

Attachment D

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**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No. 20-013

Recommending Approval)
Of the First Amendment to)
Development Agreement)

This resolution is made with reference to the following facts and circumstances:

RECITALS

- A. The County of Monterey and East Garrison Partners, LLC (the “Original Developer”) entered into that certain Development Agreement dated October 4, 2005 and recorded in the Official Records of Monterey County on May 16, 2006 as Instrument No. 2006044223 (the “Development Agreement”), related to development of approximately 244 acres on the former Fort Ord, a former United States military base, in the unincorporated area of Monterey County. The County Board of Supervisors adopted the Development Agreement by Ordinance No. 05001 on October 4, 2005 pursuant to California Government Code sections 65864 through 65869.6 and Monterey County Code Chapter 18.62.
- B. Concurrent with approval of the Development Agreement, the Board of Supervisors adopted the East Garrison Specific Plan and approved the Original Developer’s application for a Combined Development Permit and other entitlements for development of the Property (the East Garrison Project).
- C. In 2009, UCP East Garrison, LLC (the “Developer”) acquired title to the real property subject to the Development Agreement, and UCP East Garrison, LLC became the successor-in-interest to the original developer under the Development Agreement.
- D. The County and Developer mutually desire to amend the Development Agreement to:
1) extend the term of the Development Agreement an additional fifteen years to October 4, 2035; and 2) establish a fee to replace the Fort Ord Reuse Authority (FORA) Community Facilities District Special Tax, with such replacement fee to be paid by Developer or its successors in interest upon issuance of the remaining building permits for the East Garrison Project.
- E. Pursuant to Government Code section 65868 and Monterey County Code section 18.62.140, the Development Agreement may be amended by mutual consent of the parties, provided certain procedures required by Chapter 18.62 of the Monterey County Code are followed, including that the Planning Commission conduct a noticed public hearing, make certain findings, and provide written recommendation to the

Board of Supervisors. The Board of Supervisors must also conduct a noticed public hearing, make certain findings, and adopt the amendment by ordinance.

- F. The proposed amendment, First Amendment to Development Agreement (“First Amendment”), describes in full the background and reasons for the proposed amendment. The First Amendment is attached hereto and incorporated herein by reference. The First Amendment is also an exhibit to the proposed ordinance which is attached as Exhibit C to the staff report to the Planning Commission and incorporated herein by reference.
- G. Per Section 9. 3(c) of the Development Agreement, the First Amendment to the Development Agreement applies only to the portion of the East Garrison Project site for which the County has not approved a residence or building for occupancy and for which a building permit has not issued as of June 30, 2020.
- H. On May 27, 2020, the Planning Commission conducted a duly noticed public hearing on the First Amendment to Development Agreement.
- I. On October 4, 2005, the Board of Supervisors of Monterey County certified a Final Subsequent Environmental Impact Report (FSEIR) for the East Garrison Project (Board of Supervisors’ Resolution No. 05-264). An Addendum to the FSEIR has been prepared describing the replacement fee and extension of the term of the Development Agreement. The Planning Commission has considered the Addendum together with the SEIR and finds that none of the conditions described in section 15162 of the CEQA Guidelines that would warrant preparation of a subsequent EIR have occurred.

NOW, THEREFORE, BE IT RESOLVED, based on all of the above facts and circumstances and the administrative record as a whole, the Planning Commission makes and adopts the following findings:

1. The First Amendment is consistent with the General Plan and the East Garrison Specific Plan. The change in funding mechanism from FORA CFD Special Tax to a County replacement fee and the fifteen-year extension of the term of the Development Agreement do not alter the Project in a manner that would create an inconsistency with the General Plan or East Garrison Specific Plan.
2. The First Amendment is in the public interest. The Amendment enables continuation of a fee equivalent to the FORA CFD fee after termination of the FORA fees due to the dissolution of FORA. Establishment of the replacement fee is consistent with the environmental analysis and mitigation measures for the East Garrison project and will be used for the same beneficial purposes of infrastructure improvements and habitat management as the FORA Fee. The replacement fee consists of fair share contribution to the Transportation

Agency of Monterey County's Regional Development Impact Fee for roads in TAMC's Zone 5 (former Fort Ord), the County roadway fee for the Greater Salinas area, and habitat management in the County unincorporated area in the former Fort Ord.

