



**A REQUEST FOR A SUBSTANTIAL DECREASE PLAT**

**AMENDMENT BY:**

Scott Shepard

**WHERE:** Valley Vista Estates

**August 10, 2015**

Substantial Plat Amendment Valley Vista Estates Subdivision

**Background:** A notice of noncompliance was filed with the Teton County Recorder’s office on August 30, 2012 (223728). The reason for the notice was that the Developer was in violation of the original Development Agreement for Valley Vista Estates (148905). This violation was due to the deadlines of completion, agreed to in the original Development Agreement, not being met. In order to remedy the non-compliance, a new Development Agreement must be negotiated. This new Development Agreement proposes new dates for completion (Section 3.11), as well as identifies phases (Section 3.11) which were not defined in the original agreement.

**Definition: §9-7-1 (B-2c) Substantial Changes – Substantial Changes/ Vacations – Decrease Scale, Impact.** Substantial Changes or vacations of a plat, the master plan, or portions of it that substantially decrease the direct or indirect impacts on the immediate neighborhood, general vicinity of the subdivision or overall community. These substantial changes may include the following:

- i. a reduction in the number of lots or parcels;
- ii. the re-arrangement or relocation of more than five (5) lots or parcels that does not encroach further into natural resource areas or Overlay Areas as defined in Title 8 or Title 9 or move closer to neighboring property;
- iii. renegotiation of development agreement;
- iv. other changes of similar magnitude or reduction of impacts.

**Procedure for Approval: §9-7-1 (B-4c) Substantial Changes – Decrease Scale, Impact.** Upon the Planning Administrator determining the application complete, and that the proposed changes will decrease the scale or impacts of the development, the application shall be reviewed by the following procedure.

- i. **Concept Review by Planning Administrator.** The application for proposed changes shall be reviewed by the Planning Administrator as a Concept Plan. The Administrator shall recommend approval, approval with conditions or denial to the Board.
- ii. **Final Plat by County Commission.** Upon receiving a recommendation from the Planning Administrator, the Board shall review the application at a legally noticed public hearing. A Final Plat application shall be submitted pursuant to Title 50 of the Idaho Code and Title 9, and shall be accompanied with a revised Development Agreement and/or Conditions, Covenants and Restrictions (CCR) as such revisions may be necessary to implement the Final Plat. The Board shall approve, approve with conditions or deny the proposed Master Plan, Final Plat and/or Development Agreement pursuant to the criteria set forth in C-iii-d of this section.

**Criteria for Approval §9-7-1 (B-3c): Substantial Changes – Decrease Scale, Impact.**

- i. The applicant shall submit to the Planning Administrator revised maps showing the proposed vacation or revisions to the layout of lots or buildings and any reduction in the number of lots or buildings. The project’s Development Agreement may require adjustments in order to reflect the substantial changes being proposed. This revised layout shall be accompanied by the maps and analyses that were submitted as part of the previous application and approval. These maps and analyses include the following to the extent they were required for the previous approval:
  - 1. Existing Conditions Inventory and Existing Conditions Map;
  - 2. Existing Contour Map;
  - 3. Maps of Overlay Areas as established in Title 8 and Title 9;

4. Land Management Plan and/or Open Space Management Plan
  5. Fiscal and Services Analysis;
  6. Natural Resource Analysis; and,
  7. Traffic Impact Study.
  8. Approved Development Agreement
- ii. No additional studies or analyses are required.
  - iii. No additional application fees are required.
  - iv. The master plan and plat for subdivision or Planned Unit Development, including the proposed changes, shall reduce governmental costs for operations and capital expenses. The applicant shall provide financial surety of 125% of a current engineer's cost estimate for infrastructure OR the development agreement shall require no lot sales in the improved amended plat until such time as infrastructure is complete or financial surety has been provided. As applicable, shall reduce the intrusion of development into natural resource areas that are protected by criteria in county regulations or reduce development in the Overlay Areas as these areas are defined in Title 8 or Title 9.

**Concept Review Findings:**

**Teton County Planning Administrator has reviewed the proposed changes to the Development Agreement for Valley Vista Estates and finds that the changes would bring the subdivision into compliance with Teton County Land Use regulations. The proposed changes (revision of dates and inclusion of phasing) would not require additional maps or analysis, additional studies, additional fees or additional expenses to Teton County.**

**Final Approval:**

Action/Decision: The Board of County Commissioners, shall act on the information presented in the application. The decision shall be to:

- 1) Continue the public hearing,
- 2) Approve the Amended Developer's Agreement,
- 3) Approve the Amended Developer's Agreement with conditions,
- 4) Deny of the application.

