WHEN RECORDED, MAIL TO:

KARI JIMENEZ
IVINS CITY
55 NORTH MAIN
IVINS, UT 84738

APN: I-SB-37; I-SB-38

DEVELOPMENT AGREEMENT FOR THE CLIFFROSE SUBDIVISION PROJECT IVINS CITY, WASHINGTON COUNTY, UTAH

This Development Agreement ("Agreement") is entered into as of this _____ day of July, 2014, by and between **RUSSELL M. MILLER**, an individual, **KENDALL M. MILLER,** an individual, and **DEVELOPMENT SOLUTIONS GROUP, INC.**, a Utah Corporation (collectively "Developer"), as owners and developers of certain real property located in Ivins City, Washington County, Utah, on which they propose to develop a project known as the Cliffrose Subdivision (the "Project"), and **IVINS CITY**, a municipality and political subdivision of the State of Utah, by and through its City Council ("City").

R E C I T A L S

A. Developer owns a parcel of real property approximately 20.56 acres in size, located within Ivins City, Washington County, Utah, the legal description of which is set forth on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), on which it proposes the development of a certain subdivision known as the Cliffrose Subdivision.

B. Developer applied for and, having provided the requisite minimum of 10% additional improved open space, qualified for the Subdivision Enhancement Overlay under Ivins' Zoning Ordinance, thereby establishing a base density of 57 lots for the Project. Following a public hearing at the Planning Commission on April 29, 2014, The Planning Commission recommended a 15% density bonus, which would increase the total number of allowed lots for the Project to 65. Following a public hearing before the City Council on May 15, 2014, the City Council approved the recommended density bonus as follows: 5% for Consistency in Design Elements and 10% for Convenience in Layout, Variety of Lot Sizes and Unique Subdivision Features, which included the following concessions by the Developer: a block wall along the northern boundary of the Project, landscaping of all front yards of the homes that are within the Project, the development of half street (minimum required pavement) of 600 West including curb and gutter, trail and landscape buffer improvements, dedication of property for a roundabout at southwest corner, extra landscape buffer as shown on the preliminary plan, and single story homes along 600 West, 400 South, 400 West and lots 2 through 8 on the northern boundary of the Project.

C. The Project shall be developed in three (3) phases, each phase to begin shortly after receipt of all necessary approvals. Phase 1 shall include all of the street improvements to 400 West, including the trail and landscape buffer, and construction of the detention basin located at the southeast corner of the Property. Phase 2 shall include all of the street improvements to 400 South, including the trail, landscape buffer and dedication of

land at the southwest corner of the Property necessary for the City to later construct a roundabout. Phase 3 shall include all of the street improvements to 600 West, including the trail and landscape buffer.

D. Developer acknowledges that it must comply with all City development standards and ordinances, including applicable zoning and subdivision ordinances, fencing regulations, lighting regulations, design guidelines, and design & construction standards, as well as the standards and specifications set forth and/or incorporated herein.

E. This Development Agreement is intended to set forth the entire agreement between the Developer and the City regarding the development of the Project.

F. Ivins City, acting pursuant to authority under The Municipal Land Use, Development, and Management Act (U.C.A. §§10-9a-101 et. seq., as amended from time to time, hereinafter the "Act"), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project and, in the exercise of its legislative discretion, has elected to approve this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, Developer and Ivins City hereby agree as follows:

(1) Recitals; Findings. The foregoing recitals are incorporated and made an integral part of this Agreement by this reference. The City finds that the development of the Property pursuant to this Agreement and applicable City ordinances will result in meaningful planning and economic benefits to, and shall further the health, safety and welfare of, the City and its residents by, among other things:

(a) requiring development of the Property in a manner consistent with the applicable rules, regulations and policies of the City;

(b) providing for the dedication of infrastructure improvements to be completed as set forth herein and/or as consistent with current State or City regulations; and

(c) preserving the natural beauty and view of the surrounding environment by constructing the Project in accordance with the terms and conditions of this Agreement.

The City is entering into and approving this Agreement pursuant to its authority under the Act and City ordinances, policies and regulations and has made certain determinations with respect to the Property and, in the exercise of its legislative discretion, has elected to approve this Agreement as an agreement, compromise, and settlement as to the matters covered by this Agreement.

(2) Project Plans; Development Pursuant to this Agreement.

(a) Project Plans. The Project Preliminary Plan approved herewith, as well as any exhibits attached hereto and future approved Final Plats for the Project (collectively the "Project Plans"), are integral parts of this Agreement. The City's approval of the Project is based upon the City's reliance that the Project will be developed in accordance with the standard and quality of improvements, unit densities, dedication of easements, roadways, and other improvements as represented by the Developer for in the Project Plans and this Agreement.

