

G. **Historic District and Town Center.**

1. Historic District

As a condition to conveyance, and to ensure that all historic preservation requirements are met, Developer will comply with the Agreement and Covenant for the Transfer of East Garrison Historic District (the "Historic District Agreement"), dated as of August 3, 2004, between the SHPO and FORA and recorded in the Records of the Monterey County Recorder on October 15, 2004 as Document 2004110087, and Mitigation Measure 4.8.1-H and Combined Development Permit Condition of Approval No. 59. The Developer must also provide infrastructure to all buildings in the Historic District, subject to the CFD and CSD, as applicable to such buildings. Subject to Part H, below, Agency agrees to make available to the Project for the rehabilitation of the Historic District the net tax increment allocable to the Agency as set forth below in this section.

The Developer will be legally obligated to expend directly or make available to the Agency a total amount of \$750,000, (indexed to the ENR Cost Index, as first defined in Part B hereof), to fund the predevelopment expenses of the Historic District on the following timetable: \$150,000 in 2006, \$300,000 in 2007 and \$300,000 in 2008.

For capital costs (exclusive of capital costs for buildings to be devoted to public use and owned after rehabilitation by public entities, which costs shall be deemed part of the costs of the Public Facilities under Attachment No. 9 hereto) and subject to Section c. of Part H, below, of this Attachment No. 4, the Agency will make available up to but not to exceed \$5 million (indexed to the ENR Cost Index, as first defined in Part B hereof) in tax increment funds during the first year that tax increment funds sufficient for major capital improvements to the buildings in the Historic District are available, currently estimated to be FY 2008/09. The Developer shall thereupon provide funds for major capital improvements to buildings in the Historic District up to but not to exceed \$1 million (indexed to the ENR Cost Index, as first defined in Part B hereof, in the same percentage as the Agency's \$5 million), to be provided in an amount equal to Twenty Percent (20%) of the amount made available for such purposes by the Agency. In addition, upon completion of work on and occupancy of fifty percent (50%) of the buildings in the Historic District, the Developer will contribute \$250,000, (indexed to the ENR Cost Index, as first defined in Part B hereof) to the establishment of an endowment for the non-profit corporation described in Section 3 of Attachment No. 9 hereto to cover the operating costs of the Historic District. No other contributions will be required by the Agency or the Developer. Nothing in this paragraph shall be deemed to impose an obligation on the Agency or the Developer to perform any work or make any capital improvements to the buildings to be retained in the Historic District.

The Developer, the Agency and the County agree to enter into an agreement with ArtSpace to take title to the historic buildings and rehabilitate such buildings. Agency has approved Artspace as the developer and operator of the Historic District. Funds for the rehabilitation will be paid to Artspace upon a demonstration, to the satisfaction of the Agency and Developer, that Artspace has the technical, managerial and financial ability to complete the rehabilitation in accordance with the covenants and conditions stated in the Historic District Agreement between FORA and the SHPO.

2. Town Center

Pursuant to the Option Agreement, Developer has the obligation to construct approximately 34,000 square feet of neighborhood serving retail, civic and other non-residential uses ("Town Center Construction Obligation"). Developer and County recognize that the retail portion of the Town Center Construction Obligation may not be economically feasible. Consequently if no residual value is determined to exist pursuant to Section 3.b(ii)(2) of Part A of this Attachment No. 4, no value may be attributable to the town center mixed use parcels and any subsidy which may be required from Developer to finance construction shall be considered a Project Cost, as defined in Section 3.d. of Part A of this Attachment No. 4. Developer will install all the infrastructure necessary to service the Town Center parcels, including the Town Center Park and parking lots. Developer may assign its rights and obligations to develop the Town Center mixed-use commercial and residential parcels (as described in Exhibit 2 to Attachment No. 9) to either Woodman Development Company, LLC ("Woodman") or a special purpose Affiliate of either the Developer or Woodman ("Assignee").