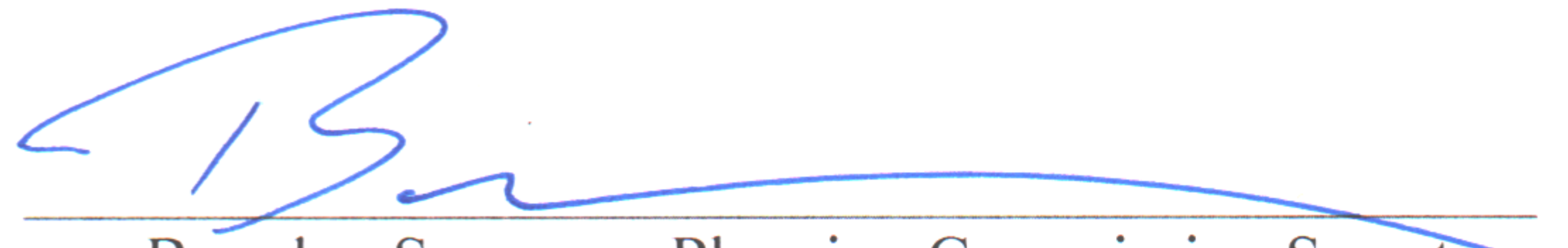
3. The First Amendment provides public benefits that may not otherwise be attainable through other applicable development approval processes by providing Developer's voluntary agreement to the levy of a replacement fee on future building permits in light of FORA dissolution and termination of the FORA fee.
4. The First Amendment is consistent with the requirements of Chapter 18.62. The Amendment has been processed in accordance with the procedures set forth in Chapter 18.62, including a public hearing before the Planning Commission.

BE IT FURTHER RESOLVED, based on all of the above findings and the administrative record as a whole, the Planning Commission does hereby:

1. Certify that it has considered the Addendum together with the FSEIR for the East Garrison Project; and
2. Recommend that the Board of Supervisors approve the First Amendment to Development Agreement, in the same or substantially the form as attached hereto

PASSED AND ADOPTED this 27th day of May, 2020 upon motion of Commissioner Daniels seconded by Commissioner Mendoza, by the following vote:

AYES:	Ambriz, Diehl, Getzelman, Gonzalez, Mendoza, Roberts, Daniels, Coffelt, Monsalve, Duflock
NOES:	None
ABSENT:	None
ABSTAIN:	None


Brandon Swanson, Planning Commission Secretary

Attachment 1

RECORDING REQUESTED BY

**AND WHEN RECORDED MAIL
DOCUMENT TO:**

**County of Monterey
Office of Community Development
1441 Schilling Place – North
Salinas, CA 93901
Attn: Director**

**Space Above This Line for
Recorder's Use Only**

No fee for recording pursuant to
Government Code Section 27383

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
(East Garrison Project)
[DRAFT 5/20/20]

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) is entered as of this _____, 2020 by and between THE COUNTY OF MONTEREY, a political subdivision of the State of California (“County”), and UCP East Garrison, LLC, a Delaware limited liability company (“Developer”), with reference to the following facts:

A. Development Agreement. County and East Garrison Partners I, LLC (the “Original Developer”) entered into that certain Development Agreement dated October 4, 2005 and recorded in the Official Records of Monterey County on May 16, 2006 as Instrument No. 2006044223 (the “Development Agreement”), related to development of the real property more particularly described on Exhibit A-1, attached hereto and commonly referred to as East Garrison (the “Property”). The Property consists of approximately 244 acres on the former Fort Ord, a former United States military base, in the unincorporated area of Monterey County. The County and the Original Developer entered the Development Agreement pursuant to California Government Code sections 65864 through 65869.6 and Monterey County Code Chapter 18.62 concurrent with County adopting the East Garrison Specific Plan and approving the Original Developer’s application for a Combined Development Permit and other entitlements for development of the Property (the East Garrison Project) Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Development Agreement.

B. Property Subject to this Amendment. Final subdivision maps have been recorded for the entire Property, and a majority of the lots have been sold and developed. As provided in Section 9. 3(c) of the Development Agreement, the Development Agreement automatically terminated as to any single family residence, multifamily building or non-residential building, and the lot upon which such building is located, when the County approved the residence or building for occupancy, while the Development Agreement continues to apply to the remainder of the Property. Accordingly, this Amendment to the Development Agreement applies only to the portion of the Property for which the County has not approved a residence or building for occupancy and for which a building permit has not issued as of June 30, 2020, which property is

more particularly described in Exhibit A-2, attached hereto (hereafter referred to as the “Subject Property”).

