

DEPARTMENT OF THE ARMY

GROUND LEASE

**ORD MILITARY COMMUNITY, PRESIDIO OF MONTEREY, THE NAVAL
POSTGRADUATE SCHOOL AND LA MESA VILLAGE,
MONTEREY, CALIFORNIA**

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EXHIBITS

Exhibit A-1	Legal Description of Ground Lease Premises (excluding Future Barracks Parcel)
Exhibit A-2	Legal Description of Future Barracks Parcel
Exhibit B	Outgrants and Encumbrances
Exhibit C	Loan Documents
Exhibit D	Excluded Property
Exhibit E	Intentionally Omitted
Exhibit F	Developer Capacity and Experience
Exhibit G	Project Management Procedures and Protocols
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Exhibit J-3	Historic Property Covenants (POM)
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MONTEREY, CALIFORNIA**

This **GROUND LEASE** ("Ground Lease"), made as of the 1st day of October, 2003 (the "Effective Date"), by and between THE UNITED STATES OF AMERICA, by THE SECRETARY OF THE ARMY (the "Secretary") and MONTEREY BAY LAND, LLC, a Delaware limited liability company (the "Lessee"). The Secretary and the Lessee may be referred to collectively as the "Parties" and each may be referred to separately as a "Party."

WITNESSETH:

A. **Ground Lease of Land.** The Secretary, by the authority of Title 10, United States Code, Section 2878, for the consideration hereinafter set forth, leases to the Lessee the land legally described in Exhibit A-1 and Exhibit A-2, together with all rights appurtenant thereto (collectively, the "Site," with each portion of the Site located within each of Ord Military Community, Presidio of Monterey, the Naval Postgraduate School and La Mesa Village, respectively, a "Parcel", and the land described on Exhibit A-2 being referred to herein as the "Future Barracks Parcel") subject to the existing encumbrances identified in Exhibit B, for, among other things, the design, financing, management, rehabilitation, renovation, demolition, construction, operation and maintenance of residential communities and related ancillary facilities at Ord Military Community, Presidio of Monterey, the Naval Postgraduate School and LaMesa Village, Monterey County, California (collectively, the "Installation"). This Ground Lease specifically excludes the improvements described on Exhibit D (the "Excluded Property"), which shall remain owned by the Secretary free and clear of this Ground Lease.

B. **Conveyance of Improvements.** The improvements located on the Site, excluding the Excluded Property, are comprised of (A) the improvements conveyed by deed of even date herewith ("First Deed") from the Secretary to the Lessee (the "Improvements"), and (B) the improvements conveyed by deed of even date herewith (the "Second Deed" and together with the First Deed, the "Deeds") from the Secretary to MBL Subsidiary, LLC, a Delaware limited liability company (the "Land Subsidiary") (the "Additional Improvements") which Deeds are subject to this Ground Lease. Immediately following execution and delivery of the Second Deed, the Lessee and Land Subsidiary shall enter into a certain License and Assumption of even date herewith ("License") pursuant to which the Lessee grants to Land Subsidiary a license with respect to all rights hereunder which benefit the Additional Improvements and Land Subsidiary will agree (a) that its use and operation of the Additional Improvements shall be subject to the same restrictions as apply to the Improvements pursuant to this Ground Lease and (b) to perform all obligations as to the

Additional Improvements (during the period that Land Subsidiary owns such Additional Improvements) that the Lessee is required to perform as to the Improvements hereunder. At any time that Lessee owns the Additional Improvements after the date hereof, such Additional Improvements shall automatically be deemed "Improvements" for purposes hereof.

C. **Sublease and Building Lease.** On the Effective Date and immediately following execution of this Ground Lease the Lessee shall enter into a "Sublease and Lease Agreement" with Monterey Bay Military Housing, LLC, a Delaware limited liability company ("Sublessee") for a term concurrent with the term hereof (the "Sublease"), whereby the Lessee shall (a) sublease to Sublessee all of the Lessee's interest in the land comprising the Site and (b) lease to Sublessee the Improvements described in the First Deed, and which Sublease is subject to this Ground Lease. The Sublease provides, *inter alia*, that (x) the Lessee assigns to Sublessee all of the Lessee's rights under the Ground Lease and Sublessee assumes from the Lessee all of the Lessee's obligations under the Ground Lease, except to the extent described in the License and (y) if the Lessee acquires any Additional Improvements from Land Subsidiary, such Additional Improvements shall automatically become part of the property demised under the Sublease. In addition, Land Subsidiary shall enter into a "Building Lease" with MBMH Subsidiary, LLC, a Delaware limited liability company ("Development Subsidiary") whereby Land Subsidiary shall (i) lease to Development Subsidiary the Additional Improvements, and (ii) assign to Development Subsidiary all of Land Subsidiary's rights under the License, and Development Subsidiary shall assume from Land Subsidiary all of Land Subsidiary's obligations under the License.

D. **Other Property.** On the Effective Date, the Secretary shall, in addition to the conveyances set forth in the Deeds, convey certain other property rights related to the Site to the Lessee and/or Land Subsidiary, or at the Lessee's direction, to Sublessee and/or Development Subsidiary, pursuant to a bill of sale.

E. "**Project**" shall mean the Site together with the Improvements and any other buildings, improvements, fixtures and systems hereafter located on the Site (but excluding the Excluded Property).

The Secretary has either direct control and jurisdiction, or jurisdiction and control pursuant to that certain Host Tenant Agreement between the Department of the Army and the Department of the Navy, over each and every portion of the Site and the Improvements thereon and has the right and authority to enter into this Ground Lease and consent to the execution of the Sublease Agreement, the Building Lease, the License and related documents pursuant thereto as to each and every portion of the Project, on its own behalf and as representative of the Navy.

In addition, upon the subsequent agreement of the Parties, certain property now owned by the City of Seaside described in that certain Quitclaim Deed dated December 30, 2002 may be added to the premises hereunder.

THIS GROUND LEASE is granted subject to the following Conditions:

1. TERM

a. The initial term of this Ground Lease of all lands described in Exhibit A-1 is for a period of fifty (50) years, commencing on the Effective Date and expiring September 30, 2053. The initial term of this Ground Lease for the Future Barracks Parcel described in Exhibit A-2 is for a period commencing on the Effective Date and expiring December 31, 2006. Notwithstanding the initial term of this Ground Lease, upon written notice from the Secretary to the Lessee, this Ground Lease shall be modified to exclude the Future Barracks Parcel described in Exhibit A-2 and the Lessee will quitclaim (or cause to be quitclaimed) the Improvements located on the Future Barracks Parcel to the Secretary, free of the Sublease and/or Building Lease. Unless the parties agree to the contrary, the Future Barracks Parcel shall be released from the Ground Lease and deeded to the Secretary no later than December 31, 2006.

b. The Secretary may extend this Ground Lease with respect to all lands described in Exhibit A-1 for one (1) additional period of twenty-five (25) years, commencing on the first day after the end of the initial term and continuing through September 30, 2078 by providing eighteen (18) months advance written notice to the Lessee, provided the Lessee accepts the lease extension within ninety (90) days from the date of receipt of written notice. Any lease extension shall be governed by the terms, covenants, and conditions of this Ground Lease, including any modifications, supplements and amendments. In the event the Lessee fails to accept the lease extension, this Ground Lease shall expire pursuant to Condition 1.a.

2. CONSIDERATION

The consideration provided by the Lessee for the Secretary's execution of the Ground Lease consists of (i) the membership interest in the Lessee granted to the Secretary in accordance with that certain limited liability company Operating Agreement of Monterey Bay Land, LLC between Clark Pinnacle Monterey Bay LLC, a California limited liability company or any successor or assign thereof ("CPMB") and the Secretary (the "Land LLC Operating Agreement"); and (ii) the Lessee's agreement to design, develop, manage, rehabilitate, renovate and maintain the Project at the Site and in accordance with the terms of this Ground Lease.

3. NOTICES

Any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Ground Lease or with respect to the Project shall be in writing and shall not be effective for any purpose unless given or served by personal delivery to the party or parties to whom such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication is directed or by mailing in duplicate to the party or parties by certified mail, postage prepaid, return receipt requested, or sending the same by telecopy, electronic mail, or other similar form of rapid transmission, addressed as follows:

If to the Lessee: MONTEREY BAY LAND, LLC
Attention: Douglas R. Sandor
Two Bethesda Metro Center
Suite 250
Bethesda, MD 20814
Fax: (240) 497-6700

With a copy to: Rebecca Owen, Esq.
General Counsel
Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, MD 20814
Fax: (301) 654-2564

If to the Secretary: U.S. Army Corps of Engineers
Norfolk District
ATTN: CENAO-RC-RI
Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096
Fax: (757) 441-7437

With a copy to: Commander I Corps at Presidio of Monterey
1759 Lewis Road, Suite 229
Monterey, California 93944-3227
ATTN: Residential Communities Office
Fax: (831) 242-7793

If to the Mortgagee: GMAC Commercial Holding Capital Corp.
1801 California Street
Suite 3700
Denver, Colorado 80202
Attention: Dan Ray
Fax: (303) 672-8558

With a copy to: Kutak Rock LLP
1801 California Street
Suite 3100
Denver, Colorado 80202
Attention: Michael R. Johnson
Fax: (303) 292-7799

With a copy to: U.S. Bank National Association
1420 5th Avenue 7th Floor
Seattle, Washington 98101
Attention: Corporate Trust Services

or at such other address or addresses as the Secretary, the Lessee, CPMB (on behalf of the Lessee), or any Mortgagee (hereinafter defined) may from time to time designate.

Every notice, demand, order, direction, determination, requirement, consent or approval, request or communication sent by mail shall be deemed to have been given or served as of the earlier of actual receipt (or refusal of delivery) or second (2nd) business day following the date of mailing.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided herein, until notice is provided to the contrary, any reference to "Secretary" or "U.S. Army Corps of Engineers" shall include their duly authorized representatives or successors. The authorized representative of the Lessee is CPMB. Any reference to the "Lessee" shall include any of its sublessees, assignees, transferees, successors and their duly authorized representatives, except residents of individual housing units or the Secretary (in the case of a sublease of any portion of the Project to the Secretary).

5. SUPERVISION BY THE SECRETARY; RIGHT TO ENTER

a. To the extent not otherwise governed by this Ground Lease, the use and occupancy of the Project shall be subject to the general supervision and approval of the Secretary and to such rules and regulations as may be prescribed from time to time by the Secretary; provided the Commander (hereafter defined) shall use his or her best efforts on behalf of the Secretary to exercise discretion in a manner which does not unreasonably interfere with the Lessee's rights hereunder. It is anticipated by the Parties that the Secretary shall continue to maintain and exercise command control over and with respect to (i) the Project, including traffic control, law enforcement, fire protection and other matters, and (ii) military personnel that may be residing at or otherwise present on the Project from time to time.

b. The Secretary, its officers, agents and employees, shall have the right to enter upon the Project for any purpose necessary or convenient in connection with the Secretary's purposes, including, without limitation, the Secretary's compliance with environmental, safety, and occupational health laws and regulations in accordance with its obligations hereunder or under applicable law. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections as may be authorized by applicable law. The Secretary may make such inspections as are reasonably determined by the Secretary to be necessary and appropriate. The Secretary will enter the Project only during regular business hours, give the Lessee at least twenty-four (24) hours prior notice of entry, and permit a representative of the Lessee to be present unless the Secretary determines that emergency entry is required for safety (including fire), environmental, military operations, law enforcement or security purposes, or such entry is required as a matter of military necessity. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof on account of any entry in the ordinary course of business under this Condition 5, except for damages resulting from the negligence or misconduct of the United States or any such officer, agent, employee, or contractor or except where such entry impairs or interferes with the rights granted to the

Lessee hereunder in other than a de minimis manner. Notwithstanding the foregoing, the Secretary will repair any damage (other than de minimis damage) to the Project caused by its exercise of any rights under this Condition, at its sole cost.

c. The Secretary shall have the right to enter and use the Excluded Property.

6. ACCESS BY LESSEE

a. At all times during the term of this Ground Lease, the Secretary will provide access to all portions of the Project to the Lessee, its constituent members, and Subsidiaries and each of their respective officers, directors, partners, members, employees, Permitted Tenants (hereinafter defined) and other residents of the housing units, contractors and subcontractors, representatives, invitees, permittees, Mortgagees, and agents, which may collectively be referred to as the "Lessee Parties." Access shall include vehicular and pedestrian access, including access for construction personnel and equipment, contractors and residents of the housing units who are not military personnel, among the various parcels comprising the Project, with access to all parcels connecting ultimately to an open and dedicated public way over existing roads.

b. The Commander of I Corps at Presidio of Monterey (the "Commander"), and such Commander's duly appointed successors and authorized representatives, may impose vehicle registration and identification restrictions, or other access restrictions and/or identification requirements, on the Lessee Parties and/or any of their visitors that the Commander deems advisable for purposes of security, force protection or military necessity provided the Commander shall use his or her best efforts to exercise discretion in a manner which does not unnecessarily interfere with the Lessee's rights and obligations under this Ground Lease.

c. The Commander may limit access to the Project at his or her discretion, to the extent as may be required for security, force protection or military necessity provided the Commander shall use his or her best efforts to exercise discretion in a manner which does not unnecessarily interfere with the Lessee's rights and obligations under this Ground Lease.

d. In the event that the Lessee Parties are at any time denied access to any portion of the Project, the Commander shall use his or her best efforts to provide the Lessee Parties alternate access to such portion of the Project.

e. The Commander will allow the Lessee access to the existing housing signs on the Installation for the purpose of maintaining housing signs located outside of the Project.

7. APPLICABLE LAWS AND REGULATIONS

a. At all times during the term of this Ground Lease, the Lessee shall faithfully observe and comply with all applicable Federal, State and local laws, rules, regulations, orders and ordinances ("Legal Requirements"), at the Lessee's sole cost and expense. The Lessee will not store, manage or dispose or permit the storage, management or disposal of hazardous materials at the Project in violation of applicable Legal Requirements.

b The Lessee will comply with the Americans with Disabilities Act of 1990, as amended (the "ADA") and the attendant guidelines published by the Architectural and Transportation Barriers Compliance Board, to the extent each may be applicable to the Project and the use thereof.

8. NON-DISCRIMINATION

The Lessee shall not discriminate against any person or persons, or exclude them from participation in the Lessee's operations, programs or activities conducted on the Project because of race, color, gender, religion, sex, age, handicap or national origin.

9. TRANSFERS, ASSIGNMENT, OR SUBLEASES

a. BY THE LESSEE OR SUBLESSEE

(1) The Secretary hereby authorizes and consents to the execution of the Sublease by and between the Lessee and Sublessee, the execution of the Building Lease by and between the Land Subsidiary and Development Subsidiary, and the execution of the License by and between the Lessee and Land Subsidiary.

(2) Except as provided in Condition 9.a.(1), the Lessee shall neither transfer nor assign this Ground Lease nor sublet any part of the Site (other than rental of dwellings to Permitted Tenants as defined in Condition 14 and Mortgages permitted under Condition 10), Sublessee shall not transfer or assign the Sublease nor sub-sublease any part of the Site (other than rental of dwellings to Permitted Tenants and Mortgages permitted under Condition 10) and Development Subsidiary shall not transfer nor assign the Building Lease nor sublet any part of the Site (other than rental of dwellings to Permitted Tenants and Mortgages permitted under Condition 10), nor grant any interest, privilege, or license whatsoever in connection with this Ground Lease, the Sublease or the Building Lease without prior written approval of the Secretary, provided that the Secretary's approval shall not be required for (v) any transfer of Additional Improvements from Land Subsidiary to the Lessee and the addition of such Additional Improvements to the Sublease automatically pursuant to its terms, or (w) any transfer or assignment of all or any rights under this Ground Lease to any party which meets the standards set forth on Exhibit F hereto controlled by, controlling or under common control with the Lessee or CPMB (or any direct or indirect member thereof) or for the delegation of any obligations of the Lessee hereunder to any asset manager, property manager or developer in accordance with the development of the Project, or (x) any transfer or assignment of all or any rights under the Sublease or Building Lease to any party controlled by, controlling or under common control with Sublessee or CPMB (or any direct or indirect member thereof), or (y) any transfer of an interest in the Lessee which is permitted pursuant to the Land LLC Operating Agreement or (z) any assignment pursuant to any Permitted Financing (hereinafter defined).

(3) Any assignment granted by the Lessee shall be subject to and consistent with all of the terms and conditions of this Ground Lease, including, without limitation, the environmental protection provisions set forth in Conditions 25 and 44. Except with respect to the License, any successor shall be deemed to have assumed all of the obligations of the

Lessee under this Ground Lease and all other documents and agreements incorporated into this Ground Lease, and the Lessee shall be released from all obligations under this Ground Lease and all other documents and agreements incorporated into this Ground Lease from and after the date of the assignment.

(4) Any sublease, or grant of any interest, privilege, or license by the Lessee must expressly be subject to all of the terms and conditions of this Ground Lease, including, without limitation, the provisions set forth in Condition 25 and 44 and shall not relieve the Lessee of any of its obligations.

(5) In case of any conflict between any provisions of this Ground Lease and any provisions of any agreement permitted under this Condition 9, this Ground Lease will control. A copy of this Ground Lease and all current documents and agreements that are incorporated into this Ground Lease must be attached to all agreements permitted under this Condition 9 (other than leases to Permitted Tenants).

(6) The Secretary shall not be obligated to recognize any right of any person or entity to an interest in this Ground Lease or to own or operate any facilities and/or Improvements or conduct any other activity or activities on the Project authorized under the Ground Lease acquired in violation of this Condition 9.

b. BY THE SECRETARY

(1) Except as Congress may otherwise direct, the Secretary may not transfer or assign its rights in whole or in part under this Ground Lease or the land comprising the Site to an entity that is not a subdivision or agency of the federal government without the prior written approval of the Lessee.

(2) In the event that the Secretary shall assign or transfer this Ground Lease, or convey title to any portion of the Site, in either case in accordance with Condition 9.b.(1) above, this Ground Lease shall remain in effect with respect to any portion of the Site in the hands of a successor provided, however, any successor owner shall not succeed to the Secretary's rights under Condition 5.a., 6.b., 6.c., 14, 22, 23, and 33 and shall not succeed to the rights of any other agency of the United States but shall be bound by the remaining provisions of this Ground Lease.

(3) Pursuant to the Purchase Option Agreement, the Secretary shall notify Sublessee and all Mortgagees in writing of any determination under BRAC procedures to close the Installation (the "**Closure Determination Notice**") at the earliest time at which the information is releasable to the general public (or earlier, if special notification is permitted for such parties under the applicable BRAC procedures). The Secretary shall also provide written notice ("**Closure Notice**") to Sublessee and such Mortgagees of the actual date scheduled for the closure of the Installation (the "**Closure Date**") upon such date's determination, which Closure Notice shall include a statement of any legal impairment to the United States' compliance with the Purchase Option. If, (i) within ninety (90) days after receipt of the Closure Notice, Sublessee (a) fails to notify the Secretary that the Purchase Option (hereinafter defined at Condition 20) is to be exercised pursuant to that certain

Purchase Option Agreement of even date herewith between the Secretary and Sublessee ("Purchase Option Agreement"), or (b) notifies the Secretary that such Purchase Option is not to be exercised, or (ii) Sublessee timely exercises the Purchase Option but such exercise does not for any reason result in a purchase, this Ground Lease shall remain in full force and effect, provided if Sublessee (and any Mortgagee) notifies the Secretary that it elects to terminate this Ground Lease, in which event this Ground Lease shall terminate effective as of the 90th day after the giving of such termination notice as to the applicable portion of the Site. If Sublessee shall give timely notice to the Secretary pursuant to the Purchase Option of its election to exercise the Purchase Option as provided therein and such purchase closes, this Ground Lease shall remain in full force and effect following the acquisition of the Site (or the applicable portion thereof) pursuant to said Purchase Option, provided, Sublessee may by written notice to the Secretary on or prior to closing on the Purchase Option, terminate this Ground Lease with respect to such portion purchased at the end of such 30-day period.

