

**ADVANCE FUNDING AGREEMENT AMONG
UNION COMMUNITY PARTNERS, COUNTY OF MONTEREY AND
REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY FOR
NEGOTIATION AND DEVELOPMENT REVIEW SERVICES FOR THE EAST
GARRISON PROJECT AT FORT ORD**

THIS ADVANCE FUNDING AGREEMENT (this "Agreement") is entered into as of 1-11-11, 2011 (the "Execution Date") by and among the County of Monterey ("County"), the Redevelopment Agency of the County of Monterey ("Agency") and UCP East Garrison, LLC, a Delaware limited liability company, as "Lender/Succeeding Owner" pursuant to the Consent, Subordination and Recognition Agreement dated January 30, 2007 (the "Lender/Succeeding Owner"). The Lender/Succeeding Owner, Agency and County may each be referred to herein as a "Party" or collectively as the "Parties".

RECITALS

A. The Lender/Succeeding Owner has acquired all of the rights, title and interest to the property and development rights for that development of a residential mixed use project known as East Garrison (hereinafter, the "Project"), located on the former Fort Ord, pursuant to foreclosure process.

B. The Lender/Succeeding Owner has indicated a desire to negotiate modifications or amendments to the Agency's Disposition and Development Agreement ("DDA") and the County's Development Agreement ("DA") for the Project.

C. The intent of this Agreement is to provide funding to the County and Agency for certain reasonable and necessary costs of County and Agency staff and consultants in providing services for the timely review, processing, and administration during the negotiating of the proposed modifications to the Project.

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 or the Agency to give special treatment to, or exercise its discretion favorably for any modifications to the Project, in exchange for Lender/Succeeding Owners' obligation to advance costs incurred during the negotiation process.

E. The parties hereto agree that any amounts paid by Lender/Succeeding Owner to the Agency pursuant to this agreement shall be considered a "Project Cost" as that term is defined on page 3 of Attachment 4 to the DDA.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES
CONTAINED IN THIS AGREEMENT, COUNTY, AGENCY AND
LENDER/SUCCEEDING OWNER AGREE AS FOLLOWS:**

1. Funding Obligation.

1.01. Lender/Succeeding Owner agrees to advance funds to the County and Agency 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 November 6, 2009, and reasonably related to carrying out the responsibilities of the negotiation process. Administrative Costs include but are not limited to all costs reasonably incurred by the County or Agency (including costs of consultants pertaining thereto, pursuant to Section 1.02) in undertaking Negotiation Services ("Services"), which include but are not limited to:

(i) Project coordination with the Lender/Succeeding Owner and their consultants, and other relevant parties;

(ii) Internal coordination between and among County and Agency departments/agencies, and their consultants engaged to provide staff support services in facilitating the negotiation process. County departments/agencies include but are not limited to: Planning and Building Inspection, Public Works, Water Resources, Parks, County Counsel, Board Offices and Environmental Health;

(iii) Coordination with other interested agencies/departments including local, state and federal governmental entities and special districts; and

(iv) Review and evaluation of project plans, reports and financial documents as submitted by the Lender/Succeeding Owner as part of the negotiation process. Preparation of memos, agendas, staff reports and other materials as necessary for public meetings, including but not limited to: the Fort Ord Subcommittee of the County Board of Supervisors, Board of Directors of the Redevelopment Agency of the County of Monterey and the Monterey County Board of Supervisors.

1.02 County and Agency shall provide Lender/Succeeding Owner with a copy of any existing consultant's agreement and related scope of work for Lender/Succeeding Owner's review and comment, and shall provide Lender/Succeeding Owner a copy of any new proposed consultant agreement prior to entry, for any additional review and comment.

