

Recording Requested By and  
When Recorded return to:

City Clerk  
City of Kuna  
PO Box 13  
Kuna, ID 83634

For Recording Purposed Do  
Not Write Above This Line

## DEVELOPMENT AGREEMENT

This Development agreement entered into by and between the City of Kuna, a municipal corporation in the State of Idaho hereinafter referred to as "City", and \_\_\_\_\_, whose address is \_\_\_\_\_ the owner of the property described herein and applicant(s) for \_\_\_\_\_, hereafter referred to as "Developer".

WHEREAS, the City has approved a zone change to \_\_\_\_\_ of the property described as attached hereto and incorporated by reference herein on Exhibit A ("Property") to develop a Residential Subdivision. The property is currently zoned \_\_\_\_\_. Pursuant to their discussion at the \_\_\_\_\_ meeting the City is requiring a/an \_\_\_\_\_. The Developer has also applied for a subdivision plat for the same property. The Preliminary Plat as approved by the City Council is attached hereto as Exhibit B.

WHEREAS, the City, pursuant to Section 67-6511A, Idaho code, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Kuna City Code.

WHEREAS, the City of Kuna and The Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, it is agreed as follows:

### ARTICLE I LEGAL AUTHORITY

1.1 This Development Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Kuna City Code, Title 5, Chapter 14.

### ARTICLE II ZONING ORDINANCE AMENDMENT

2.1 The City has adopted an ordinance amending the Kuna Zoning Ordinance to rezone the property to \_\_\_\_\_.

### ARTICLE III CONDITIONS ON DEVELOPMENT

3.1 The sole use(s) allowed and restrictions pursuant to this conditional rezone as reflected in this Agreement are as follows:

**EXAMPLES:** The development agreement includes amenities. This is an example of items that are typically addressed in this section.

- 3.1.1 List the proposed zone.
- 3.1.2 List the number of buildable lots.
- 3.1.3 Minimum square footage of homes if proposed.
- 3.1.4 Entrance features.
- 3.1.5 Amenities for the subdivision.
- 3.1.6 Pathways, paved.
- 3.1.7 Pathway fencing / Type of fencing
- 3.1.8 Right-of-way fencing / Type of fencing
- 3.1.9 Perimeter fencing / Type of fencing
- 3.1.10 Common Area
  - 3.1.10.1 Size of the common area
  - 3.1.10.2 Open space amenities
  - 3.1.10.3 Play ground equipment
  - 3.1.10.4 Fencing
- 3.1.11 Elevations of homes if proposed
- 3.1.12 Any special detail for the proposed subdivision
- 3.1.13 Landscaping (KCC 5-17)

3.2 No change in the use or restriction specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Kuna City Code. In the event Developer changes or expands the use permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Kuna City Code, Developer shall be in default of this Agreement.

3.3 The \_\_\_\_\_ shall be constructed as shown on the plan attached hereto and incorporated herein as Exhibit "B". Failure to construct the development consistent with this Agreement and the plan and conditions included as Exhibit "B" or

construction in accordance with this Agreement and the plan and conditions included as exhibits without formal modification of the plan consistent with Kuna City Code, including the amendment of this Agreement, shall result in a default of this Agreement by the Developer.

3.4 **Conditions, bonding for Completion:** All of the conditions set forth herein shall be complied with or shall be bonded for completion by the Developer before a Final Plat Approval or Occupancy permit will be granted. Failure to comply or bond for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Kuna City Code or the terms of this Agreement shall result in a default of this Agreement by the Developer. The Developer may be allowed to bond for certain conditions at one hundred and ten percent (110%) of the estimated cost of completion pursuant to Kuna City Code.

3.5 **Commencement of Construction:** The Developer shall commence construction within 365 of the effective date of this Agreement. In the event the Developer fails to commence construction within the time periods herein stated, the Developer shall be in default of this Agreement

#### **ARTICLE IV AFFIDAVIT OF PROPERTY OWNERS**

4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Kuna City Code shall be provided and is incorporated herein by reference.

#### **ARTICLE V DEFAULT**

5.1 In the event the Developer, her/his heirs or assigns or subsequent owners of the property or any other person acquiring an interest in the property, fail to faithfully comply with all of the terms and conditions included in the Agreement, this Agreement may be modified or terminated by the Kuna City Council upon compliance with the requirements of Kuna City Code. In the event City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and the Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event City Council, after compliance with the requirements of the Kuna City Code, determines that this Agreement shall be terminated, the zoning of the property shall revert to \_\_\_\_\_ zoning. All uses of property, which are not consistent with \_\_\_\_\_ zoning, shall cease. Nothing herein shall prevent the Developer from applying for any nature of use permit consistent with \_\_\_\_\_ zoning. A waiver by City of Kuna for any default by the Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

5.2 **Consent to Rezone:** The Developer, by entering into the Development Agreement, does hereby agree that in the event there shall be a default in the terms and conditions of this Agreement that this Agreement shall serve as consent to a reversion of the subject property to \_\_\_\_\_ zoning as provided in Idaho Code.

#### **ARTICLE VI UNENFORCEABLE PROVISIONS**

6.1 If any term, Provision, commitment or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable; the remainder of this instrument shall remain in full force and effect.

#### **ARTICLE VII ASSIGNMENT AND TRANSFER**

7.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the City and the Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided and each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

#### **ARTICLE VIII GENERAL MATTERS**

8.1 **Amendments.** Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provision of Idaho Code Section 67-6509, as required by Kuna City Code, Title 5, Chapter 14.

8.2 **Paragraph Headings.** This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Title and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

8.3 **Choice of Law.** This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.

8.4 **Notice.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.

Kuna: City Clerk  
City of Kuna  
P.O. Box 13  
Kuna, Idaho 83634

Developer:

or such other address and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

8.5 **Effective Date.** This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Development Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

CITY OF KUNA

By: \_\_\_\_\_  
J. Scott Dowdy, Mayor

Attest:

\_\_\_\_\_  
Lynda Burgess, City Clerk

Developer:

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

**CITY NOTARY:**

State of Idaho \_\_\_\_\_ )

County of \_\_\_\_\_ )

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

And who personally appeared before me

\_\_\_\_\_.

S e a l

Notary Public \_\_\_\_\_

My Commission Expires on \_\_\_\_\_

**DEVELOPER NOTARY:**

State of Idaho \_\_\_\_\_ )

County of \_\_\_\_\_ )

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

And who personally appeared before me

\_\_\_\_\_.

S e a l

Notary Public \_\_\_\_\_

My Commission Expires on \_\_\_\_\_