C. Disposition and Development Agreement. The Original Developer and the Redevelopment Agency of the County of Monterey concurrently entered that certain Disposition and Development Agreement dated October 4, 2005 (the “DDA”) governing, among other matters, the transfer of the Property from the Redevelopment Agency to the Original Developer. The Memorandum of Disposition and Development Agreement (Together with Exclusive Negotiating Rights to Certain Property) is recorded in the Official Records of Monterey County on May 16, 2006 as Instrument No. 2006044222.

D. Replacement of Original Developer with Developer.

1. On or around January 30, 2007, Original Developer obtained a loan (the “Loan”) from Residential Funding Company, LLC, a Delaware limited liability company and RFC Construction Funding, LLC, a Delaware limited liability company (collectively, the “Original Lender”), which Loan was evidenced by, among other instruments, that certain Construction Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents, Proceeds and Agreements effective as of January 30, 2007 (as amended, the “Deed of Trust”), which Deed of Trust encumbered the Property.
2. As a result of Original Developer defaulting under the Loan, on March 24, 2009 Original Lender commenced trustee sale proceedings under the Deed of Trust by causing a Notice of Default and Election to Sell under Deed of Trust to be recorded in the Official Records as Instrument No. 2009017137 (the “Trustee Sale Proceedings”).
3. On August 7, 2009, during the pendency of the Trustee Sale Proceedings, Developer purchased the Loan from Original Lender and became the lender under the Loan.
4. Title to the Property was vested in Developer pursuant to that certain Trustee’s Deed Upon Sale dated September 8, 2009 and recorded in the Official Records on September 9, 2009 as Instrument No. 2009057220 and, consequently, Developer became the successor-in-interest to Original Developer under the Development Agreement and the DDA.
5. The Redevelopment Agency and UCP East Garrison, LLC subsequently entered the First Implementation Agreement to the Disposition and Development Agreement, dated June 28, 2011. Additionally, the Successor Agency to the Redevelopment Agency and UCP East Garrison, LLC entered into the Amended and Restated First Implementation Agreement to the Disposition and Development Agreement, dated August 30, 2016. (The term “DDA” as used in this Agreement is inclusive of these implementation agreements.)

E. Development Agreement Term.

1. Pursuant to Section 9.3 of the Development Agreement, the current Term of the Development Agreement expires on October 4, 2020.
2. The Property development will not be complete upon the expiration of the Term for a variety of reasons including, without limitation slow-down in development arising from: (a) the national economic downturn that started in 2008, (b) the original Developer's Loan default and Developer's subsequent acquisition of the Loan and Property, and (c) recent governmental construction restrictions and market stressors resulting from the COVID-19 pandemic.
3. The County and Developer both desire to extend the Term to allow for the completion of Property development pursuant to the Development Agreement and the other entitlements for the Project.

F. FORA Fees.

1. The Fort Ord Reuse Authority ("FORA") was formed pursuant to California Government Code Section 67650 et. seq., (the Fort Ord Reuse Authority Act) to manage the transition of Fort Ord from military to civilian use, including to facilitate the transfer and disposition of real property from the United States Army, plan for reuse and development of the former Fort Ord, and maintain and protect its environmental resources. (Gov't Code sec. 67651.).
2. As a requirement for the closure of the military base and transfer of land from the United States Army, the Army established the *Installation-Wide Multispecies Management Plan for Former Fort Ord*, dated April 1997 (HMP) to comply with the federal Endangered Species Act. The HMP requires different levels of habitat management across the former Army base, requiring preservation, enhancement and restoration of habitat on some parcels in order to enable development to occur on other parcels of the former base.
3. In connection with FORA's duties, in 2002, FORA formed the Fort Ord Reuse Authority Basewide Community Facilities District (FORA CFD) and authorized the levy of a Special Tax within the District pursuant to the Mello-Roos Community Facilities Act of 1982 to finance all or a portion of the costs of improvements on the former base, including roadway improvements, transportation system improvements, water and storm drain improvements, and habitat management. (Exhibit A to Notice of Special Tax Lien, recorded as Instrument No. 2002048932 on May 22, 2002.) (The Special Tax is often referred to as the FORA fee.) Per a condition of approval of the Combined Development Permit for the East Garrison Project and per the Development Agreement, the Developer was required to and has been paying the Special Tax prior to issuance of a building permit for development of each lot. The current Special Tax rate is set forth on Exhibit B attached hereto (the "Current FORA Fees").
4. Effective on June 30, 2020, pursuant to Government Code section 67700 of the Fort Ord Reuse Authority Act, FORA will dissolve, and the FORA CFD will

terminate by its terms. It is necessary to establish a replacement fee in order for Developer to continue to contribute its fair share toward the cost of habitat management and roadway improvements on the former Fort Ord, consistent with the conditions of approval of the Combined Development Permit.

5. Due to FORA dissolution and termination of the FORA CFD, the County has proposed a fee to replace the Current FORA Fees in the categories and amounts set forth in Exhibit B attached hereto (the “the FORA CFD Replacement Fee”). The fee is to be levied on the remaining building permits for the Project, in lieu of the Current FORA Fees, for Developer’s fair share funding of habitat management under the HMP and regional and County roadway improvements. The Developer is willing to pay the proposed FORA CFD Replacement Fee for the portions of the Project that remain to be completed for which the Developer would have otherwise paid the Current FORA Fee.

G. DDA.

1. Developer and the Successor Agency to the Redevelopment Agency of the County of Monterey (the “Successor Agency”) are the current parties under the DDA.
2. In connection with certain affordable housing obligations under the DDA, Casa Acquisition Corp. (an affiliate of Developer) signed that certain Phase Two Completion Guaranty and that certain Phase Three Completion Guaranty, both for the benefit of the Successor Agency (collectively, the “Guaranties”).

H. Amendment to Development Agreement.

1. To achieve the purposes described above, the County and Developer desire to amend the Development Agreement as more particularly set forth below.
2. On _____, 2020, the County Board of Supervisors duly adopted Ordinance No. _____, to approve this Amendment. Provided the Ordinance is not challenged within the applicable governmental challenge period, the Amendment will become effective on the thirty-first day following adoption of Ordinance No. ____ (“Amendment Effective Date”). The filing of litigation challenging the adoption of the Ordinance shall not change the Amendment Effective Date, unless the parties to this Amendment agree in writing to stay the Effective Date due to the litigation.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Term. The Term, as defined in Section 9.3 of the Development Agreement, is hereby extended an additional fifteen (15) years to October 4, 2035, subject to all other terms of Section 9.3.

2. FORA CFD Replacement Fee. The following is hereby added as a new Section 2.8.1 to the Development Agreement:

“Section 2.8.1: The parties agree that, effective July 1, 2020, the Current FORA Fees will discontinue and the County will collect the FORA CFD Replacement Fee for lots within the Property. The FORA CFD Replacement Fee will be due for a lot within the Property upon the issuance of a building permit for such lot. The FORA CFD Replacement Fee shall consist of the categories and amounts set forth in Exhibit B attached hereto, subject to annual automatic adjustment as set forth in Exhibit B.

For clarification, the parties agree to the following:

- a. Provided this Amendment ultimately goes into effect, the FORA CFD Replacement Fee shall apply to all lots for which building permits are issued on or after July 1, 2020, regardless of whether the Amendment Effective Date of the Amendment occurs after July 1, 2020.
- b. For any building permits that Developer obtains between July 1, 2020 and the Amendment Effective Date, the applicable FORA CFD Replacement Fee will be due and payable fifteen (15) days after the County notifies Developer that the Amendment Effective Date has occurred.
- c. This Amendment runs with the land. Accordingly, if Developer sells a lot within the Subject Property prior to obtaining a building permit, the successor owner of the lot who obtains a building permit shall succeed to the obligation herein to pay the FORA CFD Replacement Fee.”

3. No Changes to DDA and Guaranties. Nothing herein shall change the deadlines or otherwise amend the terms in the DDA or any ancillary documents to the DDA including, without limitation, the deadlines set forth in the Guaranties.

4. No Change to Remainder of Development Agreement. All other terms and provisions of the Development Agreement shall remain in full force and effect.

5. Counterparts. This Amendment may be executed in counterparts which, when taken together, will constitute one and the same agreement.

6. Entire Agreement; Conflict; Amendments. This Amendment and the attachments hereto, which are hereby incorporated into and made a part of the Development Agreement, constitutes the entire agreement between the parties with respect to the matters set forth herein. In the event of any conflict between the provisions of this Amendment and the provisions of the Development Agreement, the provisions of this Amendment shall control. No amendment or modification to the Development Agreement will be effective unless contained in a writing signed by both parties.

7. Severability. Should any provision of this Amendment be deemed by a court of competent jurisdiction to be unenforceable under applicable law, the remaining provisions of this Amendment shall in no way be affected and shall remain in full force. The parties also agree

that any such provision deemed unenforceable shall be replaced automatically with an enforceable provision as close as possible, in meaning and effect, to that deemed unenforceable.

[signatures on next page]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

DEVELOPER:

UCP EAST GARRISON, LLC, a Delaware limited liability company

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

By: _____
Name: Nicholas Arenson
Title: Division President

COUNTY OF MONTEREY

By: _____
Chris Lopez, Chair
Monterey County Board of Supervisors

APPROVED AS TO FORM

UCP EAST GARRISON, LLC

COUNTY OF MONTEREY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[ADD CONSENT BY BMC EG entities]

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF MONTEREY)

On _____ before me, _____,
a 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 acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the 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.

Signature

(Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF MONTEREY)

On _____ before me, _____,
a 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 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the 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.

Signature

(Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF MONTEREY)

On _____ before me, _____,
a 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 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the 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.

Signature

(Seal)

EXHIBIT A-1
PROPERTY

DRAFT

EXHIBIT A-2

SUBJECT PROPERTY

DRAFT

EXHIBIT B

FORA CFD REPLACEMENT FEES

DRAFT

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Attachment 2

Table 1
East Garrison Fort Ord
Proposed FORA CFD Replacement Fee Amounts

Proposed FORA CFD Replacement Fee	Basis	Single Family	Affordable/Workforce Units [1]			Office	Retail
			Workforce II Units [2]	Condo/Townhome Mod	Apt. Low and Very Low		
Fee Component			<i>per unit</i>			<i>per 1,000 sq. ft.</i>	
Regional Roadways [2] [3]	Regional Development Impact Fee	\$3,962	\$3,108	\$1,903	\$1,612	\$4,582	\$5,608
Local Roads [4] [5]	Countywide Road Fee (Zone 3 - Greater Salinas)	\$2,141	\$1,679	\$1,028	\$871	\$2,813	\$3,318
Habitat Management [6]	Habitat Management Component of FORA CFD Special Tax	\$9,000	\$7,059	\$4,322	\$3,663	\$78	\$2,253
Total Proposed FORA CFD Replacement Fee		\$15,103	\$11,846	\$7,254	\$6,147	\$7,473	\$11,179
Current FORA CFD Special Tax Rate [7]		\$25,362	\$25,362	\$25,362	\$7,609	\$218	\$6,295
Difference from Current FORA CFD Special Tax Rate		(\$10,259)	(\$13,516)	(\$18,108)	(\$1,462)	\$7,255	\$4,884

rates

Source: FORA, TAMC, MCWD, and County of Monterey.

- [1] Fee rates for affordable and workforce housing derived using TAMC Regional Development Impact Fee rates for the regional roadways component. Affordable and workforce housing rates for the local roads and habitat management components are calculated by applying a reduction to the respective Single Family rates proportionate to the Regional Development Impact Fee reduction.
- [2] Reflects units priced to accommodate 150-180 area median income. Workforce II unit fee rate based on TAMC Single Family Moderate Income rate.
- [3] Per section 12.90.030 of the Monterey County Code, the Regional Development Impact Fee component shall be automatically adjusted as of July 1 of each year following the first year after the effective date of this Agreement. The adjustment shall be calculated by the Transportation Agency of Monterey County (TAMC) as administrator of the RDIF Agency, based on the increase or decrease in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the period ending December 31 of the preceding calendar year. Also in accordance with section 12.90.030, the County may from time to time make additional adjustments to the RDIF component per the recommendations of TAMC.
- [4] The office and retail fee rates are based on the County Zone 3 fees for General Office Building and Shopping Center categories, respectively.
- [5] No escalation provision is included for the local roads component in accordance with County implementation practices for the Countywide Road Fee, but local roads component shall be subject to automatic adjustment if County adopts an annual adjustment in the course of the extended term of the Development Agreement.
- [6] The Habitat Management Fee component shall be automatically adjusted as of July 1 of each year following the first year after the effective date of this Agreement. The adjustment shall be calculated by the County based on the increase or decrease in the Consumer Price Index published by the United States Department of Labor's Bureau of Labor Statistics for all items, all urban consumers San Francisco-Oakland-Hayward Metropolitan Area.
- [7] FORA CFD Special Tax rates for affordable units varied based on whether the affordable units contained deed restrictions regarding where residents worked and based on the mix of affordable housing. This analysis assumes that 100% of the affordable housing units at East Garrison categorized as "Apt. Low and Very Low" would be "Below Market Housing containing at least 75% of the dwelling units as Affordable Housing, with no deed restrictions on where individuals can work." The applicable Maximum Special Tax rate is therefore assumed to be the Existing Residential Maximum Tax rate (30 percent of New Residential Maximum Special Tax rate).