An approximately 7,000 square foot Fire Station to be constructed on a site within Phase 1 comprises a portion of the Town Center Construction Obligation but is the subject of its own separate subsidy by Developer, described in Section 8 of Attachment No. 9, and shall not count toward satisfying the Developer's 34,000 square foot Town Center Construction Obligation. As provided in Section 6 of Attachment 9, 4,000 square feet of the Library/Sheriff's Substation shall count toward satisfying the Developer's 34,000 square foot Town Center Construction Obligation. At least 20,000 square feet of the Town Center Construction Obligation must have been completed prior to the issuance of the first market rate unit permit within Phase 3 of the Project and the remaining 14,000 square feet of the Town Center Construction Obligation must be completed prior to the issuance of the last certificate of occupancy for the last market rate unit in Phase 3.

Prior to the first market rate unit building permit being issued in Phase 3, Developer or Assignee shall post a completion bond with respect to any portion of the Town Center Construction Obligation which is not completed or under construction at that time.

Developer shall thereafter be allowed to continue to obtain all remaining building permits and certificates of occupancy for the market rate units of the Project without restriction. Timing of construction of the Town Center Construction Obligation shall be subject to Enforced Delays under Section 604 of this Agreement.

H. Tax Increment; Agency Assistance.

The Agency agrees to pledge and devote to the Project its share of the net tax increment produced by the Project and allocable under State law to the Agency in the following priority order:

- a. First, to the Agency's actual annual costs of administering the Redevelopment Project Area, estimated at the lesser of total increment or \$300,000, escalated at 3% per year, from non-housing funds based on net increment after statutory pass-throughs.
- b. Second, subject to priority a. above, and to availability, up to \$48,469 (indexed to the ENR Cost Index as first defined in Part B hereof) per Rental Affordable Housing unit as requested by the Developer, up to but not to exceed in the aggregate \$9.5 million (indexed to the ENR Cost Index as first defined in Part B hereof) solely for the purpose of subsidizing the costs related to vertical construction (hard costs only, not including, by way of example, site preparation costs, infrastructure costs, permits, fees and exactions) of the units in the Project to be made available and restricted to occupancy by persons and families of very low and low income, all subject to the terms of the Inclusionary Housing Agreements to be entered into between the Developer and the County pursuant to the Combined Development Permit Conditions of Approval and the agreements with one or more Rental Affordable Housing Developers (referenced in Section 4 of Attachment No. 9). The source of such tax increment funding shall be the Agency tax increment generated by the Project. Developer has represented to Agency, and Agency acknowledges, that Developer will budget and expend, in addition to the amount of the Agency's subsidy for the Rental Affordable Housing units referenced in the preceding sentence, up to a total of \$630,000 of its own funds (indexed to the ENR Cost Index as first defined in Part B hereof) for such Rental Affordable Housing units; provided, however, that Developer acknowledges and agrees that notwithstanding the amounts required to be contributed by the Agency and the Developer for Rental Affordable Housing units under this subsection b., the Developer shall be responsible in any event for causing such Rental Affordable Housing units to be constructed in accordance with the terms of the Inclusionary Housing Agreements, and that no additional amount of subsidy for such units shall be required from the Agency or requested by the Developer or any Rental Affordable Housing Developer.

Tax increment funds will be made available as provided in the immediately preceding paragraph for the Rental Affordable Housing units. No such funds shall be made available for the moderate income Inclusionary Housing units. If tax increment is not available when needed for construction of the Rental Affordable Housing units, the Developer will advance those funds up to but not to exceed \$5.5 million (the

"Shortfall Loan") of the \$9.5 million (as indexed to the ENR Cost Index as first defined in Part B hereof) that the Agency is obligated to contribute for the Rental Affordable Housing units, which Shortfall Loan shall be evidenced by a promissory note (the "Note") from the Agency to the Developer substantially in the form attached to this Agreement as Attachment No. 10 and shall be repaid by the Agency out of tax increment Bond proceeds or pay-as-you-go tax increment proceeds with accrued per annum interest at the higher of 7% or prime plus 1% on the unpaid balance, compounded annually until repaid. The Agency shall apply its pay-as-you-go tax increment and/or the proceeds of tax allocation Bonds to effectuate the repayment of the Note as soon as it is feasible to do so, in the good faith determination of the Agency. The Shortfall Loan shall not be considered "Project Revenues" or "Project Cost" under Section 3.d. of Part A hereof for purposes of calculating the Developer's Target IRR under Section 3.b. of Part A hereof.