2. Payment of Funds.

2.01. Forthwith upon approval of this Agreement and execution hereof by the authorized representatives of the parties, the Lender/Succeeding Owner will deposit One Hundred Fifty Thousand Dollars \$(150,000) into a special fund to be established and maintained by the County, and to be known as the "East Garrison Modification 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 or Agency and their consultants in connection with the Services for the Project. The County may disburse amounts from said fund to other appropriate funds or accounts of the County or Agency to reimburse the County (or Agency, as may be) 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 \$20,000, the County may notify the Lender/Succeeding Owner of such fact, and the Lender/Succeeding Owner shall forthwith provide the County with an additional deposit of \$50,000 to assure the continued availability of funds for the payment of such Services. Provided, however, that once the initial deposit of \$150,000 has been expended, any further expenditures under this Agreement shall be borne equally between Lender/Succeeding Owner and County, such that the County shall be responsible for payment of one-half of any costs incurred under this Agreement beyond the initial deposit, up to the amount of \$50,000.

In consideration of the agreements expressed herein on the potential sharing of costs, the County may retain any unexpended funds from the initial deposit. In the event that additional deposits are necessary beyond the initial deposit, any unexpended amounts of such additional deposits shall be returned to Lender/Succeeding Owner, consistent with Section 8 (Termination).

3. Review of Costs.

- 3.01. The County and Agency recognize that Lender/Succeeding Owner has an interest in ensuring that costs incurred by the County and Agency pursuant to this Agreement are reasonable. Accordingly, the County and Agency shall monitor the incurring of Negotiation 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. Further, the Parties shall conduct their respective negotiations in a manner that does not place undue burdens on any other Party, which might otherwise require the use of outside consultants due to time constraints or workload burdens.
- 3.02. At the request of any Party to this Agreement, and in any event not less than quarterly during a Fiscal Year, the County and Agency, in consultation with the Lender/Succeeding Owner, shall review the costs incurred and anticipated costs to be incurred within such Fiscal Year.
- 3.03. Lender/Succeeding Owner recognizes that ability to carry out the activities referenced in Section 1 on the part of the County or Agency is contingent on timely provision of funds as provided for in this Agreement.
- 3.04. The Parties agree that the costs to be reimbursed by Lender/Succeeding Owner pursuant to this Agreement shall not exceed Two Hundred Thousand Dollars (\$200,000) without amendment of this Agreement (hereinafter, the "Cost Cap"). Provided however, that Lender/Succeeding Owner expressly acknowledges that the County and Agency have no obligation to continue to negotiate modifications in the event that the Cost Cap is reached without the prior approval of an amendment to this Agreement.

~~3.05.~~ Notwithstanding Section 3.04, the Parties acknowledge the existence of existing agreements between and among them, including the DDA, the DA and the Consent, Subordination and Recognition Agreement referenced above, and further acknowledge the mutual rights and obligations of those agreements remain, unless and until modified pursuant to these negotiations.

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 Lender/Succeeding Owner with a notice of the amount billed ("Billing Notice") for such Quarterly Billing Period which sets forth the expenses of the Agency and 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 Lender/Succeeding Owner 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 Lender/Succeeding Owner by the forty-fifth (45th) day following the end of each Quarterly Billing Period. Lender/Succeeding Owner shall review the Billing Notice and identify any disputed amounts, pursuant to Section 4.02

4.02. Payment Dispute. If Lender/Succeeding Owner takes exception to any amount identified in a Billing Notice under this Agreement, Lender/Succeeding Owner shall, within twenty (20) days after Lender/Succeeding Owner 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 Agency or County, as appropriate. If the amount(s) disputed by Lender/Succeeding Owner are unresolved for longer than 30 days, and if the disputed amount is found to be proper, Lender/Succeeding Owner 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 Lender/Succeeding Owner'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 Lender/Succeeding Owner of its obligation to increase deposits, as set forth in Section 2.01.

5. No Promise or Representation.

Lender/Succeeding Owner, Agency and County agree that nothing in this Agreement is to be construed as a representation, promise, or commitment on the part of the County or Agency

to give special treatment to, or exercise its discretion favorably for, the Project or Lender/Succeeding Owner.

