

STATUTORY DEVELOPMENT AGREEMENT FOR [NAME OF PROJECT]

THIS AGREEMENT is entered into this ____ day of _____, 20____, by and between **CITY OF LINCOLN CITY**, a municipal corporation and political subdivision of the State of Oregon (hereinafter referred to as "City"); and **NAME OF CORPORATION OR OTHER ENTITY**, an Oregon _____ Type of entity _____, (hereinafter referred to as "OWNER").

RECITALS

WHEREAS, Name of Corporation or Other Entity is the OWNER or contract purchaser of approximately _____ acres of real property located on _____ in Lincoln City, Oregon (the property at the time of application being inside / outside Lincoln City's corporate limits, and within City's Urban Growth Boundary); and,

WHEREAS, OWNER has submitted land use applications to list applications e.g. annexation, plan designation, rezoning, commercial master site plan or residential planned development. The proposed development, as modified through the review process, consists of the following elements, among other things:

Briefly describe commercial square footage, and/or type and number and density of residential development. Is the project a PUD? Briefly describe phases of development and elements of each discrete phase. Briefly describe amenities (e.g. recreation or open spaces).

WHEREAS, the proposed development will be known as "**Name of Project** _____" more particularly described in the application, including but not limited to the date and title of final revised application materials and exhibits, supporting documents, materials and official plans as said application and materials have been amended and refined by this Agreement, and contained in the record of Planning Department File(s): List planning Department file numbers, incorporated herein and made a part hereof by this reference; and

WHEREAS, to realize the development of Name of Project, numerous approvals and authorizations are required, including but not limited to:

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[delete / add applicable approvals]

1. Annexation;
2. Comprehensive Plan Map Change;
3. Zoning Map Change;
4. PUD Preliminary Master Plan;
5. Master Site Plan (Non-Residential);
6. PUD Final Master Plan(s) and Preliminary Plat;
7. Final Site Plan or Plans for Phased Developments, if any;
8. Final Plat(s);
9. Authorization to Construct Project Infrastructure;
10. Improvement Agreement and Financial Security;
11. Building Permit(s);
12. Tree Removal Permits, Erosion Control Permits, and the like; and
13. Building Permits

WHEREAS, efficiency, public policy, and community involvement are best promoted if the various public processes and approvals required for the [list required approvals that can be concurrently processed (e.g. annexation, comprehensive plan amendment, zone map change, and PUD Preliminary Master Plan approval or Master Site Plan with phased site plan approvals)] are “bundled” for global consideration; and,

WHEREAS, OWNER and City agree that a Development Agreement pursuant to ORS Chapter 94 and LCMC Chapter 17.96 is the best tool to bundle the required approvals to achieve consolidated review and action on the approvals necessary for the Name of Project and,

WHEREAS, a decision to enter into a Development Agreement is a negotiated legislative land use decision by the City addressing the orderly and efficient development of land within the City limits or the City’s urban growth boundary; and,

WHEREAS, on _____, 20__ , City’s Planning Commission considered the requests to _____ [list applications bundled for public process ... e.g. annexation, comprehensive plan and zoning map amendments and the like...] for Name of Project as presented in Files [List file names]; after due consideration of the entire record, the Commission recommended to the City Council that Council approve the [list applications] for the subject property, provided a Development Agreement pursuant to ORS Chapter 94 and LCMC Chapter 17.96 be entered into by the parties to bind the OWNER to the representations in the associated applications; and,

WHEREAS, on _____, 20__ , the City Council considered the *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR “Name of Project”*

above-referenced land use applications together with this Development Agreement at a public hearing held in accordance with the notice and advertising requirements of the Oregon Revised Statutes [ORS 94.513(2)] and Lincoln City Municipal Code Chapter 17.96; and,

WHEREAS, on _____, 20__, the hearing was closed and the record was closed. Council continued deliberations on the applications and development agreement until _____, 20__; and

WHEREAS, on _____, 20__ the City Council deliberated on the proposed land use applications and Development Agreement and tentatively approved the requested Agreement, and associated land use actions; Council further directed staff return with an Ordinance, Findings of Fact, Conclusions of Law and Order, and Development Agreement for final adoption by ordinance on _____, 20__; and

WHEREAS, on _____, 20__ the City Council conducted and approved the First and Second Reading of Ordinance 20__-__ declaring the approval of the Development Agreement, and associated land use approvals with an effective date of _____ 20__; and

WHEREAS, City's Council finds and determines that this Development Agreement is consistent with City's Comprehensive Plan, the applicable provisions of Lincoln City Municipal Code and applicable provisions of the Oregon Revised Statutes in effect at the time of entering into the Development Agreement pursuant to ORS 94.508 and LCMC Chapter 17.96; and

WHEREAS, City has authority to enter into this Development Agreement and to adopt a City Ordinance approving this Development Agreement pursuant to the Lincoln City Charter, State Statutes, the City's Comprehensive Plan and Municipal Code; and

WHEREAS, the adoption of the Ordinance 20__-__ approving Name of Project Development Agreement, [list associated applications and file numbers], is fully supported by evidence in the whole record, including specifically the evidence supporting the Findings of Fact, Conclusions of Law and Order, attached to Ordinance 20__-__, as Attachment 2.

NOW, THEREFORE, in consideration of the mutual promises and performance obligations of each party as set out in this Agreement, the CITY and OWNER do hereby agree as follows:

1.0 RECITALS. The above Recitals are true and correct and are incorporated herein by this reference.

2.0 INTENT AND PURPOSE.

This Development Agreement is intended to facilitate, control and manage the development of the Name of Project within the City of Lincoln City. The Ordinance approving the Development Agreement “bundles” required approvals for consolidated consideration and approval. (Note: Development Agreements need not “bundle required approvals”, but can also serve as a roadmap for future approvals. – It is more efficient to concurrently process approvals requiring Planning Commission and City Council approval) This Agreement enumerates the special terms, conditions and requirements of development, including a timetable of development, negotiated and agreed to by the City and OWNER.

3.0 LEGAL AND EQUITABLE OWNERSHIP.

Name of Corporation or Entity represents and warrants that it is the fee OWNER of the real property described and shown in **Exhibit A** attached hereto and made a part hereof by this reference. The property is generally described as located [describe location, include address if any], the property being at the time of application inside / outside Lincoln City’s limits, and inside the City’s Urban Growth Boundary. The property consists of _____ tax lot(s) _____, on assessor’s map _____ and contains approximately _____ acres.

4.0. DEFINITIONS.

4. “Applicant” means “OWNER” - [FULL LEGAL NAME OF DEVELOPER/OWNER] [must be registered with Oregon Secretary of State Corporations Division including D/B/As].

4.2 “LCMC ” means the Lincoln City Municipal Code, as amended, including but not limited to Title 16 (Subdivision) and Title 17 (Zoning).

4.3 “Agreement” means this Development Agreement, entered into between the parties pursuant to ORS 94.504 through ORS 94.528 and Chapter 17.96 LCMC.

4.4 “CITY” means the City of Lincoln City, Oregon.

4.5 “Council” means the City Council of the City of Lincoln City.

4.6 “Planning Commission” means the City of Lincoln City ’s duly appointed Planning Commission.

