ORDINANCE 1021B

APPROVE THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LINCOLN, A MUNICIPAL CORPORATION, AND ESPLANADE AT TURKEY CREEK, RELATIVE TO THE DEVELOPMENT KNOWN AS THE TURKEY CREEK ESTATES PROJECT

Recitals

WHEREAS, the City of Lincoln has received an application for the Esplanade at Turkey Creek Development Agreement, by and between the City and Taylor Morrison of California, LLC, a California limited liability company, John H. and Denise E. Peck Family Trust, and DiGiordano Family Trust, the developers of the property; and,

WHEREAS, Section 65864 et, seq. of the California Government Code provides for preparation and adoption of amendments to development agreements; and,

WHEREAS, pursuant to Government Code Section 65090, notice of the City Council's hearing was published in at least one newspaper of general circulation within the City of Lincoln at least ten calendar days before the City Council's meeting; and,

WHEREAS, the Esplanade at Turkey Creek project is located within the Village 1 Specific Plan and is consistent with the goals, policies and intent of the Specific Plan and the applicable development standards of the approved Village 1 General Development Plan; and

WHEREAS, the City Council adopted Resolution No. 2012-196, Certifying the final Environmental Impact Report for the Village 1 Specific Plan Project ("Village 1 EIR"), Making Findings Concerning Mitigation Measures Adopting a Mitigation Monitoring Plan, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in accordance with the California Environmental Quality Act for the Village 1 Specific Plan Project; and,

WHEREAS, the Esplanade at Turkey Creek project site was analyzed for development within the Village 1 Specific Plan Development Project EIR pursuant to the EIR. Pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Environmental Guidelines of the City of Lincoln, the City has determined that the project is exempt from further environmental review pursuant to Section 15183 whereby projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site; and,

WHEREAS, the Esplanade at Turkey Creek Estates project site was analyzed for development within the Village 1 Specific Plan Development Project EIR pursuant to the EIR. Pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Environmental Guidelines of the City of Lincoln, the City has determined that the project is exempt from further environmental review pursuant to Section 15183 whereby projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require

additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site; and,

WHEREAS, the application includes minor amendments to the Village 1 Specific Plan; minor amendments to the Village 1 General Development Plan, and a Large-Lot Tentative Map; and a Small-Lot Tentative Subdivision Map . The project site is located in the City's Village 1 Specific Plan area, which designates the site for Village Low Density Residential (VLDR), Village Medium Density (VMDR), Village Park/Recreation (VPR), and Village Open Space/Corridors (VOS); and,

WHEREAS, the proposed project would result in an overall residential density less than that assumed in the EIR, the project's effects associated with development intensity, such as air quality, greenhouse gas emissions, noise, population, public services, utilities, and transportation, would be less than those disclosed in the EIR. The footprint of the proposed project is within the development footprint assumed in the EIR, so there would be no change with respect to impacts related to footprint; and,

WHEREAS, the type of housing product proposed for the project VLDR and VMDR is consistent with the housing product analyzed in the Final EIR, and the amount of land dedicated to development and the overall number of units are consistent with that analyzed in the EIR. Therefore, the project is substantially consistent with the Village 1 Specific Plan; and,

WHEREAS, the potential impacts of the project were fully analyzed in the Village 1 Specific Plan EIR and the mitigation measures established in that EIR shall apply to the Esplanade at Turkey Creek project. Therefore, no further review of the Esplanade at Turkey Creek project is required under CEQA; and,

WHEREAS, the City Council reviewed and considered the information contained in the above incorporated Environmental Documents, and finds that the mitigation measures identified therein, imposed on and incorporated into the Village 1 Specific Plan Project which mitigate or avoid the significant environmental effects will be imposed upon the project; and,

WHEREAS, on October 13, 2020, the City Council conducted a public hearing, waived the first reading of the Esplanade at Turkey Creek Development Agreement; and,

WHEREAS, the City Council has reviewed the Esplanade at Turkey Creek Development Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN APPROVES THE ESPLANADE AT TURKEY CREEK DEVELOPMENT AGREEMENT SUBJECT TO THE FOLLOWING FINDINGS AND CONDITIONS:

Section 1. This Resolution incorporates, and by reference makes a part of, the Esplanade at Turkey Creek Development Agreement by and between the City of Lincoln and Taylor Morrison of California, LLC, a California limited liability company, John H. and Denise E. Peck Family Trust, and DiGiordano Family Trust, relative to the Development known as the Esplanade at Turkey Creek project.

Section 2. Based on the recitals set forth in this Resolution, the evidence in the Staff Report, and subject to the approved Project Tentative Subdivision Map and Project Conditions of Approval, the City Council can make the following findings with respect to the Esplanade at Turkey Creek Development Agreement:

1. The Development Agreement is consistent with the City's General Plan, amended Village 1 Specific Plan, and amended Village 1 General Development Plan.
2. Implementation of the Development Agreement is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
3. Implementation of the Development Agreement is not likely to cause serious public health problems.
4. Implementation of the Development Agreement will not conflict with public easements for access or use of property within the proposed Project.
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values given the proposed Project is consistent with the planned character and zoning identified in the adopted specific plan.

Section 3. Based on the recitals set forth in this Resolution, the CEQA Resolution No. 2012-196, the evidence in the Staff Report, and subject to the approved Project Tentative Subdivision Map and Project Conditions of Approval, the City Council hereby approves the Esplanade at Turkey Creek Development Agreement, substantially in the form on file as Exhibit A, subject to such language and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

INTRODUCED at a regular meeting of the City Council of the City of Lincoln held on October 13, 2020.

ADOPTED THIS 27th day of October, 2020, by the following roll call vote:

AYES:	COUNCILMEMBERS:	Gilbert, Joiner, Andreatta, Silhi, Karleskint
NOES:	COUNCILMEMBERS:	
ABSENT:	COUNCILMEMBERS:	

Daniel Karleskint
Dan Karleskint, Mayor

ATTEST:
Gwen Scanlon
Gwen Scanlon, City Clerk

Exhibit A

The Esplanade at Turkey Creek Development Agreement is approved based upon the attached document.

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LINCOLN
AND
TAYLOR MORRISON OF CALIFORNIA, LLC,
JOHN H. AND DENISE E. PECK FAMILY TRUST, AND
DIGIORDANO FAMILY TRUST
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE ESPLANADE AT TURKEY CREEK PROJECT

This Development Agreement ("Agreement") is entered into this _____ day of _____, 2020, by and between the CITY OF LINCOLN, a municipal corporation ("City"), and Taylor Morrison of California, LLC, a California limited liability company, John H. and Denise E. Peck Family Trust, and DiGiordano Family Trust ("Developer"), pursuant to California Government Code Section 65864 et seq.

Recitals

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. ("Development Agreement Statute"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. City Authorization. Pursuant to Government Code Section 65865, City has adopted procedures and requirements for consideration of development agreements which are contained in Lincoln Municipal Code Chapter 18.80. This Development Agreement has been processed, considered and executed in accordance with such procedures and requirements.

C. Property Description. The subject of this Agreement is the development of those certain parcels of land consisting of approximately 281 acres located within City's limits as depicted in Exhibit "A" and more particularly described in Exhibit "B" ("Property"), attached hereto and incorporated herein by reference. **[NOTE – TO BE CONFIRMED BASED ON TOTAL ACREAGE IN ASSEMBELED PROJECT; NEED TO HAVE CURRENT LEGAL DESCRIPTION**]

D. Developer's Interest. Developer represents that it has a fee title interest in the Property, and that all other persons holding legal or equitable interests in the Property agree to and shall be bound by this Agreement. Portions of the Property were subject to four (4) prior Development Agreements described as follows: (1) that certain Development Agreement by and between the City and Elizabeth Layn and Jeannette W. Duff relative to

the Development Known as Walkup Ranch Project dated as of February 13, 2018 and recorded in the Placer County Official Records on April 5, 2018 as Document Number DOC-2018-0023341-00 against a portion of the Property as described therein; (2) that certain Development Agreement by and between the City and Leavell Ranch Partnership relative to the Development Known as Epick Three Project dated as of March 6, 2018 and recorded in the Placer County Official Records on March 29, 2018 as Document Number DOC-2018-0021166-00 against a portion of the Property as described therein; (3) that certain Development Agreement by and between the City and Horizon Edge Partners, LLC relative to the Development Known as Enclave at Horizon Edge Project dated as of March 10, 2018 and recorded in the Placer County Official Records on March 29, 2018 as Document Number DOC-2018-0021164-00 against a portion of the Property as described therein; and (4) that certain Development Agreement by and between the City and John Peck and Pete Di Giordano relative to the Development Known as La Bella Rosa Project dated as of April 4, 2018 and recorded in the Placer County Official Records on March 29, 2018 as Document Number DOC-2018-0029327-00 against a portion of the Property as described therein. In light of these four projects having come under common ownership and being developed as one integrated project, Developer and the City seek to enter into this Development Agreement for the purposes of establishing one common set of conditions and obligations related to the Project, and Developer and the City intend for the prior Development Agreements described above to be superseded and replaced in their entirety by this Development Agreement.

E. Project Description. Developer intends to develop the Property with residential uses, parks, and open space uses as depicted in Exhibit "C" attached hereto and in accordance with the General Development Plan attached hereto as Exhibit "D".

