

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Lancaster
Attn: City Engineering Division
44933 Fern Avenue
Lancaster, California 93534

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 6103.

SUBDIVISION IMPROVEMENT AND LIEN AGREEMENT
(Cal. Gov't Code § 66499(a)(4))

THIS SUBDIVISION IMPROVEMENT AND LIEN AGREEMENT (this "Agreement") is made this ___ day of _____, 20__ (the "Date of Agreement"), by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city (the "City"), and **Lancaster 20 Land, LLC**, a California limited liability company (the "Developer").

RECITALS

A. As a successor in interest to Cambridge Homes, LLC, the Developer is the current owner of real property located in Lancaster, California, commonly known as Tract Map No. 54274, lots 4 through 25 and lots 63 through 80, more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property").

B. On September 22, 2003, the City approved Tentative Map No. 54274 in connection with the approval and recordation of a final subdivision map on March 3, 2007 (the "Map"). Lots 1 through 3 and lots 38 through 54 were developed by Cambridge Homes, LLC, through an undertaking agreement dated January 9, 2007. Lots 26 through 37 and lots 55 through 62 were developed by Lancaster Land 20, LLC, through an undertaking agreement dated May 24, 2016.

C. Now Lancaster Land 20, LLC, wishes to develop the remainder of the Property and certain public improvements (the "Improvements"), in accordance with, and as required by, the plans and specifications for said Improvements, which plans and specifications are now in the office of the City Engineer and which are hereby referred to and incorporated herein as though set forth in full.

D. Developer has requested to enter into a new undertaking agreement with City, regarding construction and completion of the Improvements. Developer has also requested that City accept a lien on the Property to secure the completion of the Improvements.

E. City has agreed to accept a lien on the Property to secure the performance of the Developer's obligation under this Agreement provided the following conditions are met: The

lien is in first position. Developer agrees to present substitute security to the City prior to the commencement of the work of Improvements, and Developer agrees the City may revert the property to acreage if the work of Improvements has not commenced within two years.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and of the approval of the Map and of the acceptance of the dedications therein offered, the parties agree as follows:

1. Subdivision Development Lien. This Agreement shall constitute a lien (the "Subdivision Development Lien") on the Property in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00). The Subdivision Development Lien is established pursuant to Government Code Section 66499(a)(4), to secure the performance of the Developer's obligations contained in this Agreement. The Subdivision Development Lien shall be in first position, and shall not be subordinate to any other lien or deed of trust on the Property.

To the extent that it is necessary for some other lienholder(s) to subordinate its/their lien(s) on the Property in order to ensure that the Subdivision Development Lien is in first position, Developer shall obtain from said lienholder(s) a subordination of lien agreement in a form approved by the City in its sole discretion.

2. Construction and Installation of Improvements. Developer shall construct and install all improvements as hereinafter provided:

2.1. Performance of Work. Developer, at its sole cost and expense, will improve the Property, or cause the Property to be improved, by the grading and paving of streets, construction of curbs and gutters, cross gutters and sidewalks, installation of drainage and sanitary sewerage facilities, provision of an underground utility and street lighting system, installation of street signs, parkway trees, a water system and all related facilities, and such other improvements required by the ordinances of the City and/or the City Council in the approval of the Map, together with appurtenances, contingencies and engineering costs and as more particularly shown in the improvement plans for said Map. Developer will do all work and furnish all materials necessary, in the opinion of the City Engineer, to complete said work in accordance with the plans and specifications on file in the office of the City Engineer or with any changes or modifications required or ordered by the City Engineer which, in his opinion, are necessary or required to complete the subdivision work. Developer shall maintain the subdivision Improvements and adjacent public facilities clear of all debris, weeds, and other materials which inhibit the performance of the Improvements or become a public nuisance. Should the Developer fail to act promptly in accordance with this requirement the City may, at its option, perform the necessary work and the Developer shall pay to the City the actual cost of such maintenance plus fifteen (15) percent.

