that Buyer has an interest in ensuring that costs incurred by the County pursuant to this Agreement are reasonable. Accordingly, the County shall monitor the incurring of Services costs, including the work of consultants, with the objective of avoiding unnecessary or duplicative costs of staff or consultants, and providing for cost effective performance under consultant contracts.
- 3.02. At the request of any Party to this Agreement, and in any event not less than twice during a Fiscal Year, the County, in consultation with the Buyer, shall review the costs incurred and anticipated costs to be incurred within such Fiscal Year.
- 3.03. Buyer recognizes that ability to carry out the activities referenced in Section 1 on the part of the County is contingent on timely provision of funds as provided for in this Agreement. Buyer also recognizes that, pursuant to Section 321 of the DDA, the County has the right, after notice and a 30-day opportunity to cure period, to stop work on Buyer's construction or to take other remedial actions against a building trades contractor (but not with respect to work being performed

by other contractors) in the event of an uncured violation of the law requiring the payment of prevailing wages by such building trades contractor.

- 3.04. The Parties acknowledge the existence of existing agreements between and among them, including the DDA, the DA and the Assignment and Assumption Agreement referenced above, and further acknowledge the mutual rights and obligations of those agreements remain.
4. Procedures.
 - 4.01. Submission and Payment of County Invoices. Within forty-five (45) days of the end of each calendar quarter in a Fiscal Year ("Quarterly Billing Period") the County shall prepare and provide the Buyer with a notice of the amount billed ("Billing Notice") for such Quarterly Billing Period which sets forth the expenses of the County for reimbursable costs (including costs of consultants) incurred in such Quarterly Billing Period. The Billing Notice shall set forth the amounts claimed and paid from the deposit set forth in Section 2.01, together with such supporting documentation as the Buyer may reasonably request. The Billing Notice shall include staff expenses and the costs of consultants, the costs of which may be billed separately (without limiting the County's ability to redact billings as appropriate pursuant to the attorney client and attorney work product privileges). The County shall submit the Billing Notice to the Buyer by the forty-fifth (45th) day following the end of each Quarterly Billing Period. Buyer shall review the Billing Notice and identify any disputed amounts, pursuant to Section 4.02
 - 4.02. Payment Dispute. If Buyer takes exception to any amount identified in a Billing Notice under this Agreement, Buyer shall, within twenty (20) days after Buyer has received the Billing Notice in dispute, deliver to County a written notice of protest explaining the basis for the dispute. The Parties shall promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the Parties have met and attempted in good faith to resolve the dispute for not less than 30 days. Upon the resolution of the dispute, the amount, if any, which was determined to be erroneously charged against the deposit shall be replaced by the County, as appropriate. If the amount(s) disputed by Buyer are unresolved for longer than 30 days, and if the disputed amount is found to be proper, Buyer shall pay interest on the disputed amount at the lesser rate of 5% per annum or the maximum rate permitted by law, from the date of Buyer's notice of disputed amount to the date of resolution, to the Agency. The existence of a dispute over any portion of a Billing Notice does not relieve Buyer of its obligation to increase deposits, as set forth in Section 2.01.
5. No Promise or Representation.

Buyer and County agree that nothing in this Agreement is to be construed as a representation, promise, or commitment on the part of the County to give special treatment to, or exercise its discretion favorably for, the Project or Buyer.

6. Term.

This Agreement shall be effective from the Effective Date of this Agreement through the date of issuance of a Certificate of Occupancy for the last unit to be developed on the Parcels which are the subject of this Agreement, or the resolution of any prevailing wage issue with respect thereto, whichever is later, unless extended by mutual consent of the Parties.

7. Indemnification.

The Buyer shall defend, indemnify, and hold harmless the County from and against any and all claims, liabilities, or losses in any action brought by any third party challenging the validity of this Agreement or the authority of the County to enter into this Agreement. This indemnification shall survive termination of this Agreement.

8. Assignment.

The Buyer shall not assign, sell, mortgage, hypothecate or otherwise transfer its obligations under this Agreement except as part of a financial transaction or transfer to a transferee or assignee as permitted under or as otherwise approved in writing by the County and Successor Agency to the Redevelopment Agency of the County of Monterey. This Agreement and the rights, privileges, duties, and obligations of the Parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective, successors and permitted assigns.

9. Amendment.

This Agreement may be amended or modified only by an instrument in writing signed by all the Parties hereto.

10. Authority to Implement this Agreement.

The Executive Director of the Successor Agency of the Redevelopment Agency of the County of Monterey, or his or her designee, shall have the authority to implement this Agreement on behalf of the County, and to enter into such clarifying and/or administrative memoranda or other documentation as he or she deems appropriate to carry out its purpose and intent. Buyer represents and warrants that any individual executing or amending this Agreement on behalf of the Buyer has been authorized by Buyer to enter into and implement this Agreement on behalf of the Buyer and to bind the Buyer to the terms and conditions of the same.

11. Waiver.

With the exception of the time to dispute any Billing Notice, as set forth in Section 4.02, the failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the Parties hereto, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

12. Governing Law.

This Agreement shall be construed, interpreted and governed by the laws of the State of California, without regard to conflicts of law principles.

13. Negotiated Agreement.

The Parties acknowledge that each Party has reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of the Agreement.

14. Relationship of Parties.

This Agreement establishes only a funding and reimbursement arrangement between the Parties, and nothing in this Agreement establishes a partnership or joint venture among the Parties.

15. Notices.

Notice to the Parties in connection with this Project Reimbursement Agreement shall be given personally, by first class, certified, or registered mail, or by an express mail delivery service addressed as follows (except as any Party may otherwise direct in writing to the other Parties):

TO COUNTY: Director, Resource Management Agency
 County of Monterey
 168 West Alisal, Second Floor
 Salinas, CA 93901
 Tel: 831-755-4879
 Fax: 831-755-5877

TO BUYER: Will La Herran
 Chief Financial Officer
 BMC EG Village, LLC
 6489 Camden Ave. Ste. 204
 San Jose, CA 95120
 Tel 408-323-1114 Ext 412
 Fax 408-323-1114

Notice shall be deemed effective at the time of personal delivery, five days after the notice is deposited in the United States registered or certified mail, properly addressed, with postage prepaid, or on the day of delivery if notice is sent by express mail delivery service.

16. Entire Agreement.

This Agreement constitutes the entire agreement between Buyer and County respecting the advancement and reimbursement of funds for Compliance Services and shall supersede all prior negotiations, representations or agreements, either written or oral, among the Parties with respect

to this issue. County and Buyer each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with this Agreement that is not expressly contained herein.

IN WITNESS WHEREOF, the County and Buyer have executed this Advance Funding Agreement as of the day and year written below.

COUNTY:
COUNTY OF MONTEREY

Date: _____

APPROVED AS TO FORM:

Kay Reimann
Sr. Deputy County Counsel

Date: _____

BUYER:
BMC EG Village, LLC

Date: _____

James W. Fletcher
Chief Operating Officer