- c. Third, subject to priority a. and b. above, and further subject to timing of availability, to fund, to the extent required, completion of the Mandatory Public Facilities referred to in Part B of this Attachment No. 4 above.
- d. Fourth, subject to priority a., b. and c. above, and further subject to timing of availability, to fund a portion of the capital cost of rehabilitating the Historic District, in an amount not to exceed \$5.0 million (indexed to the ENR Cost Index) as set forth in Part G., above.
- e. Fifth, subject to priority under a., b., c. and d. above, and further subject to timing of availability, to fund the costs of design and construction of other Public Facilities as specified in Part B., above, not to exceed a total cost of \$5.5 million (indexed to the ENR Cost Index).
- f. Sixth, subject to priority under a., b., c., d. and e. above, and further subject to timing of availability, at the discretion of the Agency, for projects and programs to be carried out in the County's Redevelopment Project Area (with Public Facilities needs of the Project, if any remain, to be given first consideration by the Agency, in its discretion, after consultation with the Developer) to which tax increment may be applied.

I. Tax Increment Pledge.

The financial obligations of the Agency in Sections 205 and 310 of this Agreement, and in Part H, above, are secured by the Agency's pledge of tax increment set forth in Section 703 of this Agreement. In the event State Legislation enacted after the date of this Agreement would have the effect of diverting tax increment funds of the Agency to other State purposes with a material impact on the Agency's ability to fund its obligations under this Agreement and as set forth in this Attachment No. 4, the Parties hereto: (1) shall cooperate to explore all feasible means to enforce and/or validate the Agency's pledge under Part H above and, (2) in addition, shall meet and confer in good faith to attempt to mutually restructure the timing and amount of the Agency tax increment funding for the Project and the requirements and financial obligations for the Project in a way that would allow the Project to proceed in an economically feasible

manner as planned consistent with maintaining the Developer's Target IRR of 22.5%. Nothing in the preceding sentence shall obligate the Agency to materially alter the terms of the transaction to accommodate the reduction or diversion of tax increment or obligate the Developer to proceed with the transaction if the Project cannot proceed in an economically feasible manner as a result of the reduction or diversion, and the failure to reach mutual agreement thereunder shall constitute a failure of the Agency to satisfy a condition precedent and to tender conveyance of the Site under Section 510 of this Agreement, for which the Developer's sole remedy shall be, subject to the provisions of Section 513, termination of this Agreement.

J. [Intentionally Deleted].

K. Fiscal Neutrality.

The Project shall provide fiscal neutrality with respect to the County, the SRFD and the Monterey-Salinas Transit District ("MST"). A CSD shall be formed as provided in Part F., above and/or the Developer shall provide an appropriate alternative financing mechanism (such as a property owners association) to achieve this requirement, together with other appropriate funding mechanisms to the extent necessary to establish fiscal neutrality, meaning that annual tax revenues to the County, the SRFD and MST from the Project for each year starting with the receipt of the first certificate of occupancy issued by the County for the Project shall equal or exceed costs to the County, the SRFD and MST in providing urban services to the Project.

In order to achieve fiscal neutrality, a preliminary fiscal impact analysis by the Agency assumes that the Project will be responsible for funding all net operational and maintenance costs related to public works, parks, fire protection, public safety and the library and other services provided by the County's general fund.

A final fiscal impact analysis, consistent with the methodology used in the preliminary impact analysis prepared for the Agency in May, 2004, will be conducted following the approval of this Agreement and prior to closing, which will be used to finalize a Fiscal Neutrality Funding Plan, which, when approved by the Developer, Agency and County, shall be added to this Agreement as Exhibit 1 to this Attachment No. 4 and shall be the basis for financing obligations of the CSD and, if necessary, other appropriate funding mechanisms.

L. School Site.

If the Monterey Peninsula School District (the "School District") identifies a site for a new school on County lands outside the Site to serve the Project, the County intends, on request from the School District and conditioned upon completion of appropriate environmental review and applicable County process, to provide the identified site to the School District for the purpose of constructing the new school.