(b) Design Standards. In consideration for granting Developer's density bonus, the following design standards shall be part of the Project Plans:

(i) All homes in the Project are to be of a Tuscan/Mediterranean design and shall be at least 1,200 square feet in size.

(ii) All homes in the Project shall have landscaping installed in the front and side yards prior to occupancy being granted.

(iii) Exterior materials for homes built within the Project shall be stucco, with limited stone accents, and tile roof using noncombustible tiles.

(iv) All exterior colors shall be limited to subdued earth tones.

(v) No metal or vinyl siding shall be allowed on homes.

(vi) All soffit and facia materials shall be synthetic stucco.

(vii) All reflective exterior surfaces or materials shall be colored or painted to match the material to which they are attached or from which they project.

(viii) All exterior lighting shall be shielded and low level and consistent with the City's current lighting ordinance.

(ix) All fencing around the Project, including the privacy wall to be constructed along the perimeter boundary of the Project, shall be earth tone colored masonry and shall be constructed concurrent with the construction of individual residences. Rear privacy walls along the perimeter boundary of the Project must include one-foot (1') offsets at regular intervals in order to comply with City policy prohibiting the construction of long, flat walls along major streets.

(x) No asphalt shingles or wood shakes will be allowed. Roof mounted air-conditioning equipment shall not be permitted.

(xi) Garages are required and must be attached to the primary structure. Carports are not permitted.

(xii) Accessory elements shall be non-reflective, painted a color that is compatible with the home, placed as discreetly as possible, and hidden with landscaping or fence.

(xiii) Any Project signs shall comply with all City ordinances, including but not limited to, the City's sign and/or lighting ordinances and shall be placed on the wall on or both Project entrances.

(xiv) All homes built along the western, southern, and eastern boundaries, and Lots 2 through 8 along the northern boundary, of the Project shall be single story with a maximum height of twenty-two feet (22') and shall have hip roofs only.

(c) Development. Upon execution of this Agreement by the City, the Developer is authorized to develop the Property as set forth in this Agreement and in accordance with the types, densities and intents of the land uses set forth in the Project Plans and this Agreement.

(3) Construction Standards on Project.

(i) All improvements in the Project shall be installed in accordance and consistent with approved Project Preliminary Plans, approved Final Plats, approved construction

drawings, exhibits referred to herein, and with Ivins City Design and Construction Standards and all other governmental and regulatory standards. All fencing in the Project must comply with the City fencing ordinances and regulations. Lighting in the Project shall be in accordance with the City's current lighting ordinance.

(ii) Erosion, Dust & Weed Control. Developer shall not disturb areas outside of the current phase unless there is a reasonable need for the additional disturbance for which case the restoration bond amount shall be adjusted proportionately. The limits of disturbance shall be shown on the construction plans and marked on the Project site. All disturbed areas shall be controlled to the maximum extent practicable to prevent erosion and sediment transport in accordance with an approved Storm Water Pollution Prevention Plan that meets all City, State and Federal standards. Developer also agrees to actively undertake efforts to minimize dust and control weeds on the Project in accordance with City standards.

(iii) Enforcement of Violations. In the event that the City is required to take enforcement action against the Developer for violations of this agreement or any City standard, Developer acknowledges and agrees that no further approvals on the Project will be issued by the City unless and until the violations have been corrected and all civil penalties and/or costs have been fully paid and satisfied.

(4) Developer Provided Municipal/Public Improvements (Offered Improvements).

(a) Improvements. The Developer shall design, install, construct, and complete, at its expense, the following municipal/public improvements as set forth in and contemplated by the Project Plans (the "Developer's Municipal Improvements"), all such improvements to be constructed in a good and workmanlike manner and in accordance with applicable regulations and governmental standards and within the time periods for development set forth herein or as otherwise agreed to by the City:

(i) Water Distribution System. All pipes, valves, fittings, and other facilities as necessary within the property for the purpose of distributing culinary water within the property and distributing culinary water to the construction limits of the required road improvements for connection to future developments.

(ii) Irrigation System. All pipes, valves, fittings, pressure reducing stations, air release valves and other distribution facilities within the Property for the purpose of distributing irrigation water. The system shall tie into the irrigation line on 400 South.

(iii) Sewer System. All pipes, manholes, laterals, fittings, and other facilities as necessary within the property for the purpose of collecting sewer waters from the development and extending the collection system to the construction limits of the required road improvements for connection to future developments. The sewer system must be extended at least to 400 South and 600 West for connection to future developments. If potholing of existing utilities in 600 West shows that the sewer must be installed on east side of the street where road improvements are required, the sewer shall also be extended northward in 600 West to construction limit of the project.

(iv) Storm Water Drainage. Developer shall install all pipes, catch basins, manholes, detention or retention facilities as necessary in accordance with the approved drainage study.

(v) Roads. All roads adjoining the Project (400 West, 400 South and 600 West) shall be improved with paving, curb and gutter in accordance with the standard Collector Street cross-section. Developer shall also install all necessary stormwater drainage improvements. With Phase 1 of the Project, Developer shall install all improvements to 400 West, as well as the roadway entering the Project from 400 West as shown on the Final Plat for Phase 1. With Phase 2 of the Project, Developer shall install all improvements to 400 South, as well as the roadway entering the Project from 400 South as shown on the Final Plat for Phase 2. With Phase 3 of the Project, Developer shall install all improvements to 600 West. All other interior roads within the Project shall be completed as part of the phase in which the roads are located.

(vii) Walking/bike Path. Ten foot (10') wide asphalt trails shall be installed along 400 West, 400 South and 600 West adjacent to the Project

(viii) Landscaping. Landscaping of the landscape buffer areas along 400 West, 400 South and 600 West shall be installed in accordance with plans approved by, and consistent with, the requirements of the Parks and Recreation Department and all plants shall be of the type on the City's approved plant list. Installation of the landscape buffer improvements shall be completed on 400 West, 400 South and 600 West shortly after the construction of street improvements to those streets

(ix) Fencing. All fencing within or around the Project shall be six feet (6'), earth tone colored masonry and consistent throughout the Project.

(x) Street/Path Lighting. Developer shall install one City approved street light at 400 South at the entrance to the Project. Developer shall also install bollard lights along the walking/biking paths on 400 West, 400 South and 600 West in accordance to City Design and Construction Standards regarding type and spacing. Interior street lights are optional as long as they meet City standards.

(b) Warranty Period. Pursuant to City Code regarding Subdivisions, the warranty period for public improvements shall commence on the date that all city required improvements associated with the development have been completed to the satisfaction of the City and a final inspection thereof has been made approving the same. The warranty period shall commence at that date and shall continue for one (1) year thereafter for all improvements. If any defects or deficiencies in materials or workmanship are found by the City during the warranty period, the developer shall promptly resolve such defects or deficiencies and request the City Engineer to re-inspect the improvements. If the defective or deficient improvements are not corrected, the City will give notice to the developer of the action to file on the security agreement for completion of the improvements. At the end of the one (1) year period, as applicable, the developer shall request the City staff to make a final warranty period inspection of all improvements. If the City Engineer verifies that the improvements are acceptable, the remaining security posted by the developer under the security agreement shall be released.

(c) Costs Associated with the Developer's Municipal/Public Improvements.

(i) Construction Costs. The Developer will pay all costs and all associated expenses to install, construct, and complete the Developer's Municipal/Public Improvements, including those required by ordinance and those offered as consideration for receiving the density bonus. If this Agreement makes no

provisions for the City to provide, pay or reimburse Developer for any Municipal Improvements installed by Developer as anticipated in the construction drawings or in this Agreement, the City is not responsible for any such costs and Developer specifically waives any claims against the City therefor.

(ii) Maintenance Costs. Until such time as a particular component of Developer's Municipal/Public Improvements is dedicated to and accepted by the City, and standard maintenance thereof is assumed by the City, the Developer shall maintain, at its cost, such component of Developer's Municipal/Public Improvements.

(d) Inspection and Dedication of Developer's Municipal/Public Improvements. Upon completion of the Developer's Municipal/Public Improvements ("Offered Improvements"), the City shall inspect the Offered Improvements within a reasonable time after receipt of written notice from the Developer that such Offered Improvements are complete. The City shall approve and accept for dedication the Offered Improvements so long as they are constructed in accordance with the City's adopted standards therefor, as verified by the City's inspection. Following completion of the Offered Improvements, and the City's inspection and acceptance thereof, the City shall thereafter own, operate and maintain the Offered Improvements without charge or cost to the Developer, excepting that usual warranty bonding shall be provided to the City by the Developer. The City shall accept the "Offered Improvements" as a donation to the improvement of the City, including appraised value of land at time of donation.

(e) Other Utilities. The Developer shall install, construct and complete, without cost to the City, all other utilities required by the City or by regulation, ordinance or law to be installed. The Developer will pay all costs and all associated expenses to install, construct, and complete such other utilities, unless otherwise specifically provided herein for improvements which the City has specifically required of Developer, which Developer and the City specifically agree herein shall be paid (or reimbursed) to Developer by the City. If this Agreement makes no provisions for the City to provide, pay or reimburse Developer for any such other utilities installed by Developer, the City is not responsible for any such costs and Developer specifically waives any claims against the City therefor.

(f) Documentation Supporting Provisions Herein. If the City determines that any provision of this Agreement requires a separate (recordable or otherwise) document/agreement to protect or clarify the City's rights pursuant to the intent of the parties under this Agreement, both parties shall cooperate in preparing and completing such documents.

(5) Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police power by Ivins City in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement.

(6) Subdivision Plat Approvals and Compliance with City Design and Construction Standards. Developer expressly acknowledges and agrees that nothing in this Development Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of Ivins City necessary for approval and recordation of subdivision plats for the Project, including the payment of fees and

compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of Ivins City, including but not limited to, the Ivins City Subdivision Ordinance and Standards and Specifications for Design and Construction.

(7) Bonding for Improvements. Developer shall comply with all bonding requirements of the City for completion, restoration and guarantee of improvements. Specifically, as a condition of recording of any Final Plat for the Project, Developer shall provide the following bonds, or equivalent security as allowed by Ivins City ordinances:

(a) Completion of all Improvements or Completion Security. If the Developer does not complete all improvements prior to recordation of the Final Plat for any phase of the Project, a completion bond shall be provided to the City as required by the Ivins City Subdivision Ordinance. Such completion bond will be in the amount of 110% of the City engineer's estimated cost for applicable construction costs of the improvements. The security must be in a form acceptable to the City.

(b) Restoration Bond. If the Developer intends to install improvements rather than provide a completion bond, the Developer must provide a restoration bond to the City as required by the Ivins City Subdivision Ordinance. (If a completion bond is not provided, plat recording may not occur until all improvements are installed and approved by the City.)

(c) Warranty Security. At the completion of the improvements for which completion security is required, Developer shall provide the City with a warranty bond or other form of security, as required by the Ivins City Subdivision Ordinance, in the amount of 10% of the estimated construction costs referred to above. The security must be in a form acceptable to the City and authorized by the City's Subdivision Ordinance.

(d) Application. In case of any discrepancy between the bonding/security provisions in this Agreement and the City's subdivision ordinance provisions regarding bonding/security, the provision providing greater protection to the City (as such is determined by the City) shall be applicable.

(8) Agreement to Run with the Land. This Agreement shall be recorded against the Property described in Exhibit "A" attached hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property. Additionally, Developer shall provide appropriate notes upon the Final Plat prior to recordation giving notice of the primary provisions of this Agreement.

(9) Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent signed by the Mayor with the approval of the City Council, which consent shall not be unreasonably withheld.

(10) No Joint Venture, Partnership or Third Party Rights. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(11) Binding Effect. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. However, in the event Developer fails to proceed in a timely fashion resulting in the revocation or loss of Final Plat or Preliminary Plan approvals for the Project, the City may terminate this Agreement and require a new Development Agreement as part of any future approval process.

(12) Integration. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

(13) Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(14) Previous Agreements. Except as otherwise expressly provided herein, this Agreement is the exclusive agreement of the parties and replaces and supersedes all prior agreements between the parties pertaining to this Project.

(15) Miscellaneous.

(a) Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

(b) Survival. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

(c) Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(d) Plat Notes. Primary provisions of this Agreement, as determined by the City, shall be included as notes on any Final Plat of the Project, as well as incorporated into the Project Restrictive Covenants documents.

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

IVINS CITY:

By: _____
Chris Hart, Mayor

Attested by:

_____
Kari Jimenez, Ivins City Recorder

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On this ___ day of _____, 2014, before me personally appeared CHRIS HART and KARI JIMENEZ whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of **Ivins City**, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.

_____
Notary Public

OWNERS/DEVELOPER:

_____
RUSSELL M. MILLER

_____
KENDALL M. MILLER

_____
DEVELOPMENT SOLUTIONS GROUP, INC

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2014 before me personally appeared RUSSELL M. MILLER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

_____
Notary Public

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On this _____ day of _____, 2014 before me personally appeared KENDALL M. MILLER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

_____
Notary Public

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On the ___ day of _____, 2014, personally appeared before me _____ _____, AUTHORIZED OFFICER OF DEVELOPMENT SOLUTIONS GROUP, INC., whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that DEVELOPMENT SOLUTIONS GROUP, INC. is an Owner/Developer of the Cliffrose Subdivision and that the foregoing document was signed by him/her by authority, and he/she acknowledged before me that he/she executed the document for its stated purpose.

_____
Notary Public