2.2. Work, Places and Grades to be Fixed by Engineer. All of the work of Improvements is to be done at the places, of the materials, in the manner and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer.

2.3. Repairs and Replacements. Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all survey monuments, shown on the Map which have been damaged, disturbed, or obliterated by reason of any work done hereunder. In addition,

Developer shall replace or have replaced, repair, or have repaired, as the case may be; or pay to the owner, the entire cost of replacement or repairs, or any and all property damaged or destroyed by reason of any work done hereunder. Any such repair or replacement pursuant to this Section 2.3 shall be to the satisfaction and subject to the approval of the Development Services Director.

2.4. Supervision by Developer. Developer shall personally supervise the work of Improvements, or have a competent foreman or superintendent on the work at all times during progress, with authority to act for Developer.

2.5. Inspection by City. Developer shall at all times maintain proper facilities and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation.

2.6. Commencement of Work of Improvements. Developer shall commence the work of improvements on or before the second anniversary of the Date of Agreement, as hereinafter defined, (the "Commencement Date"), or within such further time as may be granted by the City Council in its sole discretion.

2.7. Completion of Work of Improvements. Developer shall complete all work of Improvements within two (2) years from the Commencement Date, or within such further time as may be granted by the City Council in its sole discretion. Work of Improvements will be deemed complete on the date that the City Council authorizes final acceptance of the Improvements.

3. Permits and Fees.

3.1. Permits: Compliance with Law. Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law.

3.2. Cash Charges. Developer shall pay to the City in cash such subdivision fees ("Cash Charges") that have been established by ordinance or by the City Council in conferring approval or extension of time to said Subdivision.

4. Substitution of Security and Termination of the Subdivision Development Lien. Prior and as a condition precedent to the City issuing any building permit relative to the Property and after the Date of Agreement, the Developer shall provide the City with substitute improvement security ("Substitute Security") consisting of security for the faithful performance of this Agreement, security for the payment of all persons performing labor and materials, and security for the setting of monuments. The City agrees to terminate the Subdivision Development Lien following receipt of acceptable Substitute Security. Substitute Security and termination of the Subdivision Development Lien shall be subject to the requirements set forth in this Section 4.

4.1. Security for Faithful Performance and for Payment of Labor and Materials. This portion of the Substitute Security shall be executed by a surety acceptable to the City in its sole and absolute discretion and shall include the following: (1) security in an amount

equal to at least one hundred (100) percent of the estimated cost of improvements as security for the faithful performance of this Agreement and; (2) separate security in an amount equal to at least fifty (50) percent of the estimated cost of improvements as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement. If at any time after deposit of this portion of the Substitute Security, the surety on said securities is no longer acceptable to the City, Developer agrees to renew said securities with an acceptable surety within ten (10) days after receiving notice that said surety is unacceptable.

4.2. Monument Security. Prior to commencement of any work on Property the Developer shall submit a new Monument Security which shall consist of a cash deposit or cashier's check in the amount of Twenty Thousand Five Hundred and Fifty Dollars (\$20,550.00) ("Monument Security") as security for the faithful performance of all work of setting monuments for the entire Map and as security for the payment of the engineer(s) or surveyor(s) who set said monuments. If after depositing the Monument Security, Developer refuses or fails to complete the work of setting monuments, or if Developer refuses or fails to pay the engineer(s) or surveyor(s) for setting the monuments, the City shall have the right to expend all, or any portion of the Monument Security without notice to Developer, for purposes of completing the setting of monuments and/or paying said engineer(s) or surveyor(s).

4.3. Termination of Subdivision Development Lien. No later than thirty (30) days following City's acceptance of the Substitute Security, the City shall cause to be duly executed and acknowledged by City and recorded with the office of the County Recorder of Los Angeles County, an instrument which shall terminate the Subdivision Development Lien created by this Agreement. Upon recording of said instrument, the Subdivision Development Lien shall be of no further force and effect. Notwithstanding the foregoing, the rest of this Agreement shall remain in full force and effect.