10. LIENS AND MORTGAGES

a. No Liens or Mortgages Except as Expressly Permitted. Except as provided in this Condition 10, neither the Secretary nor the Lessee shall engage in any financing or other transaction creating or permitting the creation of any mortgage upon the Project, place or cause to be placed upon the Project any lien or other encumbrance other than encumbrances required in accordance with the Ground Lease or permitted under Exhibit B, or suffer any levy or attachment to be made on its interest in the Project, other than such levy or attachment as may result from a foreclosure of a mortgage that is consistent with this Condition 10. Any such unpermitted mortgage, encumbrance, or lien shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced, and is void in its inception.

b. Permitted Mortgages. During the term of this Ground Lease, the Lessee, and/or Sublessee may from time to time, with consent from the Secretary, encumber its respective interest in the Project (including Improvements, personal property, rents, revenues, and insurance proceeds), including this Ground Lease and the Sublease and all documents executed in connection therewith, by way of one or more loans or other financing secured by a mortgage, deed of trust, loan document, assignment for collateral purposes or other security interest (collectively, together with all renewals, modifications, replacements and refinancings, a "Mortgage"), which Mortgage shall be subject to the terms of this Condition 10. The holder of any Mortgage, including the lender identified in Condition 3, shall be referred to as a "Mortgagee." Any instrument evidencing, securing, guaranteeing, insuring or providing credit enhancement for a loan secured by a Mortgage shall be a "Financing Document." The Secretary agrees to execute an estoppel certificate or any other similar documentation as may reasonably be required by the Mortgagee or the Lessee from time to time to consent to the Mortgage or to acknowledge the rights of the Mortgagee under this Condition 10, and to certify the status of this Ground Lease and to the performance of the Secretary and the Lessee as of the date of such certification. The Secretary agrees to execute documents and/or take actions as the Lessee, Sublessee or Mortgagee may reasonably request from time to time in order to evidence, perfect and protect Mortgagee's lien and security interest, including, without limitation, execution and filing of financing statements

and obtaining the appropriate acknowledgement from the applicable Secretary official. Notwithstanding any foreclosure or other enforcement of the Mortgage or conveyance, the Lessee shall remain liable for the performance of all the terms, covenants, and conditions of this Ground Lease that are to be carried out and performed by the Lessee. Set forth at Exhibit C hereto is a schedule of the Financing Documents which are hereby approved by the Secretary and which are to be executed upon the initial financing of the Project ("Initial Financing").

c. No Encumbrance of Secretary's Interests. No Mortgage shall extend to or affect the Secretary's fee title in the Site or the right of the Secretary to acquire the Improvements upon expiration or termination of this Ground Lease. No Mortgage shall be binding upon the Secretary in the enforcement of its rights and remedies under this Ground Lease and by law unless and until a copy of the Mortgage is delivered to the Secretary.

d. Notice to Secretary. The Lessee shall furnish, or cause to be furnished to, the Secretary notice of the name and address of each Mortgagee, servicer, agent or trustee of a Mortgage (excluding parties holding participation interests in the Mortgage). Further, the Lessee shall notify the Secretary promptly of any lien or encumbrance that has been created or attached to the Lessee's interest in the Project, whether by act of the Lessee or otherwise, of which the Lessee has actual notice.

e. Nondisturbance. If a Mortgagee, or purchaser at foreclosure of the Mortgage, or transferee or assignee, acquires the Lessee's interest in the Project by virtue of the default by the under the Mortgage or otherwise, this Ground Lease shall automatically continue in full force and effect so long as the Mortgagee, purchaser at foreclosure, transferee or assignee is, with respect to any existing Default, taking the actions required under Conditions 10.f. and 10.g. to preserve the rights of the Mortgagee, purchaser at foreclosure, transferee or assignee under this Ground Lease. Neither the Mortgagee, purchaser at foreclosure, transferee or assignee, nor their agent or nominee, may operate, develop or manage any portion of the Project without obtaining the prior written approval of the Secretary. Such approval shall not be unreasonably withheld so long as the Mortgagee, purchaser at foreclosure, transferee or assignee, or their agent or nominee has the capacity and experience listed on Exhibit F. For the period of time during which the Mortgagee, purchaser at foreclosure, transferee or assignee holds the Lessee's interest in the Project, that Party shall become liable and fully bound by the provisions of this Ground Lease for only those obligations arising during the period of that Party's ownership. The Secretary agrees to execute and deliver to the Mortgagee a nondisturbance agreement consistent with the terms of this Condition 10.

f. Rights of Mortgagees. If a Mortgagee, or a servicer, agent or trustee of a Mortgagee, provides written notice to the Secretary of its lien on the Project and its name and address, the Secretary agrees that so long as the Mortgage shall remain unsatisfied of record, or until written notice of satisfaction is provided by the Mortgagee to the Secretary, the following provisions shall apply:

(1) There shall be no cancellation, surrender, alteration, amendment or modification of this Ground Lease by the Lessee or by joint action of the Secretary and the Lessee without the prior consent in writing of the Mortgagee, which shall not be

unreasonably withheld, nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and leasehold estates in the Project.

(2) The name of the Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by the Lessee provided that the insurance proceeds are to be applied or paid in the manner specified in the Mortgage.

(3) Mortgagee shall be entitled to participate in any settlement regarding insurance or condemnation proceeds with respect to any claim in excess of \$5,000,000 in value and to supervise and assure the receipt and application of proceeds in accordance with the Mortgage. Neither the Secretary nor the Lessee shall be entitled to cancel this Ground Lease by reason of any damage or destruction without the prior written consent of Mortgagee.

g. Multiple Mortgagees. If more than one Mortgagee seeks to exercise any of the rights provided for in this Condition 10 in an inconsistent manner, the Mortgagee having priority of lien over the other Mortgagee(s) shall be entitled, as against the others, to exercise its rights. Should a dispute arise among Mortgagees regarding the priority of the lien, the Mortgagees shall be required to demonstrate to the Secretary which Mortgagee has priority of lien as a condition to exercising any rights.

h. No Merger. The fee title to the Site and the leasehold interest of the Lessee in the Site shall not merge as long as any Mortgage is outstanding, but instead shall at all times remain separate and distinct, notwithstanding the union of any interests of the Secretary or any other entity.

i. Reliance; Successors and Assigns. Each Mortgagee, and its successors and assigns, shall be entitled to rely on the provisions of this Condition 10 and to enforce any provisions against the Secretary.

11. MUNICIPAL SERVICES

Pursuant to one or more Municipal Services and Utility Support Agreements between the Secretary and the Lessee or its designees, dated as of the Effective Date, the Lessee Parties shall pay or cause to be paid the costs set forth therein for such municipal services (all such terms being described and/or defined in said agreement) furnished by the Secretary or through government-owned facilities. Unless otherwise specifically provided in a Municipal Services Agreement(s), the Lessee or such designees may make their own arrangements for new or additional utility systems and services provided or distributed by private parties on the installation and the Secretary will cooperate with the Lessee or such designees' reasonable requests for the grant of access easements to utility providers.

During the term of this Ground Lease, the Secretary shall provide municipal services or provide a reasonable grant of access to municipal service providers.

12. PROTECTION OF PROJECT

- a. The Lessee shall keep the Project or cause the Project to be kept in good order and sanitary condition by and at the sole expense of the Lessee and pursuant to this Ground Lease and Exhibit G.
- b. The Lessee has the right to demolish, construct, or renovate structures and other Improvements on the Project in accordance with this Ground Lease. Title to the Improvements constructed by, through or under the Lessee shall vest in the Lessee or pursuant to the Sublease, the Sublessee. Subject to the terms of this Ground Lease, the Lessee shall be entitled to install such of its own machinery and equipment to make improvements and to attach such fixtures in or upon the Project as may be necessary for its use of the Project pursuant to this Ground Lease and to remove such machinery, equipment, improvements and fixtures at any time prior to the expiration or earlier termination of this Ground Lease, if consistent therewith.
- c. The Secretary will maintain, repair and replace (or cause to be maintained, repaired or replaced) ingress and egress to each portion of the Project (including between noncontiguous portions of the Project) and all Excluded Property, and keep them in good order to the same level as the maintenance performed to the remainder of the Installation.

13. INSURANCE AND CONDEMNATION

- a. The Lessee shall maintain or cause to be maintained the insurance coverages listed in this Condition, to the extent available at commercially reasonable rates and on commercially reasonable terms, plus any others required by the Mortgagee. This requirement includes, but is not limited to, renter's insurance, replacement cost coverage insurance for Improvements existing from time to time and general liability insurance with coverage in amounts never less than is commercially reasonable. Ratings of the insurers shall be reasonably acceptable to the Secretary.
- b. Each policy shall provide that:
 - (1) Any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee, the Sublessee or the Secretary or any other person.
 - (2) No cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice of such cancellation, etc., by the Secretary.
 - (3) The insurer shall have no right of subrogation against the Secretary or the Lessee.
 - (4) The policy shall be reasonably satisfactory to the Secretary in all respects.
 - (5) Any deductible or self-insured retention shall be declared to the Secretary.

Notwithstanding the foregoing, the Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Lessee under this Condition will constitute a failure to comply with the terms of this Ground Lease, and the remedies for Default and breach pursuant to Condition 19 shall apply.

c. The Lessee shall carry or cause to be carried general liability insurance on an "occurrence basis" against all claims for "personal injury," including without limitation, bodily injury, death or property damage, occurring upon, in or about the Project, including any buildings and adjoining sidewalks, streets and passageways. Insurance coverage must afford immediate minimum protection at all times during the term of this Ground Lease, with limits of liability in amounts of not less than \$35,000,000 in the event of bodily injury and death to any one or more persons in one accident, and not less than \$35,000,000 for property damage. Insurance coverage shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of any person or organization, or involving any owned, non-owned, leased or hired automotive equipment in connection with the Lessee's or Sublessee's activities. Proceeds under all policies of insurance carried and maintained to provide coverage required in this Condition 13 shall be applied in accordance with the Mortgage.

d. In the event any item or part of the Project shall be damaged (except de minimis damage or damage resulting from construction related demolition) or destroyed, the Lessee shall promptly provide notice to the Secretary. Subject to the requirements of the Financing Documents, and except as waived by the Secretary, the Lessee shall restore or replace or cause to be restored or replaced the damaged or destroyed property as soon as practicable, to the extent insurance proceeds are available. All applicable insurance proceeds relative to the damaged or destroyed property shall be applied (subject to any provisions of the Financing Documents) first to removing debris from and restoring the damaged area to a reasonably clean and safe condition. Any remaining balance of the proceeds may be retained by the Lessee, subject to Conditions 15 and 16 of this Ground Lease. If there is damage which renders a substantial portion (in the Lessee's reasonable opinion) of a Parcel uninhabitable, then the Lessee may at its election by written notice to the Secretary within one hundred eighty (180) days of the occurrence of such damage, terminate this Lease as to such Parcel as of a date specified in such notice not more than two hundred seventy (270) days after the occurrence of such damage. Any insurance proceeds received by the Lessee hereunder shall be applied to restoration of Improvements unless this Ground Lease is terminated as a result of such casualty (except as otherwise set forth in the Loan Documents).

e. The Lessee shall provide or cause to be provided renters insurance coverage for the benefit of Permitted Tenants that are receiving BAH (hereinafter defined) or otherwise described in Priority 3 under Condition 14 below, that is similar to renter's insurance coverage provided to tenants at other privatized army residential communities.

f. The Lessee shall deliver or cause to be delivered upon execution of this Ground Lease (and not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Condition 13) a certificate of insurance evidencing the insurance required. The Lessee, upon request from the Secretary, shall deliver a certified copy of each

policy of insurance required by this Ground Lease to the Secretary as soon as such policy is made available by the insurer.

g. Any proceeds from an condemnation or taking of any part of Lessee's interest in the Project, shall, subject to the Loan Documents, be the property of the Lessee.

h. The Lessee shall maintain or cause to be maintained workers' compensation insurance in accordance with State law. Neither the Lessee nor its employees are employees of the United States.

14. RENTAL AND OCCUPANCY REQUIREMENTS

a. The Project shall be operated as a residential rental development for Permitted Tenants. Specifically, the Project shall be managed and maintained in accordance with the procedures and protocols set forth in Condition 12 and Exhibit G, and the material failure of the Lessee to manage the Project or cause the Project to be managed in accordance with the level of service shall be a Default, subject to all applicable rights in this Ground Lease.

b. The Lessee will offer, or cause to be offered, the Project's dwelling units for rent to the following permitted tenants ("Permitted Tenants") consistent with the following priorities:

PRIORITY SEQUENCE FOR PERMITTED TENANTS

CATEGORY	PRIORITY
Accompanied (i.e., personnel living with family members) United States or Foreign military personnel (or associated tenant command, Designated Key and Essential Personnel) assigned or attached for duty at either the Naval Postgraduate School (" <u>NPS</u> "), Defense Language Institute Foreign Language Center or Presidio of Monterey (" <u>DLIFLC/POM</u> ") (each, a " <u>Facility</u> ")	1
Accompanied military personnel assigned or attached for duty at other military installations within a 50 mile radius of a Facility	2
Unaccompanied family members of military personnel not assigned or attached for duty at a Facility	3
Unaccompanied military personnel (married and single) assigned or attached for duty as stated in (1) above	4
Unaccompanied Foreign Military Personnel (married or single) assigned for duty as stated at Priority 1 above	5
Faculty at NPS or DLIFLC (married and single)	6
Accompanied retired military personnel and spouses or widowed spouses of retired military personnel	7
Accompanied DoD and Federal Agency civilians (other than designated Key & Essential)	8
Monterey Regional Educational Institutions Personnel (married or single)	9
Non-military or non-DoD or non-Federal Agency personnel (general public)	10

Residential rental units will not be rented to prospective tenants with lower priority in the above list if higher priority tenants are available and ready to rent the units within 3 days, unless the Secretary approves an exception. Active duty military tenants and International Military Education Training ("IMET") Students will be charged rents that do not exceed the applicable Basic Allowance for Housing ("BAH") for U.S. military service personnel stationed in Monterey County, California. Foreign military will be charged equivalent rates. If two (2) or more military service personnel live in one unit, the rent for such unit shall not exceed the "with dependents" BAH for the senior or higher ranking military member occupying such unit. Personnel identified in priority categories 1 through 6 above that do not receive BAH will pay rent based on the "with dependents" BAH for the highest grade of BAH attributable to the unit based upon the then-applicable Unit Designation Schedule; provided, that Foreign Military Sales Students shall pay \$1203 per month (the "Baseline FMSS Rent"), and Baseline FMSS Rent will increase automatically from time to time when BAH is increased, by the same percentage as the applicable BAH has increased, it being agreed that the Secretary will use its best efforts to cause the rent to be paid by Foreign Military Sales Students from and after the 10th anniversary of the effective date of this Lease ("Initial Completion"), to equal the BAH for tenants receiving BAH at such time occupying similarly designated quarters. Tenants in priority categories 7-10 shall pay rents as determined by the Lessee which rent shall be collected directly by the Lessee or its designee. The Secretary shall cause all occupants (or an authorized representative thereof) of units as of the Effective Date (to the extent such occupants intend to continue in occupancy beyond the Effective Date) to execute new leases with the Lessee or upon the Lessee's direction, with Sublessee, on such form as the Lessee or Sublessee shall prescribe.

c. The Lessee shall not be required to lease a unit at any time to a "Foreign Sales Student" following Initial Completion unless the rent payable thereby is equivalent to the BAH then applicable to tenants then receiving BAH and occupying similarly designated quarters.

d. As between the Secretary and the Lessee, the cost of utility service to an individual unit shall be incurred by the Lessee.

15. RESPONSIBILITY AND INDEMNITY

a. The Lessee shall be responsible for any damage that may be caused to the Project or to property of the Secretary by the activities of the Lessee under this Ground Lease and shall exercise due care in the protection of all property located on the Site against fire or damage from any and all other causes. Except as otherwise provided in the Ground Lease, any property of the Secretary damaged or destroyed by the Lessee incident to the exercise of the privileges granted to the Lessee by this Ground Lease shall, to the extent reasonably practicable, be promptly repaired or replaced by the Lessee to the condition existing immediately prior to damage or destruction, or at the election of the Secretary, the Lessee shall reimburse the Secretary in an amount reasonably necessary to restore or replace the property.

b. The Lessee agrees to indemnify, defend, save, and hold harmless the Secretary, its officers, agents and employees from and against all suits, claims, demands or actions, liabilities, judgments, including actual and reasonable costs and attorneys' fees arising out of or claimed on account of or in any manner predicated upon personal injury, death or Project damage caused by the Lessee's possession or use of the Project or any activities conducted or services furnished by the Lessee in connection with or pursuant to this Ground Lease, and all claims for damages by the tenants against the Secretary arising out of or related to their tenancy, except to the extent (i) caused by an event occurring or a condition existing as of the Effective Date unless (a) the Lessee is responsible to remedy such condition as part of its maintenance obligations hereunder, and (b) the Lessee failed to remedy such condition in a reasonably timely manner, (ii) caused by the negligence or willful misconduct of the Secretary or its agents, employees (excluding personnel employed by the Secretary acting in their capacities as tenants) or representatives or (iii) as otherwise expressly agreed herein.

16. RESTORATION

Upon the earlier to occur of (i) the natural expiration of this Ground Lease pursuant to the terms hereof or (ii) ninety (90) days after the termination date of this Ground Lease for any reason other than the exercise of and closing on the Purchase Option, the Lessee shall surrender and convey all of the Improvements located on the Site to the Secretary, without compensation, subject to the following: (A) if such expiration shall occur without application of any rights of early termination hereunder, the Lessee shall convey, or cause to be conveyed, the Improvements in the condition required by Exhibit G (other than Excluded Property for which the Lessee shall have no responsibility as to condition) to the Secretary; and (B) in the event such termination shall result from a Default by the Secretary, the Lessee may seek damages in accordance with Condition 19. During such 90 day period, the Lessee Parties shall have all access rights granted hereunder. In such event, the Lessee shall quitclaim or cause to be quitclaimed to the Secretary all right, title and interest in and to the Improvements subject only to the matters set forth on Exhibit B, any rights granted the Lessee Parties, all future outgrants granted by the Secretary, and any other liens or encumbrances expressly agreed to by (or arising by, through or under) the Secretary, and the Lessee shall deliver or cause to be delivered a bill of sale to the Army, without payment, for all of the Lessee's right, title, and interest in and to the related personal property located at the Improvements and any software but only to the extent such software is assignable and directly related to the operation and management of the Project. The Lessee grants the Secretary power of attorney to execute any quitclaim deed or other documents to clear title to the Improvements and related personal property pursuant to this Condition 16. During the term of this Ground Lease, and subject to Condition 21.f., the Lessee shall have the right at its expense to install such of its own machinery and equipment, to make improvements and to attach such fixtures in or upon the Project as may be necessary for its use of the Project pursuant to this Ground Lease and to remove such machinery, equipment, improvements and fixtures at any time prior to expiration or earlier termination of this Ground Lease in the ordinary course of business .

