

DEVELOPMENT AGREEMENT GOVENING DEVELOPMENT
OF THE PROPERTY KNOWN AS (LIST NAME)

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”) is entered into approving the rezone for the Parcel, by and between the COUNTY OF ADA, a duly formed and existing county pursuant to the laws and Constitution of the State of Idaho, party of the first part, (hereinafter “County”), and (LIST ALL OWNERS OF RECORD), party of the second part, (hereinafter “Owner(s)”), pursuant to the authority of Idaho Code § 67-6511A.

RECITALS

WHEREAS, the Owner(s) is the sole owner, in law and/or equity, of a certain tract of land in the County of Ada, State of Idaho, which property (hereinafter “Parcel”) is more particularly described in Exhibit A attached hereto; and,

WHEREAS, the County has authority to rezone a Parcel pursuant to Title 8 of the Ada County Code and § 67-6511 of the Idaho Code; and,

WHEREAS, the County has authority to enter into development agreements to condition the rezone of a Parcel pursuant to Idaho Code § 67-6511A; and,

WHEREAS, the Owner’s(s) plans, promises made during presentations, as well as the materials contained in the application, all as appear more fully in Project No. _____ in the Ada County Office of Development Services (the “Application), are an essential inducement to the Board to approve the rezone, provided however, that all of the Developer’s specific obligations are set forth elsewhere in this Agreement and in the County’s written decision and corresponding conditions of approval, attached hereto as Exhibit “B”; and

WHEREAS, the Owner(s) desires to be assured that it may proceed with development of the Parcel in accordance with this Agreement. In order to obtain this benefit, the Owner(s) has determined that it is advantageous to Owner(s) to enter into the Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the County and the Owner(s) agree as follows:

Section 1. Development of the Project

1.1 Effective Date. In accordance with Idaho Code, § 67-6511A, this Agreement will be effective upon the publication of Ordinance # _____, approving the rezone of the Parcel.

1.2 Permitted Use, Density, and Intensity of Use. This Agreement shall vest the right to develop the Parcel as described and restricted in the approved application(s) File Number _____, and as further described and restricted by Exhibits A through C that are attached to this Agreement.

1.3 Schedule: The schedule for development of the Parcel is as contained in the Conditions of Approval attached hereto as Exhibit B. In the event the Owner(s) fails to commence or complete the development of the Parcel within the time periods herein stated, the Owner(s) shall be in default of this Agreement.

1.4 Changes in State and Federal Law. This Agreement shall not preclude the application of any law, that is specifically mandated and required by changes in state or federal laws or regulations, to the Parcel. In the event such law prevents or precludes compliance with one or more provisions of this Agreement, the County and the Owner(s) shall meet and confer to determine how provisions of this Agreement would need to be modified or suspended in order to comply with the law and shall prepare and process the necessary amendment(s) to this Agreement, or the Board of Ada County Commissioners may elect to terminate this Agreement pursuant to Section 3.5.

DEVELOPMENT AGREEMENT GOVENING DEVELOPMENT OF THE PROPERTY
KNOWN AS (LIST NAME)

1.5 Police Power. Nothing in this Agreement shall be construed to be in derogation of the County's police power to protect the health, safety, and general welfare of the public.

1.6 Compliance with Conditions. Failure to comply with the terms of this Agreement, complete the Project, or bond for the completion of the Project shall result in a default of this Agreement by the Owners.

Section 2. Cooperation In The Event of Legal Action

In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity provision of this Agreement, the County and the Owner(s) agree to cooperate in defending such action or proceeding. The County and the Owner(s) may agree to select mutually agreeable legal counsel to defend such action or proceeding, or the County and the Owner(s) may each select its own legal counsel at its own expense. In no event shall the County be required to bear the cost of such defense(s) (except for the cost of the County's own attorneys), and Owner(s) shall save and hold the County harmless from claims or awards for third party attorneys' fees and costs.

Section 3. Violation; Annual Review; Remedies; Termination

3.1 General Provisions. Failure or unreasonable delay by the Owner(s) to perform any term or provision of this Agreement shall constitute a violation under this Agreement and may result in termination of this Agreement. Prior to termination, as set forth in Section 3.5 below, the County shall provide written notice of such violation. Said notice shall specify the nature of the alleged violation and the manner in which said violation may be satisfactorily cured. If the nature of the alleged violation is such that it cannot reasonably be cured within 90 days after written notice, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the 90-day period without cure, the violation will be deemed a default under this Agreement and the County, solely at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement, and, in either event, the Owner shall not be entitled to any additional time to cure such violation.

3.2 Periodic Review. Each year during the term of this Agreement, the Owner(s) shall submit a status report detailing the status of each condition of approval to the Director of Development Services. The Director shall review the annual status reports periodically and the reasonable costs incurred by the County in connection with the periodic review process shall be borne by the Owner(s). If the Director finds and determines that Owner(s) has not complied with such terms and conditions, the Director shall schedule this Agreement for hearing in front of the Board of Ada County Commissioners, following the notice and hearing procedures as outlined in Idaho Code § 67-6511A. Such violation shall be subject to the provisions of Section 3.1.