F. Project Background and Approvals.

Environmental Review. In compliance with the California Environmental Quality Act ("CEQA"), on November 27th, 2012, by Resolution No. 2012-195, City certified the Village 1 Specific Plan Environmental Impact Report ("EIR") and adopted a Mitigation Monitoring Program ("MMP"). The City Council finds the Project is consistent with the Specific Plan and that no further environmental documents relating to this Agreement are necessary because there are no substantial changes in the Project or in the circumstances under which the Project is to be undertaken, no new information shows that the Project will have any new or substantially more severe impacts or that feasible mitigation measures are available to substantially reduce one or more of the Project's impacts. Mitigation measures were identified in the EIR and the MMP and are incorporated in the Project and in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

1. Approved Land Use Entitlements. For the Property, City has approved the following land use entitlements in furtherance of the Project ("Entitlements"):

(a) A General Plan Amendment for the Property to amend the Land Use Diagram in City's General Plan as approved by Resolution No. 2013-148, dated July 9th, 2013;

(b) A Specific Plan for the Village 1 area adopted by Resolution No. 2012-196 dated November 27th, 2012 ("Specific Plan") as modified by a Specific Plan Amendment adopted by Resolution No. 2020-____ dated _____, 2020;

(c) A General Development Plan for development of the Property adopted by Ordinance No. 873B, dated December 11th, 2012 ("General Development Plan") as modified by a General Development Permit Amendment adopted by Ordinance No. _____, dated _____, 2020;

(d) The following subdivision maps:

(1) A Large Lot Tentative Parcel and Tentative Subdivision Map for a portion of the Property adopted by Resolution No. 2015-227, dated October 27, 2015 (the "Walkup Ranch Map");

(2) A Large Lot Tentative Parcel and Tentative Subdivision Map for a portion of the Property adopted by Resolution No. 2015-229, dated October 27, 2015 (the "La Bella Rosa Map");

(3) A Large Lot Tentative Parcel and Tentative Subdivision Map for a portion of the Property adopted by Resolution No. 2015-231, dated October 27, 2015 (the "Epick 3 Map");

(4) A Large Lot Tentative Parcel and Tentative Subdivision Map for a portion of the Property adopted by Resolution No. 2015-233, dated October 27, 2015 (the "Enclave Map");

(5) A Large Lot Tentative Parcel and Tentative Subdivision Map for a portion of Property adopted by Resolution No. [_____], dated [_____] (the "Tentative Map"), which had the effect of superseding the Walkup Ranch Map, the La Bella Rosa Map, the Epick 3 Map, and the Enclave Map.

(e) Ordinance No. __, dated _____, 20__, adopting this Agreement ("Adopting Ordinance").

G. Consistency with General Plan. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council has found and hereby declares this Agreement and the Entitlements are consistent with the General Plan and Specific Plan.

H. Commitment of the Parties. By entering into this Agreement and relying thereupon, Developer is obtaining a vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement. City, at the request of Developer, intends to assist Developer in development of the Project and the public improvements, which are a part of the Project, in accordance with the terms of this Agreement. Development of the Project requires a major investment by Developer in public facilities, substantial front-end investment in on-site and off-site improvements, major dedications of land for public purposes and benefit, and substantial commitment of Developer's resources to achieve the public purposes and benefits of the Project for its future residents and for City. Financing certain public facilities and dedicating land for public benefit are key elements of consideration for City's execution of this Agreement. In addition, this Agreement provides City with the assurance of implementation of the General Plan and Specific Plan as Developer proceeds with the development of the Property. City recognizes and has determined that granting vested development rights and assurances in a project of this magnitude will assist Developer in undertaking the development of the Project and thereby achieve the public purposes and benefits of the Project. Without said commitments on the part of City, Developer would not enter into this Agreement nor develop the Project.

I. Intent of this Agreement. City and Developer desire that the development of the Property pursuant to this Agreement will result in significant benefits to Developer by assurances to Developer that it will have the ability to develop the Property in accordance with the Entitlements.

J. Project Benefits. City and Developer desire that the development of the Project pursuant to this Agreement will result in significant benefits to City and Developer by providing Developer with the ability to develop the Property in accordance with this Agreement and providing assurances to City that the Property will be developed in accordance with the General Plan and Specific Plan. Consistent with this desire, City has determined that the Project presents certain public benefits and opportunities, which are advanced by City and Developer in entering into this Agreement. This Agreement will, among other things: (1) reduce uncertainties in planning and provide for the orderly development of the Project; (2) mitigate significant environmental impacts; (3) provide long-term infrastructure solutions and public services; (4) strengthen City's economic base; (5) result in the fair-share funding by Developer of critical new city-wide facilities and other infrastructure improvements required to serve the Project; and (6) provide for and generate substantial revenues for City and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth in this Agreement, the parties agree as follows:

Agreement

ARTICLE I

GENERAL PROVISIONS

1.1 Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full. Any reference to a section within this Agreement shall be inclusive of all subsections within that section. By way of example, a reference to Section 2.1 of this Agreement shall incorporate Section 2.1.1, Section 2.1.2, Section 2.1.3, and Section 2.1.4.

1.2 Binding Covenants. The provisions of this Agreement, including the Entitlements, shall constitute covenants which shall run with the Property and the benefits and burdens of this Agreement shall be binding upon and benefit the parties and their successors in interest.

1.3 Defined Terms.

"Adopting Ordinance" shall have that meaning set forth in Recital F.2(f) of this Agreement.

"Agreement" shall mean this Development Agreement and any amendments hereto.

"CEQA" shall mean the California Environmental Quality Act.

"CFD" shall mean Mello-Roos Community Facilities Districts pursuant to and as authorized by Government Code Sections 53311 et seq.

"Changes in the Law" shall have the meaning set forth in Section 2.7.

"City" shall mean the city of Lincoln, California and shall include, unless otherwise provided, City's agencies, departments, officials, employees and consultants.

"City Acknowledgments" shall have the meaning set forth in Section 3.10.2.

"Community Development Director" shall mean the Director of City's Department of Community Development or his or her designee.

"Conditions of Approval" shall refer to those conditions imposed on the Tentative Map

"Developer" shall have that meaning set forth in the preamble and shall further include, unless otherwise provided, Developer's successors, heirs, assigns, and transferees.

"Development Agreement Statute" means California Government Code Sections 65864 et seq.

"Effective Date" shall have the meaning set forth in Section 1.5.1.

"EIR" shall mean the environmental impact report described in Recital F.1 and prepared for the Specific Plan pursuant to CEQA.

"Entitlements" shall have the meaning set forth in Recital F.2 of this Agreement and shall also include, for purposes of this Agreement, any Subsequent Entitlements approved by City.

"Exactions" means all development impact fees, connection or mitigation fees, taxes, assessments and other exactions required by City to support the construction of any public facilities and improvements or the provision of public services in relation to development of the Property.

"Financing Plan Reimbursement Fee" shall have the meaning set forth in Section 4.3.

"General Development Plan" shall have the meaning set forth in Recital F.2(c) of this Agreement.

"General Plan" means City's 2050 General Plan adopted on March 25, 2008, by City Council Resolution No. 2008-048, together with all amendments thereto made prior to the Effective Date of this Agreement.

"Infrastructure Financing Plan" shall mean the Lincoln Village 1 Infrastructure and Public Facilities Financing Plan, including Volumes 1 and 2, adopted by the City Council on September 13, 2016, by Resolution No.2016-181 as updated in accordance with the terms thereof. The Infrastructure Financing Plan is incorporated into this Agreement by this reference.

"Large Lot Map" shall mean the Large Lot Tentative Parcel Map for the Project as set forth in Recital F.2(d).

"Lender" shall mean the beneficiary under a deed of trust or the mortgagee under a mortgage, or any other person or entity who has advanced funds to,

or is otherwise owed money by a debtor, where the obligation is embodied in a promissory note or other evidence of indebtedness, and where such promissory note or other evidence of indebtedness is secured by a mortgage or deed of trust encumbering the Property or a portion thereof.

"Master Plan" shall have the meaning set forth in Section 4.7.

"Mitigation Fee Act" means California Government Code Sections 66000 to 66025 (AB 1600).

"MMP" shall mean the Mitigation Monitoring Program described in Recital F.1 and adopted in conjunction with the EIR.

"Non-Potable Water" shall mean raw water or reclaimed water.

"Non-Participating Landowners" shall mean landowners who did not advance-fund the costs to prepare the Infrastructure Financing Plan, but whose properties will be benefited by public improvements constructed by or funded by the Participating Developers through participation in the Infrastructure Financing Plan.

"Open Space Preservation Areas" shall have the meaning set forth in Section 3.9.5.

"Participating Developers" shall mean Lake Development Lincoln, LLC, Elliott Homes, Inc., Epick Homes, LLC, Silverado Hidden Hills, LLC, John Peck, and Pete Di Giordano all of whom advance-funded the costs to prepare the Infrastructure Financing Plan and are eligible for reimbursement through the Financing Plan Reimbursement Fee.

"Permitted Delay" shall have the meaning set forth in Section 6.3.

"Permitted Delay Notice" shall have the meaning set forth in Section 6.3.

"PFE Fee" shall have the meaning set forth in Section 4.1.

"PFE Fee Policy" shall have the meaning set forth in Section 4.1.

"PFE Fee Program" shall have the meaning set forth in Section 4.1.

"Plan Area Fee" shall have the meaning set forth in Section 4.2.1.

"Plan Area Fee Program" shall have the meaning set forth in Section 4.2.1.

"Project" means the overall development of the Property pursuant to this Agreement and the Entitlements.

"Property" means those parcels depicted in Exhibit "A" and more particularly described in Exhibit "B" as set forth in Recital C of this Agreement.

"Public Improvements" shall have the meaning set forth in Section 3.2.

"Specific Plan" means the Village 1 Specific Plan adopted by the City Council on November 27th, 2012 as set forth in Recital F.2(b).

"Subsequent Entitlements" shall mean all additional and further land use entitlements approved for development of the Property by City following the date of City's approval of this Agreement.

"Tentative Map" means the Tentative Subdivision Map for the project as set forth in Recital F.2(e).

"Term" shall have the meaning set forth in Section 1.5.1.

"Transfer Agreement" shall have the meaning set forth in Section 1.9.1(a).

"Zoning Ordinance" shall mean City's zoning ordinance contained in Title 18 of City's Municipal Code.

1.4 Interest of Developer. Developer is the fee owner and holds a legal interest in the Property and all portions thereof and all other persons holding legal or equitable interests in the Property are to be bound by this Agreement. Notwithstanding anything set forth in this Agreement to the contrary:

(a) Subject to Section 2.8 regarding the timing of development, the Property shall be developed in accordance with this Agreement as set forth herein.