17. EASEMENTS AND OTHER ENCUMBRANCES

a. This Ground Lease is subject to all existing outgrants, which are listed on Exhibit B, to easements, permits, or licenses subsequently granted, and to established access routes for roadways and utilities located, or to be located, on the premises, it being agreed that the Secretary will not grant any outgrants, easements, permits, licenses, access routes or other interests in the Site to any third party during the term of this Ground Lease without the Lessee's written approval if such grant would materially interfere with or impair the Lessee's performance or rights to develop and operate the Project or increase the obligations of the Lessee hereunder. Subject to the foregoing, the grant of any new easement, permit, license or route will be coordinated with the Lessee, and such uses will not be granted which will, materially interfere with any present or proposed use by the Lessee. The Lessee will not close any established access routes without written permission of the Secretary.

b. At the request of the Lessee, the Secretary will grant outgrants over the Site and other areas of the Installation if reasonably required for the proper development or operation of the Project so long as such outgrants do not materially interfere with the operation of the Installation. Any such outgrant will provide that the Secretary may terminate such outgrant if the outgrant materially and adversely interferes with future activities on the Installation. In the event that the Secretary shall deny the granting of an outgrant requested by the Lessee or terminate an outgrant as described above, the Secretary shall use its best efforts to identify alternative means to provide the access, service or other use that the requested outgrant was intended to provide.

c. The Lessee is responsible to obtain any easements or rights-of-way over areas that are not owned or controlled by the Secretary at the Lessee's sole cost and expense.

18. SUBJECT TO MINERAL INTERESTS

This Ground Lease is subject to all outstanding mineral interests. Federally owned mineral interests may be included in present or future mineral leases issued by the Bureau of Land Management ("BLM"), which has responsibility for mineral development on federal lands. The Secretary agrees that surface use will not be made available to BLM, except as agreed by the Lessee, and, in consultation with the Lessee Secretary shall make recommendations to be included by BLM in future mineral leases to protect the Project from activities that would interfere with the Lessee's operations or would be contrary to local law including, without limitation, stipulations that prohibit or significantly restrict the Lessee's rights to surface access to the Site.

19. DEFAULT AND TERMINATION

a. The material failure to comply with any material provision of this Ground Lease by a Party shall constitute a default and breach of this Ground Lease (a "Default").

b. The Lessee shall be in Default if the Lessee: (i) seeks an order for relief or initiates any proceedings of any nature under any laws of the United States or any state seeking relief as debtor; (ii) applies for a receiver, trustee, custodian or like officer appointed for all or

substantially all of its business or assets on the ground of insolvency; (iii) institutes a proceeding under any bankruptcy or insolvency law of the United States or any state; (iv) makes a general assignment for the benefit of its creditors; (v) permits the attachment or sequestration of any of the Project and/or assets that is not promptly discharged or bonded; (vi) admits in writing the inability to pay its debts generally as they become due; (vii) shall be terminated or dissolved without being reconstituted or reincorporated within sixty (60) days; or (viii) shall be an adjudicated bankrupt or insolvent or a petition for reorganization shall be granted. The Secretary shall be in Default if the Lessee Parties or Permitted Tenants are denied access to all or any portion of the Project for a period in excess of five days unless (i) due to the Default of the Lessee or (ii) the Lessee Party or the Permitted Tenants have been barred from the Site pursuant to the Secretary's jurisdiction over military matters or (iii) as a result of a Force Majeure event.

c. If the Lessee is in default, the Secretary shall send a notice of Default to both the Lessee and the Mortgagee. No notice of Default by the Secretary shall be effective unless sent to both the Mortgagee and the Lessee.

d. If the Secretary is in default, the Lessee shall send a notice of Default to the Secretary.

e. The non-defaulting Party may exercise self-help in addition to any other remedies available to it under this Ground Lease with respect to the type of Default, if the Default (other than Defaults described in Condition 19.b.) is not cured within ninety (90) days after delivery of notice of Default to the defaulting Party. If the time required to cure the Default exceeds the ninety (90) day period, the non-defaulting Party may not initiate any remedy if the defaulting party commences the actions necessary to cure the Default within the ninety (90) day period and shall diligently pursue curing the Default. In the event any Party is unable to comply with any term of this Ground Lease due to strike, a delay caused by the other Party, act of God, casualty, inability to obtain materials or other events outside the control of the Party (a "Force Majeure Event"), the cure period shall be extended one day for each day during which the Force Majeure Event exists. If a non-defaulting Party exercises its right of self-help, the defaulting Party shall be liable for all reasonable costs and expenses incurred by the non-defaulting Party in connection with taking curative action.

f. Subject to Condition 19(k) and (l), the Mortgagee shall have the right, but not the obligation, until 90 days after the expiration of the period afforded the Lessee to cure any Default under this Lease to remedy or cause to be remedied any Default by the Lessee under this Ground Lease, and the Secretary shall accept performance by the Mortgagee as if the Lessee had performed.

g. If a Party defaults, but the Default does not constitute a Termination Default (as defined below), then the non-defaulting Party may seek damages, any other remedy available under law, or specific performance, but may not terminate this Ground Lease.

h. No remedy may be sought during any period of time during which the Parties are attempting to resolve a dispute pursuant to Condition 23 with respect to the actions or inaction that are the subject of the alleged Default.

i. (1) Subject to Condition 19.i., either Party may terminate this Ground Lease as to all or any part of the Project (as provided in paragraph 3 of this Condition 19.i.) in the event of a Default by the other Party that: (a) has not been cured prior to the expiration of the cure period provided for in Condition 19.a., and (b) constitutes fraud or results in material adverse impact on the other Party that has not been cured by the payment of money or the remedy of specific performance ("Termination Default"). The termination shall be effective as of a day specified in a notice of termination ("Notice of Termination for Default") to the defaulting Party, which shall be at least fifteen (15), but not more than thirty (30) days after its receipt by the defaulting Party. The Secretary hereby unconditionally and irrevocably waives any right by law or otherwise, now or in the future, to terminate this Ground Lease for convenience. If a Party has committed and has not cured a Termination Default, the nondefaulting party shall send a notice of Termination Default to both the defaulting party and the Mortgagee.

(2) If the Secretary terminates this Ground Lease pursuant to Condition 19.i, the Lessee shall surrender and convey or cause to be conveyed all of the Improvements located on the Project to the Secretary without compensation. If the Lessee terminates this Ground Lease pursuant to Condition 19.i, the Lessee will be entitled to pursue any available legal remedy, and the Lessee or CPMB as applicable shall be entitled to setoff any amounts due the Secretary hereunder or under the Land LLC Operating Agreement against amounts owned the Lessee hereunder.

(3) In the event that a Termination Default by either party shall affect only a portion of the Project and the remainder of the Project remains physically and financially viable for the purposes for which this Ground Lease was executed, the Parties agree (a) to continue to operate the remainder of the Project in accordance with the requirements of this Ground Lease, (b) to modify the obligations of the parties pursuant to this Ground Lease in a manner appropriate to the loss of the applicable portion of the Project, and (c) that remedies or damages shall be based upon the portion of the Project with respect to which the Termination Default occurred; provided, however, that in all such cases, the consent of the Mortgagee shall be obtained to such continued operation if the effect of the modification in the Project would be to cause default under the financing documents.

j. Intentionally omitted.

k. No Default shall be deemed to exist as long as the Mortgagee, in good faith (but subject to any stay resulting from a bankruptcy of or affecting the Lessee), (i) has cured, or commenced to cure a Default within the applicable time period described in Condition 19.f. and shall continuously prosecute or cause to be prosecuted the same to completion with reasonable diligence and continuity, or (ii) if possession of any part of the Project is required in order to cure the Default, shall notify the Secretary of its intention to institute foreclosure proceedings to obtain possession directly or through a receiver within the time period

required to commence curing the Default, and within ninety (90) days after the giving notice, commence the foreclosure proceedings and prosecute proceedings with reasonable diligence and continuity and, upon obtaining possession, commence promptly to cure the Default with reasonable diligence and continuity.

l. Notwithstanding any provision of this Ground Lease to the contrary, the Mortgagee shall not be required to cure any Personal Default of the Lessee (including any arising through Sublessee) in order to preserve Mortgagee's rights and the Secretary as to Mortgagee shall waive the Personal Default. A "Personal Default" is a Default that (i) cannot be cured by the payment of money or performance of maintenance, repair, or construction work by Mortgagee or (ii) is otherwise not susceptible to cure by Mortgagee.

m. In the event this Ground Lease is terminated as to the Lessee as the result of a Default, or if the fee title and leasehold interest of the Lessee shall merge, at Mortgagee's election, the Secretary shall execute a replacement ground lease (effective immediately prior to such termination or merger) with Mortgagee (or its permitted agent or nominee under Condition 10.e.) on the same terms and conditions as this Ground Lease for the remaining term of this Ground Lease or until termination of Mortgagee's interest, whichever occurs first, provided that the Mortgagee shall have cured or provided for the payment of the cost of curing all existing Defaults of which Mortgagee has been given notice (other than Personal Defaults) within the time and the manner provided in Conditions 19.f. and 19.k. In the event that federal or other applicable law shall prohibit the execution of a new ground lease, the Secretary shall take other appropriate action as shall be legally permissible under federal or other applicable law, such as recognizing Mortgagee as a substitute lessee or otherwise suspending termination of this Ground Lease, to prevent the loss of Mortgagee's rights in this Ground Lease by virtue of Personal Default or other Default or other reason.

n. No Default shall be deemed to have occurred under this Ground Lease that arises out of the acts or omissions of the Sublessee, Land Subsidiary, Development Subsidiary, a Permitted Tenant or other sublessee of one or more of the Improvements so long as the Lessee is utilizing commercially reasonable efforts to rectify any breach of which it becomes aware including, without limitation, referring the matter to the Secretary for action in appropriate circumstances .

o. No Default shall be deemed to have occurred under this Ground Lease by reason of the Lessee's failure to comply or cause compliance with any applicable Legal Requirements if such failure can be and is timely remedied or absolved by the payment of money, it being agreed that the Lessee shall not be required to comply with state and local laws to the extent inapplicable as a result of any federal jurisdiction which renders such state or local laws inapplicable to the Project. Upon the request of the Lessee, and to the extent within the Secretary's discretion and control, the Secretary shall reasonably cooperate with the Lessee, as the case may be, in taking actions, in accordance with all applicable laws, to contest the validity or applicability of any state and local laws, rules, regulations, orders and ordinances.

20. PURCHASE OPTION

In the event that all or any portion of the Site is subject to base closure occurring under such authority as the Secretary may be entitled to exercise from time to time, the Secretary shall provide the appropriate Closure Notice to the Lessee and shall offer Sublessee the option to purchase the Secretary's interest in the Project or any portion thereof (the "Purchase Option") pursuant to the terms set forth in the Purchase Option Agreement of even date herewith. In the event the Purchase Option is not exercised in accordance with the Purchase Option Agreement as to any portion of the Secretary's interest in the Project but this Ground Lease remains in full force and effect pursuant to Condition 9b above, then this Ground Lease shall be binding on all successor owners of such portion of the Secretary's interest in the Project (each a "Successor Owner"), provided that the Secretary shall provide and require each Successor Owner to provide all necessary easements, rights-of-way and access rights, including requirements as to dedication and/or maintenance of roads, which are reasonably required to permit the Lessee Parties access to the Project, to permit the supply of utilities and all necessary services to the Project, or otherwise to permit the Project to function as a first class residential rental project.

21. PROHIBITED USES AND ALLOWED USES

a. The Lessee may use the Project for the design, development, demolition, construction, operation, management, rental, rehabilitation, renovation, and maintenance of family housing units and related ancillary facilities, and any other use otherwise approved by the Secretary. The Lessee shall not use the Project for other purposes without the consent of the Secretary. In granting approval for a change of use, the Secretary may impose additional environmental protection provisions as it deems appropriate.

b. The Lessee shall not:

- (i) permit unlicensed gambling on the Project;
- (ii) install or operate, or permit to be installed or operated, any device which is illegal;
- (iii) use or permit the Project to be used for any illegal business or purpose;
- (iv) allow activities that would constitute a nuisance under applicable law; or
- (v) sell, or commercially store or dispense, or permit the sale, or commercial storage or dispensing of beer or other intoxicating liquors on the Project, without the permission of the Secretary.

c. All leases or other occupancy agreements to be entered into with Residents shall specifically prohibit the activities of Condition 21.b.

d. As an exception to the restrictions in this Condition, some games of chance, such as raffles, games and sporting events, may be conducted by non-profit organizations or other

approved Installation organizations if permissible under state and local laws and if approved in writing by the Commander.

e. The Lessee shall not construct or place any advertising sign or allow or permit such placement without the prior approval of the Secretary. Notwithstanding the foregoing, the Secretary shall be deemed to have approved (i) the construction and placement of all structures and other Improvements constituting the Project, as provided for in the various documents executed by the Parties or approved by the Secretary with respect thereto, and (ii) the placement of signage reasonable and appropriate to the operation of the Project as housing for Permitted Tenants. Except for any communications infrastructure which requires the written consent of the Deputy Assistant Secretary of the Army for Privatization and Partnerships, Office of the Assistant Secretary (I&E), alterations, additions and improvements agreed to by the Secretary in its capacity as a Member of the Lessee shall satisfy this Condition. The Lessee may, to the extent not inconsistent with any municipal services agreement, contract directly with service providers concerning the construction, installation, maintenance and provision of cable television, telephone, internet and other telecommunication services (collectively "Non-Base Utilities"), subject to applicable procedures established by the Secretary and subject to the provisions of existing agreements between the Secretary and third parties for Non-Base Utilities. Charges for Non-Base Utilities shall be billed to and payable directly by the occupants using such services.

f. The Secretary shall approve proposed additions, alterations, or improvements to the Project that require an environmental analysis under applicable federal or state law, provided that with respect to Initial Completion, the Secretary hereby approves any additions, alterations or improvements that are to be undertaken pursuant to or in accordance with the development of the Project as currently contemplated and approved by the parties. At the Lessee's sole expense, prior to approval by the Secretary of any other proposed additions, alterations or improvements to the Project, the Lessee shall furnish or cause to be furnished any environmental analysis and documentation deemed reasonably necessary by the Secretary to comply with the National Environmental Policy Act of 1969 and other applicable environmental laws and regulations.

g. The Lessee shall cooperate, at no material expense to the Lessee, with the Secretary's efforts to comply with NEPA and other applicable laws and regulations that are not necessitated by proposed additions, alterations or improvements to the Project.

22. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Site except (i) for the purpose of constructing the Project or (ii) as otherwise provided in this Ground Lease or (iii) as authorized in writing by the Secretary. The Lessee may salvage or permit the salvaging of fallen or dead timber provided the Lessee does not make commercial use of the timber. Except for timber salvaged by the Lessee pursuant to the terms hereof, when in the way of construction of improvements or other facilities, all sales of forest products will be

conducted by the United States and the proceeds shall not be available to the Lessee under the provisions of this Ground Lease.

23. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the "Act"), all disputes arising under or related to this Ground Lease shall be resolved under this Condition 23 and the provisions of the Act. However, if the parties mutually agree, they can concurrently pursue alternative disputes resolution.

b. A claim by the Lessee shall be made in writing and submitted to the District Engineer, Norfolk District, US Army Corps of Engineers ("District Engineer") for a written decision in conformance with the Act. A claim by the Secretary against the Lessee shall be subject to an initial decision of the District Engineer, subject to the procedures set forth in the Act.

c. The Parties shall proceed diligently with performance of this Ground Lease, pending final resolution of any request for relief, claim, appeal, or action arising under this Ground Lease.

24. CONDITION OF SITE

a. The Lessee acknowledges that it has inspected the Site, knows its condition, and understands that, except as otherwise provided in the Ground Lease, Deeds, and bill of sale, the Site is leased "as is" to the Lessee, without any representation or warranty whatsoever and without obligation on the part of the Secretary (in its capacity as lessor under this Ground Lease) to make any alterations, repairs, or additions or, except as otherwise agreed to herein or as otherwise agreed in writing by the parties, to remediate any environmental conditions or discharges that exist or have occurred prior to the execution of this Ground Lease by the parties. Subject to the foregoing and any other contrary provision hereunder, the Secretary shall not be liable for any latent or patent defects in the Site. Notwithstanding the foregoing, the Lessee (i) does not assume liability for any damages, injuries or losses incurred by third parties as a consequence of any acts or omissions of the Secretary or its agents, employees or officers or arising from or relating to matters or conduct that preceded the Effective Date (unless the Lessee expressly assumes such obligations hereunder); and (ii) does not release or waive its right to pursue any claims or remedies against the Secretary to the fullest extent permitted by law, for any liability to third parties incurred or to be incurred by the Lessee as a consequence of any acts or omissions of the Secretary or its agents, employees or officers arising from or relating to matters or conduct that preceded the Effective Date (unless the Lessee expressly assumes such obligations hereunder).

25. ENVIRONMENTAL PROTECTION

a. Interference with Ongoing Restoration. The Lessee will not unreasonably interfere with any ongoing environmental restoration work at the Project. The Lessee will indemnify the Secretary for any costs incurred as a result of Lessee's breach of this provision.

b. NPL Property. The Secretary acknowledges that the Ord Military Community parcel

has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"). The Secretary also acknowledges that Ord Military Community is operating under the conditions of several records of decisions (RODs) for sites and operable units issued by the California Department of Toxic Substances Control, California Integrated Waste Management Board, and the California Regional Water Quality Control Board. The Secretary will provide the Lessee with a copy of any and all subsequent modifications to the Ord Military Community Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency Region IX, the State of California, and the Army, effective the date of November 28, 1990. The Secretary will also provide the Lessee with a copy of any and all subsequent modifications to the RODs issued by the State of California, provided, however that Secretary agrees that unless otherwise compelled by law, it shall not enter into any subsequent modification or amendment to FFA or RODs that will adversely impact on the rights of Lessee under the terms of this Ground Lease or increase any costs to the Lessee or obligations of the Lessee under this Ground Lease, without obtaining the prior written consent of the Lessee. The Lessee agrees that, if any conflicts arise between the provisions of this Ground Lease and the terms of the FFA or RODs, as they presently exist or may be amended in compliance with this Ground Lease, the terms of the FFA or RODs will take precedence. The Lessee further agrees that, notwithstanding any other provision of this Ground Lease, the Secretary assumes no liability, except as a result from the negligence or misconduct of the United States or any other agent, employee or contractor thereof, to the Lessee should implementation of the FFA or RODs interfere with the Lessee's use of the leased premises.

c. CERCLA Access Clause. Subject to the provisions of Condition 5, the Secretary, and its officers, agents, employees, contractors, subcontractors, and state and federal regulatory officials will have the right, upon reasonable notice to the Lessee, to enter the Project in any case in which a response action or correction action is found to be necessary, or is in progress at the Project, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purposes:

- (1) To investigate and survey including drilling and collecting samples and other activities related to the Presidio of Monterey, La Mesa Village, Ord Military Community, or the Naval Postgraduate School Installation Restoration Program (IRP) and other environmentally related programs.
- (2) To inspect field activities of the Army, the Navy, and its contractors and subcontractors with regard to implementing the Presidio of Monterey, La Mesa Village, Ord Military Community, or Naval Postgraduate School IRP and other environmentally related programs.
- (3) To conduct any test or survey related to implementing the IRP or other environmental compliance programs at the leased premises to collect or verify any data required by the USEPA or the State of California relating to the environmental condition of the Site.

