



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Potter seconded by Supervisor Parker, and carried by those members present, the Board of Supervisors hereby:

- a. Approved and authorized the Chair to execute a First Amendment to the Agreement Concerning Maintenance, Repair, and Operation of Drainage and Flood Control Systems and Required Provisions of CC&Rs by and among the County of Monterey, the Monterey County Water Resources Agency, and UCP East Garrison, LLC, for the East Garrison development on the former Fort Ord; and
- b. Directed the Director of Public Works to submit the executed First Amendment to the County Recorder for recordation.

PASSED AND ADOPTED on this 26th day of March 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter
 NOES: None
 ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on March 26, 2013.

Dated: March 28, 2013
File Number: A 13-034

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

RECORDING REQUESTED BY)
 AND WHEN RECORDED RETURN TO:)
)
 County of Monterey)
 Resource Management Agency)
 168 W. Alisal St., 2nd Floor)
 Salinas, CA 93901)
)

No Fee per Govt. Code 6103

Space above this line for Recorder's use

FIRST AMENDMENT
 to the
 AGREEMENT CONCERNING MAINTENANCE, REPAIR, AND OPERATION
 OF DRAINAGE AND FLOOD CONTROL SYSTEMS
 AND REQUIRED PROVISIONS OF CC&RS
 EAST GARRISON DEVELOPMENT
 COUNTY OF MONTEREY

THIS FIRST AMENDMENT ("First Amendment") to the *Agreement Concerning Maintenance, Repair, and Operation of Drainage and Flood Control Systems and Required Provisions of CC&Rs* ("Agreement") dated June 28, 2007 and recorded in the Office of the ^{REG} Monterey County Recorder at Document No. 2007051444, is entered into as of March 12, 2013 by and among UCP EAST GARRISON, LLC, a Delaware limited liability company ("Developer"), the MONTEREY COUNTY WATER RESOURCES AGENCY, a body politic and corporate of the State of California ("Water Resources Agency"), and the COUNTY OF MONTEREY, a body politic and corporate of the State of California ("County").

WHEREAS, the Agreement specifies each entity's responsibility for implementation of certain portions of completed infrastructure in the East Garrison Development described in the *Urban Services Agreement* dated July 18, 2006 between the County and the East Garrison Community Services District (EGCSD); and

WHEREAS, on June 28, 2011 the Board of Supervisors approved a *First Implementation Agreement to the Disposition and Development Agreement* which transferred the rights and entitlements for the East Garrison development project to the Developer; and

WHEREAS, on September 14, 2012 the County Public Works Department conditionally approved the *Operation and Maintenance Plan* (OMP) for the East Garrison development, which further defines and specifies each entity's responsibility for the operation and maintenance of said portions of completed infrastructure; and

WHEREAS, as project implementation has proceeded it has been determined that slight modifications to the allocation of infrastructure maintenance responsibilities should be made to facilitate holding the proposed property tax burden on the future residential properties to the

limits established through County policy for issuance of Mello-Roos financing, and that these modifications be implemented through a *First Amendment to the Urban Services Agreement*.

WHEREAS, it has further been determined that the *Agreement Concerning Maintenance, Repair, and Operation of Drainage and Flood Control Systems and Required Provisions of CC&Rs* should also be amended to confirm and verify that the Homeowners Association(s) will continue to be responsible to operate and maintain all infrastructure within the development that is not managed by the EGCSO or the County through the proposed *First Amendment to the Urban Services Agreement*.