(b) Developer is not obligated by the terms of this Agreement to affirmatively act to develop all or any portion of the Property, pay any sums of money, dedicate any land (except as set forth in this Agreement), indemnify any party, or to otherwise meet or perform any obligation with respect to the Property, except and only as a condition to the development of any portion of the Property and even then only to the extent that such act or obligation is necessitated by and in proportion to Developer's development of that portion or phase of the Property.

Any development of a portion of the Property shall be subject to the terms of this Agreement, and all the rights, duties, and obligations of both parties to this Agreement shall pertain to such Property.

Developer and the City hereby acknowledged and agree that (1) that certain Development Agreement by and between the City and Elizabeth Layn and Jeannette W.

Duff relative to the Development Known as Walkup Ranch Project dated as of February 13, 2018 and recorded in the Placer County Official Records on April 5, 2018 as Document Number DOC-2018-0023341-00 against a portion of the Property as described therein; (2) that certain Development Agreement by and between the City and Leavell Ranch Partnership relative to the Development Known as Epick Three Project dated as of March 6, 2018 and recorded in the Placer County Official Records on March 29, 2018 as Document Number DOC-2018-0021166-00 against a portion of the Property as described therein; (3) that certain Development Agreement by and between the City and Horizon Edge Partners, LLC relative to the Development Known as Enclave at Horizon Edge Project dated as of March 10, 2018 and recorded in the Placer County Official Records on March 29, 2018 as Document Number DOC-2018-0021164-00 against a portion of the Property as described therein; and (4) that certain Development Agreement by and between the City and John Peck and Pete Di Giordano relative to the Development Known as La Bella Rosa Project dated as of April 4, 2018 and recorded in the Placer County Official Records on March 29, 2018 as Document Number DOC-2018-0029327-00 against a portion of the Property as described therein are hereby replaced and superseded in full by this Agreement.

1.5 Term. The term of this Agreement shall commence upon _____ ("Effective Date") and shall extend for a period of twenty (20) years from the Effective Date ("Term").

1.6 Termination. This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the Term;

(b) Completion of the Project in accordance with the Entitlements and City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Entitlements and this Agreement;

(c) For any specific residential dwelling or other structure within the Project, this Agreement shall automatically be terminated upon the issuance by City of a certificate of occupancy for such dwelling or other structure;

(d) Entry of final judgment (with no further right of appeal) or issuance of a final order (with no further right of appeal) directing City to set aside or withdraw City's approval of this Agreement or any material part of the Entitlements; or

(e) The effective date of a termination as provided in Article 6 of this Agreement.

1.6.1 Notice of Termination. City shall, upon written request made by Developer to City's Community Development Director, determine if the Agreement has terminated with respect to any parcel or lot at the Property, and shall not unreasonably withhold, condition, or delay termination as to that lot or parcel. Upon termination of this

Agreement as to any lot or parcel, City shall upon Developer's request record a notice of termination that the Agreement has been terminated as to that parcel or lot at the Property. The aforesaid notice may specify, and Developer agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement. Termination of this Agreement as to any parcel or lot at the Property shall not affect Developer's rights or obligations under any of the Entitlements and Subsequent Entitlements, including but not limited to, the General Plan, Specific Plan, Zoning Ordinance and all other City policies, regulations and ordinances applicable to the Project or the Property, including such rights set forth in Article 4, including but not limited to the right to secure PFE Fee credits or Plan Area Fee credits and any and all reimbursements due to Developer from Non-Participating Landowners. City may charge a reasonable fee for the preparation and recordation of any notice(s) of termination requested by Developer.

1.7 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part by mutual written consent of the parties hereto or their successors in interest, and as follows:

(a) Minor Amendments. Any Amendment to this Agreement, or the Infrastructure Financing Plan, which does not relate to (i) the Term of this Agreement, (ii) permitted uses of the Project, (iii) density or intensity of use, (iv) provisions for the reservation or dedication of land, or (v) monetary contributions by Developer other than cost updates to the Infrastructure Financing Plan, and which can be processed under CEQA as exempt from CEQA, or with the preparation of a Negative Declaration, shall be a minor amendment and shall not require a noticed public hearing prior to the parties executing an amendment to this Agreement as allowed by City Municipal Code Section 18.84.100.c., except as otherwise required by state law, provided, however, that City shall retain discretion to hold a public hearing if it so chooses.

(b) Substantial Amendments. Except as otherwise described in Section 1.7(a), amendments to this Agreement shall require notice and a public hearing pursuant to California Government Code Section 65868.

(c) Parties Required to Amend. Where a portion of Developer's rights or obligations have been transferred, assigned, and assumed in accordance with this Agreement, the signature of the person or entity to whom such rights or obligations have been assigned shall not be required to amend this Agreement unless such amendment would materially alter the rights or obligations of such assignee, provided thirty (30) days' prior written notice of any amendment is provided to such person or entity by the amending parties. In no event shall the signature or consent of any non-assuming assignee be required to amend this Agreement.

1.7.1 Effect of Amendment. Any amendment to this Agreement shall be operative only as to those specific portions of this Agreement expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption. No amendment to this Agreement shall be effective unless contained in a writing executed by both City and Developer, or their successors in interest.

1.8 Project Approval Amendments. To the extent permitted by state and federal law, any Entitlement may, from time to time, be amended or modified in the following manner:

1.8.1 Minor Amendments. Amendments to the Specific Plan shall comply with Section 7.6.2 thereof. Amendments to the General Development Plan shall comply with Section 4.4 thereof. For amendments or modifications to any Entitlement or Subsequent Entitlement (other than this Agreement), the Specific Plan, or the General Development Plan, Developer may submit a written request for amendment or modification to the Community Development Director. The Community Development Director or his/her designee shall determine whether the requested amendment or modification is a minor amendment or modification that may be approved by the Community Development Director without notice or public hearing. For purposes of this section only and by way of example, minor modifications or amendments include changes in pedestrian paths; amendments to lot patterns and street alignments which will not have a substantial or material impact on the circulation system as described for each village area in the Specific Plan; minor changes in landscaping for any landscaping shown on a final map or landscape plan; variations in the location of lots or home sites that do not substantially alter the design concepts of the Project; reductions in the number of lots or home sites that do not substantially alter the design concepts of the Project; and variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project. Notwithstanding the foregoing, City retains the exclusive right to make the determination, in its own discretion, as to whether a modification or amendment constitutes a minor modification or amendment or requires an amendment in accordance with Section 1.8.2 below. The Community Development Director and/or the City Manager shall retain the right and discretion to present any amendment or modification to City's Planning Commission and/or City Council for approval at a noticed public hearing and/or a public meeting of those legislative bodies.

1.8.2 Substantial Amendments. Any request of Developer for an amendment or modification to an Entitlement or Subsequent Entitlement (other than this Agreement) which is determined by City not to be a minor amendment as set forth in Section 1.8.1 above shall be subject to the provisions of review, consideration and action pursuant to the Specific Plan, General Development Plan, and other applicable law.

1.8.3 Vesting of Entitlements Made By Amendments. In the event of any change to any Entitlement or Subsequent Entitlement made pursuant to Sections 1.8.1 or 1.8.2 above, the change to such Entitlement or Subsequent Entitlement shall be vested for the then remaining duration of the Term of this Agreement, or the period of time allowed by applicable statute, whichever is longer.

1.8.4 Subsequent Approvals; Application of Agreement. City shall accept for processing and review any and all applications submitted by Developer for land use

entitlements necessary or convenient for the exercise of Developer's rights under the Entitlements for the use and development of the Property.

1.9 Assignment of Interests, Rights and Obligations. Developer may assign all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property or any portion thereof in accordance with the provisions of this Article.

1.9.1 Transfer Agreements.

(a) In connection with the transfer or assignment by Developer of all or any portion of the Property, Developer and the transferee shall enter into a written agreement in the form attached hereto as Exhibit "E" ("Transfer Agreement") regarding the respective interests, rights and obligations of Developer and the transferee in and under this Agreement. Such Transfer Agreement shall: (i) release Developer from obligations under this Agreement, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations; (ii) transfer to the transferee rights under this Agreement; and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment. Transfer Agreement(s) must be approved by the City Manager, provided the City Manager's approval shall not be withheld or delayed unless City demonstrates, based on substantial evidence, the proposed transferee is unable to fulfill its obligations under this Agreement. Transfer Agreement(s) shall be conclusively deemed approved by the City Manager if Developer does not receive a written response containing the City Manager's approval or disapproval within ten (10) days of receipt of Developer's written request for approval. Upon recordation of any Transfer Agreement in the Official Records of Placer County, Developer shall be automatically released from those obligations assumed by the transferee therein. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default of any transferee.

1.9.2 Non-Assuming Transferees. Except as otherwise elected by Developer, upon the sale of any parcel for which all public improvements required for the development thereon have been completed (or for which public improvements adequate financial security for the completion thereof has been posted by Developer and accepted by City) and any financing districts required to include such parcel hereunder have been formed, then the burdens, obligations and duties (but not the rights) of Developer under this Agreement as to such conveyed parcel shall terminate with respect to such transferee. In such event, a Transfer Agreement shall not be required in connection with the conveyance of such parcel and the assignment of the rights, without the obligations, under this Agreement. Nothing in this Section shall exempt any property transferred from payment of applicable fees and assessments or compliance with applicable conditions of approval.

1.10 Notices. All notices required or provided for under this Agreement shall be in writing and shall be sent by: (i) U.S. mail first class postage prepaid with return receipt

requested; (ii) by overnight courier or hand delivery; or (iii) by facsimile with original forwarded by U.S. Mail, addressed as follows, with email copies provided to the email addresses below:

Notice to City:	City of Lincoln Attention: City Manager 600 6th Street Lincoln, CA 95648 Telephone: 916.434.2490 Facsimile: 916.645.8903 Email: Jennifer.Hanson@lincolnca.gov
Notice to Developer:	Taylor Morrison of California, LLC Division President Sacramento Division 81 Blue Ravine Road, Suite 220 Folsom, CA 95630 Telephone: 916.932.0970 Email: abazzocco@taylormorrison.com
With additional Notice to:	John H Peck, Jr. and Denise E. Peck 1555 Misty Wood Drive Roseville, Ca 95747 Telephone: 916.412-5745 Email: johnp@peckheatingandair.com Peter Di Giordano c/o D&D Cabinets 1478 Sky Harbor Drive Olivehurst, CA 95961 Telephone: 916.719-4781 Email: annamariadigiordano@yahoo.com

Notice shall be effective when the postal authorities indicate the mailing was delivered, the date delivered in person, or upon receipt of the entire document by the receiving party's fax machine, as evidenced by the sending party's facsimile confirmation report.