3.3 Violations by County. In the event the County violates the terms of this Agreement, Owner(s) shall have all rights and remedies provided herein or under applicable law, including without limitation the right to seek specific performance by the County. But in no event shall Owner(s) have any right to monetary damages.

3.4 Excused Delay; Extension of Time of Performance.

a) In addition to specific provisions of this Agreement, performance by either the County or the Owner(s) shall not be deemed to be in default where delays or defaults are due to war, insurrection, strike, walk-out, riot, flood, earthquake, fire, casualty, or act of God.

b) As long as Owner(s) have provided governmental agencies all necessary information in a timely manner, performance hereunder shall not be deemed in default where delays

or defaults are due to governmental agencies. An extension of time necessary to gain approval of another independent governmental agency as required in the conditions of approval may be granted upon written request. The grant of a time extension shall be in writing and shall specify the period of excused delay.

3.5 Termination.

a) This Agreement may be terminated, and the zoning designation upon which the use is based reverted to the previously designated District or if the previously designated District no longer exists, its closest equivalent, upon the failure by the Owner(s) to comply with the terms and conditions contained in this Agreement, after notice by the County to the Owner(s) pursuant to Section 3.1 above.

b) This agreement terminates upon completion of conditions.

3.6 Expiration of Time. In the event the Owner fails to comply with any time limits for completing the obligations required herein, this Agreement shall be terminated and the zoning designation upon which the use is based shall be reverted to the previously designated District or if the previously designated District no longer exists, its closest equivalent, after the Board has complied with the notice and hearing provisions of Idaho Code, § 67-6511A.

Section 4. Indemnification; Compliance with Law

4.1 Owner Indemnification. The Owner(s) shall defend, indemnify, and hold the County, its officers, agents, employees, contractors and subcontractors harmless for injuries to persons or property resulting from the negligence or willful conduct of the Owner(s), its officers, agents, employees, contractors and subcontractors in performing the duties described in this Agreement.

In the event the County is alleged to be liable in any manner, as a result of acts, omissions, willful conduct and/or negligence of the Owner(s), the Owner(s) shall indemnify and hold the

County, its officers, agents, employees, contractors and subcontractors harmless from and against all liability, claims, loss, costs, and expenses arising out of, or resulting from, the services of the Owner(s). The Owner(s) shall defend against such allegations through counsel chosen by the County and the Owner(s) shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorney fees and expenses, court costs, and expert witness fees and expenses.

4.2 County Indemnification. The County shall defend, indemnify, and hold the Owner(s), its officers, agents, employees, contractors and subcontractors harmless for injuries to persons or property resulting from the negligence or willful conduct of the County, its officers, agents, employees, contractors and subcontractors in performing the duties described in this Agreement.

4.3 Compliance with Law; Indemnification. The Owner(s) guarantees to the County that all services, programs, or activities provided by the Owner(s), its officers, agents, employees, contractors and subcontractors under this Agreement will be in accordance with all applicable federal, state, and local statutes, regulations, and requirements, including, but not limited to, the Americans with Disabilities Act (ADA). Further, the Owner(s) agrees to indemnify, defend, and hold harmless the County for any loss, expense, or damage of any type experienced by the County as a result of Owner(s)'s violation of the guarantee requirements of this paragraph.

Section 5. Notices

5.1 Any notice, demand, or other communication (hereinafter "Notice") given under this Agreement shall be in writing and given personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, a notice shall be deemed to have been given and received on actual receipt by the addressee. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. A courtesy copy of the notice

may be sent by facsimile transmission. Any party may designate any other address in substitution of the address contained herein by like written notice.

5.2 Notices shall be given to the parties at their addresses set forth below:

If to County, to:

Ada County Development Services Dept.
200 West Front Street, Room 2125
Boise, Idaho 83702
Attention: Director
Telephone: 208-287-7900
Facsimile: 208-287-7909

With copy to:

Ada County
Attn: Chief Civil Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: 208-287-7700
Facsimile: 208-287-7719

If to Owner(s), to:

(LIST ALL OWNERS OF RECORD, THEIR ADDRESSES, TELEPHONE NUMBERS AND FAX NUMBERS)

Section 6. Assignment

6.1 If all or any portion of the Parcel is transferred by the Owner(s) to any person or entity (hereinafter "Transferee"), the Owner(s) may assign or transfer to Transferee all or any portion of its interests, rights, or obligations under this Agreement with respect to the transferred Parcel. No fewer than thirty (30) days prior to entering into an Assignment for all or any portion of the Parcel, the Owner(s) shall submit to the Director of Development Services a draft of the Assignment, Conditions of Approval(s) and any other obligations detailing the obligations to be assumed by Transferee pursuant to the Assignment.

DEVELOPMENT AGREEMENT GOVENING DEVELOPMENT OF THE PROPERTY
KNOWN AS (LIST NAME)

6.2 Review. Prior to accepting an assignment, the County shall determine whether the Transferee has the financial capacity to perform the obligations of the Owner(s) as contained in this Agreement. The Owner(s) and Transferee shall cooperate with the County by providing the documents and information the County may deem necessary to review the financial capacity of the Transferee.