Specific reasons for the decision shall be made and included in the written the record. It is important that the action of the Board be based on a full understanding of all anticipated impacts of the proposed development to Teton County. The Board shall only approve the application if it finds that all of the criteria has been met (or if it finds that some of the criteria has not been met, may recommend approval with conditions that would ensure that the proposed development meets the criteria).

Findings of Fact (if you wish to include them as written findings for your motion):

- o Scott Shepherd -submitted an application to amend the Devilment Agreement for Valley Vista Estates (148905, recorded 6/27/2002).
- o The application is to amended the completion deadlines and clarify the future phases.
- o Substantial Change- Decrease Scale, Impact plat amendments are used for amending Development Agreements.
- o On 8/10/15 Teton County BoCC held a public hearing to take public testimony about the application
- o The proposed amendment meets the criteria for approval found in §9-7-1 (B-3c).



NAME OF SUBDIVISION/PLANNED UNIT DEVELOPMENT

SUBDIVISION/PLANNED UNIT DEVELOPMENT AMENDMENT APPLICATION

Upon receipt of the required materials the planning staff shall stamp the application received and prepare a staff report. It is recommended that the Applicant review Title 9 of the Teton County Code prior to submittal. This Title along with application materials are located on the County website at www.tetoncountyidaho.gov. The planning staff is also available to discuss applications and answer questions prior to receiving an application.

To expedite the review of your application, please be sure to address each of the following items.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Owner: Teton Valley Development Co., LLC
Applicant: Scott Shepherd E-mail: Scott@scottsre.com
Phone: (307) 733-5881 Mailing Address: P.O. Box 3393
City: Jackson State: WY Zip Code: 83001
Engineering Firm: Y2 Consultants Contact Person: Gerald A. Edwards Phone: (307) 733-2999
Address: P.O. Box 2674, Jackson, WY 83001 E-mail: Jerry@Y2consultants.com

Location and Zoning District:

Address: Parcel Number:
Section: SW1/4 SW1/4 Sec. 14 Township: 4 N Range: 45 E, BM Total Acreage: 40 acres
Proposed Units/ Lots: 115 (112 Resid., 3 Common Area) Current Units/Lots: 115 (112 Resid., 3 Common Area)
Code Approved Under: June 2002

- FEES (pursuant to current fee schedule)
Insignificant
Substantial Increase Scale/Impacts
Substantial Decrease Scale/Impacts
Affidavit of Legal Interest
Engineer/Surveyor review cost
Taxes Current

Fees are non-refundable.

I, the undersigned, have reviewed the attached information and found it to be correct. I also understand that the items listed below are required for my application to be considered complete and for it to be scheduled on the agenda for the Board of County Commissioners public hearing.

• Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I, the undersigned, am the owner of the referenced property and do hereby give my permission to \_\_\_\_\_ to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property and find it to be correct.

• Owner Signature: *J. Myklebust* Date: *6/23/2015*  
*Manager*

**SECTION II: ADMINISTRATOR DETERMINATION**

The Planning Administrator has reviewed the amended plat and/or recorded documents and proposals in accordance with Teton County Subdivision Ordinances Title 9, Chapter 7. The Planning Administrator has determined the changes are:

( ) Insignificant: The application will be reviewed administratively and approved, approved with conditions or denied. The plat or recorded documents for a subdivision or Planned Unit Development, including the proposed changes, shall comply with all applicable criteria and standards of the county regulations, conditions of approval established in the previous approval, and the development agreement approved as part of the previous approval.

( ) Substantial Changes – Increase Scale, Impact: The application will be reviewed under any applicable current ordinances and a staff report prepared and sent to the Planning and Zoning Commission for preliminary review and noticed as a public hearing at their next available regularly scheduled meeting. Substantial changes will require amended CCR’s and Development Agreement and may or may not require additional studies or application materials. After a hearing before the Planning and Zoning Commission, the Commission shall recommend to the Board of County Commissioners approval, approval with conditions or denial of the amended plat and/or recorded documents. A public hearing before the Board of County Commissioner for the final review will then be scheduled and the Board will approve, approve with conditions, or deny the amended plat and/or recorded documents.

( ) Substantial Changes – Decrease Scale, Impact: The application will be reviewed under the code of original approval and a staff report prepared and sent to the Planning and Zoning Commission for concept review and noticed as a public hearing at their next available regularly scheduled meeting. Substantial changes will require amended CCR’s and Development Agreement. No additional studies or application fees will be required. After a hearing before the Planning and Zoning Commission, the Commission shall recommend to the Board of County Commissioners approval, approval with conditions or denial of the amended plat and/or recorded documents. A public hearing before the Board of County Commissioner for the final review will then be scheduled and the Board will approve, approve with conditions, or deny the amended plat and/or recorded documents.