1.11 Development Agreement Controls. In the event of any inconsistency between the terms and provisions of this Agreement, the Specific Plan, the General Development Plan, the Large Lot Map conditions of approval, and/or the conditions of approval for any tentative subdivision map for the Project, the terms and provisions of this Agreement shall control. Nothing in this Agreement shall limit the obligations of the Infrastructure Financing Plan.

ARTICLE 2

DEVELOPMENT OF THE PROPERTY

2.1 Vested Rights. Except as set forth in Sections 2.4, 2.5, 2.6, and 2.7, Developer shall have the vested right to proceed with development of the Property in accordance with the Entitlements, and to have Subsequent Entitlements considered for approval or denial, based upon the terms, standards and requirements set forth in the Entitlements. It is the intent of City and Developer that Developer's vested rights shall include: (i) the permitted land uses, density and intensity of use, timing or phasing of development, zoning, provisions for reservation or dedication of land for public purposes, the maximum height and size of proposed buildings, the location and size of public improvements, and the design, improvement, and construction standards and specifications applicable to development of the Property all as set forth in the Entitlements and in this Agreement; and (ii) all other terms and conditions of the development of the Project as set forth in the Entitlements and in this Agreement. Any amendments to this Agreement will affect only those sections amended and shall not affect any other term of this Agreement.

2.2 Extension of Entitlements and Subsequent Entitlements. Pursuant to Government Code Section 66452.6, all vesting tentative subdivision maps, vesting tentative parcel maps, parcel maps, tentative subdivision maps, planned unit development permits, specific development permits, special permits, general development plans or any other maps, zonings, re-zonings or land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved by City for the Property subject to this Agreement shall be valid for a minimum term equal to the Term of this Agreement, or for a period of forty-eight (48) months, whichever is longer, but in no event for a period shorter than the maximum period of time permitted by the California Subdivision Map Act or Government Code for such land use entitlements.

2.3 Rules, Regulations and Policies. Except as set forth in Sections 2.5, 2.6 2.7 and 2.8, below, the rules, regulations, policies, ordinances, and resolutions of City governing the development of the Project, including permitted uses of the Property, density, and design, improvement, and construction standards and specifications, shall be those in force on the Effective Date of the Agreement and as contained in the Entitlements and this Agreement. In the event of any conflict between the provisions of this Agreement and any ordinance, resolution, rule, regulation or policy of City, the provisions of this Agreement shall control.

2.4 Application of Subsequently Enacted or Modified Rules, Regulations and Ordinances.

(a) City may, during the Term of this Agreement, apply such City-enacted or modified rules, regulations, ordinances, laws, and official policies including improvement and construction standards and specifications and plans adopted or modified after the date of this Agreement which are not inconsistent with or in conflict with the Entitlements or this Agreement, are applied uniformly to all similar properties, or otherwise

do not prevent development of the Project in accordance with the Entitlements and the terms of this Agreement.

(b) Should an ordinance or resolution or other measure be enacted, whether by action of the City Council, by initiative, referendum or otherwise which is in conflict with or reduces Developer's vested development rights as provided in the Entitlements and/or this Agreement, City agrees that such ordinance, resolution or other measure shall not apply to the Project, or any development thereof, or construction related thereto, or construction of improvements necessary therefore.

(c) Should an ordinance or resolution or other measure be enacted, whether by action of the City Council, by initiative, referendum or otherwise which relates to the rate, timing or sequencing of the development or construction of the Project, including, but not limited to, development no-growth or slow growth moratoria, to the extent any such measure is inconsistent with or conflicts with the Entitlements and/or this Agreement, City agrees that such ordinance, resolution or other measure shall not apply to the Project, or any development thereof, or construction related thereto, or construction of improvements necessary therefore.

(d) Should any initiative, referendum, or other measure be enacted, and any failure to apply such measure to the Property by City is legally challenged, Developer agrees to fully defend City against such legal challenge with legal counsel selected by Developer and approved by City, which approval shall not to be unreasonably withheld, including providing all necessary legal services, bearing all reasonable costs therefore, and otherwise holding City harmless from all costs and expenses reasonably incurred by City in connection with such legal challenge and litigation, but only if City's failure to apply any such measure to the Property was at the written request of Developer. In addition, if Developer is not named as a party in any such litigation, City agrees that it will support Developer's efforts to intervene in any such litigation if Developer should choose to do so.

(e) Without limiting the terms of Section 2.1, by virtue of this Agreement, Developer is being given the vested right to develop the Project without having to comply with the terms and provisions of any future City-enacted inclusionary housing ordinance, affordable housing ordinance, or similar ordinance that would require Developer to provide a minimum number of below-market rate housing units at the Property or pay a fee in-lieu of providing below-market rate housing units at the Property.

2.5 Uniform Building Code and Improvement Standards. Except as otherwise specifically set forth in this Agreement, and provided they have been adopted by City and are in effect on a city-wide basis, City may apply to the Property, at any time during the Term of this Agreement, the then current City Improvement Standards and Design Criteria, California Uniform Building Code ("UBC"), and any other uniform construction codes as approved by City.

2.6 State and Federal Law. As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of

changes in law, permits, regulations, plans or policies, design criteria and improvement standards to the extent that such changes are specifically mandated and required by changes in state or federal laws, regulations or permits ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement by either party hereto, such provisions of this Agreement shall be modified or suspended or performance delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall meet and confer in good faith to determine whether the Changes in the Law apply to the Property and whether an amendment to this Agreement is necessary in light of the Changes in the Law. City and Developer shall take such action as may be necessary to meet the minimum requirements of such state or federal law, rule or regulation in a manner which is consistent with the original intent and rights and obligations originally placed on each party by this Agreement. In the event City and Developer, after having engaged in good faith negotiations, are unable to agree on any amendment, they shall consider whether suspension of the Term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event City and Developer, after having engaged in good faith negotiations are unable to agree on the suspension issues, then Developer shall have the right to terminate this Agreement by giving City sixty (60) days' written notice of termination. Developer or City shall have the right to institute litigation relating to the Changes in the Law, and raise any issues regarding the validity of the Changes in the Law. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that City would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the Changes in the Law, City shall not be required to undertake such action until the litigation is resolved, or the Changes in the Law are otherwise determined invalid, inapplicable, or are repealed. In the event that such judgment invalidates the Changes in the Law or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its Term shall be extended by the amount of time between the effective date of the Changes in the Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the Changes in the Law, then the provisions of this Section shall apply.

2.7 Health and Safety Measures. Notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be construed to limit City's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or protect against real, actual, and dangerous threats to the health and safety of City residents, in which event any rule, regulation or policy imposed on the development of the Property shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against any such real, actual and dangerous threats to the health and safety of City residents.

2.8 Development Timing. This Agreement does not require Developer to proceed with development of the Property or to initiate or complete development of any phase of the development of the Property or any portion thereof within any period of time set by City. City acknowledges the timing of development of the Property shall be in

Developer's sole and absolute discretion. No future modification of City's municipal code or any ordinance or regulation which limits the rate of development over time shall be applicable to the Property.

2.9 Phasing. Developer may choose the size of and file phased small lot final maps for the Project. However, if Developer files a small lot final map consisting of less than ten (10) acres, Developer shall be required to pay the Plan Area Fee for a minimum of ten (10) acres until such time as Developer has met its obligations under the Plan Area Fee Program.

ARTICLE 3

DEVELOPER OBLIGATIONS

3.1 Fee Obligations. Subject to certain fee credits and/or fee reimbursements as set forth in Article 4, Developer shall pay only those Exactions listed in Exhibit "H" hereto. Except as otherwise provided herein, any and all required payments of Exactions shall be made at the time and in the amount specified by the applicable City programs or ordinances. Nothing in this Agreement shall constitute a waiver of Developer's right to challenge the legality of the amount of, allocation of, or any future increases in, the Exactions applied to the Property.

3.2 Public Improvements. Developer agrees, subject to the requirements and limitations of the Mitigation Fee Act as well as certain fee credits and/or fee reimbursements as set forth in Article 4, unless already constructed, to construct and/or finance those public infrastructure improvements necessary to serve the Project as set forth in the Infrastructure Financing Plan ("Public Improvements"). Each of the Public Improvements shall be designed and constructed to City's specifications in effect at the time plans are submitted to City for approval, except as may be otherwise provided in Sections 2.4 and 2.5 above. Subject to Section 2.8 regarding the timing of development, the timing for completion of the Public Improvements shall be as set forth in the Infrastructure Financing Plan.

3.3 Dry Utilities. Developer shall construct dry utilities serving the Project as set forth in the Infrastructure Financing Plan and the applicable Conditions of Approval.

3.4 Roadways. Developer shall construct roadway improvements as set forth in the Infrastructure Financing Plan and the applicable Conditions of Approval.

3.5 Wastewater. Developer shall construct wastewater improvements as set forth in the Infrastructure Financing Plan and the applicable Conditions of Approval.

3.6 Water.

3.6.1 Water Facilities. Developer shall construct water facilities improvements as set forth in the Infrastructure Financing Plan and the applicable Conditions of Approval.

3.6.2 Water Supply. City acknowledges and agrees that Developer's payment of the applicable City water fees for the Project will provide City with the means to furnish an adequate supply of water for the needs of the Project.

3.6.3 Groundwater. City shall continue to utilize and expand its existing groundwater system to reduce peaks and as an emergency back-up supplement to its surface water supply. In furtherance of City's ability to develop its groundwater resources, Developer hereby agrees to dedicate to City all rights to the groundwater underlying the Property, provided such dedication of underlying groundwater rights is required by City of other major developers or subdividers in City. The dedication of such groundwater rights shall take place prior to approval of the first final large lot map for the Project and shall be in a form acceptable to the City Attorney.