5. Warranty Period and Retention of Substitute Security.

5.1. Repair or Reconstruction of Defective Work. If within a period of one year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Developer shall, without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Developer shall pay to the City the actual cost of such repairs plus fifteen (15) percent.

5.2. Retention of Security for Faithful Performance and Payment of Labor and Materials. The City shall retain at least ten (10) percent of the security for faithful performance for a period of one (1) year after final acceptance of the work performed under this Agreement, to guarantee corrective work throughout the warranty period described in Section 5.1 herein. The security for payment of labor and materials shall be retained by City for a period of ninety (90) days after final acceptance of the work performed under this Agreement. Ninety (90) days

after said final acceptance, the security for payment of labor and materials may be reduced to an amount equal to the amount of all claims, for which claims of lien have been recorded and notice given in writing to the City Council. The balance of the security for payment of labor and materials shall be retained until the settlement of all such claims and obligations for which security was given.

5.3. Retention of Monument Security. The Monument Security shall be retained by City until all of the following conditions have been met: (1) all work of setting monuments has been completed; (2) all work of setting monuments has been approved and accepted by City Council; and (3) City has received written verification from surveyor(s) or engineer(s) that he/she/they have been paid in full for such work.

6. Default by Developer. The following events shall constitute an “Event of Default”:

- a. Failure or delay by the Developer or any of Developer’s contractors, subcontractors, agents or employees to perform any term or provision of this Agreement; or
- b. The Developer’s refusal or failure to commence construction of the required Improvements within the time specified herein, or any extensions thereof; or
- c. The Developer’s refusal or failure to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure completion of the required Improvements within the time specified herein, or any extensions thereof; or
- d. The Developer’s refusal or failure to complete the required Improvements within the time specified herein, or any extensions thereof; or
- e. The Developer’s refusal or failure to provide the City with acceptable Substitute Security in accordance with the provisions of this Agreement; or
- f. The Developer is adjudged a bankrupt, the Developer makes a general assignment for the benefit of Developer’s creditors, or a receiver is appointed in the event of Developer’s insolvency.

7. Remedies.

7.1. Remedies Prior to Substitution of Security. Prior to the substitution of security and upon the occurrence of any Event of Default, the City may pursue any and all rights and remedies available at law or in equity, including without limitation:

- a. Any action at law or in equity as may be permitted by this Agreement in order to recover all damages necessary to compensate the City for the Developer's failure to perform its agreements, obligations or undertakings hereunder; or otherwise

arising out of the events of default; or

- b. Reversion of the Property to acreage pursuant to Government Code Section 66499.11 et seq. and all other applicable law.

7.2. Remedies Following Substitution of Security. Following substitution of the security and upon the occurrence of any Event of Default, the City may pursue, in addition to those remedies set forth in Section 7.1 above, any and all rights and remedies available at law, in equity, or under the terms of this Agreement that the City has against the Developer and/or surety(ies) which issued the security for faithful performance and security for payment of labor and materials.

8. Performance by Surety.

8.1. Notice of Breach and Default. If any Event of Default occurs after substitution of security, the City may serve written notice upon Developer and Developer's surety of the occurrence of an Event of Default, and Developer's breach of this Agreement.

8.2. Occurrence of Event of Default; Performance by Surety or City. In the event of any such notice of breach, Developer's surety shall have the duty to take over and complete the work and the Improvements herein specified, provided however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of said work and Improvements, or if surety does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer and Developer's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

9. General Provisions

9.1. Hold-Harmless Agreement. Developer hereby binds itself, its executors, administrators and assigns and agrees to indemnify, defend and hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for or claims for damage for personal injury, including death, as well as from claims for damage to property, both real and personal, which may arise from or be caused by Developer's or Developer's contractor's, subcontractor's, agent's or employee's operations under this Agreement. Developer agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason for any of the aforesaid operations. It is understood that City does not, and shall not waive any right against Developer which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Developer, of the Substitute Security or Cash Charges. It is further understood that this Section shall apply to all damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Section, regardless of whether the City has prepared, supplied or approved of, plans and/or specifications for the Subdivision.

