

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(Monterey Downs LLC)

This Exclusive Negotiating Rights Agreement (“Agreement”) is entered into as of this ___ day of _____, 2010 (the “Effective Date”), by and between the REDEVELOPMENT AGENCY OF THE COUNTY OF MONTEREY, a public body, corporate and politic (the “Agency”), and MONTEREY DOWNS, LLC, a California limited liability company (the “Developer”) on the basis of the following facts:

RECITALS

- A. As endorsed by the Board of Directors of the Redevelopment Agency of the County of Monterey, the Agency’s goals and objectives include pursuing redevelopment activities in the Fort Ord Redevelopment Project Area that eliminate blight, are environmentally sensitive, support the Fort Ord Base Reuse Plan infrastructure program and generate jobs, economic opportunities and land sales revenues, in collaboration with potentially affected agencies and organizations.
- B. The Agency owns or will be conveyed that certain real property previously known as Parker Flats and more particularly described in Exhibit A attached hereto (the “Agency Parcels”).
- C. The Agency has received a preliminary proposal from Developer for the development of a combination equestrian training facility, mixed use commercial, office, retail, hotel, residential, light industrial and non-profit equestrian and recreational facility on the Agency Parcels as well as other parcels (collectively, the “Preliminary Proposal”). The general boundaries of the Preliminary Proposal are shown on that map attached hereto as Exhibit B.
- D. The Preliminary Proposal includes a component for the development of a non-profit equestrian facility and park (“Horse Park”) designed to promote the training of equestrians and competition in international, national and regional equine events. Additionally, it is the intent of the Horse Park to promote intercollegiate, as well as public equestrian recreational activities that protect and preserve habitat. The Preliminary Proposal contemplates that the lead in development of the Horse Park component will be undertaken by the Monterey Horse Park, a California nonprofit public benefit corporation.
- E. After preliminary consideration of the Developer’s Preliminary Proposal, the Agency is willing to enter into this Agreement to negotiate with Developer on an exclusive basis, to establish the terms and conditions of a Disposition and Development Agreement (“DDA”) to be proposed for consideration, which would result in the Developer’s acquisition and development of the Agency Parcels (the “Project”).

Project; (ii) the physical and land title conditions of the Agency Parcels and remediation of any adverse conditions. (iii) the type of entitlements necessary for the Project, (iv) possible phasing for the disposition and development of the Project, (v) the development schedule for the Project (including each phase thereof), (vi) financing of the Project, and (vii) lease or sale terms for the Agency Parcels according to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq., the "Redevelopment Law").

Section 1.2 Negotiating Periods. The Phase 1 negotiating period (the "Phase 1 Negotiating Period") under this Agreement shall be **nine (9) months**, commencing on the Effective Date. The Phase 1 Negotiating Period may be extended for up to an additional **ninety (90) days** by the Agency Executive Director or designee if, in the Executive Director's judgment, sufficient progress has been made with regards to those tasks set forth in Article 2 below during the initial **nine (9) month** negotiating period to merit such extension. In the event the Phase 1 Negotiating Period, as such period may be extended pursuant to the terms of this Agreement, culminates in the Agency approving the preliminary development concept of the Project on the Agency Parcels including a Preliminary Site Plan, Market Study demonstrating market support for the Project, and a Financing Plan demonstrating the financial feasibility of the Project, the terms of this Agreement shall be extended for the Phase 2 negotiating period ("Phase 2 Negotiating Period") to negotiate the terms of a Disposition and Development Agreement ("DDA") providing for the Developer to lease or purchase the Agency Parcels and develop thereon the Project and securing entitlements.

The Phase 2 Negotiating Period shall be **eighteen (18) months** commencing from the date of the Agency approval of the preliminary development concept and related submittals. During the Phase 2 Negotiating Period, the parties shall complete those tasks set forth in Article 3 below.

Notwithstanding any provision herein to the contrary and provided this Agreement has not been terminated earlier, if the parties cannot agree upon the terms of a DDA by the expiration of the Phase 2 Negotiating Period then this Agreement shall terminate. Upon termination of this Agreement, neither Party shall have any further rights or obligations under this Agreement.