3.6.4 Water Supply Verification. City acknowledges and agrees that Developer has complied with the terms of California Government Code Section 66473.7 for the Project.

3.7 RESERVED

3.8 Drainage. Developer shall construct drainage improvements as set forth in the applicable Conditions of Approval.

3.9 Parks and Open Space.

3.9.1 Park Dedication and Fee Requirements. City requires Developer to provide neighborhood parks and regional parks for recreational activities at the Property based upon the ratios and population factors per land density set forth in the Specific Plan.

3.9.2 Satisfaction of Regional Park Obligations. City hereby agrees and acknowledges that Developer's payment of the PFE Fee regional park fee component and Plan Area Fee regional park land acquisition fee component shall fully satisfy Developer's regional park obligations.

3.9.3 Satisfaction of Neighborhood Park Obligations.

Developer's neighborhood park obligations shall be satisfied by Developer's dedication of improved parkland pursuant to Section 3.9.4, the precise location of which will be determined prior to Developer's submittal of small lot final maps

to City. As a result of Developer's dedication of improved parkland pursuant to Section 3.9.4, Developer shall not be required to pay the neighborhood park development fee component or the neighborhood park land acquisition fee component of the Plan Area Fee, notwithstanding the actual costs incurred by Developer to provide the improved parkland, so long as the improvements installed by Developer are constructed according to plans and specifications approved by City pursuant to Section 3.9.4 below. In the event that the Developer's neighborhood park obligations are not fully satisfied by dedication of improved parks, Developer shall satisfy its remaining neighborhood park obligations through the payment of the appropriate fees as set forth in the Infrastructure Financing Plan.

3.9.4 Neighborhood Parks; Cost and Terms. Developer shall construct neighborhood park land improvements in accordance with the following provisions:

a. The construction of the neighborhood parks shall be consistent with the recreation standards in the parks master plan as may be adopted by City, and with the Tentative Map conditions of approval and the Infrastructure Financing Plan.

b. Developer shall commence design of the neighborhood park labeled "Lot P" on the Tentative Map no later than issuance of the 200th building permit for the Project. Following approval of the neighborhood park design for "Lot P" by City, Developer shall be obligated to begin construction thereof no later than issuance of the 400th building permit for the Project.

c. RESERVED

d. Following the commencement of construction of any neighborhood park pursuant to subsection (b) above, Developer shall exert commercially reasonable efforts to complete the construction of said neighborhood park within one (1) year, but may request an extension of such time from City, which shall not be denied without reasonable cause.

3.9.5 Open Space Preservation Areas. City, and or local, State, or Federal regulatory agencies, including but not limited to the United States Army Corps of Engineers may require Developer to preserve open space and/or enhance wildlife habitat and wetland mitigation areas in designated open space areas at the Project ("Open Space Preservation Areas"). If the regulatory agency requires compensatory mitigation and monitoring, such as wetland creation, riparian plantings, or oak tree plantings, Developer shall complete any required monitoring and maintenance of the Open Space Preservation Areas until the end of the agency-required monitoring period. City shall accept, maintain, and monitor the Open Space Preservation Areas after the end of the agency-required monitoring period provided: (1) Developer has prepared and submitted a baseline conditions report that verifies the habitat has been established to the agency's or agencies' satisfaction; and (2) City and/or Developer has established a financing mechanism for ongoing maintenance of the Open Space Preservation Areas consistent with Section 3.10.2.

If compensatory mitigation and monitoring are not required, Developer may transfer ownership of the Open Space Preservation Area prior to recordation of a final map provided City has approved a baseline conditions report and Developer has established an adequate funding mechanism for the ongoing maintenance of the Open Space Preservation Area. Open Space Preservation Areas shall be consistent with City's current overall open space management plan, provided nothing herein shall require Developer to violate the terms and conditions of its permit(s) applicable to said Open Space Preservation Areas. Additionally, City hereby agrees that as part of its negotiations with the United States Army Corps of Engineers regarding its overall open space management plan, City will request a provision allowing it to accept Open Space Preservation Areas established under existing permits, and to maintain said Open Space Preservation Areas pursuant to the terms and conditions of its overall open space management plan.

3.9.6 Trails. Developer shall construct trail facilities as set forth in Conditions of Approval.

3.10 Infrastructure, Maintenance and Public Services Finance.

3.10.1 Infrastructure Finance. As further set forth in the Conditions of Approval and Infrastructure Financing Plan, prior to approval of a small lot final map, upon request by Developer, City and Developer will cooperate to establish one or more CFDs to fund the Public Improvements. Developer may also utilize the Statewide Community Infrastructure Program ("SCIP"), Bond Opportunity for Land Development ("BOLD") , to fund the Public Improvements, or, upon request of Developer, a similar program to be approved by the City, which approval shall not be unreasonably withheld. To the extent the costs of the Public Improvements exceed the proceeds from CFDs or other financing mechanism(s), Developer shall be solely responsible for such shortfall.

a. Infrastructure CFDs. Except as may otherwise be agreed to by Developer and City during the formation of a CFD for the Property, the following specific provisions shall be included within the applicable terms and conditions of any CFD related to the Property. The CFD shall be consistent with any City adopted finance policies relating to such financing. The term of the special tax to be levied by any CFD against the Property shall be sufficient to support multiple bond sales not to exceed an authorized amount appropriate for the Project, as determined by City and Developer. Available CFD bond proceeds and/or special tax proceeds may be used to fund, in addition to acquisition and/or construction of the Public Improvements, reimbursements and/or payment of development impact fees, and City PFE Fee Program projects outside of the Specific Plan area provided the amount of CFD proceeds used to fund such projects shall not exceed the amount of PFE fee credits for which Developer would otherwise be eligible for such projects. When the CFDs are created, City will include provisions that permit the acquisition or construction cost of the Public Improvements to be paid from Pay-As-You-Go Levies in amounts and for time periods to be agreed to in an acquisition agreement entered into in connection with the issuance of bonds. Nothing in this Section shall be construed to limit or change Developer's ability to receive fee credits and/or fee reimbursements for infrastructure improvements in accordance with City policies in effect

as of the Effective Date, including but not limited to improvements financed by a CFD or other financing mechanism.

b. Alternative Financing Mechanisms. Nothing herein shall be construed to limit Developer's option to construct any improvements through the use of alternative financing mechanisms, including but not limited to SCIP financing, traditional assessment districts, private financing, and other financing mechanisms as permitted by law and authorized by City.

3.10.2 Maintenance Finance. As further set forth in the Infrastructure Financing Plan, prior to approval of a small lot final map, City and Developer will complete all actions needed to form, annex into, and/or implement the funding mechanism(s), including financing districts and special taxes, to pay to maintain existing and new public improvements and facilities associated with or needed to serve the Property as identified in the Infrastructure Financing Plan. Developer shall participate in, support, and pay all reasonable costs incurred by City associated with such actions consistent with this Agreement and the Infrastructure Financing Plan. The amount of special taxes or assessments to be included in each new maintenance or services district referred to herein and identified for formation by the Infrastructure Financing Plan shall not exceed the amounts reasonably determined by City and Developer during the formation of such finance district to fund the operations, maintenance and/or services to be financed thereby. City hereby acknowledges such special taxes or assessments shall be (i) used solely to cover the revenue shortfall, if any, caused by the tax sharing agreement negotiated between the City and County of Placer in compliance with California Revenue and Tax Code Section 99(b) and California Government Code Section 56842 for the annexation of the Specific Plan area and (ii) consistent with the City's revenue and expense assumptions as set forth in the Lincoln Village 1 Fiscal Impact Analysis prepared by Economic and Planning Systems and dated April 25th, 2014 (collectively, "City Acknowledgments"). As more particularly described in Chapter 8 of Volume 1 of the Infrastructure Financing Plan, the funding mechanisms will include the following: (1) parks, trails, landscape corridors, medians, and open space maintenance; (2) street and lighting maintenance; and (3) storm drainage maintenance.

a. Interim Maintenance. Existing and new public improvements and facilities associated with or needed to serve the Project may require maintenance prior to implementation of the funding mechanism(s) described in Section 3.10.2 above. In the event such maintenance is required, and subject to the City Acknowledgments, Developer hereby agrees to provide said maintenance, or enter into an agreement with City to provide advance funding for said maintenance, until the funding mechanism(s) provide sufficient revenue to fund the required maintenance. Once the funding mechanism(s) provide sufficient revenue to fund the required maintenance, City hereby agrees Developer shall be entitled to a reimbursement from the funding mechanism(s) for all sums previously paid or advanced by Developer for the interim maintenance. The Parties agree the funding mechanism(s) shall be the sole source of funding for the reimbursement. Reimbursements will be paid after all annual maintenance costs have been funded, unless an earlier reimbursement is approved by the City Manager,

provided the City Manager shall have the right, in his or her sole discretion, to seek City Council approval of any such alternative reimbursement.

b. Interim Specific Plan Area Road Maintenance Costs. Developer and City acknowledge certain roads within the Specific Plan area may require maintenance prior to implementation of the funding mechanism(s) described in Section 3.10.2 and the costs of such maintenance will exceed revenues received by City to provide such maintenance. Said shortfall shall be funded by either a one-time fee per unit of $29.60 paid prior to building permit issuance, or an alternative financing mechanism acceptable to City. The fee of $29.60 per unit shall be adjusted each year on July 1st by the City based on cost of living or other such inflationary adjustments (including inflationary adjustments based on the Engineering News Record Cost of Construction Index, a Consumer Price Index, or other method) in accordance with City ordinances or the financing plan.

[NOTE: INSERT CURRENT 2020 FEE AMOUNT.]

c. Amounts and Effect of Alternative HOA Maintenance. If and to the extent the homeowner association for the Property elects to perform any of the maintenance obligations that would otherwise be performed by the districts described in Section 3.10.2, subject to City's satisfaction, to be exercised in its reasonable discretion, with the adequacy of the performance thereof secured by the homeowner association, the applicable maintenance financing districts shall include a mechanism whereby the amount of the special taxes or assessments to be collected thereby shall be reduced by the annual savings to be realized by the districts from the performance of such maintenance obligations by the homeowner association and the relieving of the districts from having to perform such maintenance obligations.