- (4) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action, as required or necessary under any Presidio of Monterey, Ord Military Community CERCLA cleanup program, or Naval Postgraduate School or La Mesa Village FFA, ROD, or IRP requirement, including, but not limited to, monitoring wells, pumping wells, ordnance and explosive investigations/removals, and treatment facilities.

d. Lessee Compliance During Response or Corrective Action. Any inspection, survey, investigation, or other corrective measure, response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee.

e. Environmental Management Plans. The Lessee will submit to the Secretary and will maintain thereafter an environmental management plan that describes in detail the program for environmental management and method of compliance by the Lessee, with all applicable Army, Navy, federal, state, and local laws and regulations for the use, management, generation, storage, treatment, and disposal of all hazardous waste, hazardous materials, and hazardous substances. Each environmental management plan for a portion of the Project, or request for waiver of the requirement for a plan due to the nonhazardous nature of the proposed use must be submitted and approved in writing by the Secretary. The Lessee will be responsible for the overall compliance of its operations with the applicable environmental management plan. Notwithstanding anything contained herein to the contrary, the Lessee's failure to comply with the terms of any environmental management plan shall not give the Secretary the right to terminate this Ground Lease except as otherwise set forth herein. No liability or responsibility will be attached to the Presidio of Monterey, Ord Military Community, La Mesa Village, or Naval Postgraduate School, or the Secretary as a result of the Secretary's review and approval of the environmental compliance plan under this Condition.

f. Groundwater Restrictions. Except in connection with the design, development, demolition, construction, operation, management, rental, rehabilitation, renovation, and maintenance of family housing units and related ancillary facilities, and any other use contemplated by the parties or otherwise approved by the Secretary, and except in accordance with any applicable environmental management plan, the Lessee shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface or groundwater without prior written approval of the Secretary, with the exception of emergency repair of existing utilities. For the purposes of this restriction, "groundwater" shall have the same meaning as in Section 101(12) of CERCLA. Any soil removed or permitted to be removed by the Lessee shall be handled in accordance with the Manifest Procedures (hereinafter defined).

g. Notice of the Presence of Lead Based Paint Warning.

(1) The Lessee is hereby informed and does acknowledge that all Improvements, which were constructed or rehabilitated prior to 1978, are presumed to contain lead based paint (LBP). The Improvements are owned by the Lessee under a Quitclaim deed which contains restrictions that must be complied with by the Lessee.

(2) The Lessee acknowledges that it has received the opportunity to conduct risk assessment or inspection of the Site for LBP and/or LBP hazards in the soil prior to execution of this Ground Lease.

(3) LBP can be properly managed in place, provided the following precautions are taken by the Lessee during the period of this Ground Lease:

(A) If LBP is present in the soil surrounding the Property, then to the maximum extent practicable (it being understood and agreed that it may not be practicable in connection with demolition and construction activities) ground cover must be maintained in order to prevent soil disturbance.

(B) The condition of painted surfaces within buildings containing LBP should be maintained to prevent chipping and dust.

26. ENVIRONMENTAL BASELINE SURVEY (EBS)

An Environmental Baseline Survey documenting the known history of the Project with regard to storage, release or disposal of hazardous substances has been obtained (the "EBS"). Upon expiration, revocation or termination of this Ground Lease, the Lessee shall, at its sole expense, conduct studies and prepare a document that is in form substantially similar to the EBS describing the environmental condition of the Property at the time of expiration, revocation or termination.

27. HISTORIC PRESERVATION

a. The Lessee shall not knowingly remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity absent compliance with applicable statutes. Upon discovery of any archeological features or deposits during the term hereof, the Lessee shall immediately suspend or cause the suspension of all activity that would affect the discovered features or deposits and shall immediately notify the Secretary of the discovery. Such discovery shall constitute a Force Majeure Event under this Ground Lease. No activity shall be permitted that would affect the discovered archeological feature or deposit until an appropriate treatment is developed by the Secretary in consultation with State Historic Preservation Officer and, when American Indian archeology is included in the discovery, representatives of the Native American Indian community recommended by the California Native American Heritage Commission. The Lessee shall at all times comply with the provisions of the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act.

b. The portions of the Property described on Exhibit J-1 and Exhibit J-2 are referred to as the "Historic Property". Certain structures on the Historic Property referred to in this Ground Lease have been determined eligible for listing in the National Register of Historic Places as elements of their respective districts. All work on the Historic Property and in the Historic Districts shall be done in accordance with the *Secretary of the Interior's Standards*

for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings and, where applicable, the *National Park Service Preservation Briefs*. Notwithstanding anything to the contrary contained in this Ground Lease, the Lessee may not alter, add to or modify any structures on the Historic Property unless either (a) such activity is described on Exhibit J-3 or Exhibit J-4 hereof, or (b) the Lessee first obtains the prior approval of the Secretary. In the event that the Lessee requests the approval of the Secretary to any activity which is not set forth on Exhibit J-3 or Exhibit J-4, then the Lessee shall at its own cost and expense, prepare all documentation that the Secretary may require to comply with the federal regulations applicable to the Secretary in connection with granting such consent. During the term of this Ground Lease, the Lessee agrees to perform or cause to be performed all routine maintenance and repair of the Historic Property which is described on Exhibit J-1 and Exhibit J-2, in accordance with any requirements set forth on Exhibit J-3 or J-4 as applicable. For all work done in accordance with Exhibit J-3, the Lessee shall provide or cause to be provided the Secretary with quarterly documentation, which documentation will include but not be limited to the applicable building numbers, scope of work accomplished and photographs of the repair work showing the condition of the applicable building before and after the work has been completed. Within thirty (30) calendar days of the submittal of such documentation, the Lessee and the Secretary will arrange for an inspection of the applicable buildings by the Secretary to confirm completion of the work described in such documentation.

28. SOIL AND WATER CONSERVATION

The Lessee shall maintain or cause to be maintained, in a manner reasonably satisfactory to the Secretary, all soil and water conservation structures that may be in existence on the Project at the beginning of, or that may be constructed by the Lessee during the term of, this Ground Lease. The Lessee shall take appropriate measures, at its sole expense, to prevent, control, or correct soil erosion caused by the Lessee activities within the installation.

29. TAXES

a. Any and all taxes imposed by the State of California or any political subdivision on the Site or interest of the Lessee shall be paid by the Lessee prior to becoming delinquent. The Lessee shall not be liable to pay any taxes, assessments or similar charges which, at any time during the term of this Ground Lease, may be imposed on the Secretary's interest in the Project.

b. Each party shall have the right to contest the validity or amount of any such taxes or similar charges. Upon Lessee's request, the Secretary shall reasonably cooperate with the Lessee in their taking such actions, as may be necessary and appropriate, in accordance with all applicable laws, to minimize or assert any exemption which may be available with respect to taxes, assessments and other charges imposed on the Project.

c. Any depreciation or tax credits with respect to the Improvements, the Project, or any part thereof, will be available to the Lessee.. The Secretary will fully cooperate with the Lessee, to the extent necessitated by applicable law, in any effort by the Lessee to avail itself

of any depreciation or tax credits properly taken in accordance with applicable laws and treasury regulations.

d. Nothing in this Condition 29 shall preclude or be interpreted as restricting the Lessee from contesting or overriding any separate agreement with the State or any political subdivision providing for an adjustment in the Lessee's state or local tax obligations.

30. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Ground Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies retained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Secretary shall have the right to require the Lessee to pay, in addition to the consideration stated herein, the full amount of such commission, percentage, brokerage, or contingent fee.

31. MODIFICATIONS

a. No modification, waiver or consent of this Ground Lease shall be valid unless in writing and signed by the Parties to be bound or by an authorized representative. This provision shall apply to all Conditions of this Ground Lease and, without limitation, the effectiveness of any modification shall be subject to compliance with Condition 10 hereof.

b. In the event of a conflict between the specific provisions of this Ground Lease and a future amendment to any other Project agreement that is not expressly recognized or confirmed by a modification to this Ground Lease, the specific provisions of this Ground Lease shall control.

c. The Lessee's reasonable reliance on a conflicting amendment to any other Project agreement shall not be a Default of this Ground Lease.

32. QUIET ENJOYMENT

The Lessee and the Lessee Parties shall have quiet enjoyment of the Project during the term of this Ground Lease without hindrance or molestation by the Secretary or anyone claiming by, or through the Secretary subject to the covenants, agreements, terms, provisions and conditions of this Ground Lease.

33. DISCLAIMER

The Secretary as lessor assumes no enforcement or supervisory responsibility except with respect to matters committed to its jurisdiction and authority by statute or other legal mandate. Except as set forth herein, the Lessee shall obtain any permit or license at its sole expense that may be required by applicable federal, state, or local statute in connection with the use of the Project. This Ground Lease does not eliminate the necessity of obtaining any Department of the Army permit that may be required pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act

of 3 March 1899 (33 U.S.C. 403), as applicable, provided the Secretary shall not require the Lessee to obtain any other permits from the Secretary in connection with the Project, except as otherwise required by applicable law.

34. ANTI-DEFICIENCY ACT

Nothing in this Ground Lease shall obligate the Secretary to obligate appropriated funds in violation of the Anti-Deficiency Act 31 U.S.C. §§ 1341-1351. Notwithstanding the foregoing, nothing contained herein shall limit, diminish or eliminate any rights that the Lessee or its successors or assigns may have against the federal government under applicable statutes, rules or regulations.

35. ADDITIONAL COVENANTS AND CONDITIONS

a. A memorandum of this Ground Lease shall be executed and acknowledged by the Secretary and the Lessee concurrently herewith. In addition, the Secretary hereby acknowledges and consents to the recording of a memorandum of the Purchase Option Agreement and a Memorandum of Sublease in the applicable real property records.

b. The Lessee and the Secretary shall each provide an estoppel certificate as to the status of this Ground Lease upon request (and in the form reasonably requested) by the other party or Mortgagee. No estoppel certificate shall excuse any undiscovered violation of the conditions of this Ground Lease.

36. EXHIBITS

Exhibits A-1 through J-4 are incorporated and made a part of this Ground Lease.

37. EXCULPATION

No constituent member in or agent of the Lessee, its successors or assigns nor any advisor, trustee, director, officer, employee, beneficiary, shareholder, participant, representative or agent of the Lessee or its members or their successors or assigns, shall have any personal liability, directly or indirectly, under or in connection with this Ground Lease or any agreement made or entered into under or pursuant to the provisions of this Ground Lease or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. Notwithstanding anything to the contrary contained in this Ground Lease, neither the negative capital account of any member of the Lessee, nor any obligation of any member of the Lessee to restore a negative capital account or to contribute capital, shall at any time be deemed to be the property or an asset of the Lessee.

38. COUNTERPARTS

This Ground Lease is executed in two (2) or more counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

39. FURTHER ASSURANCES

Each Party agrees to perform, execute and deliver such further actions and documents as may be reasonably necessary or requested to more fully effectuate the purposes, terms and intent of this Ground Lease

40. NOT PARTNERS

Nothing contained in this Ground Lease will make, or will be construed to make, the Parties hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Secretary and the Lessee under this Ground Lease is that of landlord and tenant. Neither will anything in this Ground Lease render, nor be construed to render, either of the Parties hereto liable to any third party for the debts or obligations of the other Party hereto.

41. CONFIDENTIALITY

The Secretary agrees not to release any written information or documents which are marked by the Lessee as proprietary except in accordance with the Freedom of Information Act (Title 5 U.S. Code Section 55) and the regulations thereunder applicable to the Department of Defense. Notwithstanding anything herein to the contrary, any party to this agreement (and any Related Party, or other agent of any party to this agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction contemplated by this agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure; provided, however, that such disclosure may not be made (i) until the earlier of (x) the date of the public announcement of discussions relating to the transaction, (y) the date of the public announcement of the transaction and (z) the date of the execution of an agreement to enter into the transaction and (ii) to the extent required to be kept confidential to comply with any applicable federal or state securities laws. The provisions of this paragraph are intended to comply with the requirements of the presumption set forth in Treasury Regulations Section 1.6011-4(B)(3) and are not intended to permit the disclosure of any Informational Material that is not subject to the requirements of such presumption.

42. BENEFITS

Except as expressly provided herein to the contrary, and except with respect to Sublessee, Development Subsidiary and Land Subsidiary, each of whom is a direct third party beneficiary hereunder to the extent each has been assigned any rights of the Lessee hereunder, this Agreement shall benefit only the Lessee and the Secretary and no other person or entity shall have any rights or remedies hereunder.

43. NO MERGER

The interests of the lessor and the lessee hereunder shall not merge by operation of law or otherwise in the event the lessor and the lessee are at any time the same person or entity, unless the holder(s) of the lessor's interest and holder(s) of the lessee's interest indicate in writing their intent for the lessor's estate and lessee's estate to merge.

44. ADDITIONAL ENVIRONMENTAL PROVISIONS.

a. Notwithstanding any other provision of this Ground Lease, except for those liabilities and responsibilities expressly set forth herein as the Lessee's obligations, the Lessee (and for all purposes under this Condition 44, Sublessee, Land Subsidiary and Development Subsidiary), as between the Parties: (a) does not assume any liability or responsibility and shall not be liable or responsible for (i) personal injury, property damage, natural resource damage, or environmental conditions, impact, damage, or Claims (hereinafter defined) caused by the presence, release or use of any petroleum products or distillates, polychlorinated biphenyls, PCBs, explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pesticide products or wastes, substances or materials that are listed, defined or regulated as hazardous or toxic under any federal, state or local environmental law, including but not limited to toxic mold ("Hazardous Materials") (A) in, on or under any portion of the Property as of the Effective Date, or (B) at any time, in on or under any adjacent property; (ii) any environmental conditions relating to the Property existing as of the Effective Date but not disclosed in the EBS; or (iii) damage to the Property at any time resulting from physical conditions (including seismic conditions) as of the Effective Date; and (b) has no obligation to undertake the defense of any Claim or action, whether in existence now or brought in the future, or to undertake any environmental response, remediation, cleanup or other action, relating to or in connection with any such use, release or condition identified above.

b. Notwithstanding the foregoing, but subject to the following, the Lessee shall be responsible for any Hazardous Materials introduced to the Project (and not merely discovered or naturally occurring) after the Effective Date and caused by the acts or (if the Lessee Parties have a duty to act) omissions of the Lessee Parties (excluding the Secretary and its affiliates). In furtherance of the foregoing, the parties agree that:

(1) **Lead-Based Paint.** If there is LBP existing as of the Effective Date which is required to be remediated by applicable law and is (a) disturbed (not in place) or (b) located within the Property but not contained within the improvements constituting a housing unit (for example, in the soil), the Secretary will at its sole cost abate such LBP in accordance with applicable laws, regulations and guidelines. All costs associated with LBP that the Secretary is not obligated to abate which costs arise solely from activities undertaken by the Lessee (other than those activities undertaken by the Lessee on behalf of the Secretary whether by agreement or pursuant to Condition 44e. below) after the Effective Date shall be paid by the Lessee and manifested in the name of and pursuant to the United States Environmental Protection Agency (USEPA) Identification Number of the Navy or Army, as applicable, pursuant to the manifest procedures described on Exhibit H (the "Manifest Procedures"). The Secretary shall be responsible for any Claims based upon or relating to the presence of any LBP located at the Property on or before the Effective Date. In the event the parties do not agree upon whether LBP located within the Property but not contained within the Improvements was introduced prior to the Effective Date, or was disturbed as of the Effective Date, Environmental Arbitration shall apply. For purposes of this Ground Lease, the term "Environmental Arbitration" shall mean that in the event the parties cannot agree as to whether (x) LBP or soil contamination existed at the site as of the Effective Date as may be necessary to determine liability for Claims, or (y) LBP or soil

contamination existed at the site as of the Effective Date in levels requiring remediation under applicable law, they shall within 30 days of discovery of the applicable condition, jointly appoint a nationally recognized environmental consulting company, who shall determine in its best judgment, whether the applicable LBP or soil contamination existed at the site as of the Effective Date for purposes of this Condition 44.

(2) Underground Storage Tanks ("USTs"). The Lessee shall not be responsible for the abatement and/or disposal of any USTs or any soils or groundwater contaminated by them. In the event that USTs or contaminants from USTs are found, the Secretary will at its sole cost remove such USTs and abate any soil contaminated in connection with such USTs, in accordance with applicable laws, regulations and guidelines (but shall not be required to remove USTs containing heating oil only and no other Hazardous Materials). The Secretary shall be responsible for any Claims based upon or relating to the presence of any USTs (and their contents) located at the Property on or before the Effective Date.

(3) Polychlorinated Biphenyls ("PCBs"). All costs associated with PCBs that arise solely from activities undertaken by the Lessee after the Effective Date shall be paid by the Lessee and manifested in the name of the Navy or Army, as applicable pursuant to the Manifest Procedures. The Secretary shall be responsible for any Claims based upon or relating to the presence and removal of PCBs located at the Property on or before the Effective Date.

(4) Pesticide Management. Secretary shall remain responsible for the removal of any pesticide contaminated soil as required by applicable law. The Secretary will remain the owner of contaminated soil at all times during and after remediation and shall be responsible for its proper disposal in accordance with applicable laws, regulations and guidelines, and for any Claims based upon or relating to the presence and removal of pesticide contaminated soil located at the Property on or before the Effective Date.

(5) Ordnance. The Lessee shall not be responsible for the removal or disposal of any ordnance or explosives ("OE") located at the Property as of the Effective Date. If there are OE located at the Property as of the Effective Date, the Secretary will at its sole cost remove such OE, in accordance with applicable laws, regulations and guidelines. The Secretary shall be responsible for any Claims based upon or relating to the presence of any OE located at the Property on or before the Effective Date, or introduced to the Property as a result of military operations during the term of the Ground Lease. In the event the lessee, its successors, and assigns, should discover any OE on the property, they shall not attempt to remove or destroy it, but shall immediately complete Section A of the Ordinance and Explosives Incident Reporting Form, fax the form to the Presidio of Monterey Police Department at (831) 242-7740, and notify the Presidio of Monterey Police Department via telephone at (831) 242-7851.

(6) Soil and Groundwater Contaminants. The Lessee shall not be responsible for abatement and/or disposal of, any soils or groundwater contaminated with Hazardous Materials as of the Effective Date. In the event that contaminated soils or groundwater are found, the Secretary will remove at its sole cost, the soil and groundwater contaminants, in

accordance with applicable laws, regulations and guidelines. The Secretary shall be responsible for any Claims based upon or relating to the presence and removal of contaminated soils and groundwater introduced to the Property on or before the Effective Date. In the event the parties do not agree upon whether particular contaminated soil located within the Property existed at the site prior to the Effective Date, Environmental Arbitration shall apply.

c. The Lessee shall have the right to inspect any property controlled by the Secretary which is adjacent to the Project upon reasonable notice in connection with the Lessee's obligations hereunder concerning Hazardous Materials and/or compliance with environmental laws.

d. Notwithstanding the foregoing, (a) any monitoring wells, pumping wells, treatment facilities or other remediation equipment on any lands utilized for residential purposes shall be designed and installed by the Secretary to be as inconspicuous as practicable, (b) the Secretary's actions shall be taken so as to minimize, to the extent reasonably practicable, interference with the Lessee's use, operation and occupancy of the Project, and (c) the Secretary shall repair any damage caused by its exercise of the above rights and shall perform any environmental response, remediation, or cleanup made necessary by the exercise of the above rights. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by each of the Parties, in order to minimize interference to the operation of the Project.

e. In the event the Secretary fails to comply with the environmental remediation measures applicable to the Project and identified as the Secretary's obligations hereunder, the Lessee shall have the right in its sole and absolute discretion, but not the obligation, to perform or cause to be performed such obligations and/or otherwise comply with environmental remediation measures on behalf of the Secretary, in which event the applicable provisions of the Land LLC Operating Agreement and Sublease shall apply.