NOW THEREFORE IT IS AGREED that the *Agreement Concerning Maintenance, Repair, and Operation of Drainage and Flood Control Systems and Required Provisions of CC&Rs* shall be amended as follows:

Section 2, Drainage and Flood Control System Agreement, is amended to read as follows:

If a homeowners association or Community Services District ("Responsible Party") fails to properly maintain, repair or operate the drainage and flood control facilities in the Project as required by the *Urban Services Agreement* between the County and East Garrison Community Services District entered into as of July 18, 2006, and as may be amended from time to time, and consistent with the *Operation and Maintenance Plan for East Garrison* (OMP) as may be amended from time to time, the Water Resources Agency, after notice and hearing as provided below, shall be granted the right by the Property Owners to enter any and all portions of the Property to perform repairs, maintenance and improvements necessary to properly operate the drainage and flood control facilities in the Project (the "work"). In emergency situations, the Water Resources Agency may enter upon the Property and perform the work after an expedited notice and hearing, which notice shall be given to the defaulting Responsible Party no less than three (3) business days before the hearing and the work may commence immediately following the hearing. In non-emergency situations, the Water Resources Agency may enter upon the Property and perform the work upon giving thirty (30) days advance written notice to the defaulting Responsible Party. The notice shall inform the defaulting Responsible Party of the affected Property Owner's right to a hearing before the Board of Supervisors regarding the necessity of the work and the estimated costs of the work. The hearing shall be held not less than five (5) days before the Water Resources Agency begins the work. The Property Owners may participate in the hearing orally or in writing. Upon completion of the work, the County shall advise the Property Owners, in writing, of the actual costs of that work. The Property Owners shall have the right to contest the costs of the work at a noticed public hearing before the Board of Supervisors. Thereafter, the County, on behalf of the Water Resources Agency, shall have the right to collect the costs for said work from the Property Owners upon their property tax bills.

Section 3, Developer's Annual Report Obligation, is amended to read as follows:

Until such time as all residential units for the Project are constructed, an Annual Report shall be submitted by December 14 of each year, which shall include the following information: (a) the total number of housing units started; (b) the total number of housing units with occupancy

approved by the County; (c) the total number of newly constructed units sold to individuals; (d) the number and type of units started; (e) the number and type of units built; (f) the number and type of units sold; (g) the number of existing jobs within the Project; (h) the number of projected jobs within the Project; and (i) details concerning new commercial construction. In addition, the Annual Report shall indicate whether the residential units were served by water from the Fort Ord Reuse Authority (FORA) water allocation. The Annual Report shall be delivered to the County Planning Department, the Transportation Agency for Monterey County (TAMC), and FORA. The Annual Report shall be prepared by the Developer, or if the Developer is no longer associated with the Project prior to the time all residential units are constructed, the Annual Report shall be prepared by the existing Master Association and any developers with title to any portion of property within the Project pursuant to an Assignment and Assumption Agreement approved by the County of Monterey as Successor Agency to the Redevelopment Agency of the County of Monterey.

Section 4, CC&Rs, is amended to read as follows:

Prior to and as a condition precedent to the sale or transfer by the Developer of any portion of East Garrison Phase One (as referenced in Section 1, above), the Developer shall record CC&Rs which have been previously submitted to, reviewed and approved by, the Water Resources Agency and County, as applicable, against the real property to be transferred ("initially encumbered property"). After recordation of the CC&Rs against the initially encumbered property, prior to and as a condition precedent to the transfer of any other portion of the Property, including the remainder of East Garrison Phase One and all of East Garrison Phase Two and East Garrison Phase Three, such CC&Rs shall be made to encumber any real property to be transferred by recording one or more annexation documents called a "Notice of Addition" prior to the transfer of such real property. The CC&Rs shall be approved, as required, by the California Department of Real Estate ("DRE") and shall include, among other provisions, the following provisions in compliance with the COAs listed below.

(a) COA #97: the formation of a homeowners association for the maintenance of roads, drainage facilities and open space not assumed by the EGCSO, consistent with the provisions of the *Urban Services Agreement* as may be amended from time to time and referenced in COA #199, and the OMP as may be amended from time to time and referenced in COAs #196 and #200, and providing for the yearly reports required in said COA #97.