4.7 “Comprehensive Plan” means the City of Lincoln City ’s Comprehensive Plan, as amended.

4.8 “ORS” means the Oregon Revised Statutes, as amended.

4.9 “LCMC” means the Lincoln City Municipal Code

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4.10 "Project" means the **Name of Development** project approved by City pursuant to this Agreement, as described in the record.

4.11 "Property" means the subject real property described and shown in Exhibit A, owned by, or under contract to **OWNER**.

5.0 UNIFIED CONTROL.

The **OWNER** hereby warrants that **OWNER** has unified ownership of all real property included in the **Name of Project** Property, as set forth in **Exhibit A**. Documents certifying title are attached hereto and incorporated herein as **Exhibit B**. A covenant of Unified Control by the OWNER is attached hereto and incorporated herein as **Exhibit C**.

6.0 DEVELOPMENT PLAN USES, DENSITY, INTENSITY, BUILDING HEIGHT.

[ORS 94.504(2)(b)(c)(d)]

The OWNER agrees that the **Name of Project** [list concurrent bundled approvals, e.g. annexation, comprehensive plan and zoning change] approved concurrent with this Agreement are expressly tied to and contingent upon compliance with this Agreement, and the development of the property in accordance with the **Name of Project** [preliminary PUD plan, or non-PUD master site plan or a concept plan], a reduced copy of which is attached as **Exhibit D** and made a part hereof by this reference. All development will be undertaken and carried out in accordance with this Agreement and with the following:

6.1 The permitted development uses, maximum densities, intensities, building height, size and dimension criteria, other regulations and conditions permitted for **Name of Project** shall be those specifically set forth in this Agreement and as depicted on the approved preliminary or master plan, as well as consistent final plan(s) and plat(s) to be approved:

Density or Intensity:

Describe number of units and density and /or describe square footage and list all non-residential / commercial uses. Describe any flexibility in density or intensity of use. Terms like "not to exceed square footage" or range of unit numbers to add flexibility.

[Development density and intensity may be modified in accordance with major or minor amendment provisions of LCMC Titles 16 and Title 17. Per the Code, a major amendment includes any density/intensity increase;]

Maximum Building Height:

Not to exceed height feet (excluding features not designed for occupancy).

Size and Dimension:

The construction of all structures within the Project shall be governed by the size and dimension criteria (e.g. setbacks) set forth in or incorporated into this Agreement or as reflected on the Approved PUD Preliminary Plan or Approved Master Plan for the Project. [Described or incorporate by reference setbacks and other dimensional controls, e.g. reference The "Size and Dimension Standards for Name of Project" with dated ----, are specifically accepted as controlling the development of the project setbacks and incorporated herein by this reference]. [or] [e.g. Development of lots ## - ## must comply with the R-1-5 setbacks] [or] set a default when desired: e.g. When not specifically modified herein, the standards, regulations, limitations and restrictions of the R-1-7.5 zone shall be met.

Permitted uses of property:

The uses permitted within Name of Project, including Phases 1- # shall be those uses set forth in this Agreement as follows: list here or under Special Conditions or as indicated on the approved Preliminary Master Plan (PUD) or approved Master Site Plan (non-residential) or concept plan together with such incidental and subordinate accessory uses as enumerated in the Code or this Agreement.

Set a default when desired: e.g. When not specifically modified herein, the uses, standards, regulations, limitations and restrictions of the R-1-5 zone shall be met.

The permitted uses, density and intensity of uses, and other aspects of the development requirements on the Name of Project shall also be governed by this Agreement and the City Council Findings of Fact, Conclusions of Law and Order concerning the proposed development project, (See Attachment 2) incorporated herein by this reference.

6.2 It is agreed and understood that, unless otherwise expressly stated herein, the provisions of the Lincoln City Municipal Code, the Lincoln City Comprehensive Plan, and other adopted land development regulations were applied by the City in considering and *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"*

entering into this Development Agreement, to the extent such Code provisions, Ordinances, Comprehensive Plan and land development regulations existed on the date of this Agreement. [ORS 94.518].

(a) It is agreed and understood that the development of **Name of Project** will be undertaken and carried out in accordance with this Agreement, the Preliminary PUD Plan or Master Plan approval, or concept plan, (**Exhibit D** attached hereto and made a part hereof by this reference), as well as future approvals, including the Final Plan approval(s) (for each discrete phase), tentative and final plats, engineering authorization to construct project infrastructure (construction plan approval), and, as applicable, Improvement Agreements, Landscaping Agreements, Financial Security, and other associated City approvals and building permits, to be approved by the City, and in strict compliance with the approved timetable of development (**Exhibit E**).

(b) It is agreed and understood that the development of **Name of Project** authorized by the Preliminary PUD approval or Master Plan approval or concept plan, includes no actual physical commencement of construction but only authorizes preparation of detailed Final Master Plan(s) and Preliminary (Tentative) and Final Plat(s). Similarly, Final Plan Approval and Tentative Plat does not authorize physical commencement of development but merely authorizes and facilitates preparation of Final Construction (Engineering) Plans and Specifications for Construction Plan Approval.

(c) It is agreed and understood that the development of this Project, including but not limited to infrastructure construction, shall be accomplished in accordance with the Construction Plan Approval (without or without a final plat) to be approved by the City Engineer, in accordance with the approved final plan and, if necessary, plat and in accordance with such laws, ordinances and regulations, including engineering standards as were in effect at the time of the final site plan application is deemed complete. Construction Plan approval in conjunction with a Final Plat requires submission of an Improvement Agreement and provision of acceptable Financial Security covering all required improvements. Plant material installation and survival is also subject to bonding in accordance with Chapter 17.72.

(d) It is agreed and understood that the remaining development of this Project must be accomplished in accordance with the final plat or plats, if any, to be approved by the City in accordance with the prior approvals conditions, including the preliminary (tentative) plat and such laws, ordinances and regulations as may be in effect at the time the final plat application is deemed complete.

(e) When not specifically addressed in this Agreement, and except as provided for subdivision infrastructure construction in ORS 92.040, all permits and authorizations for the development of this project shall be in accordance with the law in effect at the time such applications are deemed complete.

6.3 The special conditions of approval and requirements adopted in the process of the approval of the PUD Preliminary Master Plan or Master Site Plan or concept plan for the property which requirements are set forth in **Exhibit F**, attached hereto and made a part hereof, shall be strictly adhered to by the OWNER.

7.0 TIMETABLE OF DEVELOPMENT, PHYSICAL COMMENCEMENT AND COMPLETION.
[ORS 94.504(4)]

The timetable for development, including commencement and completion dates, as officially approved and adopted by the City and agreed to by OWNER, are described and shown in **Exhibit E**, attached hereto and made part hereof by this reference. The timetable shall be strictly adhered to by the OWNER. Notwithstanding the above, it is expressly understood that all timetables set forth herein shall be tolled during any third party LUBA challenge or subsequent appeal of the City Council's approval of the development agreement and associated (current) applications.

8.0 VESTED RIGHTS.

8.1 Except where specified in this Agreement, the OWNER shall have the right to develop Name of Project in accordance with the provisions and requirements of this Agreement, the Preliminary Master Plan (PUD) / Master Site Plan (non-residential) approval, and such consistent future Final Master Plans (PUD), Final Site Plans (non-residential), Plats, Construction Plans, and other permits to be approved in accordance with applicable laws and regulations.