Section 1.3 Exclusive Negotiations. During the Phase 1 Negotiating Period and the Phase 2 Negotiating Period (as such Negotiating Periods may be extended by operation of Section 1.2), the Agency shall not negotiate with any entity, other than the Developer, regarding development of the Agency Parcels, or solicit or entertain bids or proposals to do so.

Section 1.4 Identification of Developer's Representatives. Developer's representative to negotiate with the Agency is Brian Boudreau.

Section 1.5 Developer Phase 1 Negotiating Period Payment. In consideration for the exclusive right to negotiate during the Phase 1 Negotiating Period, Developer agrees to negotiate in good faith and to pay Agency a deposit in the amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Payment") within five business days after the Effective Date. The Payment shall be used by the Agency to cover costs incurred by the Agency related to the tasks set forth herein, including staff costs, costs for outside consultants and legal costs and costs related to

(a) Conceptual Development Program. Within **one hundred twenty (120) days** of the execution of this Agreement, the Developer shall submit to the Agency, for its review and approval: a breakdown of the proposed scope of development program for the Agency Parcels, including a range of building square feet by land use and acreage by land use, proposed development phasing schedule for entitlements, backbone infrastructure, and vertical improvements, approximate number and mix of residential units, affordable housing units by level of affordability, proposed public parks/amenities, circulation acreage, proposed commercial tenancies and general uses for the Agency Parcels. A narrative and quantitative tabular presentation of the proposed development program shall be provided. This conceptual development program shall be based upon the conceptual outline as described in Exhibit C.

(b) Market Study. Within **one hundred twenty (120) days** of the execution of this Agreement, the Developer shall provide the Agency, for its review and approval, a detailed market analysis for the Project demonstrating the marketability of each component of the proposed conceptual development program. If appropriate, the findings of the market study may be used to modify and refine the development concept.

(c) Preliminary Site Plan. Within **one hundred twenty (120) days** of the Effective Date of this Agreement, the Developer shall submit to the Agency, for its review and approval, a preliminary site plan for the Project. The Preliminary Site Plan shall set out the general location of the proposed buildings and landscaping, the massing of any proposed buildings, roadways and points of ingress and egress and the general location of any other proposed improvements to be constructed as part of the Development.

(d) Roles and Responsibilities. Within **one hundred twenty (120) days** of the Effective Date of this Agreement, the Developer shall submit to the Agency, for its review and approval, an organizational chart of the Developer that corresponds to the proposed Development Program. The chart shall identify which member of the Developer and/or Development Team is responsible for: securing entitlements; completing backbone infrastructure; completing each component of vertical improvements and operating various components. The Developer shall also provide a narrative description of the Developer's approach to developing the proposed project, including a discussion of the Developer's objectives for spinning-off entitled land or improved land to other builders.

(e) Preliminary Financing Plan and Development Pro Forma. Within **two hundred forty (240) days** of the Effective Date of this Agreement, the Developer shall submit to the Agency, for its review and approval, a preliminary financing plan for the proposed project. The financing plan shall include a general estimate of the following:

- A pro forma of backbone infrastructure costs;
- A pro forma of entitlement costs;
- A pro forma of vertical improvement costs for each land use;
- A pro forma phasing schedule for entitlements, land take down, construction of infrastructure improvements, sale of pads (if applicable), construction of vertical improvements, sale/lease of finished improvements;

During the Agency review period the Developer shall cooperate with the Agency by providing the Agency with requested information and revisions to the various submissions. The Parties agree that the process of determining the appropriate parameters of the development for the Agency Parcels requires a high degree of cooperation by the parties. The parties shall mutually use best efforts to reach agreement on all efforts, including the Conceptual Development Program, Preliminary Site Plan and Preliminary Financing Plan. If the Agency, after diligent review of the Developer Submissions determines that the Project is infeasible or fails to meet the Agency goals and objectives for development of the Agency Parcel the Agency shall so inform the Developer and provide the Developer with the opportunity to modify the Project such that the Project can be considered feasible with an additional time extension of 120-days to modify the Project. If after said reconsideration the Agency determines the Project is still infeasible, this Agreement shall terminate.

Section 2.6 Due Diligence. During the Phase 1 Negotiating Period if possible, but in any event prior to the end of the Phase 2 Negotiating Period, the Developer shall conduct such due diligence activities as Developer considers necessary, including but not limited to soils report, hazardous materials report, and survey of the Agency Parcels to determine actual property lines, and title adequacy.

As part of its due diligence, the Developer shall determine whether the Agency Parcels are suitable for development of the Project, taking into account the presence or absence of toxic or other hazardous materials, the massing of the proposed Project improvements and the parking requirements imposed on developments of this type and the other environmental and regulatory factors that the Developer deems relevant. If, in the Developer's judgment based on such investigations and analyses, any portion of the Agency Parcels is not suitable for development, the Developer shall notify the Agency in writing prior to the expiration of Phase 2 Negotiating Period of its determination (an "Unsuitability Notice"). Upon delivery of an Unsuitability Notice by the Developer, this Agreement shall be terminated without further action of any Party, and thereafter no Party shall have any further duties, obligations, rights or liabilities under this Agreement, except as set forth in Sections 4.3 and Section 4.6. If the Developer does not deliver an Unsuitability Notice prior to the expiration of Phase 2 Negotiating Period, then the Agency Parcels shall be deemed physically suitable for development of the Project and any executed DDA shall not provide for an additional opportunity for the Developer to determine the physical suitability of the Agency Parcels or for the Developer to terminate the DDA as a result of the purported physical unsuitability of the Agency Parcels.

Section 2.7 Reports. Unless otherwise waived by the Agency, the Developer shall provide the Agency with copies of all final reports, studies, analyses, official correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly upon their completion, and in both paper and electronic form as part of the formal submittal package and addendums thereto.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the Agency will need sufficient, detailed information about the proposed Project (including, without limitation the

(b) Prevailing Wages. Developer shall comply with all applicable laws (including, without limitation, all applicable ordinances of the County), the applicable redevelopment plan, and any and all applicable resolutions of the County and Agency. Developer acknowledges that the County and Agency will require that prevailing wages shall be paid to all contractors and workmen in connection with the construction of the Project.

(c) Developer and Agency Responsibilities. Developer and Agency shall negotiate and finalize the details of the respective rights, responsibilities and obligations of the Developer and Agency in the disposition and development of the Agency Parcels pursuant to the DDA, including such business terms as compensation for the conveyance of property, any public assistance required for the Project, and such other terms as are reasonable, mutually agreeable and based upon the Community Redevelopment Law.

Section 3.3 Sale/Lease Terms. The Parties agree that, if a DDA are executed, the purchase price and/or lease rate for the Agency Parcels shall be based on an evaluation of the fair reuse value of the Agency Parcels taking into account the restrictions and development conditions imposed by the Agency in accordance with the Redevelopment Plan, all other applicable requirements and restrictions on the use of the Agency Parcels related to the terms of the Fort Ord Base Reuse Plan and conveyances from the Fort Ord Reuse Authority (“FORA”), any restrictions imposed by any source of funding for the Development, any other limitations or restriction on the use of the Agency Parcels.

Section 3.4 Environmental Review. The County or the Agency shall prepare or cause to be prepared any environmental documentation required by the California Environmental Quality Act (“CEQA”) for consideration of approval of the DDA, the Development and actions related thereto; provided, that nothing in this Agreement shall be construed to compel the Agency or the County to approve or make any particular findings with respect to such CEQA documentation. The Developer shall provide such information about the Development as may be required to enable the Agency or the County to prepare or cause preparation and consideration of any CEQA-required document, and shall otherwise generally cooperate with the Agency and the County to complete this task. The County or the Agency shall enter into a contract with a consultant to prepare the required environmental documentation no later than **sixty (60) days** after the Agency approvals provided for in Section 2.5. The Developer shall be responsible for all costs associated with the preparation of the required CEQA documentation, which costs shall be paid from funds to be paid by the Developer as part of the Phase 2 Negotiating Period Payment referenced in Section 1.6. The Agency and Developer shall work together to promote the containment of costs while ensuring the timely preparation of adequate environmental assessments. After selection of the consultant to prepare the required environmental documentation the Agency and the Developer shall meet to determine the appropriate amount to be required to ensure that funds are available when necessary to pay the costs associated with the preparation of the CEQA documentation. It is acknowledged that neither the DDA nor anticipated entitlements may be approved without certification of required environmental documentation.

Section 3.5 Section 33433 Report. The Agency shall prepare the necessary documentation pursuant to Section 33433(a)(2)(B) of the California Health and Safety Code to

With a courtesy copy to:

Horse Park: Monterey Horse Park
Attn: Anne Cribbs, Executive Director
2450 Agnes Way
Palo Alto, California 94303
Fax: (650) 852-9383

Notice shall be deemed satisfied within one (1) business day if provided by personal service. Notice shall be deemed satisfied within three (3) business days if provided by certified mail. Either Agency or Developer may change such address by notifying the other Party in writing as to such new address as Developer or Agency may desire used and which address shall constitute as the address until further written notice.

Section 4.4 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Agency Parcels with respect to this Agreement or any dispute or act arising from it.

Section 4.5 Right of Entry. The Agency shall cooperate with the Developer to provide the Developer the right to enter upon the Agency Parcels, as necessary, for purpose of conducting investigations to further the objectives of this Agreement pursuant to a written right of entry, to be prepared by the Agency, and executed by the Parties.

Section 4.6 Indemnification. The Developer shall indemnify, defend, and hold the Agency and County harmless from any and all costs, expenses, losses, claims, liabilities, damages and causes of action arising out of Developer's entering into or performing this Agreement and/or Developer's failure to perform any obligation of Developer under this Agreement. The Developer's obligations under the preceding sentence shall survive the expiration or earlier termination of this Agreement.

Section 4.7 Costs and Expenses. Except as specifically provided in this Agreement, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

Section 4.8 No Commissions. The Agency shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA or Ground Lease resulting from this Agreement. Each Party represents that it has engaged no broker, agent or finder in connection with this transaction, and each Party shall indemnify, defend, and hold harmless the other Party from any claim by any broker, agent or finder retained by the other Party.

Section 4.15 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Agency and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 4.16 Actions By The Agency. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the Agency, the approval, consent, authorization or waiver of the Director of the Redevelopment and Housing Office shall constitute the approval, consent, authorization or waiver of the Agency without further action of the Agency Board.

EXHIBIT A

Redevelopment Agency Property at Parker Flats

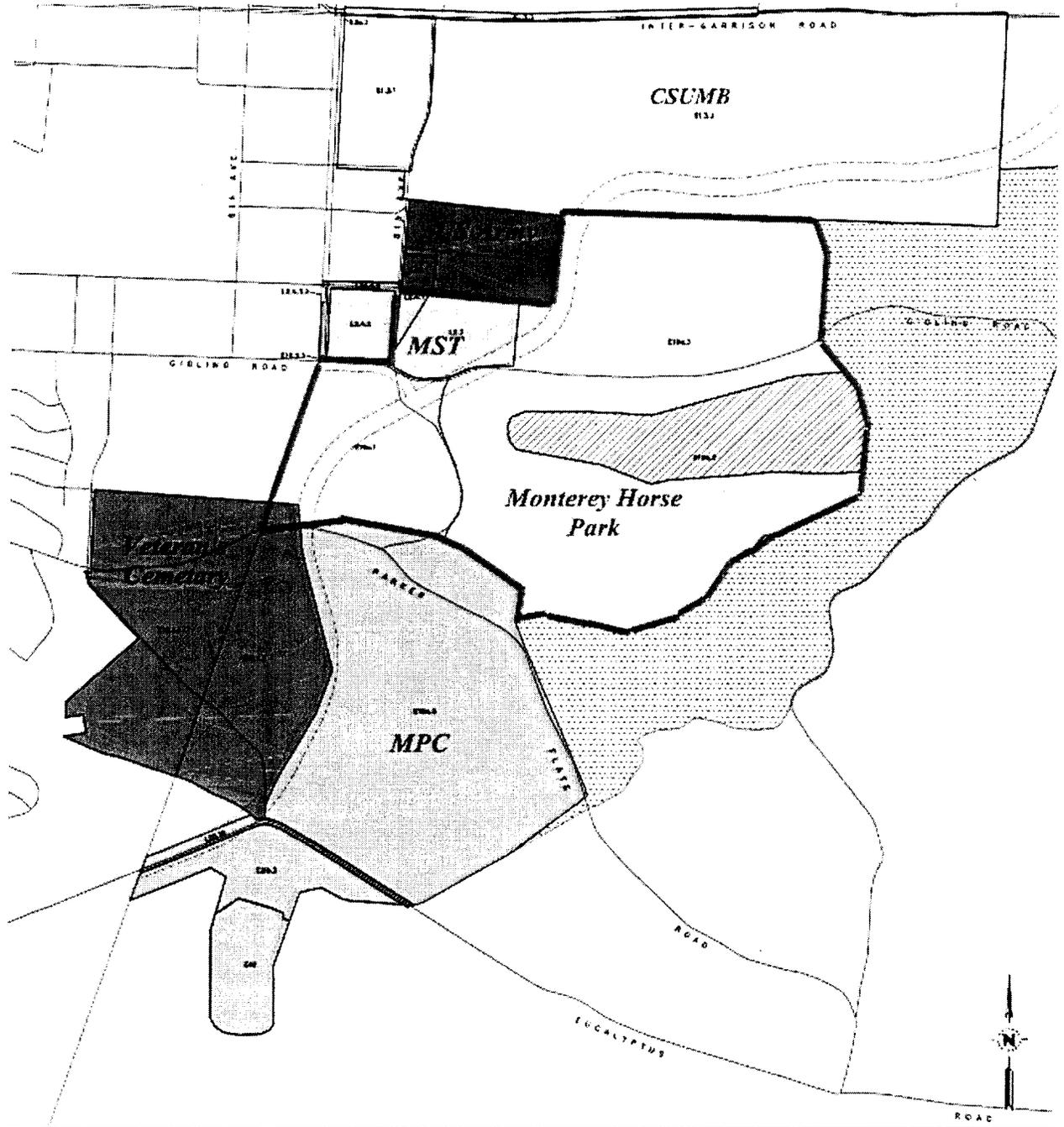


EXHIBIT C

Monterey Downs Conceptual Outline

The Monterey Downs and Horse Park encompasses approximately 450 acres. Approximately 50-acres of this property is Preserve Habitat that will not be developed. Of the remaining 400 acres, approximately 50-acres is located in the City of Seaside, and 350 acres within the County of Monterey. The Monterey Downs and Horse Park contains several components, creating a "village" as required under the FORA Master Plan. The components are:

1. Monterey Downs Training Facility
2. Mixed Use Pedestrian Village known as Country Walk
3. Sports Arena
4. Monterey Horse Park
5. Public Horse Stabling
6. Single Family Housing within the County of Monterey
7. Single Family Housing within the City of Seaside

1. Monterey Downs Training Facility

The current design for the Monterey Downs Training Facility includes a one-mile track on which horses can train to run in races at other tracks. The training center will be modeled after Del Mar Thoroughbred Club in Del Mar, California with a proposed water feature in the middle of the track (the in-field) in which reclaimed water can be stored to be used to irrigate the property. The track and infield are designed to fit on approximately 52-acres of land. Additionally, a 120,000 square foot grandstand is proposed. Also, the backstretch area of the training facility is designed to fit on approximately 30-acres. Within the backstretch area approximately 1,000 stalls and 157 low-low income worker housing units are planned as well. These worker housing units are proposed as a combination of dorm-style and single apartments designed for the workers of the track who must live on-site. Also, 26-acres are intended to be used for parking for visitors to the training facility. Finally, it is anticipated that approximately 25,000 square feet of industrial type buildings will be set aside to hold equipment necessary to maintain the grounds of the Training Facility and Horse Park.

2. Mixed Use Pedestrian Village known as Country Walk

Country Walk is expected to be approximately 150,000 square feet on approximately 25-acres. It is currently designed to be a pedestrian only village with a walkway down the center and buildings on either side. The first and second floors of the buildings are planned for commercial space, with approximately 200 two-bedroom apartments and 50,000 square feet of office space above the commercial area. Additionally, two free standing apartment buildings with another 100 two-bedroom apartments each, for a total of 400 two-bedroom apartment units are also planned within Country Walk. A 200-room hotel is designed at one end of Country Walk to provide a convenient place to stay for visitors to the Monterey Downs and Horse Park as well as a theatre complex. Finally, 48-acres of parking are intended to be used for parking for visitors to Country Walk.

Land Use Plan with Trail Circulation and Connectivity