3.10.3 Public Services Finance. As further set forth in the Infrastructure Financing Plan, and subject to the City Acknowledgments, prior to approval of a small lot final map, City and Developer will complete all actions needed to form, annex into, and/or implement the funding mechanism(s), including financing districts and special taxes, to pay for public services associated with or needed to serve the Project. Developer shall participate in, support, and pay all reasonable costs incurred by City associated with such actions consistent with this Agreement and the Infrastructure Financing Plan.

a. Interim Wildland Fire Protection Costs. Developer and City acknowledge City may enter into a wildland fire protection agreement with the California Department of Forestry and Fire Protection to provide wildland fire protection within the Specific Plan area until such protection is no longer needed to serve the Specific Plan Area. Developer hereby agrees:

1. To reimburse City for its fair share of the cost of securing such wildland fire protection for each acre within the Property requiring wildland fire protection as determined by the wildland fire protection agreement.
2. The amount of the reimbursement owed by Developer shall be calculated by taking the total number of developable acres

within the Esplanade at Turkey Creek Project property (Developable Acreage), plus 40% of the Developable Acreage, and multiplying the sum by the CALFIRE Total Protection Rate (cost per acre) in effect for the coverage year.

3. Developer shall be required to reimburse the City for any prior years of protection coverage purchased by the City, plus interest, for the Project Property acreage plus 40% of the Project Property acreage.
4. Said reimbursement shall be delivered to City by February 1 each year following the Effective Date of this Agreement.
5. Payment of wildland fire protection costs shall be required until the Property no longer requires wildland fire protection as determined by the City of Lincoln, at which point Developer's annual payment obligation under this Section shall cease.

b. Interim Public Safety Costs. Developer and City acknowledge providing public safety service to the Project prior to the sale of homes will exceed revenues received by City to provide such services, based on the City's revenue and expense assumptions as set forth in the Lincoln Village 1 Fiscal Impact Analysis prepared by Economic and Planning Systems and dated April 25th, 2014. Said shortfall shall be funded by either a one-time fee per unit of $191.00 paid prior to building permit issuance, or an alternative financing mechanism acceptable to City. The fee of $191.00 per unit shall be adjusted each year on July 1st by the City based on cost of living or other such inflationary adjustments (including inflationary adjustments based on the Engineering News Record Cost of Construction Index, a Consumer Price Index, or other method) in accordance with City ordinances or the financing plan.

[NOTE: INSERT CURRENT 2020 FEE AMOUNT.]

3.11 Community Benefit Fee. In recognition of the benefits conveyed by this Agreement, Developer hereby agrees to pay two hundred fifty dollars ($250.00) per dwelling unit as a community benefit fee. The proceeds from said fee may be used to achieve community benefits as the City Council may deem appropriate. Payment of the community benefit fee shall be made at the time that each building permit for a dwelling unit is issued by the City. The fee of $250.00 per unit shall be adjusted each year on July 1st by the City based on cost of living or other such inflationary adjustments (including inflationary adjustments based on the Engineering News Record Cost of Construction Index, a Consumer Price Index, or other method) in accordance with City ordinances or the financing plan.

[NOTE: INSERT CURRENT 2020 FEE AMOUNT.]

3.12 Prevailing Wages. To the extent required by California's Prevailing Wage Law (Labor Code Sections 1720 et seq.), Developer shall pay prevailing wages for construction of the Public Improvements.

ARTICLE 4

CITY OBLIGATIONS

4.1 Public Facilities Element Fee Program. City is currently in the process of updating its PFE fee program to include the public facilities required to serve the 2050 General Plan ("PFE Fee Program"). Upon adoption of the PFE Fee Program and the Public Facilities Element Implementation Plan and Policies ("PFE Policy"), City shall administer said program and policy and impose a PFE Fee Program fee ("PFE Fee") on all developing parcels within the Specific Plan area.

4.1.1 PFE Fee Program Credits/Reimbursements. When Developer provides PFE facilities, Developer shall receive PFE Fee credits consistent with City's PFE Policy. If the amount of Developer's PFE Fee credits do not reach a zero balance prior to the issuance of the last building permit within the Project, City shall transfer the then existing credit balance held by Developer to any other property within the Specific Plan area owned by Developer. Upon written notice to City using the form attached hereto as Exhibit "I", Developer may at any time freely transfer and assign any unused PFE Fee credits to another developer within the Specific Plan area without obtaining City's consent. PFE Fee credits are eligible for reimbursement when funds are available pursuant to the PFE Policy.

4.1.2 Pooling of Village 1 Non-Critical PFE Fees. City hereby agrees the non-critical components of the PFE Fee, as will be further defined in the PFE Fee Program, relating to water, wastewater, transportation, and drainage, will be pooled and used to pay for improvements within the Specific Plan area. Once such improvements are completed or fully funded, City may use any remaining amount of non-critical components of the PFE Fee for other PFE Fee Program projects outside of the Specific Plan area.

4.1.3 Accounting of PFE Fee Credits/Reimbursements. Within sixty (60) days of receipt of written request by Developer, City shall provide Developer with a written accounting of Developer's current balance of PFE Fee credits and/or reimbursements, including complete documentation of the basis for such PFE Fee credits and/or reimbursements. The PFE Fee credit and reimbursement obligations will be calculated in the manner set forth in the PFE Fee Program and/or PFE Policy.

4.1.4 PFE Fee Credits/Reimbursements Agreement. Prior to Developer commencing construction of any facility included in the PFE Fee Program, City shall enter into a PFE Fee credit/reimbursement agreement with Developer in the form attached hereto as Exhibit "J".

4.1.5 Nature of PFE Fee Credits/Reimbursements. All rights to PFE Fee credits and/or reimbursements shall be personal to Developer and shall not run with the land, unless such rights are expressly designated in writing to do so.

4.2 Infrastructure Financing Plan. City hereby agrees to implement the Infrastructure Financing Plan for the Term of this Agreement such that all projects within the Specific Plan area shall be conditioned to comply with the fee and fee credit/fee reimbursement provisions included therein.

4.2.1 Plan Area Fee Program. As more particularly described in Chapter 6 of Volume 1 of the Infrastructure Financing Plan, City shall adopt and implement the Village 1 Plan Area Fee Program ("Plan Area Fee Program") to finance the costs of excluded or underfunded public facilities and fairly spread the costs thereof to all developing parcels within the Specific Plan area. The Plan Area Fee Program shall consist of four components: (1) infrastructure fee component; (2) neighborhood park development fee component; (3) neighborhood park land acquisition fee component; and (4) administration fee component (collectively, "Plan Area Fee"). The timing of collection of the Plan Area Fee shall be as set forth in Chapter 6 of Volume 1 of the Infrastructure Financing Plan. The Plan Area Fee shall be collected and held by City, and earn interest at the same rate as City receives from the Local Agency Investment Fund.

4.2.2 Plan Area Fee Program Credits/Reimbursements. As more particularly described in Chapter 6 of Volume 1 of the Infrastructure Financing Plan, Developer shall be entitled to Plan Area Fee credits and/or reimbursements from the Plan Area Fee Program for the actual costs incurred to design and/or construct eligible Public Improvements. The amount of such Plan Area Fee credits and/or reimbursements shall be adjusted every year consistent with the Plan Area Fee Program.

4.2.3 Election between Plan Area Fee Credits/Reimbursements. Except as otherwise provided in the Infrastructure Financing Plan, Developer shall be entitled to elect between Plan Area Fee credits and reimbursements, or direct an apportionment between the two, from the Plan Area Fee Program, but shall only be entitled to reimbursements when funds are available for reimbursement through any eligible funding source as identified within the Plan Area Fee Program.

4.2.4 Accounting of Plan Area Fee Credits/Reimbursements. For purposes of calculating and applying Plan Area Fee credits and/or reimbursements, City shall maintain segregated Plan Area Fee Program accounts for each component. City shall also maintain an accounting of the current balance of Plan Area Fee credits and/or reimbursements. Within sixty (60) days of receipt of written request by Developer, City shall provide Developer with a written accounting of Developer's current balance of Plan Area Fee credits and/or reimbursements, including complete documentation showing the basis for such Plan Area Fee credits and/or reimbursements. The Plan Area Fee credit and reimbursement obligations will be calculated in the manner set forth in the Plan Area Fee Program.

4.2.5 Plan Area Fee Credits/Reimbursements Agreement. Prior to Developer commencing construction of any public facility described in Article 3, City shall enter into a Plan Area Fee credit/fee reimbursement agreement with Developer in the form attached hereto as Exhibit "K".

4.2.6 Nature of Plan Area Fee Credits/Reimbursements. All rights to Plan Area Fee credits and/or reimbursements shall be personal to Developer and shall not run with the land, unless such rights are expressly designated in writing to do so.

4.3 Financing Plan Reimbursement Fee. Within ninety (90) days of City's approval of this Agreement, City shall establish a financing plan reimbursement fee, as set forth in Chapter 5 of Volume 1 of the Infrastructure Financing Plan, for purposes of reimbursing the Participating Developers who advance-funded the costs to prepare the Infrastructure Financing Plan ("Financing Plan Reimbursement Fee"). City hereby agrees to collect the Financing Plan Reimbursement Fee prior to accepting any small lot final map for property owned by a Non-Participating Landowner, and to distribute said proceeds to the Participating Developers based on their pro-rata share, on a per-acre basis, within thirty (30) days of receipt thereof.

4.4 Reimbursement From Third Party Landowners. As set forth in Chapter 4 of Volume 1 of the Infrastructure Financing Plan, City hereby agrees to collect reimbursements for developers who construct certain roadway frontage lanes (on Oak Tree Lane) from the following benefitting properties: APN 021-274-023; and APN 338-010-057. City hereby agrees to collect such reimbursements prior to (i) accepting any small lot final map for said properties, or (ii) issuance of the first building permit for said properties, whichever occurs first. City further agrees to distribute proceeds from any reimbursement(s) collected under this Section to the constructing developer within thirty (30) days of receipt thereof and to reduce the infrastructure fee component of the Plan Area Fee, as applicable.