8.2 There shall at all times be strict adherence to the provisions of this Development Agreement and the approved Preliminary and Final Master Plans, Master and Final Site Preliminary and Final Plats as well as the approved construction plans and permits. Failure to strictly comply with any such provisions or requirements shall be deemed a breach of this Agreement. Any change or amendment to this Agreement, the Preliminary and Final Master Plans, Master and Final Site Plans, plats, construction plans or permits can only be made in accordance with change provisions of this Agreement (or associated approvals), or to the extent such changes (flexibility) are contemplated in the Agreement or associated land use approvals. However, if the amendment is not addressed or provided for in this Agreement or the land use approval, then such amendment must be processed in accordance with the amendment procedures for this Agreement or the *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"*

applicable approval and such amendment must be consistent with such laws and ordinances as may be in effect at the time of such Amendment. For subdivisions, ORS 92.040 is expressly understood to protect preliminary and final subdivision plat approvals from the application of new subdivision construction laws, except when amendments are proposed, in which case such amendments, *to the extent of the amendment*, must be consistent with the law in effect at the time of the proposed change.

8.3 Notwithstanding the timetable of development, and subject to unilateral amendment by the City to address public health, safety and welfare regulations, in the event that all or a portion of the **Name of Project** should be destroyed by a storm, fire or other common disaster, the OWNER, its grantees, successors or assigns and/or the Association(s), shall have the right to rebuild and/or repair so long as there is strict compliance with this Agreement, the **Preliminary and Final Master Plans (PUD), Master and Final Site Plans (non-residential)**, and as applicable, Preliminary and Final Plats, approved construction plans and permits, as the same may be formally amended from time to time.

9.0 DURATION OF AGREEMENT AND CONTINUING OBLIGATIONS.

[ORS 94.504(2)(a)]

Provided all parties have executed the Agreement, this Agreement shall be effective thirty (30) days after Ordinance adoption. Subject to compliance with the internal project timetable set forth in **Exhibit E**, the duration of the Agreement shall be for **NEGOTIABLE - the maximum fifteen (15) year period** authorized by ORS 94.504. Termination of the duration of this Agreement only terminates authorization to engage in physical construction and development of the property, **excluding vertical construction of detached single family dwelling units on individual platted lots (for residential projects only)**. To the extent this agreement incorporated the development approval, this Agreement remains in full force and effect for purposes of development approval authorization for the completed project, including all continuing maintenance obligations.

10.0. PROVISION FOR THE RESERVATION, DEDICATION OR DONATION OR SALE OF LAND FOR PUBLIC PURPOSES. [ORS 94.504(2)(e)]

Here express any donations, dedications of real property to the City or to the public, including interests in land (right of way, easements, ...)

Examples: Dedication of Easement. Reciprocal easements for access; All project infrastructure and amenities to be dedicated to the public or to the City – e.g. streets, parks, utility easements

11.0 SCHEDULE OF FEES OR CHARGES. [ORS 94.504(2)(f)]

All development authorized in the Name of Project is subject to payment of applicable System Development Charges (SDC's) and utility fees and charges at the applicable trigger times, usually building permit issuance, as specified in the SDC ordinances and other codes in effect at the time development occurs. Unless otherwise stated, this Agreement does not award or grant any SDC credits to any party nor does this Agreement freeze or otherwise fix the SDC charges for development referenced herein.

Such other fees and charges, (e.g. such as proportionate share contributions of public infrastructure) are set forth **Exhibit F** (Special Conditions) and incorporated herein by this reference.

Note: It is possible to prepay all applicable SDCs and lock in the rate – there is no reason to do this unless a facility is constrained or approaching constraint and the owner desires to reserve available capacity. Such reservation would however be subject to compliance with the approved timetable of development.

Also: SDC credit is generally granted after completion of improvements, notwithstanding this, the parties can process and agree to credit, assuming final inspection and inspection of the improvement occurs as per the timetable of development.

12.0 RESPONSIBILITY FOR INFRASTRUCTURE. [ORS 94.504(2)(h)]

Except where otherwise provided, the OWNER is fully responsible for the construction of all infrastructure development to support the **Name of Project** including public facility improvements (street/traffic improvements, water, sewer and storm water) recreation improvements, common area improvements and restoration and enhancement of natural areas, and internal project infrastructure, including utilities, and amenities, both on-site and off-site and as required by the Lincoln City Municipal Code, including City Engineering Standards, as more fully set forth in the Findings of Fact, Conclusions of Law and Order attached to the Ordinance approving the Development Agreement, incorporated herein and made a part hereof by this reference.

Subject to the Budget and other Disclaimer provisions of this Agreement, the City will construct or will participate in the construction of the following infrastructure:

- Set forth project, parties responsible, allocation of cost and expense, (e.g. City shall contribute to the cost of "oversizing" the following facilities ... explain approval subject to approval of City Engineer ...)

13.0 RESPONSIBILITY FOR COMMON AREAS.

The Lincoln City Municipal Code requires that common areas, including shared open space, be shown on the preliminary and final master plans, master and final site plan and plats. The Code further requires that the OWNER make adequate provisions for the continuing maintenance and upkeep of common areas by an association or other legal entity. The City is not required to accept dedication of common areas. **For PUDs:** The application indicates that the OWNER will establish covenants, conditions, and restrictions (CC&Rs) and an OWNER's association and that the association shall be responsible for enforcement of the CC&Rs as well as ownership and maintenance of common areas, including maintenance of landscape tracts within right-of-ways and restored open space tracts. The parties agree that the following common area maintenance provisions shall apply:

13.1 The OWNER shall create a Declaration of Covenants, Conditions and Restrictions for Logan Park, (hereinafter the "CC&R"). CC&Rs shall refer to the terms and conditions of this Development Agreement including the administrative enforcement provisions of this agreement and the ability of the City to enforce and assess the Association for the maintenance of common areas as well as the enforcement provisions of Chapter 17.84 of the Municipal Code concerning violation of any Order issued pursuant to Title 17, including site plan approval. As a part of said Covenants and Restrictions, the Association shall be established for the maintenance, operation and management of the Common Areas as defined therein. All of the above areas in the PUD are designated and shown on the Preliminary Master Plan which is attached hereto as **Exhibit "D"** and made a part hereof. All such areas shall be shown on final plans and plats. The CCR shall be part of the first application for Final Master Plan approval and shall be in conformity with the LCMC and Oregon Revised Statutes.

13.2 It shall be deemed a breach of this Agreement for any land to be conveyed by the OWNER by an instrument which does not contain the Covenants, Conditions and Restrictions or incorporate them by reference. The Association shall not be dissolved nor shall it dispose of any Common Areas, by sale or otherwise, except to an organization conceived and organized to own and maintain the Common Areas, without first receiving approval of the City. The City, as a condition precedent to the dissolution or disposal of Common Areas, may require dedication of common open areas, utilities or road rights-of-way to the public as are deemed necessary.