**SECTION III: ITEMS REQUIRED ON THE AMENDED PLAT OR IN AMENDED RECORDED DOCUMENTS**

1. Narrative explaining the changes that are being proposed.
2. Plat, if applicable, is labeled correctly as “Amended Final Plat”.  
Recorded documents, if applicable, are labeled as “Amended”
3. Itemize briefly the amendments on the original plat and/or recorded documents and the amended plat and/or recorded documents.
4. The following items may also be required, as applicable:
  - Letter of Credit or Bond for financial guarantee of public improvements
  - Engineers cost of public improvements
  - Three (3) Sets of “Final Stamped” construction drawings for public improvements
  - Final approval letter from Eastern Idaho Public Health
  - Final approval letter from Teton County Fire District

## SUBDIVISION/PUD AMENDMENT APPLICATION NARRATIVE

### VALLEY VISTA ESTATES

### TETON COUNTY, IDAHO

This amendment is submitted to update/revise the original Developer's Agreement approved in June 2002 and clarify the project phasing and update the phase completion schedule. There are no proposed or requested changes to the approved/recorded Plat.

The project consists of 112 residential lots, and 3 accessory lots; Lot 113 (Park), Lot 114 (Well Site) and Lot 115 (Lift Station). The original Developer's Agreement stated that the project would be completed in four (4) phases; however the Phase boundaries were not shown on the exhibit referenced in the Developer's Agreement. As part of this amendment a Master Plan will be submitted which clearly identifies the project phasing as noted in the Agreement.

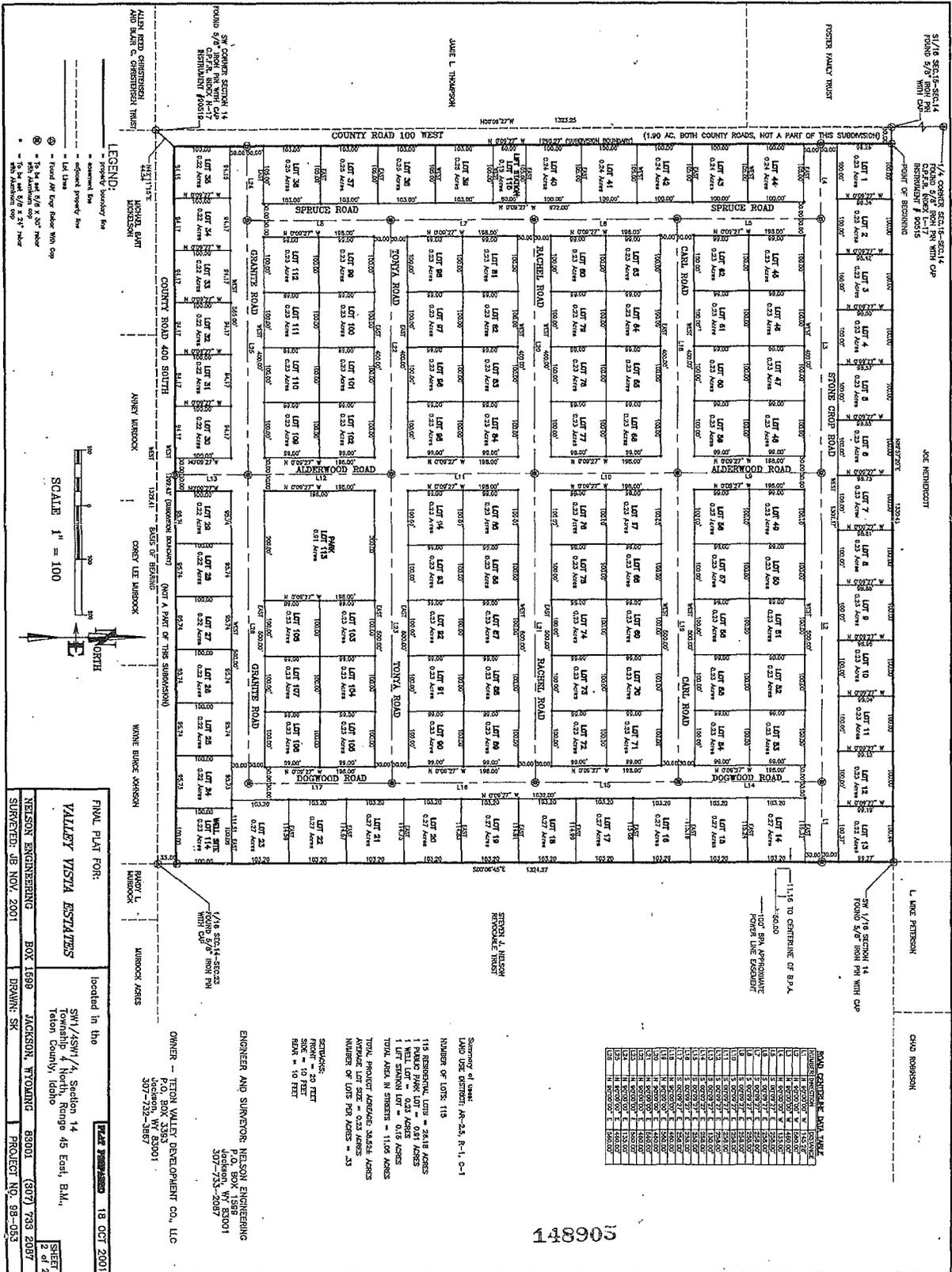
The original Developer's Agreement stated that construction of all Developer provided infrastructure must be completed within ten (10) years of the agreement. All of the infrastructure serving the Phase I residential lots (Lots 20-39, 90-112), plus the infrastructure and improvements for the three (3) accessory lots, Park, Well Site and Lift Station, were completed, inspected, approved and put into service.