4.5 Right-of-Way Acquisition. With respect to the acquisition of any off-site interest in real property required by Developer in order to fulfill any condition required of the Project, the Entitlements or the Subsequent Entitlements, Developer shall make a good faith effort to acquire the necessary interest by private negotiations at the fair market value of such interest. If, after such reasonable efforts, Developer has been unable to acquire such interest and provided that Developer (i) provides evidence of a good faith effort to acquire the necessary property interest to the reasonable satisfaction of City's Community Development Director and (ii) agrees to pay the cost of such acquisition, including reasonable attorneys' fees, then City shall make an offer to acquire the necessary property interest at its fair market value. If such offer has not been accepted within sixty (60) days, City agrees, to the extent permitted by law, to cooperate and assist Developer in efforts to obtain such necessary property interest. Any such acquisition by City shall be subject to City's discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest. Subject to the reservation of such discretion, City shall schedule the necessary hearings, and, if approved by City, thereafter prosecute to completion the proceedings and action to acquire the

necessary property interests by power of eminent domain. Developer shall fund all costs of the acquisition of such necessary property interests, including reasonable attorneys' fees and court costs in the event that such acquisition and/or condemnation is necessary. The cost of rights-of-way for any eligible public facility shall constitute a creditable and/or reimbursable cost and City shall take all necessary steps to include such costs in the applicable fee program. As such, any costs incurred by Developer in the acquisition of such rights-of-way shall be credited to Developer against the applicable fee obligations for the development of the Project. In accordance with Government Code Section 66462.5, City shall not postpone or refuse approval of a final map at the Property because Developer has failed to satisfy a Tentative Map condition because Developer has been unable to construct or install an offsite improvement on land not owned or controlled by Developer or City at the time the final map is filed with City for approval. If determined by City to be necessary, Developer agrees to enter into a subdivision improvement agreement with City and agrees to post any reasonably necessary security, such as a bond, in order to ensure the acquisition and construction of an offsite improvement on land not owned by Developer where the offsite improvement was a condition of approval for the Project. Notwithstanding the foregoing, in the event that City fails to acquire such off site property by negotiation or condemnation, the off-site improvements shall be conclusively deemed to be waived and Developer shall not be obligated to commence construction of the off-site improvements in accordance with Government Code Section 66462.5.

4.6 Review and Approval of Improvement Plans and Final Maps. To complete the improvement plan and final map review, City agrees it shall return first check prints to Developer no later than thirty (30) business days from the date of submittal to City. Upon receipt by City of the second submittal, City shall, provided Developer adequately responds to City's comments on the first check prints, within fifteen (15) days of City's receipt of such second submittal, review and verify that the plans submitted satisfactorily address all City comments. Within fifteen (15) business days of City's receipt of completed plans and maps deemed ready for approval, plans shall be signed by the City Engineer, and City staff shall place such maps on the next available City Council hearing agenda. If City determines it will be unable to comply with this Section, and notifies Developer of such determination, then plan check and map review tasks shall be subcontracted to an outside service provider at Developer's request and expense provided the outside service provider is on City's on-call list.

4.7 Building Permits.

a. City shall review a construction drawing master plan for each model home ("Master Plan") at the Property prior to construction of said model homes. City and Developer shall endeavor to resolve all City plan check comments within forty-five (45) days after any application for a Master Plan is deemed complete by City. Thereafter, City shall issue building permits for homes subject to that Master Plan within fourteen (14) business days of City's acceptance of a complete building permit application provided all of the following have occurred: (1) City's Design Review Board and Community Development Director have approved the Master Plan; (2) a final map has been recorded for the property; and (3) Developer has paid plan check fees. Recordation of a final map

for the Property shall not be required prior to issuance of a building permit for a model home.

b. In the event that an amendment to the UBC results in the need to change the Master Plan, construction of residential units pursuant to the Master Plan shall be allowed to continue for a period of six (6) months from the date the State of California publishes notice of a change in the UBC which triggers a corresponding need for changes to the Master Plan provided the model home is consistent with City's Design Standards.

4.8 Other Government Permits. Developer shall be responsible for applying for and obtaining approvals and permits required by other governmental agencies having jurisdiction over, or providing services to, the Project. To the extent possible, City shall cooperate with Developer in obtaining all such approvals and permits in as timely a manner as possible.

4.9 Approval of Other Development Agreements within Specific Plan Area. Subsequent to approval of this Agreement, City expects to process and approve development agreements with other owners within the Specific Plan area. City hereby acknowledges that in entering into such other development agreements within the Specific Plan area, City intends to negotiate terms consistent in all material respects to those in this Agreement with other owners. If within twenty-four (24) months from the Effective Date of this Agreement, City approves a Development Agreement within the Specific Plan area containing any term(s) more favorable than the analogous term(s) included in this Agreement, City hereby acknowledges its desire and intent to amend this Agreement within ninety (90) days of Developer's written request in order to provide Developer the full benefit of said more favorable term(s). Notwithstanding the foregoing, Developer acknowledges such an Amendment to this Agreement shall require Planning Commission and/or City Council approval at a noticed public hearing and/or a public meeting of those legislative bodies, as applicable. Failure to amend or update the Development Agreement does not constitute a breach of this agreement.

ARTICLE 5

ANNUAL REVIEW

5.1 Annual Review.

A. During the Term of this Agreement, City shall once every calendar year review the extent of good faith compliance by Developer and City with the terms of this Agreement. The cost for City's annual review of this Agreement shall be paid by Developer. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1. This review shall be conducted pursuant to Chapter 18.86 of the Lincoln Municipal Code. At least ten (10) days prior to any Planning Commission and City Council meetings held in connection with said annual review, City shall provide Developer with a

copy of the City staff report concerning Developer's compliance with the terms and provisions of this Agreement.

B. Upon not less than thirty (30) days' written notice by the Community Development Director, Developer shall provide such information as may be reasonably requested by the Community Development Director in order to ascertain Developer's compliance with this Agreement.

C. Failure by City in any given calendar year to undertake and complete its annual review of the Agreement shall constitute a finding by City that Developer is not in default in the performance of its obligations under the Agreement for that calendar year, for purposes of the Estoppel Certificate.

5.2 Estoppel Certificate. Any party to this Agreement and any Lender may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) the Agreement is in full force and effect and a binding obligation on the parties; (ii) the Agreement has not been amended or modified, either orally or in writing, and if so amended or modified, identify the amendments or modifications; and (iii) as of the date of the estoppel certificate, the requesting party (or any party specified by a Lender) is not in default in the performance of its obligations under the Agreement, or if in default to describe therein the nature of any such default and the steps or actions to be taken by the other party reasonably necessary to cure any such alleged default. The party requesting the certificate shall pay all reasonable costs borne by City to complete the certificate. A party receiving a request hereunder shall execute and return such certificate or give a written detailed response explaining why it will not do so within thirty (30) days following the receipt of such request. Each party acknowledges that such an estoppel certificate may be relied upon by third parties acting in good faith. An estoppel certificate provided by City establishing the status of this Agreement shall be in recordable form and may be recorded at the expense of the recording party.

ARTICLE 6

DEFAULT, TERMINATION AND ENFORCEMENT

6.1 Defaults. Except as provided below, any failure by any party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following the receipt of written notice of such failure from the other party, shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within thirty (30) days, the thirty-day time period will be tolled if: (a) the cure is commenced at the earliest practicable date following receipt of the notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (in no event later than thirty (30) days after the party in default's receipt of the notice), the party in default provides written notice to the non-defaulting party that the cure cannot practicably be completed within such 30-day time period; and (d) the

cure is completed at the earliest practicable date. Any notice given pursuant to the preceding two sentences shall specify the nature of any alleged failure and, where appropriate, specify the manner in which said failure may be satisfactorily cured. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of an uncured material default, may terminate this Agreement. If the default is cured, then no default shall exist and the non-defaulting party shall take no further action.

6.2 Termination. If City elects to consider terminating this Agreement due to an uncured material default of Developer, then City shall give a written notice of intent to terminate this Agreement to Developer and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. At least ten (10) days prior to said hearing, City shall provide Developer with a copy of the City staff report concerning such proposed termination of this Agreement. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearing. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter.

6.3 Force Majeure. Performance by any party of its obligations under this Agreement (other than for payment of money) shall be excused during any period of "Permitted Delay" as hereinafter defined. For purposes hereof, Permitted Delay shall include delay beyond the reasonable control of the party claiming the delay (and despite the good faith efforts of the party) including without limitation: (i) acts of God; (ii) civil commotion; (iii) riots; (iv) acts of terrorism; (v) strikes, picketing or other labor disputes; (vi) shortage of materials, energy or supplies; (vii) damage to work in progress by reason of fire, flood, earthquake or other casualties; (viii) as to Developer only, failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Project site; (ix) failure, delay or inability of the other party to act; (x) with respect to completion of the Annual Review, the failure, delay or inability of any party to provide adequate information or substantiation as reasonably required to complete the Annual Review; (xi) delay caused by governmental restrictions imposed or mandated by other governmental entities; (xii) enactment of conflicting state or federal laws or regulations; (xiii) judicial decisions or similar bases for excused performance; (xiv) litigation brought by a third party attacking the validity of this Agreement; (xv) City's inability to issue or sell bonds necessary to finance any public facilities necessary for the Project's development and use; (xvi) building moratoria, water connection moratoria or sewer connection moratoria; and (xvii) any period of declared public health emergency order relating to a pandemic or similar event. Any party claiming a Permitted Delay shall notify the other party in writing of such delay within thirty (30) days after the commencement of the delay, which notice ("Permitted Delay Notice") shall include the estimated length of the Permitted Delay. A Permitted Delay shall be deemed to occur for the time period set forth in the Permitted Delay Notice unless a party receiving the Permitted Delay Notice objects in writing within ten (10) days after receiving the Permitted Delay Notice. In the event of such objection, the parties shall meet and confer within thirty (30) days after the

date of objection with the objective of attempting to arrive at a mutually acceptable solution to the disagreement regarding the Permitted Delay. If no mutually acceptable solution can be reached any party may take action as may be permitted under Section 6.1 of this Agreement.