In the event the Lessee elects to do such work or cause such work to be done, the Lessee shall not incur any additional liability to the Secretary or otherwise as a result of its performance of such work or the discovery of other existing conditions, unless due to its intentionally wrongful or grossly negligent acts in undertaking such activities.

f. In the event the Secretary shall default hereunder in complying with any provision of this Condition 25 or 44 and, in connection therewith, the Lessee shall incur response costs to remediate releases or threatened releases of hazardous substances (as such terms are defined in Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended ("CERCLA")), the Lessee's sole remedy shall be to seek reimbursement of and/or contribution for such costs pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§9607, 9613, as amended; provided, however, that in no event shall the foregoing limitation of remedy apply in connection with the following:

(1) releases or threatened releases of petroleum, petroleum products or distillates (including crude oil or any fraction thereof), or any other hazardous material that is not covered within the definition of "hazardous substance" set forth in CERCLA;

(2) any other Claim from any third party (including, without limitation, Claims for personal injury) arising out of or resulting from any such release or threatened release (as distinct from direct response costs incurred by the Lessee);

(3) if, in connection with any such action for reimbursement and/or contribution, the Secretary shall be successful in asserting (i) sovereign immunity, or (ii) the defense pursuant to Section 107(b)(2) of CERCLA, 42 U.S.C. §9607(b)(2) that such release or threatened release of a hazardous substance and the damages resulting therefrom were caused solely by an act of war; and

(4) the provisions of said Sections 107 and/or 113 of CERCLA shall have been modified, amended, repealed and/or superceded at any time after the Effective Date and the effect thereof imposes further limitations on the Lessee's recovery thereunder.

g. The Secretary's default hereunder in complying with any provision of this Condition 25 and 44 shall not entitle the Lessee to terminate this Ground Lease as a remedy.

For purposes of this Ground Lease, "Claim" means any and all common law and statutory claims, demands, damages, actions or causes of action, losses, liabilities, obligations, fines, penalties, costs, expenses (including but not limited to reasonable attorneys' fees), settlements or judgments, whether known or unknown, asserted or unasserted, which were or could have been brought now or in the future, including but not limited to all actions under 42 U.S.C. §9601, et seq. and 42 USC . §6901 et seq .

IN WITNESS WHEREOF, the undersigned authorized agents of the parties have duly executed this Ground Lease this 24th day of September, 2003.

THE UNITED STATES OF AMERICA

By: Joseph W. Whitaker
Name: Joseph W. Whitaker
Title: Deputy Assistant Secretary of the Army
(Installations & Housing)
OASA (I&E)

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF ARLINGTON)

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the 30th day of November 2006, do hereby certify that on this day personally appeared before me in the Commonwealth of Virginia, County of Arlington, Joseph W. Whitaker, Deputy Assistant Secretary of the Army (Installations and Housing) OASA (I&E), whose name is signed to the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, dated the 24th day of September, 2003, and acknowledged the same for and on behalf of the UNITED STATES OF AMERICA.

GIVEN UNDER MY HAND AND SEAL this 24th day of September 2003.

Yvonne A. Cooper
Notary Public

MONTEREY BAY LAND, LLC, a Delaware limited liability company

By: Clark Pinnacle Monterey Bay LLC, a California limited liability company, Manager

By: Clark Realty Capital, L.L.C., a Delaware limited liability company, Manager

By: [Signature]
Name: William C. Johnson
Title: Manager

By: CEI Realty, Inc., a D.C. corporation, Manager

By: [Signature]
Lawrence C. Nussdorf
President

By: Pinnacle Monterey LLC, a Washington limited liability company, Manager

By: [Signature]
Name: Stan Harverson
Title: Manager

District of Columbia
STATE OF }
COUNTY OF } S.S.

On September ^{25th}, 2003 before me, the undersigned, personally appeared ~~William C. Johnson~~ William C. Johnson, as manager of Clark Realty Capital, L.L.C., a Delaware limited liability company, manager of Clark Pinnacle Monterey Bay LLC, a California limited liability company, as manager of Monterey Bay Land, LLC, a Delaware limited liability company personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]

Christine Chase-Carpino
Notary Public, District of Columbia
My Commission Expires 07-14-2006

STATE OF
COUNTY OF

District of Columbia
} S.S.

On September *25th*, 2003 before me, the undersigned, personally appeared Lawrence C. Nussdorf, as President of CEI Realty, Inc., a D.C. corporation, as manager of Clark Realty Capital, L.L.C., a Delaware limited liability company, manager of Clark Pinnacle Monterey Bay LLC, a California limited liability company, as manager of Monterey Bay Land, LLC, a Delaware limited liability company personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Christine Chase-Carpino
Notary Public, District of Columbia
My Commission Expires 07-14-2006

Signature

[Handwritten Signature]

STATE OF
COUNTY OF

District of Columbia
} S.S.

On September *25th*, 2003 before me, the undersigned, personally appeared *Stanley J. Harrelson*, as *Manager* of Pinnacle Monterey LLC, a Washington limited liability company, manager of Clark Pinnacle Monterey Bay LLC, a California limited liability company, as manager of Monterey Bay Military Housing, LLC, a Delaware limited liability company personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Christine Chase-Carpino
Notary Public, District of Columbia
My Commission Expires 07-14-2006

Signature

[Handwritten Signature]

Exhibit A-1
LEGAL DESCRIPTION OF GROUND LEASE PREMISES
(EXCLUDING FUTURE BARRACKS PARCEL)

**Legal Description of the Parcels included within
The Ord Military Community Housing Area
For Residential Communities Initiative**

Parcel 1:

That portion of the former Fort Ord, in the City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 2 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point on the northerly boundary of Parcel 2, as per said map, designated and shown as point thirty-seven (37) on page 3 of 9 thereon; thence along the boundary of said Parcel 2

- 1) South 87°33'00" East, 544.69 feet; thence
- 2) South 13°15'27" West, 607.99 feet; thence
- 3) South 09°58'35" West, 682.28 feet; thence
- 4) South 31°43'17" East, 291.49 feet; thence
- 5) South 27°27'31" East, 412.82 feet; thence
- 6) North 76°59'04" East, 228.07 feet; thence
- 7) South 52°45'18" East, 88.95 feet; thence
- 8) South 44°30'36" West, 1206.66 feet to the beginning of a curve concave to the north having a radius of 470.00 feet; thence
- 9) Westerly 415.30 feet along said curve through a central angle of 50°37'39"; thence
- 10) North 84°51'47" West, 1,476.58 feet to the beginning of a curve concave to the south having a radius of 530.00 feet; thence
- 11) Westerly 466.97 feet along said curve through a central angle of 50°28'54"; thence
- 12) South 44°39'19" West, 101.70 feet; thence leaving said Parcel 2
- 13) North 45°20'41" West, 151.71 feet; thence
- 14) South 44°39'19" West, 125.00 feet; thence
- 15) North 76°00'00" West, 949.00 feet; thence
- 16) South 14°00'00" West, 104.00 feet; thence

- 17) South 76°00'00" East, 18.00 feet; thence
- 18) South 14°00'00" West, 137.00 feet; thence
- 19) South 41°00'00" East, 48.00 feet; thence
- 20) South 89°00'00" East, 81.00 feet; thence
- 21) South 23°30'00" East, 77.00 feet; thence
- 22) North 85°30'00" East, 207.40 feet to a point of the boundary of said Parcel 2
- 23) South 44°39'19" West, 1,666.02 feet to the beginning of a curve concave to the northwest having a radius of 470.00 feet; thence
- 24) Southwesterly 153.85 feet along said curve through a central angle of 18°45'16"; thence
- 25) South 63°24'35" West, 649.45 feet to the beginning of a curve concave to the southeast having a radius of 1,830.00 feet; thence
- 26) Southwesterly 167.69 feet along said curve through a central angle of 05°15'00"; thence
- 27) South 58°09'35" West, 39.73 feet; thence
- 28) North 50°59'15" West, 491.14 feet; thence
- 29) North 39°00'45" East, 390.30 feet; thence
- 30) North 45°32'23" East, 348.53 feet to the beginning of a curve concave to the northwest having a radius of 1,482.69 feet; thence
- 31) Northeasterly 103.62 feet along said curve through a central angle of 04°00'15" to the beginning of a compound curve concave to the northwest having a radius of 766.78 feet; thence
- 32) Northeasterly 308.05 feet along said curve through a central angle of 23°01'06"; thence
- 33) North 39°00'12" East, 387.50 feet; thence
- 34) North 50°18'23" East, 50.99 feet; thence
- 35) North 39°00'45" East, 300.02 feet; thence
- 36) North 47°43'17" East, 350.06 feet; thence
- 37) North 31°38'28" East, 189.42 feet; thence
- 38) North 23°09'43" East, 138.16 feet; thence

- 39) North 46°39'34" East, 218.63 feet; thence
- 40) North 52°39'53" East, 390.67 feet; thence
- 41) North 52°03'31" East, 1,298.08 feet; thence
- 42) North 50°20'24" East, 200.10 feet; thence
- 43) North 52°03'39" East, 10.00 feet; thence
- 44) North 53°46'37" East, 200.10 feet; thence
- 45) North 52°03'30" East, 442.02 feet; thence
- 46) North 48°03'15" East, 100.26 feet; thence
- 47) North 52°03'31" East, 25.48 feet; thence leaving the boundary of said Parcel 2
- 48) South 38°00'00" East, 44.87 feet; thence
- 49) North 52°00'00" East, 52.00 feet; thence
- 50) North 38°00'00" West, 44.82 feet to a point of the boundary of said Parcel 2;
thence
- 51) North 52°03'31" East, 25.53 feet; thence
- 52) North 56°03'47" East, 100.25 feet; thence
- 53) North 52°03'31" East, 247.02 feet; thence
- 54) North 56°37'58" East, 125.41 feet; thence
- 55) North 48°47'17" East, 175.30 feet; thence
- 56) North 52°03'31" East, 637.04 feet to the Point of Beginning.

Containing 195.97 acres, more or less.

Parcel 2:

That portion of the former Fort Ord, in the City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 3 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point on the northerly boundary of Parcel 3, as per said map, designated and shown as point fifty-five (55) on page 3 of 9 thereon; thence along the boundary of said Parcel 3

- 1) South 52°45'18" East, 28.51 feet; thence
- 2) South 81°32'49" East, 235.35 feet; thence
- 3) South 74°30'00" East, 616.15 feet; thence
- 4) South 23°14'55" West, 165.64 feet; thence
- 5) South 74°30'00" East, 755.00 feet; thence leaving the boundary of said Parcel 3
- 6) South 23°14'55" West, 2,585.76 feet to a point on the boundary of said Parcel 3, shown and designated as point one hundred twenty-five (125) on page 5 of 8 of said map; thence along the boundary of said Parcel 3
- 7) North 66°45'05" West, 79.92 feet; thence
- 8) North 09°09'39" West, 430.68 feet; thence
- 9) North 23°22'44" East, 855.21 feet; thence
- 10) North 41°44'54" West, 311.38 feet; thence
- 11) North 50°36'52" West, 376.85 feet; thence
- 12) North 52°37'09" West, 174.13 feet; thence
- 13) North 56°17'20" West, 103.07 feet; thence
- 14) North 32°16'38" West, 220.10 feet; thence
- 15) North 28°46'07" West, 98.84 feet; thence
- 16) North 20°21'57" West, 41.35 feet; thence
- 17) North 61°45'31" West, 311.38 feet; thence
- 18) North 45°29'24" West, 82.00 feet; thence
- 19) North 44°30'36" East, 777.40 feet; thence to the Point of Beginning.

Containing 52.60 acres, more or less.

Parcel 3:

That portion of the former Fort Ord, in the City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 3 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point on a common line between the boundary of Parcel 3 and Parcel 9, as per said map, that bears South 75°27'19" East, 20.23 feet from the point designated and shown as point one hundred (100) on page 5 of 9 thereon; thence along the boundary of said Parcel 3

- 1) South 75°27'19" East, 92.50 feet to the beginning of a curve concave to the north having a radius of 644.00 feet; thence
- 2) Easterly 416.38 feet along said curve through a central angle of 37°02'41"; thence
- 3) North 67°30'00" East, 30.00 feet; thence
- 4) South 23°00'00" West, 350.84 feet; thence
- 5) South 22°54'16" West, 534.30 feet; thence
- 6) South 77°42'40" East, 1,116.99 feet; thence
- 7) South 48°33'43" East, 482.33 feet; thence
- 8) South 34°04'26" East, 605.02 feet; thence
- 9) South 66°18'45" East, 509.86 feet; thence
- 10) South 63°29'30" East, 264.97 feet; thence
- 11) South 49°00'31" East, 267.83 feet; thence
- 12) South 09°01'53" East, 339.61 feet; thence
- 13) South 39°37'20" West, 369.92 feet; thence
- 14) South 70°02'48" West, 574.22 feet; thence
- 15) South 84°06'30" West, 660.99 feet; thence
- 16) North 63°28'30" West, 288.96 feet; thence
- 17) South 69°56'37" West, 403.06 feet; thence
- 18) South 11°10'51" East, 148.24 feet; thence
- 19) South 66°04'24" West, 423.03 feet; thence

- 20) South $89^{\circ}18'56''$ West, 422.26 feet; thence
- 21) South $39^{\circ}54'08''$ West, 174.23 feet; thence
- 22) South $88^{\circ}27'50''$ West, 1,005.44 feet; thence
- 23) South $23^{\circ}06'28''$ West, 391.10 feet; thence
- 24) North $66^{\circ}53'34''$ West, 536.38 feet; thence leaving the boundary of said Parcel 3
- 25) North $23^{\circ}14'55''$ East, 4,230.74 feet to a point on the boundary of said Parcel 3 and to the Point of Beginning.

Containing 201.70 acres, more or less.

Parcel 4:

That portion of the former Fort Ord, in the City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 3 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point on a common line between the boundary of Parcel 3 and Parcel 9, as per said map, that bears North $67^{\circ}30'00''$ East, 17.33 feet from the point designated and shown as point ninety-seven (97) on page 5 of 9 thereon, said point being the beginning of a curve concave to northwest having a radius of 20.00 feet, and to which beginning a radial bears South $22^{\circ}30'00''$ East; thence leaving the boundary of said Parcel 3

- 1) Northerly 31.42 feet along said curve through a central angle of $90^{\circ}00'00''$; thence
- 2) North $22^{\circ}30'00''$ West, 98.67 feet to the beginning of a curve concave to the east having a radius of 170.00 feet; thence
- 3) Northerly 135.74 feet along said curve through a central angle of $45^{\circ}45'00''$; thence
- 4) North $23^{\circ}15'00''$ East, 955.88 feet; thence
- 5) North $67^{\circ}50'00''$ West, 315.18 feet; thence
- 6) North $23^{\circ}14'55''$ East, 325.00 feet; thence
- 7) North $21^{\circ}48'15''$ East, 251.03 feet; thence
- 8) South $67^{\circ}30'00''$ East, 304.50 feet; thence
- 9) North $22^{\circ}30'00''$ East, 252.66 feet; thence
- 10) North $67^{\circ}30'00''$ West, 323.87 feet; thence
- 11) North $23^{\circ}14'55''$ East, 129.57 feet; thence
- 12) North $41^{\circ}30'00''$ East, 284.95 feet to the beginning of a curve concave to the southeast having a radius of 100.00 feet; thence
- 13) Northeasterly 88.44 feet along said curve through a central angle of $50^{\circ}40'30''$; thence
- 14) South $67^{\circ}49'30''$ East, 2,248.34 feet to the beginning of a curve concave to the southwest having a radius of 50.00 feet; thence

- 15) Southeasterly 78.54 feet along said curve through a central angle of $90^{\circ}00'00''$; to a point on a common line between said Parcel 3 and Parcel 11, as per said map; thence along said common line
- 16) South $02^{\circ}10'30''$ West, 521.44 feet; thence leaving said common line
- 17) North $87^{\circ}49'30''$ West, 234.00 feet; thence
- 18) South $02^{\circ}10'30''$ West, 409.00 feet; thence
- 19) South $87^{\circ}49'30''$ East, 173.16 feet to a point on a common line between said Parcel 3 and Parcel 10, as per said map; thence along said common line
- 20) South $22^{\circ}22'00''$ West, 137.04 feet to the beginning of a curve concave to the east having a radius of 682.00 feet; thence
- 21) Southerly 238.06 feet along said curve through a central angle of $20^{\circ}00'00''$; thence
- 22) South $02^{\circ}22'00''$ West, 889.87 feet to the beginning of a curve concave to the northwest having a radius of 50.00 feet; thence
- 23) Southwesterly 93.18 feet along said curve through a central angle of $106^{\circ}46'40''$; thence
- 24) North $70^{\circ}51'20''$ West, 757.20 feet to the beginning of a curve concave to the south having a radius of 964.00 feet; thence
- 25) Westerly 411.28 feet along said curve through a central angle of $24^{\circ}26'40''$; thence
- 26) South $84^{\circ}42'00''$ West, 543.88 feet to the beginning of a curve concave to the south having a radius of 2,064.00 feet; thence
- 27) Westerly 115.27 feet along said curve through a central angle of $03^{\circ}12'00''$; thence
- 28) South $81^{\circ}30'00''$ West, 651.55 feet to the beginning of a curve concave to the south having a radius of 527.00 feet; thence
- 29) Westerly 128.77 feet along said curve through a central angle of $14^{\circ}00'00''$; thence
- 30) South $67^{\circ}30'00''$ West, 133.59 feet to the Point of Beginning.

Containing 129.90 acres, more or less.

Parcel 5:

That portion of the former Fort Ord, in the City of Seaside, County of Monterey, State of California described as follows:

Parcel 1 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at the northwest corner of Parcel 1, as per said map, designated and shown as point one (1) on page 2 of 9 thereon; thence along the boundary of said Parcel 1

- 1) North $63^{\circ}24'35''$ East, 573.98 feet to the beginning of a curve concave to the northwest having a radius of 530.00 feet; thence
- 2) Northeasterly 173.48 feet along said curve through a central angle of $18^{\circ}45'16''$; thence
- 3) North $44^{\circ}39'19''$ East, 355.09 feet; thence
- 4) South $22^{\circ}53'19''$ East, 544.58 feet; thence
- 5) South $12^{\circ}55'30''$ West, 35.88 feet; thence
- 6) South $08^{\circ}25'05''$ East, 121.45 feet; thence
- 7) South $48^{\circ}14'24''$ West, 577.23 feet; thence
- 8) South $61^{\circ}47'43''$ West, 287.77 feet; thence
- 9) North $47^{\circ}27'12''$ West, 343.17 feet; thence
- 10) North $34^{\circ}52'17''$ West, 224.61 feet; thence
- 11) North $26^{\circ}35'25''$ West, 61.53 feet to the Point of Beginning.

Containing 14.81 acres, more or less.

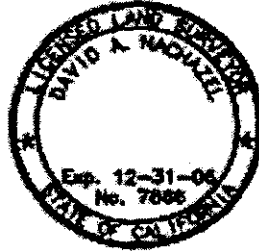
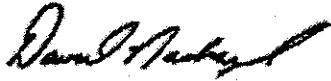
Total area:

Parcels 1 through 5 as described herein contain a total area of 594.98 acres, more or less.

The grid bearing of North 37°05'40" East as measured between California High Precision Geodetic Network (HPGN) points "CA HPGN 05 13" and "941 3450 M Tidal" is the basis of bearings for this description.

Dated: September 23, 2003

Bestor Engineers, Inc.



