

**ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

DEVELOPMENT AGREEMENT BETWEEN  
THE COUNTY OF ADA, IDAHO, AND  
Skyline I Development, Inc.

RELATIVE TO THE PROPERTY KNOWN AS THE  
The Cliffs

THIS DEVELOPMENT AGREEMENT (hereinafter this “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the COUNTY OF ADA, a Political Subdivision of the State of Idaho, (the “County”), and Skyline I Development, Inc., (the “Developer”), pursuant to the authority granted in Idaho Code § 67-6511A, *et seq.*

**WITNESSETH:**

WHEREAS, Developer is the sole owner, in law and/or equity, of a certain tract of land in the County of Ada, State of Idaho, which land is more particularly described in Exhibit A, attached hereto and incorporated herein by reference, (the “Land”); and,

WHEREAS, upon the Land, Developer proposed to develop, construct, and install a planned community to be known as The Cliffs (the “Project”); and,

WHEREAS, part of the application for the Project includes a vision statement and Planned Community Comprehensive Plan and a Planned Community Zoning Ordinance (the “Plan”) which have been approved by the Board of Ada County Commissioners (the “Board”); and,

WHEREAS, pursuant to Title 8 of the Ada County Code and § 67-6504 of the Idaho Code County has authority to rezone property; and,

WHEREAS, the Plan, and other portions of the application, all as more fully appears in File No. [Insert File Number]

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

, in the Ada County Office of Development Services (the “Application) are an essential inducement to the Board to approve the Project; and,

WHEREAS, the Board has determined to grant a rezone for the Project based on the findings and upon the conditions as reference to Exhibit B will more fully appear; and,

WHEREAS, pursuant to Chapter 7, Article C, Title 8 of the Ada County Code and § 67-6511A, Idaho Code, County has authority to enter into development agreements to condition rezones; and,

WHEREAS, Developer is entitled to a fixed set of rules governing development of the Project; and

WHEREAS, Developer desires to be assured that it may proceed with development of the Project in accordance with those rules; and,

WHEREAS, County and Developer, in order to obtain these benefits, have determined that it is advantageous to Developer and County to enter into this Agreement to insure the Developer that a consistent set of rules will apply and to insure the County that the Project will be built in compliance with the approved Plan and Application;

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties 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 for the Project.

1.2 Vesting of Permitted Uses, Density, and Intensity of Use. This Agreement shall vest the right to develop the Project, as described in the Plan and as conditioned in Exhibit “B” all in conformance with the approved Application as the same may be modified as hereinafter set forth; provided however, that Developer shall comply with applicable procedural rules, regulations and review processes required by statutes, as they may be amended from time to time, the County’s Comprehensive Plan and the Ada County Code, Title 8, as of the date of submittal of the Application to the County; and provided further,

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

and notwithstanding the previous clause, that Developer shall pay applicable fees required by statute or ordinance, as they may be amended from time to time.

Subject to the foregoing, and pursuant to § 8-7C-4B, Ada County Code, the County may adopt new plans, ordinances, resolutions, rules or regulations that conflict with, alter, or amend the ordinances, resolutions, rules or regulations in effect at the time this Agreement is signed, but such actions by the Board shall not prevent the Developer from completing the Project as set forth in this Agreement; provided however, that County and Developer may by a mutually executed writing amend this Agreement to include such changes to the ordinances, resolutions, rules and regulations applying to the Project as they may deem beneficial.

1.3 Compliance with Conditions. Failure to complete or bond for completion of the Project in compliance with the terms of this Agreement shall be a violation of this Agreement by the Developer.

1.4 Compliance with Schedule. The schedule for development of the Project is as contained in Exhibit B.

Subject to the right of the County and Developer to modify the schedule for development pursuant to the provisions of this Agreement, in the event the Developer fails to commence or complete the Project within the time periods therein stated, the Developer shall be in violation of this Agreement.

1.5 Changes in State and Federal Law. This Agreement shall not preclude the application to the Project of any law that is specifically mandated and required by changes in state or federal laws or regulations. In the event such law prevents or precludes compliance with one or more provisions of this Agreement, County and Developer 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 or amendments to this Agreement. If no agreement is reached the Board may seek appropriate judicial remedies.

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

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

an emergency. For purposes of determining whether the County can exercise its police power inconsistent with the provisions and conditions of this Agreement, “emergency” shall mean a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services involving the Property or the community.

1.7 Level of Existing County Services. Developer has promised to enhance service levels of certain governmental functions as more fully appears in the Application. Subject to the promises made in the Application, the County will provide to the Project Sheriff and EMS services at the same level it provides said services to other properties similarly situated.

**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 of any provision of this Agreement, the parties hereby agree to cooperate in defending such action or proceeding. The County and Developer may agree to select mutually agreeable legal counsel to defend such action or proceeding, in which case costs and fees shall be shared equally. In the alternative, each party may select its own legal counsel at each party’s cost and expense.

