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Lincoln County - NV

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APN _____

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APN _____

Eagle Falls Development Agreement
Title of Document

Affirmation Statement

I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does not contain** the social security number of any person or persons. (Per NRS 239B.030)

_____ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does contain** the social security number of a person or persons as required by law: _____
(State specific law)

[Signature] _____
Signature Title Clerk

Signature

9-9-08
Date

Grantees address and mail tax statement:



STANDARD DEVELOPMENT AGREEMENT

between

LINCOLN COUNTY, NEVADA

and

**BLT LINCOLN COUNTY LAND, LLC
A NEVADA LIMITED LIABILITY COMPANY**

pertaining to:

(Eagle Falls Planned Unit Development (PUD), located in the Toquop Planning Area,
also known as the Lincoln County Land Act, Lincoln County, Nevada)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into by and between the County of Lincoln ("County") and BLT Lincoln Count Land, LLC, a Nevada Limited Liability Company, the Developer of the real property described on Exhibit "A" ("Developer"), attached hereto and incorporated herein by reference. The Agreement is legally effective when signed and dated by the Parties below ("the Effective Date"). The Agreement is for the development of the Eagle Falls Planned Unit Development ("PUD").

SECTION 1 DEFINITIONS

1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

- A. "Agreement" has the meaning assigned to it in the first paragraph hereof. Agreement at any given time includes all addenda and exhibits incorporated by reference and all amendments that have become effective as of such time.
- B. "Applicable Rules" means and refers to the following:
- (i) Title 14 of the Lincoln County Code;
 - (ii) the PUD Conceptual Plan; as approved by County
 - (iii) the terms and conditions of this Agreement;
 - (iv) the Lincoln County Master Plan as of the Effective Date;
 - (v) the Concurrent Approvals;
 - (vi) the Eagle Falls Design Standards, as amended from time to time;
 - (vii) all applicable state and federal laws and regulations;
 - (viii) all applicable public health laws as they may change from time to time;
 - (ix) Applicable Code provisions, Ordinances, Rules, regulations and official policies of the County as adopted and in force as of the Effective Date (except for health and safety code provisions which will be applicable whenever adopted) except as modified by the Concurrent Approvals and this Agreement and as amended from time-to-time, as set forth herein, which shall be fixed for the terms of this Agreement, regarding planning, zoning, subdivisions, growth management, gaming enterprise districts, timing and phasing of development, permitted uses of the Subject Property, environmental requirements and considerations, density, design, and improvement standards and specifications applicable to the PUD, excepting there from:
 - (a) Any fees, monetary payments, submittal requirements and review procedures prescribed by ordinance which are uniformly applied to all development and construction within the Toquop Township Planning Area subject to the County's jurisdiction. Developer agrees to be subject to all such fees and monetary payments prescribed by ordinance as adopted or amended through the duration of this Agreement, and



(b) Any provisions of the Code adopted by the County Commission relating to or referencing standards or specifications which have also been adopted by the RTC or the TGID and apply uniformly to all development throughout the County.

(x) Lincoln County Capital Improvement Plan, as amended from time to time.

C. "Best Efforts" means, in the case of any contingent obligation of County or Developer, that the party so obligated will make a good faith effort to accomplish the stated goal, task, project or promised performance; provided, such term does not imply a legal obligation to take any specific action if, such action would, in the reasoned opinion of both parties, be impossible to perform.

D. "Building Permit" means an official authorization by the County Building Official to commence construction of a residential dwelling, which may include single-family detached and attached dwellings, condominiums, townhouses, apartments, or other residential dwellings that may house families on a permanent basis, and includes any commercial permits, including hotel and/or casino, or other commercial development.

E. "County" means Lincoln County a political entity of the State of Nevada together with its successors and assigns.

F. "Commission" means the County Commission and governing body of Lincoln County.

G. "County Master Plan" means the long-range comprehensive master plan adopted by the County Commission and all amendments thereto including, but not limited to, all adopted land use and development plans, except as amended by the adoption of more recent plans in effect as of the Effective Date.

H. "Code" means Title 14 of the Lincoln County Code, including all rules, regulations, standards, criteria, manuals and other references adopted therein or thereby.

I. "Concurrent Approvals" means the following approvals and authorizations, together with applicable conditions, as granted by the Commission prior to or substantially concurrently with the authorization and approval of this Agreement:

- (i) the Master Plan designation as "PUD";
- (ii) the Conceptual PUD Plan and Maps, and;
- (iii) the Eagle Falls Design Standards as Amended from time to time;

J. "Designated Builder" means a merchant homebuilder, apartment developer or other developer of real property within the PUD and so designated by Developer in writing, that is constructing any development and that may be eligible for certain impact fee credits or obligated for specific development requirements as may be specified herein or within the Applicable Rules and/or Concurrent Approvals.

J. "Developer" means Developer(s), Owner(s), or their successors and assigns, if any.

K. "Eagle Falls Design Standards" means the Design Standards approved and adopted by the Commission for the PUD describing specific standards for development in the PUD. In the event the PUD changes its designation as "Eagle Falls", Developer may, change the name as defined herein to be commensurate with the new PUD designation with County consent.



- L. "Effective Date" means the latest date of the signatures of the parties hereto as evidence by latest date set forth on the signature page hereof.
- M. "Fire District" means an entity created by the Commission to provide public fire protection and emergency medical services to the PUD or the Toquop Planning Area, also known as the Lincoln County Land Act.
- N. "Fire Facility, temporary" means a modular public building and appurtenances therein provided by Developer and utilized by the County for the purpose of providing fire protection and rescue services with the LCCRD and used on temporary basis until the need for a permanent fire station, as determined by this agreement or by the County, becomes apparent.
- O. "Fire Facility, permanent", means a permanent public building and appurtenances therein constructed by Developer and conveyed to County for the purpose of providing fire protection and rescue services within the LCCRD, which may or may not, at County's discretion, be located at the "Satellite Government Facility" site, as required under Section 4.3.
- P. "Fire Substation" means a public building and appurtenances therein constructed by Developer and conveyed to County for the purpose of providing timely response for fire protection and/or rescue services within the PUD. More than one Fire Substation may be required within a PUD, dependant upon response time and/or specialty response required.
- Q. "General Improvement District" (GID) means an entity created by the Commission to provide public services and infrastructure management to the PUD or the Toquop Planning Area, also known as the Lincoln County Land Act.
- R. "LCCRD" – means property sold pursuant to the Lincoln County Conservation, Recreation and Development Act of 2004 within the Toquop Planning Area, and is interchangeable with Toquop Planning Area.
- S. "Master Drainage Study" means the Toquop Drainage Study approved by Lincoln County for the Toquop Planning Area and incorporating the PUD, or a portion thereof, acceptable to the County. The Toquop Drainage Study is of sufficient engineering to provide a basis for which all subsequent drainage studies must be in compliance and when acceptable to the County, will permit the County to review Tentative and Final Large Parcel land subdivision applications within the PUD.
- T. "Master Home Owners Association" means an association of residential property owners within a "planned community", "condominium" or "cooperative" as such terms are used in NRS Chapter 116, et seq.
- U. "Master Plan" means the Master Plan for land use activity and density in the PUD, as hereafter may be lawfully amended.
- V. "Master Transportation Study" means the Toquop Transportation Study approved by the County for the Toquop Planning Area which incorporates the PUD and addresses the major street network and intersection plan of the Toquop Planning Area and identifies impacts to street segments and intersections outside the Toquop Planning Area and the need to construct improvements outside of the Toquop Planning Area. The Master Transportation Study may include any and all addenda acceptable to the Commission.
- W. "NRS" means Nevada Revised Statutes.



- X. "Off-Site Improvements" means public or private facilities that may include but are not limited to, underground utilities (such as sanitary sewer, water, gas, electricity, and communication lines), Street Improvements such as: fire hydrants, sidewalks, curbs, gutters, pavement, gravel, aggregate base, streetlights, street name signs, traffic signals and signs, pavement markings, other applicable traffic control devices, and other improvements such as, survey monuments, flood control, drainage facilities and landscaped islands, corridors and areas, which are permitted within public right-of-ways as required by the County, and excludes public and private internal subdivision improvements to be completed by Merchant Builders within the PUD..
- Y. "Owner" means the owner or developer of the Subject Property and its Heirs, Successors or Assigns, if any.
- Z. "Planned Unit Development" or "PUD" means the Subject Property and the proposed development of the Subject Property described in this Agreement.
- AA. PUD Name Designation - means the current name for the PUD as of the effective date of this Agreement. Developer, with County approval which shall not be unreasonably withheld, may at any time and from time to time change the current PUD Name Designation.
- BB. "PUD Master Transportation Study" means a detailed transportation study specific to the Eagle Falls Master PUD plan and addresses, in sufficient detail, the major street network and intersection plan and identifies impacts to street segments and intersections outside the Eagle Falls Master PUD plan and the need to mitigate impacts accordingly. The PUD Master Transportation Study is sufficient to allow for the recordation of large lot Final Map land divisions and recordation of subsequent residential subdivision final maps, with the exception of a commercial subdivision maps, within the Eagle Falls Master PUD plan.
- CC. "Qualified Parks, Recreational Facilities and Open Space" means programmable park space and facilities and non-programmable amenities, such as trail systems, trailheads, wash corridors or other natural or environmental areas of significance that are open and available for general public use on a non-discriminatory basis and can be programmed by either the Owner, the GID, or the County.
- DD. "Residential Construction Tax" – has the meaning as given to it in NRS 278
- EE. "RTC" means the Regional Transportation Commission of Lincoln County.
- FF. "Satellite Government Facility" means a public building built by Developer and conveyed to County for the purpose of providing county governmental administrative services within the LCCRD.
- GG. "Subject Property" means that certain real property owned by the Developer located in the County and more particularly described in Exhibit A.
- HH. "Successors and Assigns" means any person or entity that assumes the role of the Developer, whether as master developer, builder, or designated builder, or assumes the responsibilities of the Developer.
- II. "Streetscape Area" means the street medians and landscaping areas adjacent to all Master Plan roads within the Planned Community and all public or private roads within Merchant Builder improvements.
- JJ. "Technical Drainage Study" means a detailed drainage study to be prepared for subsequent and specific PUD approvals as required by the County to record residential and commercial subdivision maps or for specific off-site public and private roadway or storm drain facility improvements



KK. "Term" means the term of this Agreement as defined in Section 12.2 thereof.

LL. Toquop General Improvement District (TGID) – means the general improvement district created pursuant to the ordinance adopted by the County for public convenience and necessity of providing certain public services within the Toquop Planning Area on land lying within Lincoln County, Nevada as authorized by NRS Chapter 318.

MM. "Toquop Township Planning Area" ("Toquop") means the area located in the southeast corner of Lincoln County know as the Lincoln County Land Act.

**SECTION 2
RECITAL OF PREMISES, PURPOSE AND INTENT**

2.1 Recitals. This Agreement is predicated upon the following facts and findings:

- A. Statutory Authorization. The County is authorized, pursuant to NRS Chapters 278.0201 through 278.0207 and 278.02591 through 278.02598, inclusive, to enter into binding agreements with persons having a legal or equitable interest in real property to establish long range plans for the development of such property.
- B. Ownership Interest. Developer represents that it has acquired, or has the right to acquire, fee title ownership of the Subject Property.
- C. County Authorization, Hearing and Ordinance. All preliminary processing with regard to the PUD has been duly completed in conformance with all applicable laws, rules and regulations including, without limitation and adoption of the Concept PUD Plan. The Commission, having given notice as required by law, held a public hearing on Developer's application seeking approval of the form of this Agreement and the execution hereof by the Commission. At the described meeting, the Commission found that the form of the Agreement is consistent with the Commissions plans, policies and regulations, and that the execution hereof by and on behalf of the County is in the public interest and is lawful in all respects. NRS grants the County power to enter into and perform development agreements subject to the terms and conditions of the ordinance approving the form of this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance shall take effect as provided in NRS 266.105. The Parties have agreed to record a certified copy of the Ordinance as required by NRS 278.0207.
- D. County Intent. County desires to enter into this Agreement in conformity with the requirements of NRS and as otherwise permitted by law and this Agreement to provide for public services, public uses, and urban infrastructure to promote the health, safety and general welfare of County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the PUD and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County at the least economic cost to its citizens and otherwise achieve goals and purposes for which the State statute and County ordinance authorizing Development Agreements were enacted.
- E. Developer Intent. In accordance with the legislative intent evidenced by NRS 278.0207 the Nevada State Statute authorizing development agreements and the intent of County in adopting an ordinance allowing development agreements, Developer wishes to obtain reasonable assurances from the County that Developer may develop the PUD in accordance with the Applicable Rules subject to the conditions established in this Agreement. Because of the nature of the PUD and the type and extent of the public and private improvements to be provided within the PUD, the development of the PUD is based on expectations of proceeding with the PUD to completion.



F. Acknowledgment of Uncertainties. The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the PUD be developed in the manner contemplated by this Agreement. Among such circumstances are the unavailability or insufficiency of water or other limited natural resources, federal regulation of air and water quality, and similar conditions. In such event, Developer and County would be relieved of their obligations set forth in this Agreement. It is not the intent of the parties nor shall this Section be construed as excusing County or Developer of any obligation hereunder or depriving County or Developer of any right under this Agreement. County and Developer agree that the Subject Property cannot be developed unless there is sufficient power, water and sewer service and that such services are, or can be made available in a cost effective manner as determined by Developer in its reasonable discretion.

G. Provision of Water and Sewer Service. Developer clearly understands and agrees that, among other requirements, water commitment and sanitary sewer system development approval must be obtained from the proper governmental entities, specifically all domestic water service, excluding reclaimed or reuse water, must have the approval of the Lincoln County Water District. It is understood by Developer and County that per Title 14, no individual water wells will be permitted. The County does not guarantee the provision of water and sewer services. Developer may provide for water and sewer service through a private utility service or a General Improvement District (GID) provided the private utility complies with all, federal, state and local requirements

2.2 Incorporation of Recitals. The foregoing recitals shall be deemed true and correct in all respects with regard to this Agreement and shall serve as the basis for the interpretation of this Agreement.

2.3 Permitted Uses, Density, Height, and Size of Structures. Pursuant to the requirements of NRS 278.0201, Title 14 of the Lincoln County Code, the Eagle Falls Design Standards for this PUD must set forth the maximum height and size of structures to be constructed on the Subject Property, the density of uses and the permitted uses of the land. County agrees the PUD may be developed to the density and with the land uses set forth in the Conceptual PUD Plan and Eagle Falls Design Standards. The maximum height and size of structures to be constructed, as part of the PUD, shall be governed by the Applicable Rules.

2.4 Eagle Falls Design Standards. The PUD shall be developed to the standards set forth in the Eagle Falls Design Standards and as approved by the Commission and designated in Exhibit C of this Agreement. The Eagle Falls Design Standards shall include common area and streetscape themes, a master sign and monument plan, a master landscape palette, and maintenance provisions for the common and County-owned areas. Any required or applicable development or design factor not included in the Eagle Falls Design Standards, such as architectural design standards, shall be as set forth in the Code. Developer may, amend or modify those sections within the Eagle Falls Design Standards that have been identified and approved for modification by the County, so long as such amendment or modification is not in conflict with the Code.

**SECTION 3
DEVELOPMENT OF THE PLANNED COMMUNITY**

3.1 Time for Construction and Completion of the PUD. Subject to the terms of this Agreement, Developer shall have complete discretion as to the time of commencement, construction, phasing, and completion of any and all development of the PUD, subject to the requirements of Federal, State or County law and this Agreement. Nothing herein shall be construed to require Developer to develop the PUD or any part thereof.

A. Notwithstanding any provision to the contrary contained in this Section 3, Developer will develop (at no cost to County) a receiving and storage area within the Subject Property, to include providing a Postal Zip Code, for receiving materials for all contractors and major sub-contractors for the project at the earliest practicable time before construction and after approval

of the SLCHCP (as described in Section 3.13 below) and issuance of the Section 10(a)(1)(B) permit by USFWS). The purpose of the receiving and storage area is to ensure County is credited for the State of Nevada sales tax revenues.

- 3.2 **Plans and Maps.** The Conceptual PUD Plan and associated Maps, approved by the Commission for the PUD, along with the Eagle Falls Design Standards, constitute the PUD Master Plan. In addition, development of the PUD will be guided by such other plans as may be submitted by Developer or any Builder, including those which may be required by the County for traffic, parks, conservations, drainage and other applicable matters. All plans are to be approved by the County. All plans must comply with the Applicable Rules.
- 3.3 **Adoption of the Conceptual PUD Plan.** County hereby agrees that the Subject Property may be used and developed during the Term hereof for the purposes and in the manner set forth in the Conceptual PUD Plan. The Conceptual PUD Plan sets forth broad categories of uses and defines maximum number of units and densities allowed in the PUD. The Developer may not change the maximum gross density and types of uses beyond the standards set forth in the Conceptual PUD Plan without prior County written approval. In the event Developer does not utilize the maximum permitted number of units for any specific development area with the PUD, Developer may, as identified in the Conceptual PUD Plan and with County written approval, transfer the excess units to other areas within the PUD. The Parties agree that this Agreement incorporates and adopts the Conceptual PUD Plan and further acknowledge that the Conceptual PUD Plan becomes a part of the County Master Plan.
- 3.4 **Modification of Applicable Rules.** County and Developer acknowledge and agree that the Applicable Rules and the Concurrent Approvals are peculiar to the PUD and may not be amended, modified or changed during the Term of this Agreement without the express written consent of the Parties except as may be otherwise explicitly provided in this Agreement, and with the exception of changes to health, safety or environmental regulations which are applicable to the Development as they are and as they change from time-to-time.
- A. County agrees that any changes to the development standards applicable to any base-zoning district, which are more restrictive than the Eagle Falls Design Standards in effect on the Effective Date, will not apply to the PUD. It is understood this will not apply to any change in the nationally recognized building code that is now or may be adopted by the County, nor any changes in life safety standards where applicable.
- B. The Parties may agree in writing that any newly adopted ordinance, rule, regulation or policy not automatically applicable to the PUD, will be applied to development within the PUD. In such event, the Parties shall execute an amendment to this Agreement that will then be recorded and constitute a portion of this Agreement.
- 3.5 **Environmental Mitigation.** Developer will use its best efforts to educate and inform builders and contractors within the PUD of any applicable environmental rules and best management practices and to encourage compliance therewith. Developer and all other builders and contractors working with the PUD will be subject to the Southeastern Lincoln County Multi-Species Habitat Conservation Plan as adopted by the Commission.
- 3.6 **Amendments to Development Agreement.** County agrees that Developer or County may submit amendments to this Agreement during the course of development of the PUD and during the Term of this Agreement within any six (6) month period, subject to the discretion of the Commission. County agrees that any Amendments to the Agreement shall be limited in scope to the subject matter of the Amendment. Proposed amendments will be consistent with the intent of this Agreement and the Applicable Rules and will be processed and considered in accordance with the provisions for an amendment to a Development Agreement as prescribed in Ordinance No. 2004-02. Any amendment must be approved by all Parties prior to Commission approval.

- 3.7 Reliance on Concurrent Approvals and Applicable Rules. County hereby agrees and assures that Developer will be permitted to carry out and complete the entire PUD in accordance with the land use zones, uses and densities set forth in the Conceptual PUD Plan, subject to the terms and conditions of this Agreement. Without limiting the foregoing, and subject to the conditions and requirements of the Applicable Rules and the Concurrent Approvals, County agrees:
- A. Pursuant to the PUD Master Plan and this Agreement:
- (i) The maximum quantity of residential dwelling units (including single-family and multiple-family dwelling units) that may be developed and constructed within the PUD shall not exceed ten thousand thirty-two (10,032), or 3.3 dwelling units per gross acre per Title 14. In the event, Title 14 is amended to increase this gross density cap per gross acre beyond 3.3 dwelling units, or to the extent any other property within the LCCRD is approved for gross density that exceeds Title 14, Developer may be approved to Amend the PUD accordingly, without prejudice to the increased density requested so long as the increased density is deemed Title 14 compliant or consistent with similar Density increases approved within the LCCRD and consistent with the applicable concurrent approvals. Developer agrees to update the PUD Master Transportation Study and PUD Master Drainage Study as needed, and to construct any improvements due to the additional impacts within the Toquop Planning Area.
 - (ii) The PUD may, subject to the water conservation conditions set forth in Section 5.04, contain golf courses having up to thirty-six (36) holes of golf and related facilities.
 - (iii) The PUD may be developed with the other land uses and facilities described in the PUD Master Plan.
 - (iv) Developer may develop or permit development of aggregate processing operations, concrete and/or asphalt plants and sell the products of such operations within and outside the PUD. Any such use must comply with zoning and permitting requirements outlined by the Code.
- 3.8 Inclusion of Additional Lands. County specifically acknowledges that Developer may become the fee title owner or hold interest in lands other than those described in Exhibit A to this Agreement. County may consider supplemental Development Agreements in accordance with the provisions of this Agreement, if necessary. Supplemental Development Agreements will only be valid if approved and executed by both parties and processed and considered in accordance with NRS. The parties hereto agree that a separate Supplemental Development Agreement may be created addressing the additional lands provided:
- A. Developer obtains all necessary County approvals;
- B. The Supplemental Development Agreement conforms as nearly as practical to the terms and provisions of this Agreement including but not limited to requiring Developer to provide additional park facilities and dedicate additional school sites and any other public facilities, if necessary, based on the formulas established in this Agreement.
- 3.9 County Processing of Tentative and Final PUD Plan Submittals. All processing of Tentative and Final PUD Plan Submittals will be done in accordance with Title 13 and Title 14 of the Lincoln County Code.
- 3.10 Digital Map Data. Developer will prepare and submit to County, all digital data in accordance with Title 13 and Title 14 of the Lincoln County Code, along with any requirements of the Lincoln County Planning Director.

- 3.11 Special Improvement Districts. County may agree upon Developer's request to use its best efforts to assist Developer in the creation of one or more Special Improvement Districts (SID) in accordance with NRS Chapter 271 and Chapter 308, to finance necessary infrastructure improvements for the PUD. At Developer's Request, County and Developer may cooperate in the formation of one or more SID's to pay for the construction and or acquisition of public infrastructure required to develop the Subject Property in accordance with the approved PUD and this Agreement. County also agrees that, to the extent any such District is formed and sells bonds in order to finance such infrastructure, Developer shall be entitled to reimbursement of any funds expended or lands dedicated for the establishment of public facilities pursuant to this agreement or as otherwise may be required. Any such SID shall not obligate the County in any manner to provide for additional funding for construction from any County resources, other than those resources established through the formation and funding of the SID.
- 3.12 General Improvement Districts. County hereby acknowledges that Developer may seek to create one or more General Improvement Districts (collectively "GID") under NRS Chapter 318 to provide certain improvements and long-term maintenance and operations within the PUD. NRS Chapter 318 authorizes General Improvement Districts to acquire, construct, reconstruct, improve, extend and better lands, works, systems and facilities for electric light and power; streets and alleys; curbs, gutters and sidewalks; storm drainage and flood control; sewer; water; fire; emergency medical services; pest and weed abatement; endangered species protection; recreation such as swimming pools, golf courses, tennis courts, athletic fields, playgrounds, public parks, biological gardens and other recreational facilities; and other facilities and improvements which may be authorized under NRS Chapter 318. The GID would further be authorized to establish a system of rates, fees and charges for the use or availability of use of such facilities and pledge such revenues for the payment of any indebtedness or special obligations resulting from such activities. County may agree, upon Developer's request, to form a GID covering Developer's land holdings in Lincoln County, Nevada. County and/or Developer acknowledges that the Commission has the jurisdiction, power and authority to create and supervise such GID, Developer further agrees to participate in the formation and funding, along with other Toquop Developer's of one overall GID to address infrastructure, transportation, drainage control, etc., for common uses throughout Toquop. Any such GID shall not obligate the County in any manner to provide for additional funding for construction or maintenance from any County resources, other than those resources established through the formation and funding of the GID.
- 3.13 Southeastern Lincoln County Habitat Conservation Plan (SLCHCP). The existence of the SLCHCP, under Section 10(a) of the Endangered Species Act, allows for the issuance by the United States Fish & Wildlife Service (USFWS) of permits (known as Section 10(a) permits). This permit will allow the "incidental take" of threatened or endangered species on non-federal properties within the SLCHCP. Developer acknowledges that the SLCHCP shall specifically cover all of Developer's landholdings in Toquop. County and Developer agree that upon implementation of the SLCHCP any cost for any activity required by the SLCHCP will not become an obligation of the County.
- 3.14 Dust Mitigation. Developer agrees to use its best efforts to educate builders and contractors within the PUD of the applicable rules of the Nevada Division of Environmental Protection Bureau of Air Quality (BAQ), and any applicable ordinance as adopted by Lincoln County, with respect to dust mitigation and to encourage compliance therewith.
- 3.15 Temporary Storm Water Construction Permit. Developer agrees to use its best efforts to educate builders and contractors within the PUD on the requirements for a Temporary Storm Water Construction Permit issued by the Nevada Division of Environmental Protection (NDEP), and any applicable ordinances as adopted by Lincoln County.
- 3.16 Future Approvals within the Toquop Planning Area. County acknowledges that Developer will incur substantial cost in complying with the terms of this Agreement in development of the Master Plan PUD and that Developer has agreed to the conditions, restrictions and exactions set forth herein in reliance on County's representation that it intends to require other Developers within the Toquop Planning Area to adhere to the same standards of approval on an equitable level. County agrees, therefore, that it will not permit the development of property within the Toquop Planning Area except on the terms substantially consistent with those set forth herein. In the event County does permit such other



development, Developer shall have the right, in addition to any other remedy Developer may have hereunder, to amend this Agreement accordingly. County further agrees that any such amendment shall not be reasonably withheld.

- 3.17 Cooperation in Obtaining Available Funding and Public Financing. County Acknowledges Developer intends to explore all available sources of financing for the development of the Subject Property and completion of the improvements required, including private and public sources, wherever available. County agrees to use its best efforts, consistent with the County's best interests, to assist the Developer, and sponsoring Developer's requests when appropriate, in obtaining and using any state, regional or federal funds, including but not limited to grants, funds for nature trails, or other monies that may be available or become available for the acquisition, construction, or maintenance of public facilities within the Subject Property. Any such effort shall be the sole responsibility and cost of the Developer. Furthermore, without being bound to the creation or implementation of the same, the parties agree to discuss the possibility of utilizing one or more Special Improvement Districts (SIDs) to finance public improvements within the Subject Property, to the extent authorized by applicable state law.
- 3.18 Early Grading. County acknowledges, the Subject Property has limited physical access and agrees to allow Developer to commence rough grading of the Master PUD Arterial and Collector Roadways earlier than would otherwise be permitted under the Applicable Rules, payment of all applicable fees, and approval of a clearing, grading and drainage plan that is in general conformity with the locations shown on the PUD Conceptual Plan and issuance of a Dust Permit for the same, provided all graded access is secured for strictly controlled private, non-public access. Security and access control to be approved by Lincoln County prior to approval of any encroachment into dedicated rights of ways. Approval may require Developer to enter into an encroachment & indemnity agreement for same.
- 3.19 Public Utility & Access Easements & Rights of ways Developer agrees to provide, at no cost and upon written request, any and all public utility and or access easements as deemed necessary by and at the County's sole discretion for the orderly development of the Toquop Planning Area in accordance with the approved Toquop Master Transportation, and Drainage Studies, as may be amended from time to time, and in accordance with any other regional utility needs to include but not be limited to Power, Telephone, Water, Sewer, Cable, and Natural Gas provided the same is required of all Developers in the Toquop Planning Area as defined herein. County agrees to request easements on an as needed basis and in conformance with the planned arterial roadways and utility corridors as designated on the PUD Concept Plan, as approved and amended, and with any subsequent maps as approved by the County.
- 3.20 Tax Increment Areas. County understands Developer may consider the creation of one or more Tax Increment Areas in accordance with NRS Chapter 278C to finance those undertakings for the PUD as allowed by law. Developer understands any such Tax Increment Area must be approved and administered by the County which approval shall not be unreasonably withheld. In the event Developer and County agree to the Tax Increment Area, Developer shall be responsible for the sole cost of its formation.
- 3.21 PUD Name Designation Changes- Developer, with County's approval, which shall not be unreasonably withheld, reserves the right to change the current and future PUD Name Designation at any time and from time to time for purposes of Marketing, Advertising, Licensing and Transacting or for any other purpose Developer so desires without amending this Agreement or any of the Concurrent Approvals. Developer acknowledges, that in the event Developer changes the PUD Name Designation, that all County approvals will be required to be submitted under the PUD Name Designation as of the Effective Date of this Agreement unless otherwise agreed to by the County.

**SECTION 4
PUBLIC SERVICES AND FACILITIES**

- 4.0 County agrees that an interlocal agreement(s) between County and Mesquite for fire and sheriff services is within the best interest of the LCCRD. County agrees Developer may be a part of the discussions between County and Mesquite relating to the terms of the interlocal agreement(s) for fire and sheriff services.



Developer shall be responsible to County for all related costs of fire and sheriff services provided within the Planned Community. Within six (6) months after the issuance of the first grading permit or upon request by the County, Developer shall provide a fully functional, including air conditioning, construction office trailer within the Planned Community for County's sole temporary use and benefit. The construction trailer shall revert back to Developer upon completion of the Temporary Modular Facility or the completion of the permanent Sheriff and Fire Facilities referenced herein.

A. Failure to Timely Construct or Equip. In addition to Section 9 of this Agreement, if Developer fails to timely construct any of the Public Facilities in this Section 4, then no further building permits will be issued in the PUD until such facilities is/are constructed, unless otherwise agreed to by Developer and County.

4.1 Fire and Emergency Medical Service.

Fire District. County and Developer agree that the County will have to create a District that will provide necessary Fire and Emergency Medical Services within Toquop, it is anticipated that this District will be referenced as the Toquop Fire District ("Fire District"). Upon creation of the Fire District, the Developer agrees to enter into an agreement with the Fire District, if required, that will establish a plan for the location of fire and emergency medical service provision that will meet the needs of the PUD. County agrees that the plan for fire and emergency medical services shall not require resources greater than those that would be required of a similar area of development within Clark County, Nevada. County acknowledges that any conflict between the Fire District Plan and this Agreement may require an Amendment to this Agreement to the extent the Fire District Plan imposes additional financial burden to the Developer.

- A. Temporary Modular Facility. Developer and County agree that, should the interlocal agreement with the City of Mesquite for fire, EMS and police service not be executed or if it should be terminated, the Developer will provide a Temporary Modular Facility for fire service within the PUD prior to the completion of the Permanent Fire Facility. The Temporary Modular Facility shall be located on the Temporary Satellite Government Facility Site within the PUD. County agrees the Temporary Modular Facility is to be jointly used by the Fire Department and Sheriff. Developer agrees to provide the Temporary Modular Facility prior to the issuance of the First Building Permit, unless an alternate date is agreed to in writing between the County and Developer. All monthly utilities and associated fees are the sole cost of the County. Upon completion of the Permanent Fire Facility, the Temporary Modular Facility shall revert back to the Developer. The Temporary Modular Facility shall be a minimum of 3600 square feet. In the event the Temporary Modular Facility is utilized for service outside the PUD, County agrees to require and enforce a proportionate share reimbursement to Developer in accordance with Section 4.8.
- B. Initial Provision of Service. Developer acknowledges and agrees to pay for its Proportionate Share of any and all services as deemed necessary by Lincoln County, to include training as necessary, in its sole discretion in order to provide for Emergency Fire and Rescue service within the Toquop Planning Area. Should Developer be the sole recipient of the initial services, Developer understands he is fully responsible for all costs of the initial services until such time as other development occurs. When other development occurs a partial reimbursement refund from any additional developer will be obtained to offset up-front initial provision of service costs provided by Developer. This reimbursement amount will be based on such factors as 1), proportionate share of gross acreage, 2) time of provision of initial service, 3) any other mitigating circumstances which may effect the fair sharing of initial provision of service, as determined by County. Developers obligation to participate in funding of the Initial Services shall commence upon approval of the first Permit issued within the PUD, unless a later date is agreed to in writing between the County and Developer and shall continue until it can be shown that County revenue generating operations of Developer, its successors and assigns are contributing enough funding to make the PUD fire service self sustaining, .but in no event shall Developers interim funding obligation exceed the term of this Agreement.- County agrees to ensure the Developers obligation to participate in funding of the Initial Service shall be limited to the minimum ISO (Insurance Services Rating) of the Fire Suppression Rating Schedule level of service acceptable to the County and to terminate Developers funding obligation upon receipt of



sufficient funding from other sources to include, but not be limited to, other Developer's funding obligations, tax revenues, grants, or general obligation bonds and any other means available to the County.

- C. **Permanent Fire Facility.** The County and Developer agree that the Developer shall construct one (1) Permanent Fire Facility to be used for fire and rescue services within the PUD. County agrees the Fire Facility may be used as a substation for the Sheriff's Department to provide adequate law enforcement service within the PUD. In the event the Developer is obligated to provide the permanent "Satellite Government Facilities" Site as specified in subsection 4.3, the Developer will construct the Fire Facility to be located at the Satellite Government Facility. Developer agrees to commence construction of the Permanent Fire Facility prior to the issuance of the 1000th building permit, unless a later date is agreed to, in writing, between the County and Developer. Developer agrees to complete the construction of the Fire Facility prior to the issuance of the 2000th Building Permit within the PUD, unless a later date is agreed to in writing between the County and Developer. The Fire Facility costs shall be capped at \$1,970,000 ("Fire Facility Cap") and is inclusive of all associated costs including but not limited to, professional architectural and engineering soft cost, direct construction costs, construction management costs, fees, and any furniture, fixture and equipment costs, but excludes any cost for Fire Apparatus specified herein under Section 4.1E. The "Facility Cap" cost is in 2008 dollars and will be adjusted as necessary under Section 9.6 for any raise in construction costs. Any cost that exceeds the Fire Facility Cap shall be the responsibility of the County. Developer agrees that County, in exchange for the "Fire Facility Cap" provision, will be provided with all bid documents and will be allowed to approve the contract price and any change orders for construction of the Fire Facility. County and Developer agree the Fire Facility shall be designed in accordance with the Eagle Falls Design Standards relative to the exterior architectural, landscape and lighting design. Developer agrees that any costs that are in excess of the Eagle Falls Design Standards but requested by the Developer and that exceed the "Fire Facility Cap" shall be the Developers responsibility. In such event, Developer may, at its sole discretion, waive any of the requirements of the Eagle Falls Design Standards. In the event the Permanent Fire Facility is utilized for service outside the PUD in a manner that precludes other Developers receiving said services from the cost of providing the same, County agrees to require and enforce a proportionate share reimbursement to Developer in accordance Section 4.9. County agrees to the inclusion of all associated Fire Facility costs as an eligible reimbursement within any SID formed or other funding sources, what ever they may be, for services that provide benefit to the PUD and/or all properties within the Toquop Planning Area. To that end, County, at the request of Developer, agrees to sponsor any such SID prior to Developers obligation as set forth herein to construct the Fire Facility. So long as all costs for said SID formations are borne by Developer, including necessary consultant fees.
- D. **Fire Apparatus.** Developer shall provide for the purchase of one (1) Fire Engine, and (1) Emergency Medical Service Vehicle in accordance with the County specifications as of the Effective Date of this Agreement. Further, in the event Lincoln County Fire Department is unable to provide a Backup Fire Engine from another source, Developer may be required to provide a second Fire Engine. Developer shall pay up to \$225,000 for a single Emergency Medical Services Vehicle in accordance with the County's minimum specifications and provide the single Fire Engine and a Backup Fire Engine, if required, upon completion of the Temporary Modular Facility, unless a later date is agreed to in writing between the County and Developer. In the event, the County has not established the minimum apparatus specifications as of the "Effective Date", the Developer may submit same for County approval which may not be unreasonably withheld within 60 days of submittal. Developer agrees the Apparatus costs are separate and not a part of the equipment costs established in Section 4.1(C).
- (1) **Ladder Truck.** Developer agrees that as a condition of approval for any Residential or Commercial facility that requires Fire Protection over 35 feet a Ladder Engine may be required. County acknowledges this is not an obligation to run with the PUD property but rather a condition of approval and that as such the condition may be met by other than the Developer.



4.2 Sheriff Service.

- A. Private Security Program. Developer agrees to implement a private security program, for protection and security of its own private property, acceptable to the Lincoln County Sherriff's Department, within thirty (30) days of the commencement of any construction activity. Developer agrees to cooperate with and obtain approval from the Lincoln County Sheriff (Sheriff) for any private security company so employed or formed, including but not limited to patrol methods and communications procedures.

- B. Initial Provision of Service. Developer and County agree that initial Sheriff's patrol service for the Toquop Planning Area may be provided through an Inter-local Agreement between Lincoln County and the City of Mesquite. County agrees to Developers participation in any discussions between the County and the City of Mesquite related to the terms of the Inter-local Agreement. Should Developer be the sole recipient of the initial services, Developer understands he is fully responsible for all costs of the initial services until such time as other development occurs. When other development occurs a partial reimbursement refund from the additional developer(s) will be obtained to offset up-front initial provision of service costs provided by Developer. This reimbursement amount will be based on such factors as 1), proportionate share of gross acreage, 2) time of provision of initial service, 3) any other mitigating circumstances which may effect the fair sharing of initial provision of service, as determined by County. In the event Lincoln County and the City of Mesquite are unable to gain approval of the Inter-local Agreement, Developer acknowledges and agrees to pay for its Proportionate Share of any and all services, to include any necessary training, as may deemed necessary by the Lincoln County Sheriff Department, in its sole discretion to provide for security and law enforcement within the Toquop Planning Area. Developers obligation to participate in funding of the Initial Services shall commence upon approval of the first Grading Permit issued within the PUD and shall continue until it can be shown that County revenue generating operations of Developer, its successors and assigns are contributing enough funding to make the Sheriff service self sustaining, but in no event shall Developers interim funding obligation exceed the term of this Agreement. County agrees to ensure the Developers obligation to participate in funding of the Initial Service shall be limited to the minimum level of service acceptable to the County, and to terminate Developers funding obligation upon receipt of sufficient funding from other sources to include, but not be limited to, other Developer's funding obligations, tax revenues, grants, general obligation bonds and any other means available to the County. In the event the Initial Services are utilized for service outside the PUD, County agrees to require and enforce a proportionate share reimbursement to Developer in accordance Section 4.8.

- C. Temporary Modular Facility. Developer and County agree that, should the interlocal agreement with the City of Mesquite for fire, EMS and police service not be executed or if it should be terminated, the Developer will provide a Temporary Modular Facility for sheriff and fire service within the PUD prior to the completion of the Permanent Fire Facility. The Temporary Modular Facility shall be located on the Temporary Satellite Government Facility Site within the PUD. County agrees the Temporary Modular Facility is to be jointly used by the Fire Department and Sheriff. Developer agrees to provide the Temporary Modular Facility prior to the issuance of the First Building Permit, unless a later date is agreed to in writing between the County and Developer. All monthly utilities and associated fees are the sole cost of the County. Upon completion of the Permanent Fire Facility, the Temporary Modular Facility shall revert back to the Developer. The Temporary Modular Facility shall be a minimum of 3600 square feet. In the event the Temporary Modular Facility is utilized for service outside the PUD, County agrees to require and enforce a proportionate share reimbursement to Developer in accordance Section 4.9.

- D. Sheriff Facility. County and Developer agree that the Sheriff Facility is to be located on the permanent Satellite Government Center. If the permanent Satellite Government Center is located outside the PUD, Eagle Falls will provide for a joint use Permanent Fire Facility as required under Section 4.1 C. Developer agrees to complete construction of the Permanent Sheriff's Facility prior to the issuance of the three-thousandth (3000th) Building Permit within the Planned Community unless a later date is agreed upon by Developer and County in writing to



address the additional need for sheriff services. County agrees to act in good faith to process all necessary applications, permits and inspections for the construction in an expeditious manner. Developer will provide utility hook ups for the Sheriff's Facility. County agrees to pay for the ongoing utilities service including without limitation the necessary power, water and sewer supply charges for the Sheriff's Facility. The cost to construct the Sheriff Facility and provide any furniture, fixtures and equipment shall not exceed two million one hundred thousand dollars (\$2,100,000) ("Sheriff's Facility Cap"). The "Facility Cap" cost is in 2008 dollars and will be adjusted as necessary under Section 9.6 for any raise in construction costs. Any cost that exceeds the Sheriff's Facility Cap shall be the responsibility of County. Developer agrees that County, in exchange for the "Facility Cap" provision, will be provided with all bid documents and will be allowed to approve the contract price and any change orders for construction of the Sheriff Facility. County shall operate and provide staff for the Sheriff's Facility at County's expense. County agrees to have the Sheriff's Facility in operation within six (6) months upon the completion of construction and dedication. This Sheriff's facility will be located at, and be a part of, the Permanent Satellite Government Facility. County agrees to the inclusion of all associated Sheriff Facility costs as an eligible reimbursement within any SID formed or other funding sources, what ever they may be, for services that provide benefit to the PUD and/or all properties within the Toquop Planning Area. To that end, County, at the request of Developer, agrees to sponsor any such SID prior to Developers obligation as set forth herein to construct the Fire Facility, So long as all costs for said SID formations are borne by Developer, including necessary consultant fees.

4.3 Satellite Government Facility Site.

- A. Temporary Satellite Facility. Should the County determine the necessity for a Temporary Facility prior to the construction of the permanent facility (as outlined in 4.3B), Developer shall provide a site acceptable to the County at a minimum size of two (2) acres at no cost, and construct a temporary modular satellite government facility of a minimum size of 1500 square feet for use by the County, This facility may be incorporated with the temporary modular facility for fire, sheriff and EMS.

- B. Permanent Satellite Facility. Developer shall provide a site acceptable to the County at a minimum size of seven (7) acres and construct the first phase (phase I) of a permanent satellite government facility prior to issuance of the 3000th building permit. Minimum size for phase one of the permanent building will be 6000 square feet, not including the permanent fire and sheriff facility. Buildings are to be designed to allow for future expansion as growth in the Toquop Planning Area warrants. Developer shall provide all improved roads and utilities necessary to serve the temporary and/or permanent site. The Parties contemplate that County may utilize the satellite government facility site for facilities that may include:
 - (i) A sheriff's substation and related facilities,
 - (ii) Administrative offices for County and other governmental agencies,
 - (iii) A Justice Court facility and,

Should the County agree, prior to commencement of construction of the permanent government facility, to a permanent government facility site outside the PUD, then County agrees to consent to removal, by developer, of all temporary facilities placed upon the temporary satellite government facility site and return the site to Developer for use by Developer. Should the County agree to make the Temporary Site the Permanent Site, Developer shall convey the Site to the County. County agrees that the site so transferred would be subject to a restriction in the instrument of conveyance prohibiting the land from being used for any private commercial or residential use, unless approved by Developer, and further providing that the land will be used solely for governmental office and administrative purposes specifically excluding any storage yards, or other similarly noisy or unsightly uses.



- C. Facility Costs. The cost to construct phase one of the Permanent Satellite Government Center, not including the Sheriff and Fire Facility, and provide any furniture, fixtures and equipment shall not exceed one million, three hundred thousand dollars (\$1,300,000.00). The "Facility Cap" cost is in 2008 dollars and will be adjusted as necessary under Section 9.6 for any raise in construction costs. Any and all costs exceeding this amount will be the responsibility of the County. Developer agrees that County, in exchange for the "Facility Cap" provision, will be provided with all bid documents and will be allowed to approve the contract price and any change orders for construction of the permanent government facility. County further agrees that prior to Developers obligation to construct the Permanent Satellite Government Center, the County and Developer shall enter into a Reimbursement Agreement enabling the Developer to be proportionately reimbursed for the costs of the Satellite Government Center including the value of the site, unless the site is located on property identified as Open Space or given open space credit within the PUD. County agrees to the inclusion of all associated Satellite Government Center costs as an eligible reimbursement within any SID formed or other funding sources, what ever they may be, to the extent permitted by governing laws, for services that provide benefit to the PUD and/or all properties within the Toquop Planning Area. To that end, County, at the request of Developer, agrees to sponsor any such SID prior to Developers obligation as set forth herein to construct the Permanent Satellite Government Center, so long as all costs associated with formation of the SID are borne by Developer, to include any consultants necessary for such formation.

- D. Site size and location. County and Developer further agrees that the permanent site location and size is dependent upon overall needs of Toquop and that Developers share of land and construction costs may vary proportional for the needs of County services and facilities, as there is a possibility that some of the necessary facility sites may be located on other parcels in the Toquop Planning Area.

4.4 Ownership and Control.

Public facilities may be constructed and operated by Developer, an Association, or through special assessments or special districts and other political subdivisions of the State subsequently created under State law. Satellite government or fire facilities may be constructed by these means, but not operated by them. Developer may, from time to time, upon request, consider funding and construction of public facilities through the following entities in accordance with NRS.

- A. Construction and/or Operations Funded by an Association. Developer may, from time to time, fund construction and operations of public facilities as required under this Section 4 through special assessments to any Homeowner's Association formed under the provisions of NRS Chapter 116.

- B. Construction and/or Operations Funded by General or Special Improvement Districts. Developer may, from time to time, fund construction and operations of public facilities as required under this Section 4 through special assessments to any GID/SID formed under the provisions of NRS,

4.5 Construction Tax/Impact Fee.

In the event that County adopts an ordinance for a construction tax or impact fee to provide for fire, satellite government and/or sheriff facilities, which applies to new construction within a PUD, Developer shall, if allowed and provided for by ordinance, law or code, receive credit for the fire and/or sheriff facilities contributions, and the land they occupy in a manner similar to the credit received by Developer for the park residential construction tax for the term of this Agreement after the Effective Date of the ordinance. County shall use its best efforts to include a provision for such credit in any such ordinance.

4.6 Solid Waste Transfer Site.

County may permit, or allow the construction of a solid waste transfer site or similar facilities on the Subject Property with Developer's prior written consent. County and Developer agree that a solid waste



transfer site for the Toquop may be necessary and the possibility exists that the most logical place for such a site may be in a heavy industrial zoning area.

4.7 Design and Construction of Public Facilities.

County agrees to utilize the approved Eagle Falls Design Standards, as is allowed by Title 14, in the construction of any County facility within the PUD.

4.8 Reimbursement of Public Facilities

- A. **Enforceability.** County agrees to create a comprehensive ordinance or other enforceable instrument, as deemed appropriate by the County, obligating all developers and property owners within the Toquop Planning area to share in the cost of any Public Facilities that are constructed by the Developer for common usage of all portions of the Toquop Planning Area. The ordinance will provide for the reimbursement of costs, to include a fair and equitable interest rate, incurred by any one or more developers required to construct temporary and/or permanent public facilities needed to provide public services within the Toquop Planning Area. Further, County acknowledges that Developer will incur substantial cost in complying with the terms of this Agreement, in development of the Master Plan PUD and providing for temporary and permanent public facilities and, accordingly, Developer has agreed to the conditions, restrictions and exactions set forth herein in reliance on County's representation that it intends to require other Developers within the Toquop Planning Area to adhere to the same requirements on an equitable level. County agrees, therefore, that in the event, County elects to use other than an Ordinance or other enforceable instrument for the reimbursement of Public Facilities, that it will not permit the development of property within the Toquop Planning Area except on the terms substantially consistent with those set forth herein and that approvals will require each developer and/or property owner to participate in a Public Facilities Reimbursement Agreement with the County and enforceable by the County for the collection of that property owners or developers proportionate share of Public Facilities costs.
- B. **Proportionate Share Methodology.** County agrees that the proportionate share methodology and payment requirements shall to be set forth in the Ordinance or other Reimbursement obligation based on the proportionate number of Gross Acres within each property owners or developers respective development parcels.
- C. **Timing of Reimbursements.** County agrees the Ordinance or other Reimbursement obligation shall require all developers and or property owners within the Toquop Planning Area to pay their proportionate share of public facilities costs upon first submittal of any tentative residential or commercial subdivision map within their respective developments (excludes large parcel land division maps).
- D. **Radio Communication Site.** Developer recognizes that reliable radio communications for Sheriff's personnel and other emergency services, is necessary and important for public safety and that in the event, the County Sheriff requires a communications tower be constructed within the PUD for service to the Toquop Planning Area, Developer and County Sheriff shall agree on a suitable location given the constraints of land use and topography to site the communications tower. County agrees, that similar to other public facilities sites, the communications tower site may be located on property designated as Open Space within the PUD and receive acre for acre open space credit. Developer and County agree to enter into a no fee lease agreement for the communications tower site and that Developer or its assigns may utilize the Communication Tower to co-locate other private commercial communication uses to generate income, provided they do not interfere with the County's primary use. Developer agrees to pay up to \$46,000 towards Sheriff's communications equipment to be installed on the Communications Tower. If at any time in the future, the County Sheriff no longer has use for the communications tower as originally intended, the communications tower will revert to the Developer or its assigns. Alternatively, Developer agrees to pay it's proportionate share of County's lease obligations for same in the event the Sheriff's communications needs are met through an independent provider in or outside the Toquop Planning Area. In any event Developers lease payment participation is limited to the first 10 years of operation. Further, Developer shall be required to participate in



funding or payment for communications equipment upon approval of the first grading permit, or at some other time as may be agreed to in writing between Developer and County.

**SECTION 5
WATER CONSERVATION, REUSE AND SANITATION**

- 5.1 Water Conservation. Developer agrees to use its best efforts to encourage water conservation in the PUD. Landscaping within Streetscape Areas shall use drip type or other water conserving irrigation systems and limit turf areas not to exceed 15% of the Streetscape area. Developer shall impose design criteria on all development within the PUD (by use of recorded restrictive covenants or pursuant to contractual obligations binding on purchasers of property) that will encourage water conservation in landscaping treatments by incorporating water conservation concepts and proven water conservation equipment, techniques and plant materials.

- 5.2 Golf Course Water Conservation. To the maximum extent practical, Developer agrees to use treated effluent to irrigate any golf course, but other sources of water including but, not limited to ground water recharge, surface water runoff, shallow nuisance ground water and potable water will also be considered. County acknowledges that treated effluent may not be available (or available in sufficient quantities) to serve golf course irrigation within the PUD at the time construction of such golf course commences. If it is determined that treated effluent should be used to irrigate a proposed golf course or courses and treated effluent is not available in sufficient quantities to irrigate same, County shall not take any action to prohibit the construction of such golf course or courses and the use of potable water on an interim basis; provided Developer shall:
 - A. Design and construct the golf course or courses to use treated effluent, and
 - B. Convert any such golf course to the use of treated effluent as soon as reasonably possible following the availability of treated effluent on the terms set forth in Section 5.6.

- 5.3 Future Approvals of Golf Courses Outside the PUD. County acknowledges that Developer will incur substantial costs in complying with the terms of Section 5.2 above and that Developer has agreed to such conditions partially in reliance on County's representation that it does not intend to permit others to construct golf courses that rely solely or primarily on the use of potable water for irrigation purposes. County agrees; therefore, that it will not permit the development of a golf course within Toquop except on terms substantially the same as those set forth in Section 5.4. In the event County does permit such other development, Developer shall have the right, in addition to any other remedy Developer may have hereunder, to design and construct future golf courses in the PUD with irrigation methods consistent with such other development.

- 5.4 Use of Treated Effluent and Conversion to Such Use. Developer agrees to design and construct any golf course, park space, and streetscape area to use treated effluent for all irrigation uses in accordance with this Section 5.4. In the event the approved PUD provides for future use of treated effluent and treated effluent is not available at the time of construction, Developer agrees to design and construct such golf course, park space, and streetscape area in a manner that it may be converted (at Developer's expense) to use treated effluent in the future as soon as reasonably possible following the availability of treated effluent. The availability of sufficient treated effluent and the timing of conversion to such use will be reviewed at least annually by the GID, or any other service provider providing water service and Developer. Treated effluent may become available from any of the sources described in this Section 5.

- 5.5 Ownership and Control. All sewage treatment facilities within the PUD will be constructed by Developer, or through special assessments or special districts and other political subdivisions of the State subsequently created under State law subject to this Section. Developer or any entity subject to this, Section 5, agrees to construct and maintain all sewage treatment facilities needed to serve the PUD at no cost to County. Developer retains the rights to treated effluent in accordance with NRS. Developer



may, from time to time, upon request, consider conveying any sewage treatment facilities to the following entities in accordance with NRS:

- A. Dedication to Water Reclamation District. Developer may dedicate, at no cost to County, any sewage treatment facility described in this, Section 5 provided:
- (i) Any sewage treatment facility must be completely constructed and acceptable to Water Reclamation District;
 - (ii) The land and improvements must be dedicated free of all liens, encumbrances, conditions, covenants and restrictions and in a manner acceptable to Water Reclamation District;
 - (iii) Prior to the dedication to a Water Reclamation District, Owner and Water Reclamation District will sign a Maintenance Agreement that covers the maintenance of said facilities.
- B. Transfer to or Construction by a General Improvement District. County hereby acknowledges that Developer may, from time to time, convey sewage treatment facilities to a General Improvement District ("GID") formed under the provisions of NRS Chapter 318 provided the conveyance is subject to the terms and conditions of NRS Chapter 318 and the GID Board acknowledges in writing that it accepts Developer's maintenance obligations for such sewage treatment facilities.
- C. Transfer to Any Entity Approved by the State of Nevada. Developer may convey sewage treatment facilities to any entity approved by Lincoln County and the State of Nevada, to provide, operate, and maintain sewage treatment facilities in accordance with NRS provided that the entity accepts Developer's maintenance obligations for such sewage treatment facility.
- D. All sewage must be treated through a County approved system and method, and such effluent must be put to beneficial use. County or any GID created by the County and having authority over the design and approval of sewage treatment facilities for the PUD may permit Developer to engage in a Private Utility Service Agreement for sanitary sewer facility improvements and operations to serve the PUD. Further, County or any GID created by the County shall permit Developer or Developers Private Utility Service Provider to utilize temporary facilities to include, but be limited to, package treatment plants and pumping stations or temporary connections to other service providers on an interim basis.
- 5.6 Package Treatment Plants. If determined to be appropriate at the time of a PUD approval, Developer may choose to purchase and install package treatment plants for use in connection with any golf course in the PUD and convert the irrigation of such golf course to treated effluent promptly following notification from the County or any entity approved by the State of Nevada to provide, operate, and maintain sewer facilities in accordance with NRS, and to supply the necessary sewage effluent to Developer in an amount sufficient to assure proper irrigation of such golf course. Developer will, to the maximum extent practical, irrigate nearby park spaces and streetscape areas with the effluent from the package treatment plants. The package treatment plant, or plants, may be located anywhere within the PUD in order to provide the most efficient and economical operation.
- 5.7 Right of First Refusal on Use of Treated Effluent. Developer shall retain right of first refusal on the use of any treated effluent for the irrigation purposes outlined in this Section 5, from any sewage treatment facilities that are conveyed to any entity other than Developer in accordance with Section 5.5 of this Agreement.
- 5.8 Groundwater Recharge. County acknowledges that to the extent Developer is able to utilize effluent for irrigation within the PUD or discharge the effluent into the groundwater basin through traditional means deemed acceptable in the industry such as Rapid Infiltration Basins, that the Developer may receive a recharge credit to Developers benefit to the extent such recharge credit exists now or in the future.



**SECTION 6
PARKS, OPEN SPACES, AND SCHOOLS**

- 6.1 **Required Park Facilities.** At least five (5) acres of programmable parks space is required for every 1,000 inhabitants. For the purposes of this Agreement, the average household size is stipulated to be 2.5 persons per unit. Developer agrees to construct, complete and maintain any park space as required by this Agreement and in accordance with the PUD Master Parks Plan as required in this Agreement and the Applicable Rules. Developer will submit to the County or a GID having authority to provide recreational facilities a Master Parks Plan for the Subject Property as soon as practical, but not later than the time of submittal of the first Tentative PUD Plan for any portion of the Subject Property, excluding a Large Parcel Tentative Map. Such plan shall include the preliminary location and timing or phasing of development of Qualified Parks, Recreational Facilities, and Open Space in addition to other requirements as may be described within this Agreement. In addition, a PUD Park Plan indicating type, nature of said public facilities, location and size in conformity with the PUD Master Parks Plan will be submitted with each Tentative PUD Plan.

- 6.2 **Park Design.** Developer shall design and construct Qualified Parks, Recreational Facilities and Open Spaces in accordance with the Applicable Rules. A detailed plan for any Park proposed to be a Qualified Park, Recreational Facility or Open Space describing the nature and location of recreational facilities shall be submitted as required under the Applicable Rules and PUD Master Parks Plan. The County will approve the final design, construction specifications and amenities of each park site. Each Qualified Park, Recreational Facility and or Open Space shall include the amenities specified in the PUD Master Plan for Parks including: turf area, trees, irrigation, playground apparatus, playfields, play areas, picnic areas, and other recreational facilities and equipment designed to serve the residents. County and Developer agree to design and construct public parks in compliance with the minimum park standards as specified in the Code as of the effective date of this Agreement and that any design in excess of the minimum standards requested by either the Developer or the County will be the at the sole cost to the requesting party whether the Developer or the County.

- 6.3 **Location of Parks.** County agrees police and fire stations, schools and other public facilities may be located at joint use sites adjacent to Qualified Parks, Recreational Facilities, and Open Spaces or other public facilities where feasible. Developer shall have the right to construct Qualified Parks, Recreational Facilities, and Open Spaces within storm water detention basins, drainage channels, and floodways so long as such facilities meet County approval.

- 6.4 **Ownership and Control.** Developer may, from time to time, convey any Qualified Park, Recreational Facility, or Open Space to the following entities in accordance with NRS, and such Qualified Park, Recreational Facility, or Open Space shall be counted towards Park requirement as described in Section 6.1 and Section 6.2 if it meets the following requirements:
 - A. **Transfer to or Construction by a GID.** County hereby acknowledges that Developer may, from time to time, convey any Qualified Park, Recreational Facility or Open Space to a GID formed under the provisions of NRS Chapter 318 provided the conveyance is subject to the terms and conditions of this Section 6 and the GID Board acknowledges in writing:
 - (i) That it is obligated to perform any unfulfilled terms and conditions of this Section 6, and;
 - (ii) That it accepts Developer's maintenance obligations for such Qualified Park, Recreational Facility, or Open Space.

With respect to any GID Park that may be considered as a Qualified Park, Recreational Facility, or Open Space, the GID, to which Developer conveys title, shall have the right to program and control the use thereof; provided, however, that in all circumstances that the general public shall have reasonable rights of access and use to the Qualified Park, Recreational Facility, or Open Space listed in Section 6.1, 6.2 and in accordance with NRS Chapter 318.



B. Transfer to Homeowner's Association. Prior to any dedication to GID, Developer may from time to time, convey any Qualified Park, Recreational Facility, or Open Space to any Association formed under the provisions of NRS Chapter 116, ("HOA Park"), provided the conveyance is subject to the terms and conditions of this Section 6, and the Association acknowledges in writing:

(i) That it is obligated to perform any unfulfilled terms and conditions of this Section 6, and;

(ii) That it accepts Developer's maintenance obligations for such Qualified Park, Recreational Facility, or Open Space.

With respect to any HOA Park that may be considered as a Qualified Park, Recreational Facility, or Open Space, the Homeowner's Association, to which Developer conveys title, shall have the right to program and control the use thereof; provided, however, that in all circumstances that the general public shall have reasonable rights of access and use to the Qualified Park, Recreational Facility, or Open Space listed in Section 6.1 and 6.2.

C. Transfer to County. County may, at its sole discretion, accept the transfer of and maintenance for any Park, Recreational Facility or Open Space.

6.5 Failure to Timely Construct or Equip. In addition to Section 9 of this Agreement, if Developer fails to timely construct or equip any of the park sites in accordance with the Master Parks Plan and this Agreement, then no further building permits will be issued until such park(s) is/are constructed, unless otherwise agreed to by Developer and County.

6.6 Termination of Maintenance Obligation. When Developer has dedicated any Qualified Park, Recreational Facility, or Open Space described in Section 6.1 and 6.2 in accordance with the provisions in 6.1 through Section 6.6 of this Agreement, Developer and any entity described herein shall be relieved of any further responsibility for maintenance of such Qualified Park, Recreational Facility, or Open Space, except where such Qualified Park, Recreational Facility, or Open Space, is covered by a Maintenance Agreement between GID, County and Developer or any entity described in Section 6.5 of this Agreement.

6.7 Residential Construction Tax Revenues. In accordance with NRS Chapter 278.4983, the County may impose a "Residential Construction Tax" (RCT) upon the privilege of constructing apartment houses and residential dwelling units. If the County enacts an ordinance imposing a RCT upon the Subject Property, County agrees that, as RCT revenues become available from the created Park Revenue Management District, such funds will be applied for the development and construction of Qualified Parks, Recreational Facility, or Open Space, as described in Section 6.1 through Section 6.5 to the extent that funds are generated from within the Subject Property. County and Developer agree to produce an annual statement of funds generated by the RCT within the Subject Property for the created Park Revenue Management District and a plan for the use of such fees within the Subject Property agreeable to both parties.

6.8 Park Revenue Management District. If the County adopts a Residential Construction Tax for park construction in accordance with NRS, County may designate the PUD as a Park Revenue Management District (District) in accordance with NRS.

6.9 Joint Park Implementing Agreement. If the County enacts an ordinance imposing a RCT upon the Subject Property, County, District and Developer agree to develop a Joint Park Implementing Agreement that addresses:

A. The use and allocation of RCT revenues and credits within the PUD in accordance with NRS Chapter 278;



- B. The maintenance of constructed Qualified Parks, Recreational Facilities, and Open Space and/or the establishment of a Maintenance Agreement between Developer and District for Qualified Parks, Recreational Facilities, and Open Space, and;
- C. The obligations of Developer and District regarding park implementation and maintenance.

6.10 Residential Construction Tax Credits. If the County enacts an ordinance imposing a RCT upon the Subject Property, Developer and any Designated Builder shall be entitled to a credit against such tax for any Qualified Park, Recreational Facility, or Open Space in accordance with NRS Chapter 278 as follows:

- A. Credit for Construction and Development of Park Facilities. County agrees and acknowledges that if Developer constructs and develops Qualified Park, Recreational Facility, or Open Space facilities on land to be dedicated in fee simple to Lincoln County or in manner consistent with Section 6.5 of this Agreement, Developer shall be entitled to a credit against the RCT in an amount equal to the cost actually and reasonably incurred by Developer or the Designated Builder for the design and construction of such Park and for improvements or installation of facilities that would be a permissible use of residential construction tax revenues under NRS Chapter 278.4983. County further agrees and acknowledges that if Developer constructs and develops park facilities on land that will not be conveyed to County in fee simple or conveyed as described in Section 6.5 of this Agreement, Developer shall be entitled to a credit against the RCT in an amount equal to the actual cost of the park facilities developed and constructed as outlined herein only if the park site and all facilities are made available for use by the general public on a non-discriminatory basis and such requirement is expressly stated in an irrevocable easement acceptable to County and recorded against the land on which such facilities are located. The actual cost of the credit shall be determined by the County. Notwithstanding the above, County shall not be required to reimburse or compensate Developer in excess of the total funds available through residential construction taxes collected within the Subject Property if the residential construction tax required from Developer and/or Designated Builder exceeds available funds.
- B. Acre for Acre Open Space Credit. With respect to any Public Facility, Qualified Park, Recreational Facility, or Developed Open Space improvements required to be located on other than property designated for Open Space or Parks as depicted on the approved PUD, the County agrees to give acre for acre open space credit for developable land, including trading open space for Public Park space. Further, County agrees said credit may be adjusted through an administrative amendment to the PUD.
- C. Construction Cost Credit The County shall determine, in its reasonable and good faith opinion and in accordance the NRS 278, the amount of construction costs that qualify for Residential Construction Tax Credit pursuant to the foregoing provisions after reviewing the design, location and costs of each proposed Qualified Park, Recreational Facility, or Open Space; provided such determination may, at Developers election, be appealed to the Commission.
- D. Transfer of Credits. In addition to the credits referred to above, any credits otherwise due for a Unit may be applied at Developer's sole discretion to another Unit so long as the residents or future residents of the new construction have the right to use such Park on an equal basis with all other users.
- E. Right to Limit Credit Transfer. Developer shall, from time to time, notify County in writing of the identity and the location of the residential units entitled to such credits. Developer may, in its discretion, limit the maximum amount of credits for which such Designated Builder is entitled pursuant to this Section 6.11. Credits will be applied only to building permits, which have not yet been issued.

6.11 Master Plan for Schools. The Lincoln County School District is responsible for providing the primary and secondary education of all school age children within Lincoln County. Developer agrees to cooperate



with the Lincoln County School District ("School District") in developing a Master Plan for Schools in the PUD. Such plan shall include the proposed location and suggested timing or phasing of development of potential school sites, which may include elementary, middle, and high school sites. Developer agrees that School District, in order to meet its educational, design and construction requirements, has the right to approve all proposed school sites. Developer agrees to complete an agreement with the School District prior to the Issuance of the first residential building permit within the PUD, unless otherwise agreed to between the School District and the Developer.

**SECTION 7
TRANSPORTATION**

7.1 Traffic Studies. Developer will prepare and submit to the County a Master Traffic Study acceptable to the County for the Conceptual PUD Plan. This study must conform to the Toquop Traffic Study adopted by County. Developer shall be responsible to provide (or agree to provide with adequate assurance of performance in accordance with County standard practice), at no cost to County, On-Site Improvements (defined below) in conjunction with approval of a Master Large Lot Final PUD Map prior to issuance by County of any grading or building permits for the PUD. Developer shall be responsible to provide, at no cost to County, Off-Site and On-Site Improvements in accordance with this Section 7. For the purposes of this Section 7, the following terms shall have the following meanings.

- A. "Off-Site Improvements" means traffic mitigation measures and improvements to the Major Intersections and roadways located outside of the PUD as described herein.
- B. "Public Street" means a street dedicated to the County for public use. This dedication is not complete until the County formally accepts these streets. Upon completion and acceptance, these streets will be maintained by the County for perpetuity.
- C. "Private Street" means a street dedicated to the PUD Master Home Owner's Association ("HOA"). Upon dedicated the HOA will be responsible for maintenance. The HOA may or may not choose to dedicate any Private Street to an alternate Home Owner's Associations.
- D. "Refunding Agreement" means a document enforced by the County to provide the Developer a means to recoup the cost of any proportionate "out of pocket expense" for the construction of any offsite road improvements through BLM or where applicable through private lands to the entrance of the PUD. It is understood that the County is not responsible for sharing any of this cost and said cost should be shared by the additional developers and or parcel owners.
- E. "On-Site Improvements" means any Traffic improvement located within the PUD.
 - (i) Any Traffic Study shall be in a manner acceptable to the County and provide the following:
 - a. Identify impacts to the roadway network within the PUD. Including impacts to any Major Street Segment and any Major Intersection, and impacts to the transportation network which are outside of PUD, and;
 - b. Display all related mitigation measures necessary to such Major Street Segments and at such Major Intersections together with the roadway access needs leading to the PUD.
 - c. The study shall be consistent with ITE principles and technologies. County may also require additional site-specific traffic studies as may be deemed necessary related to and prior to the construction of any commercial area, school, or other land use that may have time-sensitive traffic impacts or other significant



impacts to adjacent traffic patterns. Traffic Studies and all other site-specific traffic studies required by a Tentative PUD Plan shall be performed in accordance with County regulations. All Traffic Studies shall identify the construction phasing anticipated for any and all phases of the PUD plan area together with access mitigation acceptable to the County.

7.2 Mitigation of Off-Site Traffic Impacts. Developer's obligation to improve any roads or construct intersections or other transportation improvements outside of the PUD shall be limited to those obligations described in this Section 7.2. County and Developer acknowledge that development within the PUD will impact only those rights-of-ways owned and maintained by County or future HOA. Developer acknowledges that it will be assessed its prorated share of any Off-Site Traffic Impacts for facilities and improvements in providing traffic access to Toquop. Developer acknowledges that it has the responsibility for any necessary cost of improvements as required by County. Developer shall cooperate with County in the implementation of such required improvements as set forth in this Section 7.2. Except as expressly provided in this Agreement,

A. Minimum Traffic Service Level. To satisfy its obligations to provide Off-Site Improvements, Owner will be responsible for constructing and funding all Off-Site Improvements as required by County, in order to provide the minimum service level as specified in the approved Toquop Master Transportation Study, for those Major Intersections and roadways as set forth therein. In order to provide and maintain a minimum service level as defined herein, Developer shall be:

- (i) Required to implement those Off-Site Improvements required within a Tentative PUD Plan Traffic Study concurrently with development and/or phasing of construction within the associated Tentative PUD Plan area or;
- (ii) Subject to County review and inspection of existing PUD service levels as set forth in Section 7.2(c) as follows:
 - (1) For any improvements to roadways, intersections or interchanges as described in Section 7.4, Developer will be responsible for providing a minimum service level required by the Toquop Traffic Study.
 - (2) For any On-Site Improvements to public roadways and intersections, Developer will be responsible for providing a minimum service level required by the Toquop Traffic Study.

B. Financing of Off-Site Improvements. County and Developer agree that Developer may use any means necessary in accordance with County, State, or Federal law to obtain such funds necessary to timely construct any Off-Site Improvements set forth within this Section 7.2, including but not limited to Developer financing, special improvement districts, builder and/or property assessments or mitigation funds, state and/or federal highway funds and financing mechanisms, or any other reasonable financing mechanisms authorized under State law or otherwise. County shall use its best efforts to cooperate with Developer, in securing any State or Federal funds or other authorizations, which may be necessary in order to obtain financing from institutions other than County. Any such financing means shall be the Developers sole responsibility and cost.

C. Review, Maintenance and Cure of Service Levels. Notwithstanding the construction and timing of Off-site Improvements as required by County and included within a Tentative PUD Plan Traffic Study, County has the right at any time to review and inspect existing service levels at any Intersection or roadway set forth in Section 7.2(a). If County finds that minimum service levels that are a direct result of the PUD as set forth in Section 7.2(a) are not being met, Developer shall be required to submit traffic mitigation plans in coordination with County within ninety (90) days showing how Developer shall meet minimum service levels as required herein. Such traffic mitigation plans shall provide:



- (i) Design and specifications as necessary to bring Off-site Improvements to minimum service levels and;
- (ii) A schedule for when required Off-site Improvements will be implemented.

Developer is then required to complete the Off-Site Improvements in accordance with the schedule provided within the traffic mitigation plan. If Developer does not meet the schedule for implementation of Off-Site Improvements as set forth in the traffic mitigation plan, County may take action in accordance with Section 9 of this Agreement.

D. Data Collection, Sharing, and Use. Developer and County shall provide copies of all actual traffic data collected by any party within Toquop to each other party and related to those Off-Site Improvements set forth in Section 7.2(a). County and Developer agree that any such actual traffic data collected on these Off-Site Improvements provides a valuable tool for estimating future traffic estimates and may be used by Developer and County as a model for generating any future traffic estimates, Tentative PUD Plan Traffic Studies and traffic mitigation plans.

7.3 Mitigation of On-Site Traffic Impacts. Developer acknowledges it shall be responsible for constructing all internal public and private roadway and funding all costs and expenses associated with their construction as set forth in Section 7.2, including, but not limited to: rights-of-way; drainage facilities; roadway construction; cart and pedestrian pathways, utility installations and modifications; noise attenuation devices; bridging structures; lighting; traffic control equipment and signage; aesthetic improvements; landscaping, and such other features customarily provided in such PUD. Except as expressly provided in this Agreement, Developer shall have no obligation to participate in, pay, contribute or otherwise provide any further exactions to provide for on-site rights-of-way, facilities or improvements for the road and motor vehicular traffic system within County or for any facilities, equipment or physical improvements that are a substitute thereof.

7.4 Ownership and Control of Internal (Private) Roadway Network. All private roads within the PUD will be constructed and maintained by Developer, a HOA, or through special assessments or special districts and other political subdivisions of the State subsequently created under State law. The hierarchy of roadways will be designed and constructed as applicable to meet AASHTO standards or ITE guidelines for roadway improvements. The final design of street configurations and intersections will be established within final PUD Plan approvals to be consistent with the Eagle Falls Design Standards. Developer agrees to maintain private streets, roads and rights-of-way within the PUD at no cost to County. Developer may, from time to time, convey any street or roadway to the following entities in accordance with NRS:

A. Transfer to or Construction by a General Improvement District. County hereby acknowledges that Developer may, from time to time, convey any public street or roadway to a GID formed under the provisions of NRS Chapter 318 provided the conveyance is subject to the terms and conditions of NRS Chapter 318 and the GID acknowledges in writing that it accepts Developer's maintenance obligations for such streets and roadways. With respect to any street or roadway, the GID, to which Developer conveys title, shall have the exclusive right to program and maintain the use thereof in accordance with NRS Chapter 318.

B. Transfer to Homeowner's Association. Developer may, from time to time, convey any private street or roadway to any HOA formed under the provisions of NRS Chapter 116 provided that the HOA accepts Developer's maintenance obligations for such street or roadway.

7.5 Acquisition of Offsite Rights-of-Way. With respect to rights-of-ways outside the boundaries of the PUD but necessary for development of the roadways, utilities, or flood control facilities within the PUD, County shall use its best efforts to assist (except financially) Developer in obtaining such necessary Right-of-way through acquisition from the Bureau of Land Management or by power of condemnation where authorized by law. County and Developer agree that in the event such Offsite Rights-of-Way may require condemnation resulting in Financial burden resulting from acquisition costs to the



Developer, at Developers request, County may approve alternate Rights-of-Way both revocable and irrevocable as interim and permanent alternatives to meet the development needs of the PUD, provided such Rights-of-Way are in the County's reasonable interest and pose no additional financial burden to the County.

- 7.6 Jobs-Housing Balance. Developer will use best efforts to develop employment creating land uses in conjunction with residential development, in accordance with the PUD as approved and amended.
- 7.7 Streetscapes. County acknowledges Developer will retain ownership of Streetscape Areas subject to Section 7.4, of this Agreement to allow Developer to maintain landscaping in the Streetscape Areas. Developer or any entity outlined in Section 7.4 of this Agreement shall establish an adequate reserve account to fund the maintenance, removal and replacement of the landscape and irrigation materials within Streetscape improvements.
- 7.8 Developer agrees to complete all major thoroughfares as shown in the overall traffic study and approved by the County, that connect to adjacent parcels at the earliest possible opportunity in order to facilitate traffic flows throughout Toquop. The County retains the right to determine when these routes should be completed.

**SECTION 8
FLOOD CONTROL**

- 8.1 Technical Drainage Studies. Developer shall prepare and submit a technical drainage study acceptable to the County for each Tentative PUD Plan submittal. Developer shall construct those flood control facilities identified in the technical drainage study, which are necessary for the flood protection of the PUD or for mitigation of any downstream flood impacts caused by the development of the PUD.
- 8.2 Flood Control Facilities. Developer agrees that all flood control facilities will be constructed so as to not exceed the current downstream flows that are now delineated in the required flood studies. All flood control facilities within the PUD will be constructed by the Developer, a HOA, or through special assessments or special improvement districts. Each facility must be built in the manner consistent with the County Regulations Manual on or before the facility completion date set forth in the approved Drainage Study for each respective Tentative PUD Plan. Developer agrees to cooperate with County in the design and treatment of local and regional flood control facilities including, but not limited to, the construction of recreational or other multiple use facilities located within said flood control facility, if approved by County.

Developer may design additional flood storage and conveyance facilities within flow channels located within the 100-year flood plain. Developer and County agree that additional flow capacities may be carried within a series of appropriately-sized flood control lakes and created wetlands that may be built in conjunction with an Aquifer Recharge Program as described in NRS Chapter 534 to control excess flood flows from the north, west and east, and the backflow condition from the south of the PUD. The flood control lakes will be designed with a minimal, yet appropriate, level of free board to allow tertiary storage and conveyance for peak events.

- 8.3 Additional Flood Control and Development Requirements. Residential and commercial development, excluding open space uses, within the 100-year floodplain will only occur in Floodway Fringe locations in accordance with FEMA Standards in effect at the time of development, unless the 100 year flood plain is properly mitigated through the filing of FEMA required maps. All onsite facilities and development will be constructed as required to reduce runoff in a manner consistent County regulations.
- 8.4 Conveyance, Maintenance and Control. Developer may, from time to time, upon request, consider transferring the maintenance obligations, as may be required by the County or any GID, of any flood control facilities to the following entities in accordance with the Nevada Revised Statutes:
 - A. Transfer to Homeowner's Association. Developer may, from time to time, convey flood control facility maintenance obligations to any HOA formed under the provisions of NRS Chapter 116

provided that the HOA accepts Developer's maintenance obligations facilities or was formed in accordance with by-laws stipulating required acceptance of such maintenance responsibilities.

- B. Transfer to or Construction by a General Improvement District. County hereby acknowledges that Developer may, from time to time, convey flood control facilities to a GID provided the conveyance is subject to the terms and conditions of NRS Chapter 318 and the GID Board acknowledges in writing that it accepts Developer's maintenance obligations for such flood control facilities. With respect to flood control facility, the GID, to which Developer conveys title, shall have the exclusive right to program and maintain the use thereof in accordance with NRS Chapter 318.
- C. Transfer to a Political Subdivision of the United States or State of Nevada. Developer may convey flood control facilities to any political subdivision of the State of Nevada or United States provided that the political subdivision accepts Developer's maintenance obligations for such flood control facilities. The political subdivision, to which Developer conveys title, shall have the exclusive right to program and maintain the use thereof.
- D. Transfer to a Flood Control District. Developer may convey flood control facilities to any Flood Control District formed under the provisions of NRS provided that the District accepts Developer's maintenance obligations for such flood control facilities.

SECTION 9 REVIEW AND DEFAULT

- 9.1 Frequency of Reviews. As required by NRS Chapter 278, at least once every twenty-four (24) months during the Term of this Agreement, Developer shall provide and County shall review in good faith, a report submitted by Developer documenting the extent of Developer's and County's material compliance with the terms of this Agreement during the preceding twenty-four (24) months. During the final review, (24 months prior to the expiration of term for this development agreement), Developer and County shall determine the need for any extension. Developers cost shall be limited to the standard and current application fee with respect to such review. If, at the time of review, an issue not previously identified in writing is required to be addressed, the review at the request of either party shall be continued to afford sufficient time or response. County and Developer shall be permitted an opportunity to be heard before the Commission regarding their performance under this Agreement in a manner set forth in the Development Agreement Ordinance.
- 9.2 Procedures in the Event of Noncompliance. In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing a courtesy notice stating the reason for noncompliance and any action necessary to correct the noncompliance. Courtesy notices must be made by certified mail. If after thirty days (30) of the date the courtesy notice is sent the compliance is not corrected to the satisfaction of the complaining party, the party alleging noncompliance may deliver in writing a notice of default. The time of notice shall be measured from the date of receipt of certified mailing. The notice of default shall include the section of this agreement alleged to be violated, the nature of the alleged default, and, where appropriate, the manner and period of time in which it may be satisfactorily corrected. During the period of time the notice of default letter is pending the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected after thirty days, the following procedures shall apply:
 - A. County Procedures.
 - (i) Intent to Remedy Noncompliance. After proper notice and the expiration of the above-referenced periods for correcting the alleged default, the County, or designee, may Issue a letter providing notice of County's intent to set the matter for hearing before the Commission. The letter shall notify Developer of the action taken. County shall give



Developer at least ten (10) business day's notice to correct the default before the matter is scheduled for a hearing. The letter notifying the Developer of the hearing shall contain the intended hearing date. The ten (10) business days are measured from the date of certified mailing of the notice.

- (ii) Hearing Scheduled. If default is not corrected within the time specified above, the matter shall be scheduled and noticed as required by law for consideration and review by the Commission during their next regularly scheduled Commission meeting.
- (iii) Review by Commission. Following consideration of the evidence presented before the Commission and a finding based on substantial evidence that a default has occurred by Developer and the default remains uncorrected, the Commission may authorize the suspension of building permits within the PUD or may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any Vested Right in favor of Developer existing or received as of the date of the termination. Developer shall have twenty-five (25) days after the date noticed of the Commission's decision is filed with the Lincoln County Clerk, to institute legal action pursuant to Section 9.4 hereof, to determine whether the Commission abused its discretion in determining whether a default existed and remain uncorrected.

B. Developer Procedures.

- (i) Hearing Scheduled. After proper notice and the expiration of the above-referenced periods for correcting the alleged default, Developer may issue a letter requesting a hearing before the Commission for review of the alleged default. Upon receipt of the letter, the Lincoln County Clerk shall schedule an agenda item to consider the alleged default during the next regularly scheduled Commission meeting.
- (ii) Review by Commission. Following consideration of the evidence presented before the Commission and a finding based on substantial evidence that a default has occurred by County and remains uncorrected, the Commission shall direct County staff to correct the default. Developer shall have twenty-five (25) days after the date notice of the Commission's decision is filed with the Lincoln County Clerk, to institute legal action pursuant to this Section 9.4 hereof, to determine whether the Commission abused its discretion in determining whether a default existed and remain uncorrected.

C. Waiver. Failure or delay in giving any notice provided for herein shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any of its rights or remedies.

D. Notices. All notices provided for herein shall be sent to the address provided in Section 12 of this Agreement and to be sent certified mail.

9.3 Unavoidable Delay or Default, Extension of Time for Performance. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war; acts of terrorism; insurrection; strikes; walkouts; riots; floods; earthquakes; fires; physical and financial limitations and constraints related to power, water and sanitary sewer services to the Property; casualties; acts of God; restrictions imposed or mandated by governmental entities; failure of governmental agencies (other than County) to perform acts or deeds necessary for the performance of this Agreement; enactment of conflicting state or federal laws or regulations; new or supplementary environmental regulations, or similar matters beyond the control of the parties. If written notice of any such delay is given to County within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by County within ten (10) days of such written notice, shall be granted



coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between County and Developer.

- 9.4 Institution of Legal Action. County and Developer agree that neither would have entered into this Agreement if either party were liable for, or could be liable for, damages under or with respect to this Agreement. Accordingly, County and Developer may pursue any remedy at law or equity available for breach, except that neither Developer nor County shall be liable to the other or to any other person or entity for any monetary damages whatsoever. Any judicial review of the Commission's decision or any legal action taken pursuant to this Agreement will be heard by a Court under the standard review appropriate for the review of zoning actions. Judicial review of the decision of the Commission shall be limited to the evidence presented to the Commission at the public hearing as described in this Section 9. If a party desires to present new or additional evidence to the Court, they may petition the Court to remand the matter to the County Commission to consider the additional or new evidence. Jurisdiction for judicial review or any judicial action under this Agreement shall rest exclusively with the Seventh Judicial District Court, State of Nevada.
- 9.5 Applicable Laws. This Agreement shall be construed and enforced in accordance with the law of the State of Nevada.
- 9.6 Adjustments for Inflation. In the event there is a delay of more than one (1) year in the payment of a contribution required in this Agreement, or the construction of any required public facilities, the amount of the contribution may be adjusted for inflation, or if construction of a required public facility based on actual construction costs. If the parties are unable to agree to the adjusted amount, the matter may be set for a hearing before the Commission, after notice is provided to Developer. After the Commission conducts a public hearing and considers the evidence presented, it may adjust the amount of the contribution to account for inflation.