David Nachazel
LS 7868
Exp: 12/31/06

**Legal Description of the Parcels included within
The Presidio of Monterey Housing Area
For Residential Communities Initiative**

Parcel 1:

That portion of the Presidio of Monterey, in the City of Monterey, County of Monterey, State of California described as follows:

A portion of that certain parcel land as per map recorded in Volume 2, Page 3 of Maps and Grants in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point that bears South 87°26'33" East, 1273.23 feet from the monument shown and designated as "B-8", as per map recorded in Volume 13, Page 177 of Parcel Maps in the Office of the County Recorder of said county; thence

- 1) South 88°30'00" East, 483.41 feet to the beginning of a curve concave to the southwest having a radius of 105.00 feet; thence
- 2) Southeasterly 105.83 feet along said curve through a central angle of 57°45'00"; thence
- 3) South 30°45'00" East, 42.04 feet to the beginning of a curve concave to the northwest having a radius of 82.00 feet; thence
- 4) Southwesterly 177.43 feet along said curve through a central angle of 110°30'00"; thence
- 5) South 79°45'00" West, 34.65 feet to the beginning of a curve concave to the north having a radius of 50.00 feet; thence
- 6) Westerly 38.40 feet along said curve through a central angle of 44°00'00"; thence
- 7) North 56°15'00" West, 19.85 feet to the beginning of a curve concave to the southwest having a radius of 125.00 feet; thence
- 8) Northwesterly 23.45 feet along said curve through a central angle of 10°45'00"; thence
- 9) North 67°00'00" West, 17.08 feet to the beginning of a curve concave to the south having a radius of 75.00 feet; thence
- 10) Westerly 43.52 feet along said curve through a central angle of 33°15'00"; thence
- 11) South 79°45'00" West, 352.00 feet to the beginning of a curve concave to the south having a radius of 200.00 feet; thence

- 12) Westerly 55.85 feet along said curve through a central angle of $16^{\circ}00'00''$; thence
- 13) South $63^{\circ}45'00''$ West, 130.40 feet to the beginning of a curve concave to the southeast having a radius of 30.00 feet; thence
- 14) Southwesterly 22.45 feet along said curve through a central angle of $42^{\circ}53'04''$ to the beginning of a compound curve having a radius of 200.00 feet; thence
- 15) Southerly 0.77 feet along said curve through a central angle of $0^{\circ}13'14''$ to a point hereinafter referred to as Tie-Point "A"; thence
- 16) Continuing southerly 38.03 feet along said curve through a central angle of $10^{\circ}53'42''$; thence
- 17) South $09^{\circ}45'00''$ West, 14.37 feet to a point hereinafter referred to as Tie-Point "B"; thence
- 18) Continuing South $09^{\circ}45'00''$ West, 31.03 feet to the beginning of a curve concave to the east having a radius of 100.00 feet; thence
- 19) Southerly 72.87 feet along said curve through a central angle of $41^{\circ}45'00''$; thence
- 20) South $32^{\circ}00'00''$ East, 334.42 feet to the beginning of a curve concave to the west having a radius of 375.00 feet; thence
- 21) Southerly 176.38 feet along said curve through a central angle of $26^{\circ}56'56''$ to a point hereinafter referred to as Tie-Point "C"; thence
- 22) Southerly 11.79 feet along said curve through a central angle of $1^{\circ}48'04''$; thence
- 23) South $03^{\circ}15'00''$ East, 329.74 feet to the beginning of a curve concave to the northeast having a radius of 30.00 feet; thence
- 24) Southeasterly 50.13 feet along said curve through a central angle of $95^{\circ}45'00''$; thence
- 25) North $61^{\circ}00'00''$ East, 267.13 feet to the beginning of a curve concave to the southwest having a radius of 5.00 feet; thence
- 26) Southeasterly 9.12 feet along said curve through a central angle of $104^{\circ}30'00''$; thence
- 27) South $05^{\circ}30'00''$ West, 149.61 feet; thence
- 28) South $36^{\circ}53'55''$ East, 29.28 feet; thence
- 29) South $06^{\circ}00'00''$ East, 27.62 feet; thence

- 30) South 82°00'00" West, 10.73 feet to the beginning of a curve concave to the south having a radius of 300.00 feet; thence
- 31) Westerly 39.87 feet along said curve through a central angle of 07°36'54" to the beginning of a reverse curve having a radius of 300.00 feet; thence
- 32) Westerly 39.87 feet along said curve through a central angle of 07°36'54"; thence
- 33) South 82°00'00" West, 446.82 feet to the beginning of a non-tangent curve concave to the west having a radius of 3,959.00 feet, and to which beginning a radial bears North 89°58'18" West; thence
- 34) Northerly 347.42 feet along said curve through a central angle of 05°01'41"; thence
- 35) North 05°00'00" West, 158.42 feet to the beginning of a curve concave to the west having a radius of 259.00 feet; thence
- 36) Northerly 70.07 feet along said curve through a central angle of 15°30'00"; thence
- 37) North 20°30'00" West, 220.67 feet; thence
- 38) North 31°45'00" West, 273.01 feet; thence
- 39) North 51°15'00" East, 52.39 feet to the beginning of a non-tangent curve concave to the east having a radius of 75.00 feet, and to which beginning a radial bears North 58°15'00" East; thence
- 40) Northerly 32.40 feet along said curve through a central angle of 24°45'00"; thence
- 41) North 07°00'00" West, 67.73 feet to the beginning of a curve concave to the east having a radius of 200.00 feet; thence
- 42) Northerly 33.18 feet along said curve through a central angle of 09°30'00"; thence
- 43) North 02°30'00" East, 17.27 feet to the beginning of a curve concave to the east having a radius of 100.00 feet; thence
- 44) Northerly 48.87 feet along said curve through a central angle of 28°00'00"; thence
- 45) North 90°30'00" East, 92.77 feet to the beginning of a curve concave to the southeast having a radius of 50.00 feet; thence
- 46) Northeasterly 22.69 feet along said curve through a central angle of 26°00'00"; thence
- 47) North 56°30'00" East, 65.20 feet; thence

- 48) South 44°00'00" East, 55.00 feet; thence
- 49) North 59°45'00" East, 55.00 feet; thence
- 50) North 31°45'00" West, 57.00 feet; thence
- 51) North 62°45'00" East, 50.57 feet to the beginning of a curve concave to the south having a radius of 50.00 feet; thence
- 52) Easterly 11.34 feet along said curve through a central angle of 13°00'00"; thence
- 53) North 75°45'00" East, 42.53 feet to the beginning of a curve concave to the south having a radius of 400.00 feet; thence
- 54) Easterly 50.61 feet along said curve through a central angle of 07°15'00"; thence
- 55) North 83°00'00" East, 54.66 feet; thence
- 56) North 01°00'00" West, 89.12 feet to the Point of Beginning.

Containing 12.46 acres, more or less.

Excepting therefrom the following 3 Exceptions to be retained by the U.S. Army for Road Purposes:

Exception #1:

Beginning at the aforementioned Tie-Point "A" point, said point being the beginning of a curve concave to the east with a radius of 200.00 feet, and to which beginning a radial bears North 69°08'04" West; thence

- 1) Southerly 31.13 feet along said curve through a central angle of 8°55'17" to the beginning of a non-tangent curve concave to the west having a radius of 5.00 feet, and to which beginning a radial bears North 78°16'28" West; thence
- 2) Northerly 5.74 feet along said curve through a central angle of 65°43'32"; thence
- 3) North 54°00'00" West, 73.61 feet; thence to the beginning of a curve concave to the south having a radius of 105.25 feet; thence
- 4) Westerly 53.73 feet along said curve through a central angle of 29°15'00"; thence
- 5) North 83°15'00" West, 69.82 feet to the beginning of a curve concave to the southeast having a radius of 20.00 feet; thence

- 6) Southwesterly 25.75 feet along said curve through a central angle of $73^{\circ}45'41''$ to the beginning of a non-tangent curve concave to the southeast having a radius of 100.00 feet, and to which beginning a radial bears South $67^{\circ}00'41''$ East; thence
- 7) Northeasterly 13.11 feet along said curve through a central angle of $07^{\circ}30'41''$; thence
- 8) North $30^{\circ}30'00''$ East, 27.21 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 2.00 feet, and to which beginning a radial bears South $59^{\circ}30'00''$ East; thence
- 9) Southeasterly 3.97 feet along said curve through a central angle of $113^{\circ}45'00''$; thence
- 10) South $83^{\circ}15'00''$ East, 71.76 feet to the beginning of a curve concave to the south having a radius of 125.25 feet; thence
- 11) Easterly 63.94 feet along said curve through a central angle of $29^{\circ}15'00''$; thence
- 12) South $54^{\circ}00'00''$ East, 62.80 feet to the beginning of a curve concave to the north having a radius of 5.00 feet; thence
- 13) Easterly 9.19 feet along said curve through a central angle of $105^{\circ}21'11''$ to the Point of Beginning.

Excepting 4,271 square feet or 0.10 acres, more or less.

Exception #2:

Beginning at a the aforementioned Tie-Point "B" point; thence

- 1) South $09^{\circ}45'00''$ West, 31.03 feet to the beginning of a curve concave to the east having a radius of 100.00 feet; thence
- 2) Southerly 72.87 feet along said curve through a central angle of $41^{\circ}45'00''$; thence
- 3) North $32^{\circ}00'00''$ West, 27.50 feet to the beginning of a curve concave to the southwest having a radius of 30.00 feet; thence
- 4) Northwesterly 31.42 feet along said curve through a central angle of $60^{\circ}00'00''$; thence
- 5) South $88^{\circ}00'00''$ West, 30.60 feet to the beginning of a curve concave to the south having a radius of 500.00 feet; thence

- 6) Westerly 99.52 feet along said curve through a central angle of $11^{\circ}24'15''$ to the beginning of a compound curve having a radius of 25.00 feet; thence
- 7) Southwesterly 22.51 feet along said curve through a central angle of $51^{\circ}35'45''$; thence
- 8) South $25^{\circ}00'00''$ West, 13.45 feet to the beginning of a curve concave to the east having a radius of 15.00 feet, and to which beginning a radial bears South $65^{\circ}00'00''$ East; thence
- 9) Southerly 14.66 feet along said curve through a central angle of $56^{\circ}45'00''$ to the beginning of a non-tangent curve concave to the east having a radius of 75.00 feet, and to which beginning a radial bears North $58^{\circ}15'00''$ East; thence
- 10) Northerly 32.40 feet along said curve through a central angle of $24^{\circ}45'00''$; thence
- 11) North $07^{\circ}00'00''$ West, 65.72 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 35.00 feet, and to which beginning a radial bears North $83^{\circ}00'00''$ East; thence
- 12) Southeasterly 54.06 feet along said curve through a central angle of $88^{\circ}30'00''$; thence
- 13) North $84^{\circ}30'00''$ East, 97.97 feet to the beginning of a curve concave to the south having a radius of 1,860.00 feet; thence
- 14) Easterly 21.41 feet along said curve through a central angle of $00^{\circ}39'35''$ to the beginning of a reverse curve having a radius of 50.00 feet; thence
- 15) Northeasterly 65.81 feet along said curve through a central angle of $75^{\circ}24'35''$ to the Point of Beginning.

Containing 5,385 square feet or 0.12 acres, more or less.

Exception #3:

Beginning at a the aforementioned Tie-Point "C", said point being the beginning of a curve concave to west having a radius of 375.00 feet, and to which beginning a radial bears North $84^{\circ}55'56''$ East; thence

- 1) Southerly 11.79 feet along said curve through a central angle of $01^{\circ}48'04''$; thence
- 2) South $03^{\circ}15'00''$ East, 35.03 feet to the beginning of a non-tangent curve concave to the southwest having a radius of 15.00 feet, and to which beginning a radial bears South $86^{\circ}45'00''$ West; thence
- 3) Northwesterly 24.78 feet along said curve through a central angle of $94^{\circ}39'21''$ to the beginning of a compound curve having a radius of 750.00 feet; thence

- 4) Westerly 47.05 feet along said curve through a central angle of $03^{\circ}35'39''$; thence
- 5) South $78^{\circ}30'00''$ West, 105.25 feet to the beginning of a curve concave to the southeast having a radius of 20.00 feet; thence
- 6) Southwesterly 30.37 feet along said curve through a central angle of $87^{\circ}00'18''$ to the beginning of a reverse curve having a radius of 311.00 feet; thence
- 7) Southerly 19.03 feet along said curve through a central angle of $03^{\circ}30'18''$; thence
- 8) South $05^{\circ}00'00''$ East, 158.42 feet to the beginning of a non-tangent curve concave to the west having a radius of 3,846.24 feet, and to which beginning a radial bears South $84^{\circ}55'46''$ West; thence
- 9) Southerly 230.74 feet along said curve through a central angle of $03^{\circ}26'14''$ to the beginning of a non-tangent curve concave to the northeast having a radius of 47.57 feet, and to which beginning a radial bears North $88^{\circ}17'46''$ East; thence
- 10) Southeasterly 76.21 feet along said curve through a central angle of $91^{\circ}47'46''$; thence
- 11) North $86^{\circ}30'00''$ East, 106.50 feet to the beginning of a curve concave to the north having a radius of 239.00 feet; thence
- 12) Easterly 25.03 feet along said curve through a central angle of $06^{\circ}00'00''$; thence
- 13) North $80^{\circ}30'00''$ East, 281.67 feet; thence
- 14) South $36^{\circ}53'55''$ East, 29.28 feet; thence
- 15) South $80^{\circ}30'00''$ West, 295.14 feet to the beginning of a curve concave to the north having a radius of 265.00 feet; thence
- 16) Westerly 27.75 feet along said curve through a central angle of $06^{\circ}00'00''$; thence
- 17) South $86^{\circ}30'00''$ West, 106.50 feet to the beginning of a curve concave to the north having a radius of 115.00 feet; thence
- 18) Westerly 65.23 feet along said curve through a central angle of $32^{\circ}30'00''$; thence
- 18) North $81^{\circ}00'00''$ West, 46.17 feet to the beginning of a non-tangent curve concave to the west having a radius of 3,959.00 feet, and to which beginning a radial bears South $88^{\circ}47'12''$ West; thence

- 20) Northerly 34.81 feet along said curve through a central angle of $00^{\circ}30'13''$ to the beginning of a non-tangent curve concave to the northwest having a radius of 18.73 feet, and to which beginning a radial bears North $29^{\circ}30'53''$ East; thence
- 21) Northeasterly 42.00 feet along said curve through a central angle of $121^{\circ}58'43''$ to the beginning of a non-tangent curve concave to the west having a radius of 3,989.00 feet, and to which beginning a radial bears South $88^{\circ}02'12''$ West; thence
- 22) Northerly 211.42 feet along said curve through a central angle of $03^{\circ}02'12''$; thence
- 23) North $05^{\circ}00'00''$ West, 158.42 feet to the beginning of a curve concave to the west having a radius of 289.00 feet; thence
- 24) Northerly 78.18 feet along said curve through a central angle of $15^{\circ}30'00''$; thence
- 25) North $20^{\circ}30'00''$ West, 205.01 feet to the beginning of a curve concave to the southwest having a radius of 189.00 feet; thence
- 26) Northwesterly 37.11 feet along said curve through a central angle of $11^{\circ}15'00''$; thence
- 27) North $31^{\circ}45'00''$ West, 236.43 feet to the beginning of a curve concave to the south having a radius of 20.00 feet; thence
- 28) Westerly 33.86 feet along said curve through a central angle of $97^{\circ}00'00''$; thence
- 29) North $51^{\circ}15'00''$ East, 44.77 feet; thence
- 30) South $31^{\circ}45'00''$ East, 263.73 feet to the beginning of a curve concave to the southwest having a radius of 211.00 feet; thence
- 31) Southeasterly 41.43 feet along said curve through a central angle of $11^{\circ}15'00''$; thence
- 32) South $20^{\circ}30'00''$ East, 200.36 feet to the beginning of a curve concave to the northeast having a radius of 35.00 feet; thence
- 33) Southeasterly 49.48 feet along said curve through a central angle of $81^{\circ}00'00''$; thence
- 34) North $78^{\circ}30'00''$ East, 94.78 feet to the beginning of a curve concave to the south having a radius of 771.00 feet; thence
- 35) Easterly 56.63 feet along said curve through a central angle of $04^{\circ}13'25''$ to the beginning of a reverse curve having a radius of 10.00 feet; thence
- 36) Northeasterly 15.32 feet along said curve through a central angle of $87^{\circ}46'28''$ to the Point of Beginning.

Containing 41,116 square feet or 0.94 acres, more or less.

Net area of Parcel 1:

The net area of Parcel 1 after exceptions 1 through 3 for road purposes as described herein contains a total area of 11.30 acres, more or less.

Parcel 2:

That portion of the Presidio of Monterey, in the City of Monterey, County of Monterey, State of California described as follows:

A portion of that certain parcel land as per map recorded in Volume 2, Page 3 of Maps and Grants in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point that bears South $0^{\circ}19'24''$ West, 1256.56 feet from the monument shown and designated as "B-9", as per map recorded in Volume 13, Page 177 of Parcel Maps in the Office of the County Recorder of said county; thence

- 1) North $22^{\circ}15'00''$ East, 188.78 feet to a point hereinafter referred to as Tie-Point "D"; thence
- 2) Continuing North $22^{\circ}15'00''$ East, 22.14 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 50.00 feet, and to which beginning a radial bears North $14^{\circ}30'00''$ East; thence
- 3) Northwesterly 39.40 feet along said curve through a central angle of $45^{\circ}09'06''$ to the beginning of a compound curve having a radius of 200.00 feet; thence
- 4) Northwesterly 21.33 feet along said curve through a central angle of $06^{\circ}06'34''$ to the beginning of a compound curve having a radius of 4,300.00 feet; thence
- 5) Northwesterly 166.40 feet along said curve through a central angle of $02^{\circ}13'02''$ to the beginning of a compound curve having a radius of 20.00 feet; thence
- 6) Northeasterly 37.53 feet along said curve through a central angle of $107^{\circ}31'18''$; thence
- 7) North $85^{\circ}30'00''$ East, 41.70 feet; thence
- 8) South $87^{\circ}30'00''$ East, 376.12 feet to the beginning of a curve concave to the south having a radius of 1,000.00 feet; thence
- 9) Easterly 46.00 feet along said curve through a central angle of $02^{\circ}45'00''$; thence
- 10) South $84^{\circ}45'00''$ East, 104.78 feet to the beginning of a curve concave to the southwest having a radius of 12.00 feet; thence
- 11) Southeasterly 25.76 feet along said curve through a central angle of $123^{\circ}00'00''$; thence
- 12) South $38^{\circ}15'00''$ West, 48.82 feet to the beginning of a curve concave to the east having a radius of 150.00 feet; thence
- 13) Southerly 152.50 feet along said curve through a central angle of $58^{\circ}15'00''$; thence

- 14) South $20^{\circ}00'00''$ East, 48.49 feet to the beginning of a curve concave to the west having a radius of 35.00 feet; thence
- 15) Southerly 45.83 feet along said curve through a central angle of $75^{\circ}01'58''$ to the beginning of a compound curve having a radius of 2,000.00 feet; thence
- 16) Southwesterly 193.84 feet along said curve through a central angle of $05^{\circ}33'21''$ to the beginning of a compound curve having a radius of 200.00 feet; thence
- 17) Westerly 116.63 feet along said curve through a central angle of $33^{\circ}24'41''$; thence
- 18) North $86^{\circ}00'00''$ West, 107.28 feet to the beginning of a curve concave to the north having a radius of 1,000.00 feet; thence
- 19) Westerly 43.63 feet along said curve through a central angle of $02^{\circ}30'00''$; thence
- 20) North $83^{\circ}30'00''$ West, 60.53 feet to the beginning of a curve concave to the north having a radius of 500.00 feet; thence
- 21) Westerly 92.16 feet along said curve through a central angle of $03^{\circ}41'05''$ to the Point of Beginning.

Containing 4.63 acres, more or less.

Excepting therefrom the following to be retained by the U.S. Navy for Road Purposes:

Beginning at a the aforementioned Tie-Point "D" point, said point being the beginning

- 1) North $22^{\circ}15'00''$ East, 22.14 feet; thence
- 2) South $75^{\circ}30'00''$ East, 29.85 feet to the beginning of a curve concave to the north having a radius of 150.00 feet; thence
- 3) Easterly 77.23 feet along said curve through a central angle of $29^{\circ}30'00''$; thence
- 4) North $75^{\circ}00'00''$ East, 286.44 feet to the beginning of a curve concave to the northwest having a radius of 80.00 feet; thence
- 5) Northeasterly 51.31 feet along said curve through a central angle of $36^{\circ}45'00''$; thence
- 6) North $38^{\circ}15'00''$ East, 56.18 feet to the beginning of a non-tangent curve concave to the east having a radius of 150.00 feet, and to which beginning a radial bears South $51^{\circ}45'00''$ East; thence

- 7) Southerly 119.05 feet along said curve through a central angle of $45^{\circ}28'28''$ to the beginning of a non-tangent curve concave to the southwest having a radius of 25.00 feet, and to which beginning a radial bears South $82^{\circ}46'32''$ West thence
- 8) Northwesterly 42.66 feet along said curve through a central angle of $97^{\circ}46'32''$; thence
- 9) South $75^{\circ}00'00''$ West, 295.68 feet to the beginning of a curve concave to the north having a radius of 172.00 feet; thence
- 10) Westerly 88.56 feet along said curve through a central angle of $29^{\circ}30'00''$; thence
- 11) North $75^{\circ}30'00''$ West, 29.85 feet to the beginning of a curve concave to the north having a radius of 72.00 feet; thence
- 12) Westerly 2.99 feet along said curve through a central angle of $02^{\circ}22'36''$ to the Point of Beginning.

Containing 10,522 square feet or 0.24 acres, more or less.

Net area of Parcel 2:

The net area of Parcel 2 after the exception for road purposes as described herein contains a total area of 4.39 acres, more or less.

**Legal Description of the Parcel included within
The U.S. Naval Postgraduate School - La Mesa Housing Area
For Residential Communities Initiative**

Parcel 1:

That portion of the U.S. Naval Postgraduate School La Mesa Housing Area, in the City of Monterey, County of Monterey, State of California described as follows:

A portion of that certain parcel land as shown on the Property Map prepared for the U.S. Naval Postgraduate School on January 7, 1953, as sheet 4 of 5, filed as DPWD Drawing No. C-43030, more particularly described as follows:

Beginning at the southeast corner of the parcel of land shown on said Property Map, said point also being a point on the westerly line of that certain 80 foot right-of-way of Aguajito Road; thence leaving said westerly right-of-way line and proceeding westerly along the southerly line of said parcel

- 1) North 80°07'59" West, 723.34 feet to a 2"x2" redwood hub on the said southerly line; thence
- 2) Continuing westerly along said southerly line, a distance of 445.54 feet; thence
- 3) Continuing westerly along said southerly line, a distance of 175.00 feet; thence
- 4) Continuing westerly along said southerly line, a distance of 3,701.07 feet; thence
- 5) North 46°58'37" East, 372.49 feet; thence
- 6) North 63°45'55" East, 395.00 feet; thence
- 7) South 77°44'05" East, 415.00 feet; thence
- 8) North 52°46'42" East, 1,484.28 feet; thence
- 9) North 03°35'10" East, 380.94 feet; thence
- 10) North 13°35'00" East, 420.70 feet; thence
- 11) North 06°35'55" East, 898.38 feet; thence
- 12) North 30°55'55" East, 1,221.63 feet; thence
- 13) South 88°14'05" East, 340.07 feet; thence
- 14) South 59°16'20" East, 104.34 feet; thence
- 15) South 14°35'15" West, 139.94 feet to the beginning of a non-tangent curve concave to the south having a radius of 198.00 feet, and to which beginning a radial bears South 00°32'30" East; thence

- 16) Easterly 89.11 feet along said curve through a central angle of 25°47'10"; thence
- 17) North 14°00'25" East, 108.21 feet; thence
- 18) South 41°12'00" East, 94.81 feet; thence
- 19) South 70°22'30" East, 86.88 feet; thence
- 20) North 88°17'05" East, 228.96 feet; thence
- 21) North 48°55'55" East, 86.09 feet to a point on said southerly line of the right-of-way of Aguajito Road, said point also being the beginning of a non-tangent curve concave to the northeast having a radius of 1,350.00 feet, and to which beginning a radial bears North 34°27'57" East; thence
- 22) Southeasterly along said southerly right-of-way line, 110.75 feet along said curve through a central angle of 04°42'02"; thence
- 23) South 60°14'05" East, 308.84 feet to the beginning of a curve concave to the southwest having a radius of 1,220.00 feet; thence
- 24) Southeasterly 359.64 feet along said curve through a central angle of 16°53'24"; thence
- 25) Continuing southerly 913.68 feet along said curve through a central angle of 42°54'36"; thence
- 26) South 00°26'05" East, 855.28 feet to the beginning of a non-tangent curve concave to the east having a radius of 1,050.00 feet, and to which beginning a radial bears North 89°33'53" East; thence
- 27) Southerly 423.93 feet along said curve through a central angle of 23°07'58"; thence
- 28) South 23°34'05" East, 128.36 feet to the beginning of a non-tangent curve concave to the west having a radius of 650.00 feet, and to which beginning a radial bears South 66°25'57" West; thence
- 29) Southerly 385.71 feet along said curve through a central angle of 33°59'58"; thence
- 30) South 10°26'02" West, 709.19 feet to the beginning of a non-tangent curve concave to the east having a radius of 2,050.00 feet, and to which beginning a radial bears South 79°35'20" East; thence
- 31) Southerly 356.17 feet along said curve through a central angle of 09°57'17"; thence
- 32) South 00°33'15" West, 158.67 feet to the beginning of a non-tangent curve concave to the west having a radius of 1,847.42 feet, and to which beginning a radial bears North 89°32'49" West; thence

- 33) Southerly 343.07 feet along said curve through a central angle of 10°38'24"; thence
- 34) South 10°37'21" West, 106.83 feet to the Point of Beginning.

Containing 305.28 acres, more or less.

Excepting therefrom (La Mesa Grade School):

That certain parcel of land granted from the United States Navy to the Monterey Peninsula Unified School District by quitclaim deed recorded February 7, 1977 in Reel 1117, Page 1008, Official Records in the Office of the County Recorder of said county, described herein as follows:

Beginning at a point that bears North 33°17'31" West, 1292.01 from the southeast corner of the parcel of land shown on said Property Map; thence

- 1) North 65°00'28" West, 485.00 feet; thence
- 2) North 20°00'28" West, 247.49 feet; thence
- 3) North 24°59'32" East, 135.00 feet; thence
- 4) North 20°00'28" West, 247.49 feet; thence
- 5) South 65°00'28" East, 175.00 feet; thence
- 6) North 24°59'32" East, 175.00 feet; thence
- 7) South 65°00'28" East, 430.00 feet; thence
- 8) South 24°59'32" West, 240.00 feet; thence
- 9) South 65°00'28" East, 230.00 feet; thence
- 10) South 24°59'32" West, 420.00 feet to the Point of Beginning.

Containing 8.73 acres, more or less.

Also Excepting therefrom the following 5 Exceptions to be retained by the U.S. Navy for various purposes:

Exception #1 (Tank-Site A):

Beginning at a point that bears North 24°55'13" West, 2079.67 feet from the southeast corner of the parcel of land as shown on said Property Map, said point also being a point on the northerly line of that certain parcel of land granted from the U.S. Navy to the Monterey Peninsula School District as described herein; thence northwesterly along said northerly line

- 1) North 65°00'28" West, 168.00 feet to the most northerly northwest corner of said granted parcel of land; thence leaving said granted parcel of land
- 2) North 24°59'32" East, 109.00 feet; thence
- 3) South 65°00'28" East, 168.00 feet; thence
- 4) South 24°59'32" West, 109.00 feet to the Point of Beginning.

Containing 18,312 square feet or 0.42 acres, more or less.

Exception #2 (Tank-Site B):

Beginning at a point on the southerly line of the parcel of land shown on said Property Map that bears North 80°07'59" West, 1168.68 feet from the southeast corner of said parcel; thence

- 1) North 80°07'59" West, 175.00 feet; thence
- 2) North 10°00'00" East, 112.00 feet; thence
- 3) North 70°00'00" East, 60.00 feet; thence
- 4) South 20°00'00" East, 24.25 feet; thence
- 5) South 80°00'00" East, 110.91 feet; thence
- 6) South 10°00'00" West, 120.59 feet; thence

Containing 21,578 square feet or 0.50 acres, more or less.

Exception #3 (Child Development Center):

Beginning at a point that bears North 30°14'16" West, 2141.43 feet from the southeast corner of the parcel of land as shown on said Property Map, said point also being a point on the westerly line of that certain parcel of land granted from the U.S. Navy to the Monterey Peninsula School District as described herein; thence leaving said westerly line

- 1) North 65°00'28" West, 268.05 feet to the beginning of a curve concave to the northeast having a radius of 230.00 feet; thence

- 2) Northwesterly 100.36 feet along said curve through a central angle of 25°00'00"; thence
- 3) North 24°45'00" East, 115.82 feet; thence
- 4) North 89°15'00" East, 194.85 feet; thence
- 5) South 65°00'28" East, 110.22 feet; thence
- 6) South 24°59'32" West, 59.00 feet; thence
- 7) South 65°00'28" East, 80.00 feet; thence
- 8) South 24°59'32" West, 45.00 feet to the most northerly northwest corner of said granted parcel of land; thence
- 9) Continuing southwesterly along the westerly line of said granted parcel of land, a distance of 118.00 feet to the Point of Beginning.

Containing 1.57 acres, more or less.

Exception #4 (Navy Lodge):

Beginning at a point that bears North 32°00'06" West, 2841.17 feet from the southeast corner of the parcel of land as shown on said Property Map; thence

- 1) North 01°30'00" West, 48.79 feet to the beginning of a curve concave to the east having a radius of 75.00 feet; thence
- 2) Northerly 27.49 feet along said curve through a central angle of 21°00'00"; thence
- 3) North 19°30'00" East, 22.88 feet; thence
- 4) North 87°45'00" West, 30.44 feet; thence
- 5) North 68°15'00" West, 38.74 feet; thence
- 6) North 64°32'00" West, 138.78 feet; thence
- 7) North 10°15'00" East, 157.60 feet; thence
- 8) South 81°23'00" East, 59.40 feet; thence
- 9) South 84°45'00" East, 12.63 feet; thence
- 10) South 01°24'30" East, 17.54 feet; thence
- 11) North 81°55'50" East, 55.41 feet; thence

- 12) North 05°20'00" West, 74.21 feet; thence
- 13) North 04°34'45" East, 63.50 feet to the beginning of a non-tangent curve concave to the north having a radius of 425.00 feet, and to which beginning a radial bears North 00°52'51" East; thence
- 14) Easterly 160.58 feet along said curve through a central angle of 21°38'55" to the beginning of a reverse curve having a radius of 35.00 feet; thence
- 15) Southeasterly 57.28 feet along said curve through a central angle of 83°46'04"; thence
- 16) South 17°00'00" East, 369.37 feet to the beginning of a curve concave to the northeast having a radius of 145.00 feet; thence
- 17) Southeasterly 34.90 feet along said curve through a central angle of 13°47'26" to the beginning of a reverse curve having a radius of 10.00 feet; thence
- 18) Southerly 15.65 feet along said curve through a central angle of 89°40'21" to the beginning of a compound curve having a radius of 125.00 feet; thence
- 19) Southwesterly 28.07 feet along said curve through a central angle of 12°52'05"; thence
- 20) South 71°45'00" West, 87.55 feet to the beginning of a curve concave to the north having a radius of 165.00 feet; thence
- 21) Westerly 47.76 feet along said curve through a central angle of 16°35'00"; thence
- 22) South 88°20'00" West, 138.11 feet to the Point of Beginning.

Containing 3.27 acres, more or less.

Exception #5 (Youth Center):

Beginning at a point that bears North 36°31'02" West, 3198.33 feet from the southeast corner of the parcel of land as shown on said Property Map; thence

- 1) North 85°00'00" West, 34.05 feet; thence
- 2) North 05°00'00" East, 23.00 feet; thence
- 3) North 85°00'00" West, 20.00 feet; thence
- 4) North 05°00'00" East, 42.00 feet; thence
- 5) North 85°00'00" West, 185.00 feet; thence

- 6) North 05°00'00" East, 152.38 feet; thence
- 7) South 85°00'00" East, 50.62 feet; thence
- 8) North 05°00'00" East, 32.83 feet; thence
- 9) North 88°00'00" East, 216.00 feet; thence
- 10) South, 56.50 feet to the beginning of a curve concave to the west having a radius of 495.00 feet; thence
- 11) Southerly 224.32 feet along said curve through a central angle of 25°57'55" to the Point of Beginning.

Containing 1.26 acres, more or less.

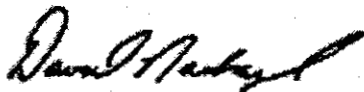
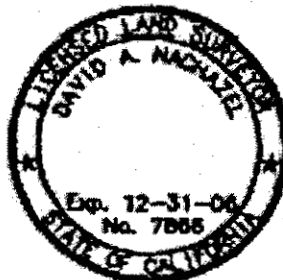
Total area (Net, after exceptions):

The net area of Parcel 1, after the exception for the portion granted to Monterey Peninsula School District and the 5 exceptions to be retained by the U.S. Navy for various purposes as described herein, contains a total area of 289.53 acres, more or less.

The grid bearing of North 80°07'59" West as measured between found monuments along the southerly line of the La Mesa Boundary as shown on the Property Map prepared for the U.S. Naval Postgraduate School on January 7, 1953, as sheet 4 of 5, filed as DPWO Drawing No. C-43030 is the basis of bearings for this description.

Dated: September 23, 2003

Bestor Engineers, Inc.

David Nachazel
 LS 7866
 Exp: 12/31/06

**Legal Description of the Parcel included within
The U.S. Naval Postgraduate School Housing Area
For Residential Communities Initiative**

Parcel 1:

That portion of the U.S. Naval Postgraduate School Housing Area, in the City of Monterey, County of Monterey, State of California described as follows:

A portion of that certain parcel land shown on the Real Estate Summary Map prepared for the U.S. Naval Post Graduate School as Drawing No. C-54016, dated May 22, 1969, said map being a retracement of the deed recorded in Reel 1068, Page 1 of Official Records in the Office of the County Recorder of said county, said portion being more particularly described as follows:

Commencing at the northeasterly terminus of that certain course labeled N 72°26'40" E, 482.86' on said Real Estate Summary Map; thence South 18°21'17" East 1026.59' to the Point of Beginning.


- 1) South 37°30'00" East, 437.00 feet; thence
- 2) South 52°30'00" West, 253.00 feet to the beginning of a curve concave to the north having a radius of 192.00 feet; thence
- 3) Westerly 301.59 feet along said curve through a central angle of 90°00'00"
- 4) North 37°30'00" West, 245.00 feet
- 5) North 52°30'00" East, 445.00 feet to the True Point of Beginning.

Containing 4.28 acres, more or less.

The grid bearing of North 80°07'59" West as measured between found monuments along the southerly line of the La Mesa Boundary as shown on the Property Map prepared for the U.S. Naval Postgraduate School on January 7, 1953, as sheet 4 of 5, filed as DPWO Drawing No. C-43030 is the basis of bearings for this description.

Dated: September 23, 2003

Bestor Engineers, Inc.



David Nachazel
LS 7866
Exp: 12/31/06

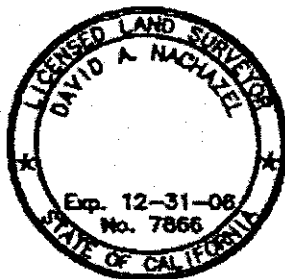


Exhibit A-2

LEGAL DESCRIPTION OF FUTURE BARRACKS PARCEL

Parcel 3:

That portion of the Presidio of Monterey, in the City of Monterey, County of Monterey, State of California described as follows:

A portion of that certain parcel land as per map recorded in Volume 2, Page 3 of Maps and Grants in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at the monument shown and designated as "B-9", as per map recorded in Volume 13, Page 177 of Parcel Maps in the Office of the County Recorder of said county; thence

- 1) South 88°03'00" East, 121.73 feet; thence
- 2) South 20°00'00" East, 221.46 feet to the beginning of a curve concave to the west having a radius of 400.00 feet; thence
- 3) Southerly 83.78 feet along said curve through a central angle of 12°00'00"; thence
- 4) South 08°00'00" East, 198.08 feet to the beginning of a curve concave to the northeast having a radius of 20.00 feet; thence
- 5) Southeasterly 35.04 feet along said curve through a central angle of 100°22'32" to the beginning of a non-tangent curve concave to the north having a radius of 600.00 feet, and to which beginning a radial bears North 18°22'32" West; thence
- 6) Westerly 32.73 feet along said curve through a central angle of 03°07'32"; thence
- 7) South 74°45'00" West, 99.65 feet to the beginning of a curve concave to the north having a radius of 399.50 feet; thence
- 8) Westerly 50.55 feet along said curve through a central angle of 07°15'00"; thence
- 9) South 82°00'00" West, 206.75 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 20.00 feet, and to which beginning a radial bears North 08°00'00" West; thence
- 10) Northeasterly 35.26 feet along said curve through a central angle of 101°00'00"; thence
- 11) North 19°00'00" West, 181.85 feet to the beginning of a curve concave to the east having a radius of 500.00 feet; thence
- 12) Northerly 87.27 feet along said curve through a central angle of 10°00'00"; thence

13) North 09°00'00" West, 185.80 feet; thence

14) North 60°45'00" East, 233.36 feet to the Point of Beginning.

Containing 4.42 acres, more or less.

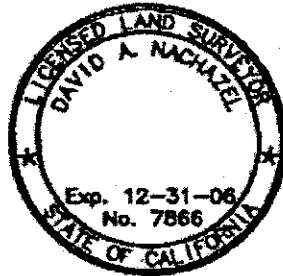
Total area (Net, after exceptions):

The net area of Parcel 1 through 3, after the exception for road purposes as described herein, contains a total area of 20.11 acres, more or less.

The grid bearing of North 60°45'00" West as measured between monuments "B-9" and "B-11" as per map filed in Volume 13, Page 177 of Parcel Maps in the Office of the County Recorder of said county is the basis of bearings for this description.

Dated: September 23, 2003

Bestor Engineers, Inc.



David Nachazel
LS 7866
Exp: 12/31/06

Exhibit C

Land Loan Documents

all dated as of October 1, 2003, unless otherwise noted

1. Loan Agreement between Monterey Bay Land, LLC ("Land"), as Borrower, and GMAC Commercial Holding Capital Corp. ("GMAC"), as Lender
2. Promissory Note made by Land to the order of GMAC
3. Leasehold Deed of Trust, Security Agreement and Fixture Filing, by Land, in favor of Commonwealth Land Title Insurance Company, as Trustee, for the benefit of GMAC, as Beneficiary
4. Servicing and Lockbox Agreement among Land, GMAC and GMAC Commercial Mortgage Corporation, as Servicer
5. Limited Indemnity (relating to certain acts of Clark Pinnacle Monterey Bay LLC) by - American Management Services LLC
6. Limited Indemnity (relating to certain acts of Clark Pinnacle Monterey Bay LLC) by Clark Realty Builders, L.L.C.
7. Environmental Indemnity Agreement by Land in favor of GMAC
8. Absolute Assignment of Leases by Land in favor of GMAC
9. Pledge and Security Agreement by Land in favor of GMAC (assigning to GMAC the Development Loan and Development Loan Documents)
10. Allonge (assigning to GMAC the Development Note)
11. UCC Financing Statements

Exhibit D
EXCLUDED PROPERTY

1. Mars Station (Bldg. 405)
2. NEX Mini Mart (Bldg. 336)

Exhibit E
INTENTIONALLY OMITTED

Exhibit F
DEVELOPER CAPACITY AND EXPERIENCE

The single-firm developer or a principal member in a development team must submit, in writing, a list of projects with sufficient detail to demonstrate that it meets the following minimum experience requirements. One principal member must meet minimum experience requirement 1 and one principal member must meet minimum experience requirement 2, although each need not be the same principal member:

(1) has within the ten (10) years prior to such substitution, (i) served as the primary developer with an ownership interest in at least three completed development projects, or completed project phases, each of which included a residential component with at least 200 low-rise (four stories or less) attached or detached family housing units, and (ii) structured, arranged and managed the capital formation, including equity and both short and long term debt, for three (3) completed residential projects or completed project phases, each resulting in total development costs in excess of \$30 million.

(2) Provided property management, including operations, leasing, repairs and maintenance, capital improvements and asset management, for at least three (3) completed major residential projects, each of which included a residential component of at least 200 units.

The projects set forth in Clauses (1) and (2) above do not have to be the same projects.

Exhibit G
PROJECT MANAGEMENT PROCEDURES AND PROTOCOLS

The Lessee will ensure professional management and maintenance of these neighborhoods consistent with the standards of a market rate residential rental development in the Monterey Peninsula metropolitan area. The Community Development Management Plan (CDMP) is an overall plan to guide initial development activity.

The Lessee will operate an On-Site Management Office. The staff of this office will be capable of performing management and operations duties as well as maintenance functions necessary to satisfy residents' housing needs. When the On-Site Office is not open, the Lessee will provide on-call staff, to include emergency maintenance personnel, to meet residents' immediate needs.

The Lessee will oversee the overall maintenance and repair of the housing stock, pest control, and the maintenance of the common area lawns and landscaping.

The Lessee will maintain a quality control program. The quality control program will include regular inspections of vendor work projects (including an annual, scheduled inspection), resident surveys (including an annual survey), and other mechanisms for residents to provide timely feedback regarding their housing.

All family housing assets including DUs, garages, carports, storage sheds, grounds, and other facilities, are to be maintained to a standard that prevents deterioration beyond that which results from reasonable wear and tear, and which corrects deficiencies in a timely manner to ensure the full life expectancy of the facilities and their components. The level of maintenance shall ensure that all family housing facilities are free of missing components or defects which would affect the safety, appearance, or habitability of the facilities or would prevent any electrical, mechanical, plumbing, or structural system from functioning in accordance with its design. The quality of the work and repaired areas shall be done in a manner compatible with adjacent areas within the Project. Replacements shall match existing components in dimensions, materials, quality, finish, color, and design where possible.

During the performance of the work, debris, excess material, and parts will be cleaned up and removed or contained at the end of each workday and at the completion of the job. Upon completion of work any fingerprints, stains, or other unsightly marks will be removed. Wherever the term "pleasing appearance" appears in subsequent paragraphs, shall be construed to mean an appearance similar to the original finished appearance.

Exhibit H
MANIFEST PROCEDURES

Definitions

Owner: Monterey Bay Military Housing LLC

Generators: U.S. Army and U.S. Navy

General Contractor: Clark Realty Builders LP

Waste Handler: To be determined subcontractor of General Contractor

Purpose

Whenever a waste handler takes custody of a waste shipment, it must sign the accompanying manifest to acknowledge its receipt and thus create a record of the shipment's chain of custody. When the waste shipment is finally delivered to the permitted facility selected to manage the waste, the receiving facility must sign the manifest, retain a copy as a record, and return a signed copy to the generator who originated the shipment. This closes the accountability circle and enables the generator to verify that the shipment reached its final destination. The California Department of Substance Control ("DTSC") must be notified for appropriate action when a generator does not receive a final manifest verification, or when a handler discovers that the shipment actually received does not match the description of the waste on the manifest.

A manifest is a multiple copy shipping paper that is used to track the disposal of hazardous, special or universal wastes. The hazardous waste form is entitled "Uniform Hazardous Waste Manifest." A manifest must accompany every hazardous, special or universal waste shipment that leaves the generator's property, regardless of size. The manifest is a paper document containing multiple copies of a single form designed to track hazardous waste from point of generation to point of ultimate disposal ("cradle to grave"). The manifest procedures are designed to seamlessly track hazardous waste from the time it leaves the generator facility, where it was produced, until it reaches the off-site waste management facility which will store, treat, or dispose of the hazardous waste.

The wastes covered under these procedures include hazardous, special and universal wastes generated during construction, renovation, replacement, rehabilitation, and development of residential communities and related ancillary facilities.

Waste Determination

Wastes generated during construction, renovation, replacement, rehabilitation, and development of residential communities and related ancillary facilities will be classified in accordance with the following:

- 100% Limited Environmental Survey completed by Altec Testing and Engineering dated July 2003.
- Abatement Specifications completed by Altec Testing and Engineering dated July 2003.
- 49 CFR Sections 100 to 185 (Specifically §172.101 Hazardous Materials Table)
- 40 CFR Sections 300 to 399 (Specifically Table 302.4) for Reportable Quantities (RQ)
- CCR 66261.9. Requirements for Universal Waste.
- California Titles 17, 22 and 23.
- North American Emergency Response Guidebook
- Generator knowledge based on previous inspections, testing, and projects.
- Other relevant and applicable State and Federal Rules and Regulations

Abatement, Handling and Storage

All hazardous special and universal waste, including waste oil, must be placed in drums or other appropriate containers that are properly labeled as hazardous, special, or universal waste. Details regarding abatement, handling, and storage procedures are detailed in the following:

- Abatement Specifications completed by Altec Testing and Engineering dated July 2003.
- Environmental Management Plan completed by the SI Group dated September 2003.
- Relevant and applicable State and Federal Rules and Regulations.

INSPECTIONS

The US Army or US Navy personnel, or a designated representative signing the manifests is responsible for the accuracy of the information. If the designated representative uses a manifest prepared by a subcontractor, the designated representative must ensure all the information entered is correct. Specifically, boxes 1, 3, and 4 for accuracy and name of transporter, name of the designated facility, the Army or Navy EPA ID number (Army EPA Number for waste generated at OMC and POM, Navy EPA ID # for waste generated at NPS and La Mesa Village), and the Department of Transportation description of the waste, such as proper shipping name and hazard class. The designated representative signing the manifest should ensure that the waste is properly packaged and labeled. The transportation vehicle must also be properly labeled. The designated representative may also inspect the storage and accumulation points at the project site.

MANIFEST FORMS

Clark Realty Builders through qualified subcontractors will complete most parts of the manifest, including the following information as supplied by the Army and/or Navy:

- Generators' US EPA ID numbers. (Army or Navy)
- Generators' name, address and phone number, and contact.
- State generators' ID number. (Army of Navy)

And the following information from subcontractors and disposal facilities:

- Transport company's name address and phone number.
- Transport company's US EPA ID Number and state transporter's ID number.
- Disposal facility's name address and phone number.
- Disposal facility's US EPA ID Number and state transporter's ID number.
- US DOT Waste Description(s) and EPA and State Waste Code(s).
- Numbers and types of containers, and total quantities of wastes.
- Additional Descriptions and codes as applicable.

A designated representative of the generator signs the completed manifest before the transporter accepts the shipment and provides the designated representative with the "generator copy" of the manifest. Therefore the designated representative is responsible for traveling to the project sites as needed to inspect the loads and sign the manifests before the trucks can leave the site. The designated representative may be an enlisted soldier or an employee of the Army and/or Navy or an appropriate employee of Monterey Bay Military Housing, LLC or a subcontractor. The designated representative must be available whenever construction is active to avoid construction delays.

When the transporter arrives at the TSDF, the load is reviewed and upon acceptance the TSDF will sign the manifest. The TSDF will provide the transporter with the transporter copy. The TSDF will keep their copy, send the generator the original signed document, and will forward a copy of the manifest to the California Department of Toxic Substance Control ("DTSC"). This final receipt for the disposition of the waste must be copied and provided to the owner. The generator must keep this copy on file for a minimum of three years.

If the generator does not receive a TSDF signed copy of their manifest(s) within 35 days from initial transport, the generator must contact the transporter and/or the TSDF to find out where the hazardous waste shipment is currently located. If the TSDF copy has not been received within 45 days, an exception report consisting of a legible copy of the manifest and a cover letter

explaining the efforts taken to locate the hazardous waste and the results of those efforts must be sent to the DTSC by the generator.

DISPOSAL

All waste will be disposed at an appropriately permitted hazardous, special, or universal waste facility. The generator at its discretion and can disapprove of the proposed final disposal facility. If the generator rejects the disposal facility on the manifest, the generator must provide an alternative facility and assist in negotiations of disposal rates.

TAXES

Owner will reimburse the Army/Navy for fees (i.e. taxes) charged to their EPA ID accounts for the disposal of the hazardous waste.

Exhibit I
INTENTIONALLY OMITTED

Exhibit J-1
HISTORIC BUILDINGS AND STRUCTURES LIST FOR THE PRESIDIO OF MONTEREY

All buildings are "Historic" except buildings 305, 337, 344 and 434A, which shall be treated as Non-Historic Buildings within the view shed of Historic Properties for purposes of paragraph 8 of Exhibit J-3.

<u>Bldg. No.</u>	<u>Original use</u>
304	Garage
305	Storehouse
306	Officers Quarters
307	Officers Quarters
308	Garage
309	Officers Quarters
310	Garage
311	Officers Quarters
312	Officers Quarters
313	Garage
314	Officers Quarters
315	Servants Quarters
316	Servants Quarters
317	Officers Quarters
318	Garage
319	Officers Quarters
320	Officers Quarters
321	Garage
322	Officers Quarters
327	Officers Quarters
328	Garage
329	Servants Quarters
330	Officers Quarters
331	Garage
332	Officers Quarters
333	Officers Quarters
334	Garage
335	Officers Quarters
336	Officers Quarters
337	Garage
338	Officers Quarters
344	Gas Meter House
345	Officers Quarters
346	Officers Quarters
348	Officers Quarters
347	Garage
349	Officers Quarters
350	Garage

351	Officers Quarters
352	Garage
353	Servants Quarters
355	Officers Quarters
357	Officers Quarters
361	Officers Quarters
363	Garage
428	Garage
429	Officers Quarters
430	Officers Quarters
431	Officers Quarters
432	Garage
433	Officers Quarters
434	Officers Quarters
434A	Officers Quarters
435	Garage
437	Officers Quarters
444	Officers Quarters
445	Officers Quarters
446	Garage
447	Officers Quarters
448	Garage
449	Officers Quarters

Exhibit J-2
HISTORIC BUILDINGS AND STRUCTURES LIST FOR
THE NAVAL POSTGRADUATE SCHOOL, MONTEREY

Quarters "A" Stanley House (building 265)

Quarters "M" (building 267)

Quarters "K" and "L" (building 269)

Exhibit J-3
ACTS NOT REQUIRING APPROVAL OR CONSULTATION/REQUIRED
MAINTENANCE PRESIDIO OF MONTEREY HISTORIC PROPERTY

1. Architectural Elements:

a. Doors: Repair of existing materials or replacement in kind when beyond repair and done in kind to match the existing material and form.

b. Footings, Foundation and Retaining Walls: Repair of existing materials or replacement of those portions that have deteriorated beyond repair when done in kind to substantially match the existing materials and form. Any associated mortar replacement shall be with a mortar mix that substantially matches historic mortar mixes in material and color.

c. Glass: Replacement of broken clear glass with clear glass of similar thickness when no modification or damage to adjacent surfaces will result.

d. Roofs: Repair or replacement of roofs or parts of roofs that have deteriorated, when done in kind to match the existing material and design. Adequate anchorage of the roofing material to guard against wind damage and moisture penetration shall be provided. Replacement of roof sheathing and supports shall be allowed only to the extent materials are deemed to be beyond repair.

e. Windows: Repair of window frames by patching, splicing, consolidating or otherwise reinforcing or replacing in kind those parts that are either extensively deteriorated or missing. No change in the exterior or interior appearance or the operation of the window shall result. Adjusting counterweights and replacing ropes and counterweights.

f. Wood siding, trim, porch decking, porch rails, joists, columns, and stairs (including framing): Repair of existing materials or replacement in kind of only those elements that are beyond repair when done in kind to substantially match existing material and design.

2. Surfaces:

a. Painting interior or exterior surfaces when the new paint matches the existing or original color. Damaged or deteriorated paint may be removed to the next sound layer by hand scraping or hand sanding. Abrasive methods, such as sandblasting and water blasting, are not allowed.

b. Replacement or installation of caulking and weather stripping around windows, doors walls, and roofs.

3. Interior Elements:

a. Floor covering: Repair and replacement of existing floor coverings, when done in kind to match existing material and design and floor refinishing.

b. Historic cabinets: Repair of existing materials. Replacements of those elements that have deteriorated beyond repair when done in kind to substantially match the existing material and design.

c. Kitchens and bathrooms: Replacement of appliances, cabinets, fixtures, accessories such as medicine cabinets, towel bars and toothbrush holders that are less than 45 years old. When associated historic cabinets are intact, the cabinets will be retained in place. Historic plumbing fixtures and accessories shall be retained.

4. Utility Systems:

a. Installation of mechanical equipment that is not visible and/or will not require the installation of ductwork.

b. Replacement, removal or the upgrading of electrical wiring.

c. Replacement, removal or upgrading of water and plumbing systems when historic features such as hand pumps are left in place. Historic plumbing fixtures shall be retained.

5. Surrounding Features:

a. Replacement of signs in kind.

b. Ongoing maintenance of existing landscaping, including removal of dead, diseased, or hazardous vegetation.

c. Removal of animal or bird debris without damaging adjacent surfaces.

d. Repair or replacement of driveways and walkways done in kind to match existing materials, design and color.

e. Repair or replacement of fencing done in kind to match existing material and design.

6. New Materials:

a. Installation of dry insulation provided an analysis of vapor migration has been made and vapor barriers are installed to prevent the retention of moisture within the insulation or the building assembly.

b. Installation of dead bolts, door locks, window latches and door peep holes.

c. Installation of fire and smoke detectors.

d. Installation of carpet over existing vinyl and/or vinyl asbestos flooring.

e. Replacing of existing vinyl and/or vinyl asbestos floor tiles with sheet vinyl flooring.

7. Ground Disturbing Activities:

a. Installation of utilities, such as sewer, water, storm, electrical, and gas lines, where installation is restricted to the areas previously disturbed by installation of these utilities.

b. Tree removal when the trees are dead, diseased or hazardous.

c. Excavation for the repair or replacement of building footings or foundation work within two feet of existing footings, foundations or retaining walls.

8. Non-Historic Building within the View shed of Historic Properties: All interior maintenance, repair or renovation and exterior maintenance and repair that does not result in a change to the overall appearance of the building or a change to the color of materials.

9. Landscape Maintenance: Removal of vines that are damaging building materials by destroying the plant at the root and gently removing the vine after the plant has died and dried; grass cutting; hedge trimming and tree pruning

10. Emergency Work: In those situations where unanticipated and sudden events, such as fire, earthquake or storm damage, irreversibly alter the structural stability of a property, rendering it an immediate health and safety hazard, Lessee will:

a. Take the necessary steps to make the property safe and secure.

b. Advise the Secretary of the situation, providing pictures of the health or safety hazard before Lessee has done any work and pictures of the "after" condition and a brief description of the nature of the emergency and corrective work.

Exhibit J-4
ACTS NOT REQUIRING APPROVAL OR CONSULTATION

The Naval Postgraduate School

1. Plumbing system rehabilitation/replacement, to include pipes and fixtures in both bathrooms and kitchens;
2. Heating, ventilation, and air conditioning rehabilitation/replacement including furnaces, pipes, radiators or other heating/air conditioning units;
3. Rehabilitation/replacement of electrical wiring including lighting, fire alarms, smoke/heat detectors, fire suppression systems, telephones, and local area network;
4. Bathroom improvements, including alterations necessary for handicap access;
5. Interior surface (floors, walls, ceiling, woodwork) treatments, providing the work is restricted to repainting, refinishing, re-papering, re-paneling, or laying carpet, linoleum, or other recognized floor systems;
6. Insulation; and
7. Replacement/repair of vertical transportation systems (i. e. elevators and stairs).

Exterior Work

1. Repair or replacement of siding, trim, or hardware when done in kind to match existing or original material and design.
2. Replacement of glass when done in kind to match existing material and design. Window glass may be double or triple glazed as long as it is clear and replacement does not alter existing window glazing rabbets. This excludes the use of tinted glass, which will require consultation.
3. Maintenance of features such as window and door frames, hoodmolds, paneled or decorated jambs and moldings through appropriate surface treatments, such as cleaning, rust removal, limited paint removal, and reapplication of protective coating systems.
4. Repair or replacement of roofs or parts of a roof that are deteriorated, when done in-kind to match existing or original material and design.
5. Repair or replacement of porches and stairs when done in kind to match existing material and design.
6. Repair of window frames by patching, splicing, consolidating or otherwise reinforcing or replacing in kind those parts that are extensively deteriorated or are missing. The same configuration of panes will be retained.

7. Installation of storm windows, provided that they conform to the shape and size of historic windows and that the meeting rail coincides with that of the existing sash. Color shall match prime window color; mill finish aluminum is not acceptable.

8. Painting exterior surfaces when the new paint matches the existing or original color. If the existing paint color is not desirable and the original color is not known, the color should be in keeping with historic color schemes. Damaged or deteriorated paint may be removed to the next sound layer, using the gentlest methods possible, such as hand scraping or hand sanding. Abrasive methods, such as sandblasting and water blasting, are not allowed.

9. Replacement or installation of caulking and weather stripping around windows, doors, walls, and roofs.

10. Repair and replacement of gutters and down spouts in kind.

11. In-kind sidewalk, driveway and curbing repair or replacements.

Other Work

1. In-kind street, parking lots, driveway, sidewalk, curb and gutter and storm drainage structure repair or replacements;

2. Use of interpretive signs or exhibit structures which are not attached to a historic property and that do not visually intrude on a historic property. They shall be constructed of materials and painted colors that harmonize with the historic property and its setting;

3. Installation of utilities, such as sewer, water, storm, electrical, gas, steam, compressed air, leach lines, and septic tanks, where installation is restricted to areas previously disturbed by installation of these utilities;

4. Repair/replacement/installation of exterior lighting;

Emergency Work

In those situations where unanticipated and sudden events, such as fire, earthquake or storm damage, irreversibly alter the structural stability of a property, rendering it an immediate health and safety hazard, Lessee will:

a. Ensure that necessary steps are taken to make the property safe and secure.

b. Advise the Secretary and the Superintendent of the Naval Postgraduate School of the situation, providing pictures of the health or safety hazard before performance of any work and pictures of the "after" condition and a brief description of the nature of the emergency and corrective work.