CC&R Article 5.17(a), Maintenance Obligation/Formation of Association or Community Service District. Declarant shall form the Association described in this Declaration. Either the Association or a Community Service District shall maintain the roads, drainage facilities and open spaces in the Overall Development. It is initially planned that the East Garrison Community Services District ("EGCSO") will maintain most of these improvements pursuant to the *Urban Services Agreement* entered into by the County and the EGCSO on July 18, 2006, and as may be amended from time to time. The Association shall be obligated to maintain all of the roads, drainage facilities and open spaces that are not maintained by the EGCSO as a general budget expense of the Association in a manner consistent with the *Urban Services Agreement* and the *Operation and Maintenance Plan for East Garrison*. If the EGCSO either fails to maintain the

improvements they have agreed to maintain or refuses to maintain the Improvements due to lack of sufficient funds (possibly caused by a vote of the property Owners not to fund the EGCSD), the Association shall be obligated to take over such maintenance obligations upon the request of the County and the costs of such maintenance shall be a general budget expense of the Association.

CC&R Article 5.17(b), Annual Report to MCWRA. The Association shall retain a licensed civil engineer to monitor the impacts of drainage and maintenance of drainage facilities within the Overall Development and to prepare an annual report to the Monterey County Water Resources Agency ("MCWRA") concerning the foregoing. The costs of the foregoing shall be a general budget expense of the Association. The annual report shall be approved by the MCWRA.

(b) COA #103: inclusion (with a copy to MCWD for approval) of the water conservation language required by said COA #103.

CC&R Article 5.17(d), Notice of Water Conservation Requirements. Each Lot is subject to the requirements of Monterey County Ordinance No. 3932 as follows: "All new construction [shall] incorporate the use of low water use plumbing fixtures including, where applicable, hot water recirculation systems; the front yards of all homes shall be landscaped at the time of construction; low water use or drought tolerant plants shall be used together with water efficient irrigation systems; leak repair is the property owner's responsibility; vehicle and building washing shall use hoses equipped with shutoff nozzles; no potable water to be used for sidewalk washing; no water spillage into streets, curbs, and gutters; no emptying or refilling of swimming pools except for structural repairs or if required for public health regulations; no fountains unless water is recycled within the fountain."

(c) COA #126: the annual report required by the homeowners association if the Developer is no longer associated with the Project, to be submitted to the County Planning Department, TAMC and FORA, and containing the information required by said COA #126.

CC&R Article 5.17(e), Annual Report to County. The Declarant shall submit an annual report by December 14 of each year until all residential units are constructed. If Declarant is no longer associated with the Overall Development, the annual report shall be submitted by the Association. The report shall include the number of housing units started, the number of housing units with occupancy approved by the County, the number of newly constructed housing units sold to individuals, and the type of units started, built, and sold. In addition, the report shall include the number of existing and projected jobs and any new commercial construction details. The report shall also include whether the residential units were served by water from the FORA allocation. The report shall be sent to the County Planning Department, TAMC, and the Fort Ord Reuse Authority ("FORA"). The Community Builders shall cooperate with Declarant and the Association to provide the details needed to prepare the foregoing report.

(d) COA #139: inclusion of the note required to be on the Final Map(s) and in the CC&Rs, as set forth in said COA #139.

CC&R Article 5.17(f), Design Approval. Declarant hereby advises Owners, the Association and Community Builders of the following design review requirements by the County: “Initial buildout of the project will involve design approval by a board that includes the Pattern Book designers to ensure that the community is built as envisioned and to help interpret intent. The County’s responsibility in the design process is to check for conformance with the Pattern Book. All building permits must be consistent with the Pattern Book. Any exterior changes to materials, additions, or reconstruction of “contributing structures” shall be subject to review by the Historic Resources Review Board (“HRRB”) prior to issuance of any demolition or building permits. After each parcel has been built on, all subsequent construction will be subject to the County’s Design Approval process in place at that time.”

(e) COA #151: inclusion of the note regarding an Aviation Easement required to be on the Final Map(s) and included in the CC&Rs as set forth in said COA #151.

CC&R Article 5.17(g), Aviation Easement. The Overall Development is subject to an aviation easement in favor of the Marina Municipal Airport, which is set forth in a separate Recorded instrument. Owners and the Association agree to be bound by the aviation easement. Owners and Residents further understand and accept that they may experience noise and vibrations from the overflight of aircraft using the aviation easement.

(f) COAs #178 and #179: provisions restricting the parking of recreational vehicles, together with a deed restriction, as required in said COAs #178 and #179.

CC&R Article 4.11(a)(i), Limitations on Types of Vehicles – Recreational Vehicles. Recreational vehicles shall not be parked within the Overall Development or elsewhere in the East Garrison Specific Plan Area, except in designated recreational vehicle parking areas that have been approved by the Monterey County Regional Fire District. Recreational vehicles are defined to include, but not limited to, travel trailers, motor homes, boats and any trailers used for transporting other recreational vehicles. There are currently no designated recreational vehicle parking areas within the boundaries of the Subdivision Map. Declarant may designate recreational vehicle parking areas in the boundaries of the phase 2 final map or phase 3 final map in a Supplemental Master Declaration or Declaration of Annexation after receiving approval from the Fire District.

Section 5 is amended to read as follows:

The language set forth in Paragraph 4, above, shall be included in the CC&Rs for the Master Association. In addition, the language set forth in the CC&R Articles listed in Paragraph 4 above shall be included in each and every other set of CC&Rs governing any portion of the Property. The Governing Documents for any Homeowner Association or Master Association,

including such CC&Rs, shall be submitted for review and approval by MCWRA and County prior to the submission of any Assignment and Assumption Agreement for the sale or transfer of any portion of the Property, and shall be recorded prior to the sale or transfer of any portion of the Property. Developer shall not close any escrow for the sale or transfer of any portion of the Property before MCWRA and County have approved them for compliance with this Agreement and the Conditions of Approval.

APPROVED AND EXECUTED AS OF THE DATE FIRST ABOVE WRITTEN BY:

UCP EAST GARRISON, LLC,
a Delaware limited liability company

By: UCP, LLC, a Delaware limited liability company
Its: Sole Member

By: *James W. Fletcher*
Name: James W. Fletcher
Title: COO

Dated: *February 7, 2013*

ACKNOWLEDGEMENT

State of California
County of *Santa Clara*

On *February 7, 2013* before me, *Julie Atwood, Notary Public,*

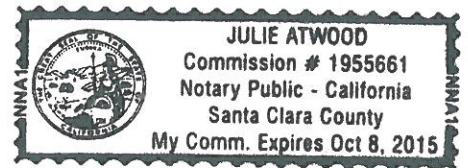
personally appeared *James W. Fletcher* who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), 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 *Julie Atwood*

(Seal)



MONTEREY COUNTY WATER RESOURCES AGENCY

David E. Chardavoigne
Interim General Manager

Dated: 5 March 2013

Approved as to Form:
COUNTY COUNSEL

By: [Signature]

Dated: 3/5/13

ACKNOWLEDGEMENT

State of California
County of Monterey

On 5 March 2013 before me, Winifred Chambliss, Notary Public

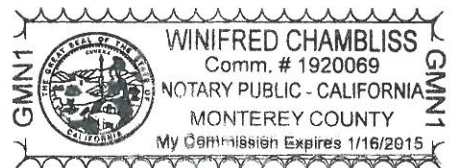
personally appeared David E. Chardavoigne who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their 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 Winifred Chambliss

(Seal)



COUNTY OF MONTEREY

Fernando Armenta

Fernando Armenta, Chair
Board of Supervisors

Dated: 3-26-2013

Approved as to Form:
COUNTY COUNSEL

By: *Cynthia L. Dixon*

Dated: 2-20-13

ACKNOWLEDGEMENT

State of California
County of Monterey

On March 26, 2013 before me, Denise A. Hancock, Notary Public

personally appeared Fernando Armenta 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 *Denise A. Hancock*

(Seal)