9.2. Relationship between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture. Neither Developer nor any of the Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. Developer agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the performance of Developer's obligations under this Agreement.

9.3. Time of Essence - Extension. Time is of the essence with respect to the performance by Developer of each and every obligation and condition of this Agreement; provided, that in the event good cause is shown therefor, the City Council may extend the time for commencement of work of improvements, and/or the time for completion of the improvements hereunder. Any such extension may be granted without notice to any surety who issues security for faithful performance and/ or security for payment of labor and materials pursuant to this Agreement, and extensions so granted shall not relieve the surety of its liability under the security to secure the faithful performance of this Agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

9.4. Emergencies. If, in the judgment of the City Engineer, conditions exist that cause, or may cause, a hazard to life or property, the City Engineer may cause such conditions to be modified on an emergency basis without notice to the Developer. Neither the City Engineer, the City or its agents shall be held liable to the Developer for damages arising out of such emergency actions and to the extent that the actions taken are for the maintenance of safety to life and property that would not have existed had the Developer's operations not been in progress, the cost of such emergency measures so taken by the City shall be reimbursed to the City by the Developer.

9.5. Attorneys' Fees. In addition to any other amounts to be paid by Developer hereunder, Developer shall pay all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing the Subdivision Development Lien and/or Substitute Security furnished by Developer hereunder.

9.6. Notices. All notices and other communications hereunder shall be in writing and mailed or personally delivered to the appropriate party at the address set forth below or, as to any party, at any other address in the State of California as shall be designated by it in a written notice sent to the other party.

To City:

City of Lancaster
44933 Fern Avenue
Lancaster, CA 93534-2461
Attn: City Engineer

To Developer:

Lancaster 20 Land, LLC
960 N. Tustin Street, Suite #385
Orange, CA 92867
Attn: Kevin Walsh
Telephone: (909) 917-3226

9.7. Alteration of Agreement; No Effect on Substitute Security. Any addition, alterations, or modifications of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Developer hereby stipulates and agrees that no addition, alterations or modifications of or to this Agreement or to the plans and specifications referred to herein, including any extension of time within which the work hereunder may be completed, shall in any way affect its obligations on the Substitute Security to be furnished hereunder. Developer does hereby waive notice of any such addition, alterations or modifications.

9.8. Demands for Payment under Substitute Security. Developer hereby stipulates and agrees that it shall have no right to dispute the propriety of any demand made by the City for payment under Substitute Security to be furnished hereunder.

9.9. Surety to Include Issuer of Letter of Credit. The term surety as used herein shall include the issuer of any letter of credit which is acceptable to the City as Substitute Security under this Agreement.

9.10. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

9.11. Successors and Assigns. All of the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, successors, representatives, assigns, officers, directors, agents, partners, servants, employees, and affiliated corporations or companies.

9.12. Headings. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope of interpretation of this Agreement.

9.13. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

9.14. Corporate Authority. Each individual executing this Agreement on behalf of a public or private corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, partnership, entity, or organization and that this Agreement is binding upon same in accordance with its terms. Developer shall, at City's request deliver a certified copy of its board of director's resolution or certificate authorizing or evidencing Controlling Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.15. Date of Agreement. The date of this Agreement ("Date of Agreement") shall be the date on which it shall have been signed by the City.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY:

CITY OF LANCASTER, a California municipal corporation and charter city

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

City Attorney

DEVELOPER:

LANCASTER 20 LAND, LLC, a California limited liability company

By: _____

Name: _____

Its: _____

**DEVELOPER SIGNATURES MUST BE
ACKNOWLEDGED BY NOTARY**

EXHIBIT "A"

Lots 4 through 25 inclusive, together with Lots 63 through 80 inclusive, all of Tract No. 54274, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 1330 Pages 31 through 36 inclusive of maps, in the office of the County Recorder of said County.