13.3 In the event that the Owner or Association (or any successor organization) fails at *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"*

any time to maintain the Common Areas in reasonable order and condition in accordance with the approved Plan(s), including any specific plan for restoration and maintenance of the natural areas, then the City may treat such failure as a violation of the development approval as provided in Chapter 17.84. As an alternative to the Notice of Violation Procedures, the City may serve written notice by certified mail, return receipt requested, upon such entity or upon each OWNER of real property with an interest in the common areas, which notice shall set forth the manner in which the entity or owner has failed to maintain the Common Areas in reasonable order and condition, and shall demand that such failure be remedied within thirty (30) days of the sending of such notice or, in the alternative, that such organization appear before the City Council or their designee at a specified time (at least ten (10) days but not more than thirty (30) days after the sending of such notice) either to contest the alleged failure to maintain the Common Areas or to show cause why it cannot remedy such failure within the thirty (30) day period. If such failure has not been remedied within the thirty (30) day period or such longer period as the City may allow, then the City, in order to maintain strict compliance with development authorizations, and in order to preserve the taxable values of the real property within the Projectand to prevent the Common Areas from becoming a public nuisance, shall hold a public hearing to consider the advisability of the City entering upon such Common Areas and maintaining them for a period of one (1) year. Notice of such hearing shall be sent by certified mail, return receipt requested, to the organization involved and (if such organization is dissolved) to each OWNER of real property within an interest in the common areas and shall be published in a newspaper of general circulation published in Lincoln City, Oregon. Such notice shall be sent and published at least fifteen (15) days in advance of the hearing. At such hearing the City may determine that it is or is not advisable for the City to enter upon such Common Areas, take non-exclusive possession of them and maintain them, according to City standards and any preservation areas management plan, if any, for one (1) year. Such entry, possession and maintenance when followed in accordance with the above procedures shall not be deemed a trespass, or seizure, and shall be deemed entry and possession with consent. In no event shall any such entry, possession and maintenance be construed to give to the public or the City any right to use the Common Areas.

13.4 The City may, upon public hearing with written notice given in the same manner as above, return possession and maintenance of such Common Areas to the organization, or successor organization, abandon such possession and maintenance, or continue such possession and maintenance for additional one (1) year periods.

13.5 The cost of such maintenance by the City, including the full administrative cost of the notice and hearing processes identified herein and outlined above, shall be assessed ratably against the responsible legal entity or property owners of which an interest in the common areas and shall become a charge or lien on said properties if not paid within thirty

(30) days after the receipt of a statement therefore.

14.0 ASSUMPTIONS UNDERLYING AGREEMENT AND CHANGED CIRCUMSTANCES. [ORS 94.504(6)]

The assumptions underlying this Agreement, specifically as regards the ability of the City to service the Development with regards to public facilities, are set forth herein, or are included in the Findings of Fact, Conclusions of Law and Order, attached to the Development Agreement Ordinance and incorporated into or referenced in this Agreement. In sum, this agreement is being entered into at a preliminary development order stage, or earlier, and the parties acknowledge that adequate public facility service is at this point fully feasible, but not at this point guaranteed. The conditions of approval identify areas where additional study is needed; at this point the assumption is that City has adequate public facility capacity to provide necessary services to the of Project, given the extended timetable of development.

In particular, the terms, conditions and restrictions of this Agreement as well as the law in effect at the time further development approvals are sought, determine the ability of the development to be served. Given the extended timetable of development, the possibility that intervening development will utilize existing capacity remains possible. OWNER has not "reserved" capacity via prepayment of applicable SDC fees and payment of ongoing utility base charges. In the event of changed circumstances, this Agreement provides for permitted amendment, modification or revocation. The parties will work together in good faith to find a solution to cure any inability to provide services or otherwise comply with the terms of this Agreement. This Agreement specifically contemplates development of the Name of Project as shown on the Preliminary Master Plan (PUD) / Master Site Plan in accordance with the approved timetable of development.

15.0 BUDGET AND GENERAL DISCLAIMER. [ORS 94.504(5)]

All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such moneys. City acknowledges that following the required review and approval of a Final Site Plan / Final Master Plan (PUD) for adequacy of public facilities, and approval of final civil plans (construction plan approval) and associated construction permits, the determination for issuing building permits for the construction of buildings on the Property is not an obligation that would require the expenditure of funds and, therefore, is not contingent upon future appropriations by the City.

The City and OWNER are entering into this Agreement voluntarily in the spirit of cooperation and coordination to facilitate the OWNER's desire to develop summarize project. The City desires to facilitate _____.

However, nothing in this Agreement makes the City or OWNER responsible for the contracts or commitments of the other as regards development of the Name of Project or as regards public improvements constructed by OWNER with the intention of donating such facilities to the City. The OWNER is not subject to public contracting rules and regulations and nothing herein makes OWNER subject to such public agency requirements.

OWNER is not the City's agent and City is not the OWNER's agent for purposes of any contracts or commitments made by either party. OWNER acknowledges and agrees that future final approvals, including final master plan(s), final site plans, final plat approval(s), final civil plan (construction plan approval) and construction permits and building permits are subject to compliance with all applicable approved preliminary master plans (PUD), master site plan (non-PUD), approval conditions and applicable land development regulations in effect at the time the approvals are sought, except as may be provided for infrastructure construction in ORS 92.040 or as otherwise provided in this Agreement. Except as expressly provided herein, no rights to obtain final development approvals nor any other rights to develop Name of Project have been granted or implied simply by the City's approval of this Development Agreement, including the donations, dedications and land exchange contained herein, without OWNER's full compliance with approved preliminary and final plans, approval conditions and the applicable law in effect at the time such final approvals are sought. The OWNER, or its successors and assigns, may not attempt to force, coerce or intimidate the City to approve the final master plan, final site plan, plat or other development authorizations, including building permits, without full compliance with this Agreement and incorporated approval conditions, by asserting that the City has committed to such approvals for Name of Project based on the theory of vested rights or equitable estoppel or any other legal theory based solely on the City's approval of this Agreement, or acceptance of donations, dedications. City approval of final development orders requires strict compliance with applicable approval conditions and the applicable criterion for approval.

16.0 FUTURE DISCRETIONARY APPROVALS. [ORS 94.504(3)]

The following is a list of all discretionary local development approvals (**bold**) as well as other steps and ministerial actions necessary for the development of (Name of Project):

Not all these approvals apply in every case

1. **Ordinance Declaring Council Approval of Development Agreement, as well as Findings of Fact, Conclusions of Law and Order for other approvals**
2. **Ordinance Approving Annexation and Library District Removal** (concurrent with 1 above)
3. **Ordinance Approving Comprehensive Plan Map and Zone Change**
4. **PUD Preliminary Master Plan**
5. **Master Site Plan**
6. **PUD Final Plan Approval**
7. **Preliminary Plat**
8. **Final Site Plan**
9. **Final Civil Plan (Engineering Construction Authorization) Approval for Phases _____.**
10. Approval of all other State, County, Federal Agency permits prerequisite to construction activity.
11. Conveyance and acceptance of easements / dedications.
12. Final Plat Approva(s).
13. Building Permit(s)

The terms, restrictions and requirements of these approvals are set forth in the applicable City Ordinances, including the Lincoln City Municipal Code, applicable State statutes and regulations, the preliminary approvals, including Preliminary Master Plan approval / Master Site Plan approval and this Agreement. Generally, the law in effect at the time of the application is deemed complete governs the review and approval of the decision, when not inconsistent with the Preliminary Master Plan approval / Master Site Plan approval. All local development approvals and permits identified in this Agreement shall be obtained at the sole cost of the OWNER. The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the OWNER of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions. Any matter or thing required to be done pursuant to the requirements of the ordinances of the City of Lincoln City shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in this Agreement with specific reference to the provisions so modified waived or amended. In no event shall delay in obtaining permits from other agencies be deemed as automatically requiring an extension of time to obtain required development approvals or the Development Agreement with City. Nor shall such delay be interpreted as requiring the City to approve an extension of time to any existing development order or development agreement. The following sworn statement shall be submitted prior to commencement of Physical construction:

Sworn Statement, Verification of Federal, State, and Local Permit Compliance.