6.4 Legal Action. In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer, and that therefore, Developer hereby waives any and all claims for damages against City for breach of this Agreement. Developer further acknowledges that as an instrument which must be approved by ordinance, a development agreement is subject to referendum and that under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard. Nothing in this Section is intended to nor does it limit Developer's or City's rights to equitable remedies as permitted by law.

ARTICLE 7

DEFENSE AND INDEMNITY/HOLD HARMLESS

7.1 Defense and Indemnity. Developer shall indemnify, defend and hold City, its elected and appointed commissions, officers, agents, and employees harmless from and against any and all actual and alleged damages, claims, costs and liabilities, arising out of this Agreement, including, without limitation, contractual and statutory claims, and those arising out of the personal injury or death of any third party, or damage to the property of any third party, to the extent such damages, claims, costs or liabilities arose out of or in connection with the Agreement or the operations of the Project under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, provided that Developer shall not be obligated to indemnify, defend, or hold City harmless for damages, claims, costs and liabilities arising out of City's sole negligence or willful misconduct. Nothing in this Article 7 shall be construed to mean that Developer shall defend, indemnify or hold City harmless from any damages, claims, costs or liabilities arising from, or alleged to arise from, activities associated with the maintenance or repair by City or any other public agency of improvements that have been offered for dedication and accepted by City or such other public agency. City and Developer may from time to time enter into subdivision improvement agreements, as authorized by the California Subdivision Map Act, or other agreements related to the Project, which agreements may include defense and indemnity provisions different from those contained in this Article 7. In the event of any conflict between such provisions in any such subdivision improvement agreements or other Project agreements and the provisions set forth above, the provisions of such subdivision improvement agreement or other Project agreements shall prevail.

ARTICLE 8

COOPERATION IN THE EVENT OF LEGAL CHALLENGE

8.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of any of the Entitlements, Subsequent Entitlements or this Agreement, the parties shall cooperate in defending such action or proceeding to dismissal, settlement or final judgment. Each party may select its own legal counsel, and Developer shall pay City's legal defense fees and costs, including attorneys' fees, consistent with Developer's obligations under Section 7.1. In no event shall City be required to bear the fees or costs of Developer, including Developer's attorneys' fees. If requested by Developer, City agrees to support any efforts made by Developer to intervene or join as a party in any such administrative, legal or equitable proceedings if Developer was not named as a party therein. Neither Developer nor City shall settle any action or proceeding on grounds that include non-monetary relief or admissions of liability without written consent of the other party. City agrees to not settle any action based upon monetary relief without the written consent of Developer, unless City is solely liable and agrees to pay such monetary relief. In the event of an award by the court or by an arbitrator of attorneys' fees to a party challenging this Agreement or any of the Entitlements or Subsequent Entitlements, then Developer shall be liable for satisfying the payment of any such award of third party's attorneys' fees only if Developer continued to contest such litigation or legal challenge to a final judgement or other final determination, rather than settling it when City proposed to settle the matter.

8.2 Court Judgment or Order. City and Developer shall meet and endeavor, in good faith to attempt to reach agreement on any amendments needed to allow development of the Property to proceed in a reasonable manner taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified herein shall apply. If agreement is not reached, Developer shall have the right to terminate this Agreement by giving City sixty (60) days' notice of termination. In the event that amendment of this Agreement is not required, and the court's judgment or order requires City to engage in other or further proceedings, City agrees to comply with the terms or the judgment or order expeditiously.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement and the authority to bind Developer to the performance of its obligations hereunder.

9.2 Cancellation or Modification. In addition to the rights provided the parties in Article 5 of this Agreement with respect to City's Annual Review, and Sections 6.1 and 6.2 of this Agreement as to default and termination, any Party may propose cancellation or modification of this Agreement pursuant to Government Code Section 65868, but such cancellation or modification shall require the consent of any parties hereto retaining any legal interest in the Property or any portion thereof.

9.3 Consent. Where consent or approval of a Party is required or necessary under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

9.4 Interpretation of Agreement. All parties have been represented by legal counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting Party shall apply to interpretation or enforcement hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

9.5 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. City and Developer shall each comply with all applicable laws in the performance of their respective obligations under this Agreement

9.6 No Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of joint venture, partnership or other association between City and Developer, and agree that nothing in this Agreement or in any document executed in connection with it shall be construed as creating any such relationship between City and Developer.

9.7 Covenant of Good Faith and Fair Dealing. No Party shall do anything which shall have the effect of injuring the right of another Party to receive the benefits of this Agreement or do anything which would render its performance under this Agreement impossible. Each Party shall perform all acts contemplated by this Agreement to accomplish the objectives and purposes of this Agreement.

9.8 Partial Invalidity Due to Governmental Action. In the event state or federal laws or regulations enacted after the Effective Date of this Agreement, or formal action of any governmental jurisdiction other than City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended only to the minimum extent necessary to comply with such laws or regulations.

9.9 Further Actions and Instruments. The parties agree to provide reasonable assistance to the other and cooperate to carry out the intent and fulfill the provisions of this Agreement. Each of the parties shall promptly execute and deliver all documents and perform all acts as necessary to carry out the matters contemplated by this Agreement.

9.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.11 No Waiver. No delay or omission by a party in exercising any right or power accruing upon non-compliance or failure to perform by another party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver. A waiver by a party of any of the covenants or conditions to be performed by another party shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions thereof.

9.12 Severability. If any provision of this Agreement shall be adjudicated to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision, and, with the exception of such provision found invalid, void or illegal, this Agreement shall remain in full force and effect.

9.13 Recording. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the official records of the Placer County Recorder's Office and thereafter provide Developer with a copy of the recorded Agreement.

9.14 Attorneys' Fees. Should any legal action be brought by any party for breach of this Agreement or to enforce any provisions herein, the prevailing party shall be entitled to reasonable attorneys' fees, court costs and other costs as may be fixed by the Court. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary costs incurred in the litigation.

9.15 Venue. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie.

9.16 Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

9.17 Several Obligations of Owners. Notwithstanding anything to the contrary contained herein, no default in the performance of a covenant or obligation in this Agreement with respect to a particular portion of the Property shall constitute a default applicable to any other portion of the Property, and any remedy arising by reason of such default shall be applicable solely to the portion of the Property where the default has occurred. Similarly, the obligations of Developer and any successor in interest thereof shall be several and no default hereunder in performance of a covenant or obligation by any one of them shall constitute a default applicable to any other owner who is not affiliated with such defaulting owner, and any remedy arising by reason of such default shall be solely applicable to the defaulting owner and the portion of the Property owned by such defaulting owner.

ARTICLE 10

PROVISIONS RELATING TO LENDERS

10.1 Lender Rights and Obligations.

10.1.1 Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement prior to the time the Lender obtains possession of the Property to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of Developer or Developer's successors-in-interest prior to Lender's possession of the Property, but such Lender shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which it holds an interest. Nothing in this Section shall be construed to grant to a Lender rights beyond those of Developer hereunder or to limit any remedy City has hereunder in the event of default by Developer, including termination or refusal to grant subsequent additional land use entitlements with respect to the Property.

10.1.2 Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of Developer and which remain unpaid as of the date such Lender takes possession of the Property or any portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of Developer hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of Developer hereunder or entitled to enforce the provisions of this Agreement against City unless and until such Lender or successor in interest qualifies as a recognized assignee of this Agreement and makes payment of all delinquent and current City fees and charges pertaining to the Property.

10.1.3 Notice of Developer's Default Hereunder. If City receives notice from a Lender requesting a copy of any notice of default given Developer hereunder and specifying the address for notice thereof, then City shall deliver to such Lender, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of non-compliance, City shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on Developer.

10.1.4 Lender's Right to Cure. Each Lender shall have the right, but not the obligation, during the same period of time available to Developer to cure or remedy,

on behalf of Developer, the default claimed or the areas of non-compliance set forth in City's notice. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of Developer hereunder.

10.1.5 Other Notices by City. A copy of all other notices given by City to Developer pursuant to the terms of this Agreement shall also be sent to Lender at the address provided pursuant to Section 10.1.3 above.

ARTICLE 11

ENTIRE AGREEMENT AND EXHIBITS

11.1 Integration Clause and List of Exhibits. This Agreement consists of _____ (__) pages and _____ (__) Exhibits, which constitute in full the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. The following exhibits are attached to this Agreement and are hereby incorporated herein for all purposes:

Exhibit A	Overall Project Map
Exhibit B	Legal Description of Property
Exhibit C	Land Use Map
Exhibit D	Village 1 General Development Plan (by Reference)
Exhibit E	Village 1 Specific Plan (by Reference)
Exhibit F	Village 1 Infrastructure Financing Plan (by Reference)
Exhibit G	Transfer Agreement Form
Exhibit H	Exactions Applicable to Project
Exhibit I	PFE Fee Credit Transfer Form
Exhibit J	PFE Fee Credit/Reimbursement Agreement Form
Exhibit K	Plan Area Fee Credit/Fee Reimbursement Agreement Form
Exhibit L	Plan Area Fee Credit Transfer Form

IN WITNESS WHEREOF, the City of Lincoln, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Ordinance No. _____, adopted by the City Council of the City of Lincoln on the _____ day of _____, 20__, and Developer has caused this Agreement to be executed.

"City"	**"Developer"**
City of Lincoln, A Municipal Corporation	Taylor Morrison of California, LLC, A California limited liability company
By:	By:

Name: Jennifer Hanson
Title: City Manager
Date:

Name:
Title: Vice President
Date:

John H. and Denise E. Peck Family Trust

By:

Name: John H. Peck, Jr.
Title: Co-Trustee

By:

Name: Denise E. Peck
Title: Co-Trustee

Di Giordano Family Trust

By:

Name: Peter Di Giordano
Title: Trustee

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney