

## **EXONERATION AGREEMENT**

This Exoneration Agreement ("Agreement") is made and entered into by and between the following persons and/or entities as follows:

1. Lincoln General Insurance Company ("LGIC") a Pennsylvania corporation
2. City of Lancaster, California ("City")

### **RECITALS**

WHEREAS, on or about February 9, 2004, Turnkey Developers, Inc. ("Turnkey"), entered into an Undertaking Agreement with City whereby Turnkey agreed to install and complete certain designated public improvements identified as Tract #39910 located at the southeast corner of Avenue L and 57<sup>th</sup> St. West ("Project").

WHEREAS, on or about March 30, 2004, LGIC issued a Bond For Faithful Performance, Bond #66112202 ("Bond") to City as obligee on behalf of Turnkey as principal in the amount of \$98,472.00 in relation to the Project.

WHEREAS, City alleges that Turnkey abandoned the Project prior to its completion.

WHEREAS, on or about June 4, 2008, pursuant to the Bond, City made a demand on the LGIC to take over and complete Turnkey's performance on the Project.

WHEREAS, LGIC offered to pay City the full penal sum of the Bond, \$98,472.00, in exchange for the full exoneration and release of the Bond.

WHEREAS, City accepted LGIC's offer to pay the full penal sum of the Bond, \$98,472.00, in exchange for the full exoneration and release of the Bond.

THEREFORE, City and LGIC desire to resolve their disputes as follows:

### **SETTLEMENT**

LGIC and City (collectively referred to as the "parties") desire to settle all claims of every kind and nature arising from or relating to City's demand on the Bond and to forever end the dispute, prosecution and defense of the claims involved therein except as set forth further herein. Pursuant to such desires, the parties intend to settle and resolve all claims by and between them relating to City's demand on the Bond. The parties acknowledge that the terms and conditions of this Agreement are reasonable,

fair and workable resolutions of the disputes involving City's demand on the Bond and are no way intended to assign fault or wrongdoing to any of the parties.

#### EXONERATION

Upon payment of \$98,472.00 to City, City shall exonerate the bond, and all matters, claims and disputes arising from or relating to City's demand on the Bond shall be fully and finally settled, and City releases LGIC therefrom, and in accordance with the facts set forth and the terms, covenants, and conditions agreed to herein.

#### COMPROMISE

The Agreement memorialized herein shall not be construed or deemed to be evidence of any admission on the part of LGIC or their agents, etc., of any fact, matter or thing. In addition, neither this Agreement nor any of the terms of the Agreement between LGIC and City shall be offered or received as evidence in any proceeding in any forum as an admission of liability or wrongdoing on the part of LGIC and their agents, employees, representatives, attorneys, and insurance carriers. This Agreement shall be considered as an offer of compromise under California Evidence Code section 1152, Federal Rule of Evidence 408, or any other similar provision.

#### WAIVER OF CALIFORNIA CIVIL CODE §1542

Except for the obligations expressly provided for in this Agreement, the parties and their agents, etc. waive any and all rights that they may have under the provisions of section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The parties understand the above-quoted provisions of California Civil Code section 1542 and knowingly enter into this waiver because it is their intention in executing this Agreement to discharge each of the other parties, and their trustees, beneficiaries, settlers, trustors, decedents, ancestors, predecessors, dependents, heirs, executors, administrators, agents, attorneys, servants, insurers, stockholders, officers, directors, subsidiaries, parent companies, employees, subcontractors, representatives, assigns, and successors from the claims, arising from or relating to the City's demand on the Bond.

AUTHORITY OF SIGNATORIES

All individuals signing below on behalf of any entity hereby warrant and represent that they have full authority to execute this Agreement on behalf of the entities for which they have signed.

**MISCELLANEOUS PROVISIONS**

WAIVER OF AMENDMENT

No breach of any provision hereof can be waived unless it is done in writing and signed by the party waiving such breach. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or other provisions hereof. This Agreement may be amended only by written agreement executed by LGIC and City.

CONSTRUCTION

This Agreement shall be construed in accordance with the laws of the State of California.

GENDER AND NUMBER

All pronouns and all variations thereof herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the antecedent person, persons, entity or entities may require.

CAPTIONS

Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of the release or the intent of any provisions hereof.

SEVERABILITY

In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, those provisions shall be severable from the remainder of the Agreement, and shall not cause the invalidity or unenforceability of the balance of this Agreement.

GOOD FAITH

The parties shall act reasonably and in good faith in all matters pertaining to this Agreement.

SUCCESSION AND SURVIVAL

This Agreement is binding upon the parties, their agents, etc., representatives, personal representatives, successors, assigns and subrogees.

NO ADDITIONAL INDUCEMENT

The undersigned hereby declare and represent that no promise, inducement or agreement not herein expressed has been made to them or any of their representatives, and that this Agreement contains the entire agreement among the parties.

ATTORNEY'S FEES AND COSTS

Each party hereto shall bear all attorneys' fees and costs arising from the actions of their own counsel in connection with this Agreement.

In the event suit is brought to enforce any of the provisions of this Agreement, the prevailing party or parties in such suit shall be entitled to recover attorneys' fees, expenses and costs of suit actually incurred therein.

COUNTERPARTS

This Agreement may be executed in counterparts/subparts and a facsimile signature shall be recognized as an original.

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THE UNDERSIGNED, HEREBY CERTIFY to have read this entire Agreement, consisting of five (5) pages, and have had the terms used herein and consequences hereof explained by an attorney. The undersigned fully understand the terms and consequences of this Agreement.

DATED: \_\_\_\_\_, 2010 Lincoln General Insurance Company

By: \_\_\_\_\_  
David Hall - Claims Analyst

DATED: \_\_\_\_\_, 2010 City of Lancaster, California

By: \_\_\_\_\_  
Authorized Representative

Approved as to form and content:

DATED: \_\_\_\_\_, 2010 LEWIS, BRISBOIS, BISGAARD AND SMITH LLP

By: \_\_\_\_\_  
Attorneys for Lincoln General Insurance  
Company

DATED: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
Attorney for City of Lancaster