Prior to any land clearing, alteration, or physical construction (other than survey work or environmental testing) on the premises by OWNER and DEVELOPER, if any, shall execute a sworn statement under penalty of perjury and false swearing, that OWNER has obtained all required Federal, State, and local authorizations, permits and approvals for the proposed development, including any proposed use, or alteration of the site, including also any off-site improvements. [More than one sworn statement may be provided, such as in the event of authorized discrete Phases or activities]. OWNER shall be solely responsible for obtaining all approvals, permits, licenses, insurance, and authorizations from the responsible Federal, State and local authorities, or other entities, necessary to use the property in the manner contemplated, including all authorizations necessary to perform land clearing, construction and improvement of property in the location and manner contemplated. This provision includes, but is not limited to, when applicable, a permit or statement from the National Marine Fisheries Service and/or Fish and Wildlife Service that OWNER's proposed use and/or development will not take or harm any endangered or threatened species as that term is defined in applicable Federal Statutes and Regulations. Further, it is expressly agreed and understood that the City of Lincoln City has no duty, responsibility or liability for requesting, obtaining, ensuring, or verifying OWNER's compliance with the applicable state and federal agency permit or approval requirements. Any permit or authorization granted by the City, including any exemption, exception, permit, approval or variance pursuant to the Lincoln City Municipal Code shall not in any way be interpreted as a waiver, modification, or grant of any state or federal agency permits or authorizations or permission to violate any state or federal law or regulation. OWNER shall be held strictly liable, and shall hold the City of Lincoln City, its officers and employees harmless for administrative, civil and criminal penalties for any violation of Federal and State statutes or regulations, including but not limited to the Clean Water Act, Endangered Species Act, treaties, regulations and rules implementing such environmental laws. Nothing herein shall be interpreted as restricting or limiting the City from bringing an enforcement action under the Lincoln City Municipal Code or applicable State of Oregon criminal statutes.

17.0 SCHEDULE/PROCEDURE FOR COMPLIANCE REVIEW. [ORS 94.504(2)(g)]

Two weeks prior to the one year anniversary date of the effective date of the Ordinance approving this Agreement, the OWNER shall submit a written report to the Planning Director for the City, for review and consideration at the next available Council meeting. The report shall address the extent and timing of compliance with the terms and conditions of this Agreement by the OWNER and the City. The submission shall be made in letter form to the City Planning Director for placement on the next available agenda. The Council shall review this report and this Agreement at the next available meeting, and if deemed

Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"

necessary, may direct that a subsequent report be submitted and considered on or about the subsequent anniversary date of this Agreement, and likewise thereafter. The Planning and Engineering Departments shall prepare a response to the OWNER's submittal. If the Council believes the report or response demonstrate failure to comply with the terms of this Development Agreement, the report and response and this Agreement shall be referred to the Planning Commission for recommendation to the Council. In accordance with the amendment/revocation procedures the Council shall determine whether the evidence demonstrates that the OWNER or City have not complied in good faith with the terms and conditions of this Development Agreement. At such time the Council shall also determine whether this Agreement should be amended, modified, revoked or terminated.

18.0 BREACH OF AGREEMENT/REMEDIES & ENFORCEMENT [ORS 94.504(2)(j)]
[ORS 94.522]

18.1 It is the intent of the parties to strictly comply with the terms and conditions of this Development Agreement to the mutual benefit of both the OWNER and the City.

18.2 In the event either party believes a material breach of the terms and conditions of this Agreement has occurred, whether by action or inaction of a party, the injured party shall serve written notice on the other of the alleged breach and the other party shall have thirty (30) days to cure or respond in writing to the injured party. In the event of a disagreement after the exchange of writings, the City Manager shall set a time, date, and place for a public meeting of the City Council. The meeting shall give the City Manager and the OWNER an opportunity to explain to the Council the facts supporting or disproving the alleged breach, and allow the parties to propose a method of fulfilling this Agreement's terms and conditions. The parties may mutually negotiate an amendment to this Agreement to cure the alleged breach, and approve such amendment, after required notice, hearing and ordinance procedures are followed. Material breach includes but is not limited to any assignment by a party for the benefit of creditors, or adjudication declaring bankruptcy, or appointment of a receiver, trustee or creditor's committee over a party. Material breach also includes failure to proceed with the development authorized in accordance with development approvals, including specifically compliance with the Timetable of Development.

18.3 Until termination or revocation of this Development Agreement, the terms of this Agreement are enforceable by any party to this Agreement. [ORS 94.522] The parties stipulate and agree that enforcement in Circuit Court is subject to the prerequisite administrative process set forth herein. Similarly, land use enforcement proceedings shall be preceded with the informal process set forth above. Thereafter, each party shall have all available remedies at law or in equity to recover damages and compel performance of the other party pursuant to this Agreement. The rights and remedies afforded under

Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"

this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance

18.4 In no event shall an injunctive order be issued which would require Lincoln City to issue a development approval or permit in violation of the Lincoln City Municipal Code, State Statutes or the terms and conditions of the Preliminary Master Plan approval or subsequent final approvals. This provision does not limit the available remedies for other forms of breach. The parties agree that the prevailing party shall be entitled to attorney fees and costs in the event of litigation, including any appeal, to enforce this Agreement.

18.5 In the event of a material breach by the OWNER, City may, but is not required as a prerequisite to legal action, pursue land use revocation or termination of this Agreement in accordance with the following administrative process:

If at the public hearing to revoke or terminate this Agreement, the City finds, based on substantial competent evidence, that the OWNER is in material breach of this Agreement, and an amendment to this Agreement to cure the breach is not appropriate, the City may revoke and terminate the Development Agreement and the development authorization for all or part of the **Name of Project**. The breach hearing shall be held concurrent with a revocation hearing held pursuant to the Lincoln City Municipal Code which may include revocation of one or more of the following: development agreement, annexation, comprehensive plan designation, rezoning, master site plan, final site plan, PUD preliminary master plan, PUD final master plan, construction plan approval, building permits. The City may initiate any necessary actions, including but not limited to a comprehensive plan and zoning amendments to cause the property to revert to its immediately pre-existing land use and zoning designation, or to rezone to the most appropriate land use and zoning designation for the property involved. Public hearings on such land use and or zoning amendments shall follow those procedures in effect for voluntary requests for land use amendments and rezonings, including any applicable hearings before the Planning Commission. The OWNER shall reimburse the County for all reasonable costs associated with breach of the Agreement, including, but not limited to, planning, engineering, and legal costs, legal notice and mailing costs, as well as any applicable application fees.

In the event of a breach of this agreement, and any termination or revocation of this Agreement or underlying development orders, no further construction authorization or building permits shall be issued to the OWNER (or to its successors in interest) based upon the development approvals found to be in violation. In the event of revocation of approvals, those portions of the property which may have buildings or structures constructed upon them in conformity with the development plans shall thenceforth be regarded as nonconforming uses with respect to the any revised land use or zoning classification.

In lieu of revoking this Agreement, development orders and the development authorization, City may agree to modify this Agreement upon a finding that such modification is in the best interests of City and the public. It is further agreed by the OWNER and the City that all costs incurred by the City for the breach and revocation proceedings shall be paid by the OWNER. However, no costs shall be assessed against the OWNER if the result of the hearing or upon review by the Court, is a finding that the City is in material breach of the Agreement, or that the OWNER is not in material breach.

If assessed costs are not paid by the OWNER, the City is empowered to place a lien against the property in the amount of the unpaid costs. This provision shall not be interpreted to provide an exclusive remedy, and either party may pursue any appropriate remedy at law or equity in the event the other party or its successors in interest fail to abide by the provisions of this Agreement. If OWNER disagrees with City's decision concerning revocation or termination of this Agreement as set forth above, then OWNER may file a legal action in a court of competent jurisdiction to review and determine the merits of City's decision and issue an appropriate judgment or decree.

18.6 In addition, any person who violates the Lincoln City Municipal Code, and development approvals, authorizations and conditions issued pursuant thereto, are subject to the enforcement provisions set out in the Lincoln City Municipal Code, as amended from time to time, including civil and criminal the penalties set forth therein. Nothing herein shall constitute an exclusive remedy and the City reserves the right to pursue any and all legal and equitable remedies in order to abate a violation of this Ordinance.

19.0 STATE AND FEDERAL LAW CHANGE. [ORS 94.504(2)(1)]

The parties agree that this Agreement is based on the proposition that the **Name of Project** will comply with City, Regional, State, and Federal policies, laws, and rules. If Regional Policy, State or Federal laws are enacted after City approval of this Agreement, which are applicable to and preclude either party's compliance with the terms or conditions *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"*

of this Agreement, or render compliance impossible, unlawful, or inconsistent with such laws or rules, or regional policies, this Agreement shall first be modified or amended, by mutual agreement, as is necessary, to comply or to sever provisions and give effect to the remainder of the Agreement. If such modification or amendment cannot remedy the inconsistency, this Agreement shall be revoked to comply with the relevant State or Federal laws or regional policies and regulations. Accordingly, if this Agreement fails in its essential purpose, then the parties shall be placed into their original position to the extent practical. If not practical, such revocation proceeding, caused without fault to either party, shall preserve to the extent possible under the law, an equal balance between the parties, with protection afforded the City and protection for the OWNER related to the development authorizations and improvements for which the OWNER has expended funds in good faith reliance on the governmental authorization.

20.0 EFFECT OF ANNEXATION [ORS 94.504(2)(L)]

Annexation is / is not necessary to authorize the development contemplated in the Name of Project as described and shown in the application materials, as amended.

If annexation is required:

The City's concern has been that after annexation is approved the OWNER will abandon the innovative and creative project which accompanied the application and simply sell the property to a new OWNER. Council sought to bind the OWNER to his representations and promises. Accordingly, the OWNER and City expressly agree in this negotiated Development Agreement, that use of the subject property is permitted only in accordance with the terms and conditions of this Agreement. This Agreement and approvals may be amended provided such amendments are consistent with the law in effect at the time of the amendment, to the extent of the amendment. The City is not required to amend the Agreement.

This Agreement contemplates that property which is the subject of this Agreement will be fully annexed into City as part of the terms and conditions of the Development Agreement. The required public hearings having been held concurrent with the approval of this Agreement, only the normal ordinance processes for annexation and withdrawal from Special Districts remains to effectuate the approval. The Annexation is more fully described in the Findings of Fact, Conclusions of Law and Order concerning the land use approvals, attached to the Ordinance declaring approval of this Development Agreement. This Agreement contemplates and provides for annexation of all portions of the Name of Project as a material term of this Agreement. Therefore, failure to accomplish annexation as contemplated will require amendment, modification, or revocation of the Development Agreement.

Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"

21.0 AMENDMENT, TERMINATION OR REVOCATION. [ORS 94.508(2)] [ORS 94.522]

21.1 OWNER and City, their successors and assignees may mutually agree to amend, modify, terminate or revoke this Agreement after compliance with the Ordinance amendment procedures identified herein, or as otherwise provided for in this Agreement. In the event of such mutual amendment, modification, termination or revocation, the parties shall be required to mutually agree as to any required allocation, return, or payment for public improvements, dedications or expenditures made in reliance upon this Agreement.

21.2 The parties hereto shall at all times strictly adhere to the terms and conditions of this Agreement. Amendment, termination or revocation of this Agreement shall be made by adoption of an Ordinance declaring the action and setting forth the terms and conditions. Unless another procedure specific to Development Agreements is provided in a City Development Agreement Ordinance, (and such procedure pursuant to ORS 94.513(1) is specifically contemplated and anticipated herein) the procedures and requirements for amendment, revocation or modification of a Development Agreement are the same as for approval of a Development Agreement, currently notice and hearing before the Council. Except as provided below, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by all the parties hereto.

21.3 Pursuant to ORS 94.518, except as provided in this Development Agreement, the local government law and policies governing this Agreement shall be those laws and policies in effect at the time of approval of this Development Agreement. Pursuant to the terms of this Development Agreement, generally, unless specifically inconsistent with the Concept Plan, PUD Preliminary Master Plan Master Site Plan, the law in effect at the time of subsequent development approvals governs those approvals. In addition, unless a reservation of legislative power is included in a Development Agreement, the Agreement is subject to a legal challenge as void or voidable for "contracting away the police power". Accordingly, the following reservation of power is included in this and in all City Development Agreements. City may apply subsequently adopted laws and policies to this Development Agreement if the City holds a public hearing proposing imposition of such subsequently adopted laws in an amendment of this Agreement and determines any one of the following:

- A.** The laws and policies are not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities or densities in the Development Agreement; or

- B. The laws and policies are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a Development Agreement; or
- C. The laws and policies are specifically anticipated and provided for in the Development Agreement; or
- D. City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the Development Agreement; or
- E. It is demonstrated that the Development Agreement is based on substantially inaccurate information supplied by the OWNER.

Nothing in this section shall prohibit the City from applying subsequently enacted laws to the Development Agreement in the event an amendment or modification of this Agreement is requested by OWNER pursuant to the terms of this Agreement. This Agreement specifically anticipates applying current health and safety regulations to any reconstruction of the project, should destruction occur, (e.g. current regulations will be used to guide re-installation of public infrastructure), when such compliance is possible given the physical parameters of the site.

22.0 RECORDING AND EFFECTIVENESS. [ORS 94.528]

22.1 Recording. The OWNER shall provide the City an executed Development Agreement, unaltered except for changes agreed upon during consideration of the matter, or to correct typographical errors, together with executed and unaltered Exhibits, including legal description, prior to 5:00 p.m. on _____ (not more than 20 days after adoption of the Ordinance). City shall record this Agreement and Exhibits with the County Clerk as required by ORS 94.528 within ten (10) days of the execution of this Agreement by all parties. OWNER is solely responsible for recording costs. Any alteration or change to this Agreement not accepted by the City in writing shall render this Agreement and the Ordinance approving it, ineffective and recording shall not occur. If this Development Agreement is amended, canceled, modified, extended or revoked, the appropriate recording shall be made in the County records to reflect the action. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties of this Agreement.

22.2 Finality and Effectiveness. The Ordinance declaring approval and adopting the Development Agreement is a final City land use decision on the date the Ordinance Second Reading and adoption is completed, the Ordinance and Findings are signed by *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"*

the Mayor and Notice of the City's Decision is provided. Notwithstanding the finality of the land use decision, the decision shall not be effective until the later of the following: the complete execution of this Development Agreement and Exhibits by OWNER and City; and (3) the finality of the Land Use Approvals defined herein. As used herein "finality of Land Use Approvals" means the date upon which the Ordinance is effective if no appeal is filed, and, if an appeal is filed, the date that all appeals are final. All timetables are tolled for the period of delay caused by any third party appeal; and the parties agree to an administrative addendum to restate deadlines for clarity after the resolution of any appeal.

23.0 ADOPTION OF ORDINANCE [ORS 94.508(1)&(2)]

City's Council finds that this Development Agreement is consistent with the provisions of the Lincoln City Municipal Code in place at the time of its adoption, and approves this Agreement by adoption of an Ordinance declaring approval of this Agreement, and supported by Findings of Fact, Conclusions of Law and Orders concerning the actions referenced therein. This Development Agreement is a land use decision under ORS Chapter 197.

24.0 ENTIRE AGREEMENT.

This Agreement incorporates or references all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in, incorporated into, or referenced in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

25.0 SEVERABILITY.

If any clause, section, sentence or any other portion or any part of this Agreement is contrary to, prohibited by, or deemed invalid or null and void for any reason under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or void, however, the remainder hereof shall not be invalidated thereby and shall be given full force and effect to the fullest extent permitted by law. In the event of such invalidation or prohibition, the Parties shall meet to discuss amendments and alternatives to address the deficiency.

26.0 JURISDICTION AND GOVERNING LAW.

The parties acknowledge that this Agreement has been negotiated and entered into in the State of Oregon. The parties hereto further agree that any and all suits or actions at law, not within the exclusive jurisdiction of the Land Use Board of Appeals, shall initially be brought in the Circuit Court of the State of Oregon for Lincoln County, or the United States District Court for the District of Oregon. This Agreement shall be construed and interpreted under the laws of the State of Oregon.

27.0 ASSIGNMENT/SUCCESSORS AND ASSIGNS. [ORS 94.504(k)]

This Agreement shall be recorded pursuant to ORS 94.528 in the Official Records of Lincoln County, Oregon and said Agreement shall run with the land. Such Agreement is binding upon the City and OWNER, their successors in interest, heirs, assigns and personal representatives. This Agreement shall be fully assignable, in whole or in discrete approved part (see the covenant of unified control), by OWNER and shall bind and inure to the benefit of OWNER and its assigns and successors.

28.0 NOTICES. All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid, to the addresses stated below; (c) by prepaid nationally-recognized overnight courier (such as UPS, overnight mail, or Federal Express), or be by facsimile transmission). Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal service. Notice by facsimile or overnight express delivery service shall be deemed effective one (1) business day after transmission or after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. For purposes of notice demand, request or payment:

Owner name and address

with copy to:

Legal counsel for Owner, Name and

In the case of notice or communication to the City, addressed as follows:

**City of Lincoln City
Attn.: Ronald Chandler, City Manager
P.O. Box 50**

Lincoln City, OR 97367

with copies to:

**City of Lincoln City
Attn.: Richard Appicello, City Attorney
P.O. Box 50
Lincoln City, OR 97367**

or addressed in such way in respect to a Party as that Party may, from time to time, designate in writing and dispatched as provided in this Agreement.

29.0 MISCELLANEOUS PROVISIONS.

29.1 Headings. The titles of the sections in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of its provisions.

29.2 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of the rights of the other Party making the waiver. No waiver by City or OWNER or any provisions of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no waiver shall be construed to be a continuing waiver.

29.3 Time of the Essence. Time is of the essence in this Agreement.

29.4 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on a Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such legal holiday.

29.5 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and neuter, as the context may require.

29.6 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally, and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any *Ordinance Attachment 1 - DEVELOPMENT AGREEMENT FOR "Name of Project"*

portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clear and explicitly permitted as to the specific item in question, as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

29.7 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, or Ordinance adopting this Agreement, the parties agree to cooperate in defending such action.

29.8 Enforced Delay, Extensions of Time of Performance. In addition to the specific provisions of this Agreement, a performance by any party shall not be in default where such default or delays is due to war; insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, unforeseen governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within the reasonable control of the party to be excused; provided, however, that the Parties agree to proceed in good faith in accordance with the terms and conditions of this Agreement.

29.9 No Third Party Beneficiaries. City and OWNER, and their successors and assigns, are the only parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as the intended beneficiaries of this Agreement.

29.10 Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents and take such additional acts (which in the case of the City, shall require adopting necessary ordinances and resolutions) as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written. The date of this Agreement shall be the date on which this Agreement is effective (i.e. 30 days after it was approved by Ordinance at Second Reading by the City Council of the City of Lincoln City, Oregon.)

OWNER: _____.

Signed, sealed and delivered

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in the presence of:

Approved as to Form:

Richard Appicello, OSB 904331
City Attorney

STANDARD FORM

MORTGAGE HOLDER CONSENT

ALL MORTGAGE HOLDERS MUST SIGN A CONSENT TO THE DEVELOPMENT AGREEMENT TO ACKNOWLEDGE AND CONSENT TO *INTER ALIA* THE PROVISION FOR THE RESERVATION OR DEDICATION OF LAND FOR PUBLIC PURPOSES. [ORS 94.504(2)(e)]

The undersigned mortgage holder, _____, hereby certifies that it is the holder of a certain mortgage lien or encumbrance on the land subject to this Development Agreement and does hereby consent and agree to the foregoing Development Agreement, including the reservations, dedications, donations, sales, and/or exchanges of land for public purposes contained herein and agrees that its mortgage, lien, or encumbrance shall be subordinate to such reservation, dedication, donation, sale or exchange.

Dated this _____ day of _____, 20__

MORTGAGE HOLDER

Signed, sealed and delivered in the presence of:

Signature of Authorized Agent
Name printed: _____
Title: _____
Address: _____

Witnesses:
Name printed: _____
Name printed: _____

State of _____)
County of _____)
City of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ of _____, a _____ *Name of Officer* _____ *Name of Corporation* corporation, on behalf of the corporation. He/She is personally *State or Place of Incorporation*

known to me or has produced _____ as identification.

Notary Public

Notary Seal

My Commission Expires:

EXHIBIT A

Name of Project

LEGAL DESCRIPTION

STANDARD FORM

EXHIBIT B

OWNERSHIP CERTIFICATION

I, _____, a member of the Oregon State Bar, hereby certify that the record title to the property described in **Exhibit A** to that Development Agreement for Name of Project dated the _____ day of _____, by and between The City of Lincoln City, Oregon and Name of OWNER, an Oregon ENTITY TYPE, is in the ownership of Name of Owner.

Dated this _____ day of _____, 20____.

Attorneys for **OWNER**

Address: _____

Telephone: _____

EXHIBIT C

UNIFIED CONTROL

We, the undersigned, being the OWNERS of the property described in Exhibit A to that to that Development Agreement for "Name of Development", dated this _____ day of _____, 20____, between The City of Lincoln City Oregon and OWNER, an Oregon _____, do hereby covenant and agree that said described property shall be held under single ownership and shall not be transferred, conveyed, sold or divided in any unit other than in its entirety; provided, however, that individual partition parcels or subdivision lots, or fully constructed condominium units, if any, may be conveyed.

In addition, the following conveyances shall be permitted:

- (1) If the project is designed and planned to be developed in phases or portions of phases, and each discrete phase or portion of a phase complies with the requirements contained within the Development Agreement and PUD Preliminary Master Plan / Master Site Plan approval, then each phase may be conveyed separately upon final master plan / final site plan and final [boundary] plat approval of that phase or approved sub-phase.
- (2) Common elements, common open area open spaces, preservation areas and developed recreation areas, if any, may be conveyed to a property owners' association or other legal entity or governmental entity, so long as such conveyance shall be subject to the express restriction that the subject property will never be used for any purpose other than as common elements, common open areas, open spaces, preservation areas or developed recreation areas, as applicable.
- (3) Other portions of the subject property that will be used or maintained by governmental, environmental, charitable or other organizations or agencies for such purposes as the City Council of the City of Lincoln City may deem appropriate.

Nothing herein contained shall limit, in any manner, the undersigned, or their successors or assigns, to mortgage or encumber the property or any part thereof. Encumbrances are encouraged to correspond to approved phase(s)., legal parcel or lot lines.

The undersigned further agrees that this condition, restriction and limitation shall be deemed a covenant running with the land and shall remain in full force and effect and be binding on the undersigned, its successors and assigns, until such time as the same may be released in writing by the City of Lincoln City, Oregon.

The undersigned further agrees that this instrument may be recorded in the public

EXHIBIT D
Preliminary PUD Master Plan
Master Site Plan
Concept Plan

(The approved Concept Plan / Master Site Plan / Preliminary Master Plan shall be reduced to a letter sized legible document(s) for recording as Exhibit D)

STANDARD FORM

EXHIBIT E
TIMETABLE OF DEVELOPMENT
PHYSICAL COMMENCEMENT AND COMPLETION
[ORS 94.504(4)]

This development will be constructed in discrete geographic phases as shown on Exhibit D (Concept Plan / Preliminary Master Plan / Master Site Plan) to this Agreement in accordance with the timetable of development set forth herein.

Physical commencement of construction of any phase of development shall occur on or before _____ from the effective date of Ordinance 20__-____ approving the Development Agreement. Surveying, soil testing, and authorized nuisance abatement activities do not qualify as commencement of construction. Failure to commence physical development shall cause the expiration of the Preliminary Master Plan / Master Site Plan) and shall require re-approval of the plan (and an amendment to this Agreement) in accordance with all current laws then in effect.

Completion of all infrastructure and vertical construction, for residential PUDs: except for detached single family units on individual platted lots, shall occur as specifically provided for in this Timetable of Development, and in no case later than fifteen (15) years from the effective date of the Ordinance 20__-____ approving the Development Agreement.

The Phase Schedule set forth below is the anticipated logical progression of the geographically discrete phases of development. Each discrete phase may however require infrastructure in other phases or in the common area and such extra-phase development must be authorized by construction plan approval and a written (blanket) easement benefitting the Phase. In this way the Phase moving forward is protected in the event other phases do not proceed or are conveyed as authorized in the Unified Control (Exhibit C), by judicial division or otherwise.

The Timetable contains some flexibility as described herein. Without the necessity of an amendment to this Agreement by Council, the OWNER may request an administrative adjustment to the Timetable of Development to proceed with a Phase or Phases out of the order set forth below. The Planning Director shall make the decision (as a minor amendment) on the adjustment as a Director's decision in accordance with the Code. Any adjustment shall maintain and not delay the construction of the prerequisite infrastructure and such infrastructure as needed for the applicable discrete Phase of development. The sequence may be in any order so long as the prerequisite infrastructure and other needed improvements are constructed to serve that particular phase. In addition, identified off-site improvements and payments with a time certain or specific trigger shall be made or paid as required. (e.g. if a condition requires payment with the first phase, that means any first phase). Further, the Unified Control (Exhibit C) authorizes conveyance of discrete phases in accordance with terms specified.

Prerequisite Work: List any soil testing, surveying or nuisance abatement or property maintenance required to maintain the subject property prior to development activities. (e.g. removal of invasive species / erosion control measures).

All timeframes below are measured from the effective date of the ordinance adopting the Development Agreement. Submission of a complete application for a Phase approvals shall be no less than 120 days prior to the approval date set forth below.

Phase	Approval of Master Site Plan,	Approval of Final Site Plan Tentative Plat (if any)	Infrastructure Completion / Final Plat (if any) /	Vertical Construction
1	Month/Day/Year	Month/Day/Year	Month/Day/Year	Month/Day/Year

Final Civil Plan Approval (construction authorization) and any associated construction permits must be obtained within ___ months (6 if not completed) of Final Site Plan Approval. Final Plat approval, if any, must be obtained within two years of Preliminary Plat approval.

Final Plat approval will not be approved without a Contract for Construction of Required Improvements with Financial Security for project infrastructure as well as a Contract for Installation and Maintenance of Plant Materials with Financial Security with respect to Phase 1 elements

Required Phase 1 elements include, but are not limited to:

- List elements in detail:

List additional Phases

Failure to strictly comply with this timetable of development requires an amendment to this Agreement and subjects the OWNER to then current laws, including but not limited to engineering construction standards, contrary to the ordinary protection of ORS 92.040.

Notwithstanding this provision, the Planning Director may extend, once, by no more than twelve (12) months, any *internal* project timetable in accordance with procedures then in

effect to extension of Preliminary Master Plan approvals.

The physical commencement deadline and fifteen (15) year completion deadline shall not be administratively extended.

After the construction termination date, no further development is authorized, except that building permits for single family units on individual platted lots shall be permitted on the subject. Any amendment to the extent of the Amendment shall comply with the laws in effect at the time the amendment is sought.

Failure of the timetable of development to list an element of the Project does not relieve or excuse the OWNER of the requirement to construct such improvement if the improvement is shown on the Preliminary Master Plan Master Site Plan as located physically within the Phase lines or adjoining right-of-way or is listed as a condition of approval for a particular phase or in the application materials and record.

STANDARD

EXHIBIT F
NAME OF PROJECT
Special Conditions

Special Conditions will vary depending upon the Project

STANDARD FORM