

Attachment A

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**SECOND EXTENSION TO MEMORANDUM OF AGREEMENT
REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE PARKER FLATS
RESERVE AT THE FORMER FORT ORD, CALIFORNIA**

This SECOND EXTENSION TO MEMORANDUM OF AGREEMENT REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE PARKER FLATS RESERVE AT THE FORMER FORT ORD, CALIFORNIA (“Extension”) is entered as of this June ___, 2021 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”) (collectively “the Parties”), with reference to the following facts:

A. County, Developer and the Fort Ord Reuse Authority (“FORA”) entered into a Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California with an Effective Date of February 2, 2015 (the “Agreement”) and the First Extension to the Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord California with Effective date of July 28, 2020 (“First Extension”). Except as otherwise defined herein, all capitalized terms shall have the meaning set forth in the Agreement.

B. The Agreement provided for preservation and management of 134 acres of parcel E.19.a.4 (“the CTS Preservation and Habitat Restoration Area”) for its value as habitat for California Tiger Salamander (CTS), with County to perform habitat management on an interim basis with \$104,155 in funding provided by Developer until the earlier of a period of five years or until a Habitat Conservation Plan for the former Fort Ord were adopted and respective incidental take permits (Fort Ord HCP ITPs) were issued by United States Fish and Wildlife Service (“USFWS”) and California Department of Fish and Wildlife (“CDFW”).

C. FORA dissolved by operation of law on June 30, 2020 and, therefore, has ceased to be a party to the Agreement by operation of law.

D. Section I.C.1.b of the Agreement states, “The term of this Agreement (the ‘Term’) shall commence upon the Effective Date and continue for a period of five (5) years, unless (and then only to the extent) such date is extended pursuant to Section I.C.1.c.”

E. Section I.C.1.c of the Agreement allows the parties to extend the Term if USFWS or CDFW has not issued all of the Fort Ord HCP ITPs on or before five (5) years from the Effective Date.

F. Because a Fort Ord Habitat Conservation Plan was not adopted and the Fort Ord HCP ITPs were not issued prior to the dissolution of FORA, the first extension extended the term of the Agreement to June 30, 2021, and authorized County’s use of the sum remaining from the \$104,155 endowment for the purpose of continued habitat management on the CTS Preservation and Habitat Restoration Area while the County planned for long-term habitat management.

G. The County is in the process of developing a Resource Management Plan (“RMP”) pursuant to the 1997 Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord (“HMP”) as modified by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker Flats Land Use Modification. The intent is that the RMP will incorporate habitat management of the CTS Preservation and Habitat Restoration Area. In order to provide time for the

development and adoption of the RMP, the Parties desire to extend the term of this Agreement until June 30, 2024 or until the date the RMP is adopted by the County, whichever is first.

H. The Parties intend that the Developer shall have no obligation to provide additional funds to replenish the Interim Management Fund in light of Developer's prior endowment under the Agreement, Developer's payment of the FORA Community Facilities District ("CFD") Special Tax, a portion of which was earmarked for habitat management on the former Fort Ord and transferred to the County upon FORA's dissolution, and Developer's payment of the FORA CFD Replacement Fee, a portion of which is for habitat management, pursuant to the First Amendment to Development Agreement recorded on July 14, 2020.

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

1. Extension. County and Developer hereby agree to extend the Agreement, as previously amended by the First Extension, to June 30, 2024 or until the date the RMP is adopted by the County, whichever is first.

2. Status of Interim Management Fund. The parties confirm that the Interim Management Fund has been expended and holds zero funds. The parties agree that Developer shall have no obligation to provide any additional funds to replenish the Interim Management Fund, unless the parties agree otherwise mutually in writing.

3. Deed Restriction in Lieu of Conservation Easement. If CDFW agrees to a grant deed restriction ("Deed Restriction") over the CTS Preservation and Habitat Area in lieu of a Conservation Easement, the Developer shall provide a draft Deed Restriction to the County for approval by the County, which the Parties acknowledge may require approval by the Board of Supervisors. Provided that the County has duly approved the Deed Restriction, the County shall execute and record the Deed Restriction over the CTS Preservation and Habitat Area as soon as practicable after approval of the Deed Restriction by CDFW. Recording fees, if any, shall be paid from the funds held by the County for habitat management on the former Fort Ord.

4. Interpretation of ITP. UCP has represented that the ITP issued by CDFW does not require monitoring and mitigation activities beyond what is required by the HMP. UCP agrees that, with County cooperation and concurrence, it will negotiate the final monitoring and mitigation plan with CDFW to be incorporated into the RMP.

5. No Change to Remainder of Agreement. All other terms and provisions of the Agreement, as previously amended by the First Extension, shall remain in full force and effect during the Term of this Agreement as extended except that: a) the Fort Ord Reuse Authority is dissolved and therefore is no longer a party to the Agreement and its obligations under the Agreement are extinguished; and b) the Parties hereto acknowledge that, although the County accepted the Conservation Easement referenced in the Agreement, the easement has not been recorded, and Parties are exploring the viability of a deed restriction rather than conservation easement for preservation of the CTS Preservation and Habitat Restoration Area.

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

7. Entire Agreement; Conflict; Extensions. This Extension 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 Extension and the provisions of the Agreement, the provisions of this Extension shall

control. No other extension or modification to the Agreement will be effective unless contained in a writing signed by both parties.


8. Severability. Should any provision of this Extension be deemed by a court of competent jurisdiction to be unenforceable under applicable law, the remaining provisions of this Extension 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Extension to be executed and effective 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

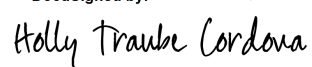
By: 
Name: Nicholas Arenson
Title: Division President
6/9/2021

COUNTY OF MONTEREY


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

APPROVED AS TO FORM

UCP EAST GARRISON, LLC

By: 
Name: Holly Traube Cordova
Title: Regional Legal Counsel
6/9/2021

COUNTY OF MONTEREY

By: 
Name: Kristi Markey
Title: Deputy County Counsel
6/9/2021

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