6. Other Agreements Remain in Place.

It is acknowledged that certain agreements concerning the reimbursement of certain costs of the Agency and County for the processing of the DDA and DA are currently tolled under applicable *force majeure* clauses. These agreements, entitled "Land Use Reimbursement and Advance Funding Agreement Between East Garrison Partners I, LLC and Monterey County for Extraordinary Development Costs for East Garrison Project Horizontal Development" and "Project Reimbursement Agreement for East Garrison Project, Fort Ord, County of Monterey [Horizontal Development]" are not affected by this Advance Funding Agreement, but have been assigned to Lender/Succeeding Owner.

7. Term.

This Agreement shall be effective from the Effective Date of this Agreement through June 30, 2011, unless extended by mutual consent of the Parties.

8. Termination.

Either Party may terminate this Agreement before the expiration of the Term by providing not less than five (5) business days' notice, in order to minimize the incurring of additional costs. In the event of termination under this Section 8, Agency/County shall be entitled to charge all costs incurred up to the effective date of termination, subject to Section 4.02, and Lender/Succeeding Owner shall not request refund of any funds remaining in the deposit for a period of 90 days, so as to allow the invoicing and payment of all outstanding charges due under this Agreement, as well as pay for any work performed by outside consultants through the effective date of termination. In the event of termination by Lender/Succeeding Owner, the County and Agency are released of any obligations created by this Agreement.

9. Indemnification.

The Lender/Succeeding Owner shall defend, indemnify, and hold harmless the County and Agency 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 or Agency to enter into this Agreement. This indemnification shall survive termination of this Agreement.

10. Assignment.

The Lender/Succeeding Owner 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 Agency. 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.

11. Amendment.

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

12. Authority to Implement this Agreement.

The Director of Housing and Redevelopment shall have the authority to implement this Agreement on behalf of the County and Agency, 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, provided that any change to a material term of this Agreement shall require approval of both the Board of Supervisors of the County of Monterey and the Board of Directors of the Redevelopment Agency of the County of Monterey. Lender/Succeeding Owner represents and warrants that any individual executing or amending this Agreement on behalf of the Lender/Succeeding Owner has been authorized by Lender/Succeeding Owner to enter into and implement this Agreement on behalf of the Lender/Succeeding Owner and to bind the Lender/Succeeding Owner to the terms and conditions of the same.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 AND AGENCY: Director of Housing and Redevelopment
County of Monterey
168 West Alisal, Third Floor
Salinas, CA 93901

TO LENDER/SUCCEEDING OWNER: Union Community Partners
James W. Fletcher, Vice-President
6489 Camden Avenue, Suite 204
San Jose, CA. 95120

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.

18. Entire Agreement.

This Agreement constitutes the entire agreement between Lender/Succeeding Owner, Agency and County respecting the advancement and reimbursement of funds for Negotiation Services and shall supersede all prior negotiations, representations or agreements, either written or oral, among the Parties with respect to this issue. County, Agency and Lender/Succeeding Owner 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, Agency and Lender/Succeeding Owner have executed this advance funding Agreement as of the day and year written below.

COUNTY:
COUNTY OF MONTEREY

Date: _____

Chair

APPROVED AS TO FORM:

Kay Reirhann
Kay Reirhann
Deputy County Counsel

Date: 12/27/10

-AND-

AGENCY:

REDEVELOPMENT AGENCY OF THE
COUNTY OF MONTEREY

Date: _____

Chair

APPROVED AS TO FORM:

Kay Reimann
Kay Reimann
Deputy County Counsel

Date: 12/27/10

-AND-

LENDER/SUCCEEDING OWNER:

UCP East Garrison, LLC, a Delaware Limited
Liability Company

BY: UCP, LLC, a Delaware Limited Liability
Company, its sole member

Date: December 22, 2010

By: *[Signature]*

Dustin L. Bogue, President