**Section 3. Enforcement and Biennial Review.**

3.1 General Provisions. Failure or unexcused delay by the Developer to perform any term or provision of this Agreement, after the Director has provided at least ninety (90) days advance written notice thereof from the County, shall constitute a violation under this Agreement. 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 ninety (90) days after mailing of the written notice as provided herein, 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; provided however, that if said cure has not been completed within one hundred eighty (180) days after

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

mailing of said Notice, such shall be deemed a failure to cure, unless the Board and Developer shall agree to extend the time allowed for cure.

3.2 Hearings on Violations. Upon a determination by the Director that the Developer has violated this Agreement and has failed to cure the violation as described in paragraph 3.1 above, the Director shall schedule a hearing before the Board pursuant to § 8-7C-6(C), Ada County Code. Notice of said hearing shall be provided to the Developer in compliance with § 67-6509, Idaho Code. The hearing shall be conducted in compliance with Title 1, Chapter 14, Ada County Code. At the conclusion of the hearing, the Board may determine the Developer to be in default, in partial default, or may modify or reverse the Director's decision.

3.3 County Remedies. Should the Board determine the Developer to be in default or partial default, the County, at its option, may institute legal proceedings pursuant to this Agreement; modify, in whole or in part, the permit, specific plan, or amend the conditions of approval; and/or terminate the Agreement pursuant to paragraph 3.7 below, all as the Board may determine in the exercise of its discretion; provided, however, that nothing contained in this Section shall be construed to prevent or preclude the Developer from seeking such judicial remedies as may be available to it at law or in equity to contest the Board's finding of a default.

3.4 Biennial Review. Every two years during the term of this Agreement, the Developer shall submit a status report detailing the status of each condition of approval to the Director. The reasonable costs incurred by County in connection with the review process shall be borne by Developer. (§ 8-7A-2D, Ada County Code). If the Director finds and determines that Developer has not complied with such terms and conditions, the Director shall schedule the alleged violation for hearing in front of the Board of Ada County Commissioners, following the notice and hearing procedures as outlined in paragraph 3.2 above.

3.5 Developer's Remedies. In the event the Developer determines that the County has violated the terms of this Agreement, Developer shall promptly give Notice as

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

provided herein. County shall have thirty (30) days in which to cure such violation. Should County fail to cure such violation, Developer shall have all rights and remedies provided herein or under applicable law, including without limitation the right to seek specific performance by the County.

### 3.6 Excused Delay; Extension of Time of Performance.

a) It shall be an Excused Delay, and neither party hereunder shall be in violation of this Agreement if such violation is directly attributable to war, insurrection, strike, walk-out, riot, flood, earthquake, fire, casualty, or act of God.

b) It shall be an Excused Delay, and neither party shall be deemed in violation of this Agreement where delays or defaults are directly attributable to the actions of or failures to act by governmental agencies; provided, however, that this subparagraph b shall not be construed to relieve the County from the timely performance of any of its obligations required hereunder or contemplated hereby.

c) Upon Notice of Excused Delay by either party hereto, an extension of time for cause will be granted in writing by the other party for the period of excused delay, or longer as may be mutually agreed upon.

### 3.7 Termination.

a) This Agreement may be terminated, and the zoning designation upon which the use is based reversed to the previously designated District, upon a finding of default by the Board that the Developer, a subsequent owner or any other person acquiring an interest in the Project site is in default as herein provided; provided, however, that nothing contained in this Section shall be construed to prevent or preclude the Developer from seeking such judicial remedies as may be available to it at law or in equity to contest the Board's finding of a default.

b) This Agreement terminates upon completion of the Project in compliance with the terms and conditions contained in Exhibit B.

c) This Agreement terminates as to each portion of the Project covered by and included in a plat duly approved by the Board and recorded in the Office of the Ada County Recorder.

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

**Section 4. Hold Harmless – Indemnification.** Except as otherwise provided herein, each party hereto agrees to indemnify, defend, protect and hold harmless the other party hereto for, from and against any and all liability, claims, damages, costs, expenses (including reasonable attorneys’ fees and reasonable attorneys’ fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property arising out of the indemnifying party’s breach of this Agreement, except to the extent caused by the willful or negligent act or omission of the indemnified party, its officers, agents, contractors or employees. Subject to the foregoing, defense provided by the indemnifying party shall include, without limitation, defense through counsel chosen by the indemnified party and the indemnifying party shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorneys’ fees and expenses, court costs, and expert witness fees and expenses.

**Section 5. Notices.**

5.1 Notices – When Received. Any notice, demand, or other communication (a “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 deposit in the U.S. Mail. 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 Addresses. Notices shall be given to the parties at their addresses set forth below:

If to County, to:

Ada County Development Services Department  
200 W. Front Street, Room 2125  
Boise, Idaho 83702

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

Attention: Director  
Telephone: 208-364-2277  
Facsimile: 208-364-2406

With copy to:

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

If to Developer, to:

Skyline I Development, Inc.  
Attention: Tucker Johnson  
10464 Garverdale Ct., Suite 710  
Boise, Idaho 83704  
Telephone: 208-377-4104  
Facsimile: 208-376-6908

With Copies to:

[Add Appropriate Information]

### **Section 6. Assignment.**

6.1 Assignment. Developer may assign or transfer all or any portion of the Project to any person or entity (“Transferee”), subject to the provision of this Section 6.