6.3 The Owner(s) shall continue to be responsible for performing the obligations under this Agreement as to the transferred Parcel until such time as there is delivered to the County a legally binding instrument, in a form approved by the County, whereby Transferee agrees to perform all Conditions of Approval(s), and/or other obligations of this Agreement applicable to the transferred Parcel as set forth in Idaho Code § 67-6511A.

Section 7. Entire Agreement, Counterparts, Exhibits, Recording

7.1 Merger And Integration. This writing embodies the whole Agreement. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. All previous and contemporaneous communications, representations, or agreements, either verbal or written, between the County and the Owner(s) are superseded by this Agreement.

7.2 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit A – Legal Description entitled “ _____ ” bearing the signature of _____ and dated _____ (____ page(s))

Exhibit B – Conditions of Approval (____ page(s))

Exhibit C – Preliminary Plat, entitled “ _____ ” and dated _____ (____ page(s))

7.3 Incorporation of Recitals. The Recitals to this Agreement are incorporated into this Agreement by this reference as if fully set forth herein.

7.4 Recordation of Agreement. The County shall record an executed original of this Agreement at the Ada County Recorder's Office. The Owner(s) agrees to pay all recording fees necessary to record this Agreement with the Ada County Recorder's Office.

Section 8. Covenants Appurtenant to the Project

8.1 All covenants and conditions set forth herein shall be appurtenant to and run with the Parcel and shall be binding upon the Owner(s)'s heirs, successors, and assigns.

Section 9. Miscellaneous

9.1 Amendment. Modifications to this Agreement may be made only by the written permission of the Board of Ada County Commissioners after complying with the notice and hearing provisions of Idaho Code, § 67-6511A. Any amendment(s) to this Agreement shall be recorded at the Owner(s) expense.

9.2 Interpretation: Unless otherwise specifically defined herein, capitalized terms used herein shall have the same meaning as ascribed to such terms either in the Local Land Use Planning Act, Idaho Code §§ 67-6501 *et seq.* or Title 8 of the Ada County Code, as the case may be. In the event of any conflict between terms in the state statute and terms in the County Code, the terms in the state statute shall prevail. Any term contained in this Agreement not so defined shall be given general common understanding.

9.3 No Agency, Joint Venture or Partnership. The County and the Owner(s) hereby renounce the existence of any form of joint venture or partnership between the County and the Owner(s) and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the County and the Owner(s) joint ventures or partners.

DEVELOPMENT AGREEMENT GOVENING DEVELOPMENT OF THE PROPERTY
KNOWN AS (LIST NAME)

9.4 Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in effect.

However, if such provision is not severable from the balance of the Agreement so that the mutually dependent rights and obligations of the parties remain materially unaffected, this Agreement shall become void.

9.5 Construction. This Agreement has been reviewed by the Owner(s) and the Owner(s) has had the opportunity to have its legal counsel review and revise the Agreement; therefore, the County and Owner(s) agree that no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

9.6 Choice of Law. This Agreement and its performance shall be construed in accordance with and governed by the laws of the state of Idaho, with venue for any action brought pursuant to this Agreement to be in the Fourth Judicial District, State of Idaho.

9.7 Waivers. No provision or condition of this Agreement shall be considered waived unless duly amended as provided for in Section 9.1. The failure of the County to require strict performance of any term or condition of this Agreement or to exercise any option herein conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such term or condition, but the same shall be and remain in full force and effect, unless such waiver is evidenced by the prior written consent of the County.

9.8 Third Party Beneficiaries. Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the
day and year first above written.

Board of Ada County Commissioners

By: _____
_____, Chairman

By: _____
_____, Commissioner

By: _____
_____, Commissioner

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20____, before me _____,
personally appeared Ada County Commissioners, _____, _____ and _____,
known or identified to me to be the persons whose names are subscribed to the within instrument, and
acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and
year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

//////////INTENTIONALLY BLANK//////////

Owner (LIST NAME OF COMPANY, LLC, PARTNERSHIP)

By: _____
(LIST NAME OF AUTHORIZED SIGNATOR)

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20__, before me, a Notary Public, personally appeared (LIST NAME OF AUTHORIZED SIGNATOR), known or identified to me as the (POSITION OF SIGNATOR IN COMPANY, LLC, PARTNERSHIP) and stated he has the authority to execute this instrument on behalf of (LIST NAME OF COMPANY, LLC, PARTNERSHIP) and did execute the instrument as the Owner of the Parcel.

Notary Public for Idaho
Commission Expires _____

Owner (LIST NAME OF INDIVIDUAL)

By: _____
(LIST NAME OF INDIVIDUAL)

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20__, before me, a Notary Public, personally appeared (LIST NAME OF INDIVIDUAL), known or identified to me as the Owner of the Parcel and stated he has the authority to execute this instrument and did execute the instrument as the Owner of the Parcel.

Notary Public for Idaho
Commission Expires _____