**SECTION 10
FINANCING**

- 10.1 County Cooperation in Financing. County expressly acknowledges and agrees that Developer may be required to finance a part of its obligations through private financing in addition to the financing and reimbursement provisions contemplated by this Agreement. County agrees to cooperate with Developer with respect to any such private financing. County will execute and deliver written documentation to any lender or other interested person such documents as may be reasonably requested to acknowledge.
 - A. That County has no lien on the Subject Property as a direct result of this Agreement, and;
 - B. That County shall recognize and allow a lender, which has foreclosed or acquired a portion of the PUD from Developer to inure to the rights and benefits of this Agreement as to such property. County and Developer acknowledge, however, that if a Special Improvement District or General Improvement District is created such district will constitute or create a lien to secure repayment of the bonds. Nothing herein shall be deemed to relieve Developer of its obligations under this Agreement or its liability for failure to perform its obligations under this Agreement.
- 10.2 Funding Allocation. County reasonably believes that sufficient funds can be obtained to meet its obligations under this Agreement. In the event, however, that County fails to allocate funds sufficient to meet such obligations, County's obligations to fund, construct or otherwise perform the specifically non-funded obligation shall be excused. In such an event Developer will have the right to terminate this Agreement and all executor obligations of Developer hereunder by written notice to County.
- 10.3 Interim funding. Developer agrees to provide interim funding for staff positions needed to support the PUD, based upon an approved budget not to exceed \$540,000, per annum, and a staffing plan for the



entire Toquop Planning Area, to be provided by an independent consultant hired by the County and paid for by developer. This staffing plan must show the need for the additional staff, based on a formula for total units in the LCCRD. The cost for this staffing plan will be fronted by the first developer and reimbursed by other developers as outlined in Section 4.8. Developer agrees to provide interim funding on a quarterly basis to the County for the needed staff positions at the County's actual cost. Payment to be made in advance on a quarterly basis. Developers funding of these positions would begin upon submittal of any PUD Engineering Studies, Improvement/Grading Plans, or Tentative Maps and on the basis of the staffing plan. Developers payment obligation may be terminated on not less than 180 days written notice, which may not be given prior to 2 ½ years from commencement of employment for each respective staff position or until it can be shown that County revenue generating operations of Developer, its successors and assigns are contributing enough funding to make each staff position self sustaining, but in no event shall Developers interim funding obligation exceed the term of this Agreement. Funding for these staff positions shall be shared by any other developer that is moving forward with development efforts within the same time frame, as outlined within the staffing plan. In the event Developer, its successors or assigns can no longer proceed with the development of the PUD as outlined in Section 3 and on the basis of Section 9.3 "Unavoidable Delays or Default". At the request of Developer, County agrees to evaluate the need for the funded staffing positions with respect to any slow down in the development of the PUD based on such other events resulting from economic hardship and overall market conditions.

- A. **PUD Coordinator Position.** Developer agrees to fund one full time staff member (PUD Coordinator) in addition to positions outline in 10.3, as a central point of contact for all coordination and communication issues between the County and Developer. Funding for the PUD Coordinator will begin upon approval of this Development Agreement and employment of the PUD Coordinator and continue for the length of this agreement or a mutually agreed upon termination date between Developer and County. Coordinator's compensation shall be consistent with other positions in Lincoln County having similar responsibilities. The full time PUD Coordinator position may be jointly shared by other Developers with equal cost sharing between the developers until any Developers submitted work requires full time coordination, which determination will be at the County's reasonable discretion. At that point, any additional Developer will be required to fund an additional full time Coordinator position.
- B. **Pre-Development Funding.** In order to defray the administrative costs of reviewing this Agreement and other ancillary costs prior to the Interim Funding and exclusive of the PUD Coordinator, Developer agrees to pay County \$40,000 no later than 45 days upon approval of this Agreement by the Lincoln County Board of Commissioners and Recordation of this Agreement with the County Clerks Office, unless an alternate date is agreed to by the County, so long as this required funding is uniformly applied to all Developers within the LCCRD.

**SECTION 11
CONFLICTING LAWS**

- 11.1 **Conflicting State or Federal Rules.** In the event that any conflicting state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by County, this Agreement shall remain in full force and effect as to those provisions not affected, the conflicting laws or regulations shall not be applied retroactively, and:
 - A. **Notice and Copies.** Either party, upon learning of any such matter, will provide the other party with written notice thereof and provide a copy of any such law, regulation or policy or an account of any such action or inaction together with a statement of how any such matter conflicts with the provisions of this Agreement; and;
 - B. **Modification Conferences.** The parties shall, within thirty (30) days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement



or create a Supplemental Development Agreement to bring it into compliance with any such federal or state law or regulation, or accommodate any such action or inaction.

11.2 County Commission Hearings. In the event County believes that an amendment to this Agreement is necessary pursuant to this, Section 11 due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the Commission. The Commission shall determine the exact nature of the amendment of suspension necessitated by such federal or state law or regulation or action or inaction. Developer shall have the right to offer oral and written testimony at the hearing. Any suspension or modification ordered by the Commission pursuant to such hearing is subject to judicial review as set forth in Section 9.

11.3 Cooperation in Securing Permits. County shall use its best efforts to cooperate with Developer in securing any County permits, licenses or other authorizations, which may be required as a result of any, amendment or suspension resulting from actions indicated under this Section 11. Developer will be responsible to pay all applicable fees in connection with securing of the permits.

**SECTION 12
GENERAL PROVISIONS**

12.1 Enforcement and Binding Effect. Subject to the limitations of NRS Chapter 278, this Agreement is enforceable by either party in accordance with its terms notwithstanding any change (which, except for this Agreement would otherwise be applicable) in any of the Applicable Rules. Nothing in this Agreement shall prevent the County from increasing "Cost Based Fees" which are deemed to be administrative fees for issuance of Land Use Approvals, building permits, plan checks, or inspections which are based upon actual costs to the County.

12.2 Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the thirtieth (30th) anniversary of the Effective Date, with two ten 10 year options to extend. Any such extension must be approved by County.

12.3 Assignment.

A. Agreement Transfer. This Agreement, including the terms and conditions thereof and except as described in Section 12.3B of this Agreement, may be freely transferred or assigned at any time and from time to time, wholly or in portions thereof by Developer provided that the County consents in writing to the assignment or transfer, to which consent is not unreasonably withheld, and the County is satisfied that assignee or transferee is financially capable of fulfilling the terms and conditions of the Agreement, and such assignee or transferee assumes in writing all obligations of the Developer commensurate with such assignment or transfer hereunder. Upon any such assignment or transfer hereunder, the Developer shall be relieved of all obligations and liabilities under or in connection with this Agreement.

B. Transfer to an Affiliate of Developer. The rights of Developer under this Agreement may be freely transferred or assigned to any entity, partnership or corporation which Developer controls or in which Developer has a combined interest or which controls Developer, provided such entity shall assume in writing all obligations of Developer hereunder. In connection with the transfer or assignment of any portion of the Subject Property to an affiliate of the Developer, Developer shall provide County with written notice of any transfer, conveyance or assignment.

C. Transfer of Property Not to Relieve Developer of its Obligation. The Developer may assign or transfer lands in any portion of the PUD within a recorded parcel map, large land division map or subdivision map and such transferee and assignee shall not be subject to the obligations of the Developer as to the portion of the PUD so assigned or transferred except as expressly provided herein. Such assignment or transfer shall not relieve Developer of its obligations as to the assigned or transferred portion of the PUD unless Assignee assumes such obligation in writing and County consents.



- D. Transfers to Designated Builders. Without the requirement of further action on the part of the County and notwithstanding the requirements of Section 12.4 C County hereby consents to the transfer, at any time and from time to time following the execution of this Agreement, of parcels of the Subject Property to one or more Designated Builders for development purposes.
- E. In Connection with Financing Transactions. Developer has full discretion and authority to transfer, assign or encumber the PUD or portions thereof in connection with financing transactions, without limitation on the size or nature of any such transaction, the amount of land involved or the use of the proceeds therefore, and may enter into such transactions at any time and from time to time without permission of or notice to County.

- 12.4 Amendment or Cancellation of Agreement. Except as otherwise permitted by NRS Chapter 278.0205 and Section 9 of this Agreement, this Agreement may be amended from time to time or canceled but only upon the mutual written consent of the parties hereto, which consent shall not unreasonably withheld or delayed by either party..
- 12.5 Binding Effect of Agreement. Subject to Section 12.3 hereof, the burdens of this agreement bind and the benefits of this Agreement inure to the parties' respective successors in interest.
- 12.6 Relationship of Parties. It is understood that the contractual relationship between County and Developer is such that Developer is an independent contractor and not an agent of County for any purpose.
- 12.7 Notices. All notices, demands and correspondences required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To County: Board of County Commissioners for Lincoln County
 ATTN: County Clerk
 P. O. Box 90
 Pioche, NV 89043

With a Copy to: Office of the District Attorney
 Lincoln County
 P. O. Box 60
 Pioche, NV 89043

To Owner: BLT Lincoln County Land, LLC
 9900 Covington Cross, Suite 200
 Las Vegas, NV 89144

Either party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address within thirty (30) days. Notices given in the manner described shall be deemed delivered on the date of personal delivery or the date delivery of the mail is first attempted.

- 12.9 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous Agreements between the parties with respect to all or any part of the subject matter hereof.
- 12.10 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of County or Developer, as the case may be.

- 12.11 Recording Amendments. Promptly after the Effective Date, an executed original of this Agreement shall be recorded in the Official Records of Lincoln County, Nevada. All amendments hereto shall be in writing signed by the appropriate officers of County and Developer in a form suitable for recordation in the Official Records of Lincoln County, Nevada. Upon the completion of performance of this Agreement or its cancellation, revocation or termination, a statement evidencing said completion or revocation signed by appropriate officers of County and Developer shall be recorded in the Official Records of Lincoln County, Nevada.
- 12.12 Release. Each residential lot or commercial parcel within the Subject Property shall not be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of a building permit for the construction of a residence or commercial building thereon.
- 12.13 Headings; Exhibits; Cross References. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement and the recitals at the front of this Agreement are incorporated herein by the references thereto contained herein. Any term used in an exhibit herein have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits of or to this Agreement, unless otherwise specified.
- 12.14 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such term does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.
- 12.15 Voluntary Agreement. Developer acknowledges and agrees that it voluntarily, willingly and without protest and duress freely enters into this Agreement and accepts the terms and conditions herein.
- 12.16 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Developer shall hold County, its officers, agents, employees, and representatives harmless from liability for damages or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on Developer's behalf which relate to the development of the PUD. Developer agrees to and shall defend County and its officers, agents, employees and representatives from actions for damages cause or alleged to have been caused by reason of Developer's activities in connection with the development of the PUD. Developer agrees to indemnify, hold harmless, and provide and pay all costs and attorney's fees for a defense for County in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or action is proximately caused by the intentional or negligent act of county, its officers, agents, employees or representatives.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written, as authorized by Ordinance No. 2008-03 of the Lincoln County Code, to be effective on the Effective Date shown below.

THE EFFECTIVE DATE hereof is 7-7, 2008

COUNTY: BOARD OF COUNTY COMMISSIONERS,
COUNTY OF LINCOLN, STATE OF NEVADA

By: [Signature]
Chairman

LEGAL DESCRIPTION

APN 008-251-04

PARCEL I, OF THE LINCOLN COUNTY LAND ACT OF 2004;

A PARCEL OF LAND SITUATED WITHIN SEC.'S 25, 26 35 & 36, T. 12 S., R. 70 E.,
M.D.M., LINCOLN COUNTY, STATE OF NEVADA, BEING FURTHER
DESCRIBED AS FOLLOWS:

ALL OF SAID SEC.'S 26 & 35, THE W1/2 OF SAID SEC. 25 AND THE NW1/4 OF
SAID SEC. 36;

CONTAINING A TOTAL OF 1760.67 ACRES, MORE OR LESS.

UNITED STATES PATENT NO. 27-2005-0162

APN 008-251-03

PARCEL J, OF THE LINCOLN COUNTY LAND ACT OF 2004;

A PARCEL OF LAND SITUATED WITHIN SEC.'S 27 AND 34, T. 12 S., R. 70 E.,
M.D.M., LINCOLN COUNTY, STATE OF NEVADA, BEING FURTHER
DESCRIBED AS FOLLOWS:

ALL OF SAID SEC.'S 27 & 34;

CONTAINING A TOTAL OF 1280.81 ACRES, MORE OR LESS.

UNITED STATES PATENT NO. 27-2005-0163