6.2 Effect of Assignment. It is the intent of the parties that, as the Project is developed, all requirements of the Conditions of Approval(s) and Permits shall be met. To

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

that end, and subject to the provisions of Sections 3.7 b and c, if Developer transfers any portion of the Property to a Transferee, Developer shall continue to be responsible for performing the obligations under this Agreement as to the transferred property until such time as there is delivered to County a legally binding instrument in a form approved by the Director in his reasonable discretion (an "Assignment and Assumption") whereby Developer assigns to Transferee and Transferee agrees to perform, all conditions of approval, and/or other obligations of this Agreement, and the Board has approved the transfer in accordance with the provisions of this section.

6.3 Procedures. No fewer than thirty (30) days prior to entering into the Assignment and Assumption, Developer shall submit to the Director a draft of the Assignment and Assumption containing this Agreement as an attachment along with any other applicable conditions of approval(s) and any other obligations to be assumed by Transferee pursuant to the Assignment and Assumption.

Acceptance of such Assignment and Assumption by the County shall be subject to the review of the Director for a determination of financial responsibility of the Transferee. The Developer shall cooperate with the Director by providing documents and information the Director may deem necessary in the exercise of his reasonable discretion.

The Director shall report his findings to the Board who shall then schedule the matter for decision. Approval shall not be unreasonably withheld. If the Board does not indicate its approval or denial of a proposed Transfer within 30 days of the Director's receipt of the Assignment and Assumption with required attachments, the Transfer shall be deemed approved.

### **Section 7. Entire Agreement; Counterparts; Exhibits; Recording.**

7.1 Defined Terms. 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 Act and the terms in the

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

Code, the terms in the Act shall prevail. Any term contained in this Agreement not so defined shall be given general common understanding.

7.2 Amendment. Subject to the requirements of Idaho Code § 67-6511A, including, without limitation, the notice and hearing provisions thereof, County and Developer agree to cooperate and pursue any amendments to this Agreement that are reasonably required to accomplish the goals expressed herein and the development of the Project in light of any changes in market or development requirements. All amendments shall be in writing and shall be approved and signed by both County and Developer. Any amendment to this Agreement shall be recorded. Developer agrees to pay all recording fees necessary to record any such amendment.

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

7.4 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 full force and effect. However, if such provision is not severable from the balance of this Agreement so that the mutually dependent rights and obligations of the parties remain materially unaffected, either party shall be entitled to terminate this Agreement.

7.5 Construction. This Agreement has been reviewed and revised by legal counsel for both County and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

7.6 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.

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

7.7 Merger and Integration. This Agreement embodies the whole agreement of the parties. 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 parties are superseded by this Agreement.

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

7.9 Waivers. No provision or condition of this Agreement shall be considered waived unless duly amended as provided in Section 9.1. The failure of County or Developer 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 either County or Developer, as the case may be.

7.10 Duty to Act Reasonably. Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

7.11 Recordation of Agreement. County shall record an executed original of this Agreement at the Ada County Recorder's Office. Developer agrees to pay all recording fees necessary to record this Agreement with the Ada County Recorder's Office.

7.12 Covenants Appurtenant to the Project. All covenants and conditions set forth herein shall be appurtenant to and run with the Project and shall be binding upon the parties hereto, their heirs, successors, and assigns.

7.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

## **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

7.14 Further Acts. Each of the parties shall execute and deliver all such documents and perform all such acts as reasonable necessary, from time to time, to carry out the matters contemplated by this Agreement.

7.15 Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

7.16 Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of Developer in connection with the Project.

7.17 Attorney Fees. If either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorney fees by the other party, and if any judgment is secured by said prevailing party, all such costs and fees shall be included therein, such fees to be set by the court and not by jury.

**THE BALANCE OF THIS PAGE LEFT INTENTIONALLY BLANK**

**ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

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: \_\_\_\_\_

Rick Yzaguirre, Chairman

By: \_\_\_\_\_

Judy M. Peavey-Derr, Commissioner

By: \_\_\_\_\_

Fred Tilman, Commissioner

ATTEST:

\_\_\_\_\_

J. David Navarro, Ada County Clerk

STATE OF IDAHO )

) ss.

County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me a notary public, personally appeared Judy M. Peavey-Derr, Fred Tilman, and Rick Yzaguirre, known or identified to me, to be the County Commissioners of Ada County, that executed the said instrument, and acknowledged to me that Ada County executed the same.

\_\_\_\_\_

Notary Public for Idaho

**ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

Commission Expires \_\_\_\_\_

**ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

Skyline I Development, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF IDAHO            )  
  ) ss.  
County of Ada            )

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Commission Expires \_\_\_\_\_

# **ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

## **EXHIBIT A – LEGAL DESCRIPTION**

**ELEMENT G, THE CLIFFS PLANNED COMMUNITY**

---

**EXHIBIT B – FINDINGS AND CONDITIONS**