Due to the severe downturn in the economic conditions following the completion of Phase I, construction of the infrastructure to the remaining three (3) phases was put on hold. As a result, the 10 year timeline for completion of all the infrastructure has passed and the County provided notice that no construction activities can take place in the subdivision until a new Development Agreement is entered into, which could cause potential issues by precluding private lot owners in Phase I from building on their property.

Therefore, this amendment is being submitted to clarify the phasing plan, as noted in the original agreement, and update the phasing schedule for completion of infrastructure for the remaining phases (Phases 2, 3 and 4). This will allow the County to lift the order on Phase I, allowing existing property Owners to build on their lots, and provides a new schedule for completion of the remaining phases. Phased infrastructure improvement plans will be submitted for the remaining phases in accordance with County requirements.

# EXHIBIT B

SCALE 1" = 100'



**FINAL PLAT FOR:**  
**VALLEY VISTA ESTATES**  
 NELSON ENGINEERING BOX 1598 JACKSON WYOMING 83001 (307) 733 2087  
 SURVEYED: 08 NOV. 2001 DRAWN: SR PROJECT NO. 98-053

**OWNER:** TETON VALLEY DEVELOPMENT CO., LLC  
 P.O. BOX 3355 JACOBSON WY 83001  
 307-733-2087

**ENGINEER AND SURVEYOR:** NELSON ENGINEERING  
 P.O. BOX 1588 JACOBSON WY 83001  
 307-733-2087

**STATISTICS:**  
 FRONT - 20 FEET  
 SIDE - 10 FEET  
 DEPTH - 10 FEET  
 TOTAL AREA - 10,000 SQ. FT.  
 NUMBER OF LOTS - 115

**Summary of Lots:**  
 Land Use District: R-1, C-1  
 NUMBER OF LOTS: 115  
 115 RESIDENTIAL LOTS = 2418 ACRES  
 1 PARKING LOT = 0.01 ACRES  
 1 LOT SWAMPY LOT = 0.15 ACRES  
 TOTAL AREA IN SQUARES = 1105 ACRES  
 AVERAGE LOT SIZE = 0.23 ACRES  
 TOTAL PROJECT ASSIGNED MARKET VALUE  
 NUMBER OF LOTS PER ACRES = 33

**ROAD CENTERLINE DATA**

ROAD NAME	ROAD WIDTH	RIGHT-OF-WAY	CENTERLINE	ELEVATION
SPRUCE ROAD	20.00	40.00	100.00	1500.00
GRANITE ROAD	20.00	40.00	100.00	1500.00
TONYA ROAD	20.00	40.00	100.00	1500.00
RACHEL ROAD	20.00	40.00	100.00	1500.00
CAROL ROAD	20.00	40.00	100.00	1500.00
ALDERWOOD ROAD	20.00	40.00	100.00	1500.00
COUNTY ROAD 400 SOUTH	20.00	40.00	100.00	1500.00

**1/4 CORNER SEC. 14-35-014**  
 FOUND 5/08' FROM PIN WITH CAP  
 INSTRUMENT # 8015

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 FOUND 5/08' FROM PIN WITH CAP  
 INSTRUMENT # 8015

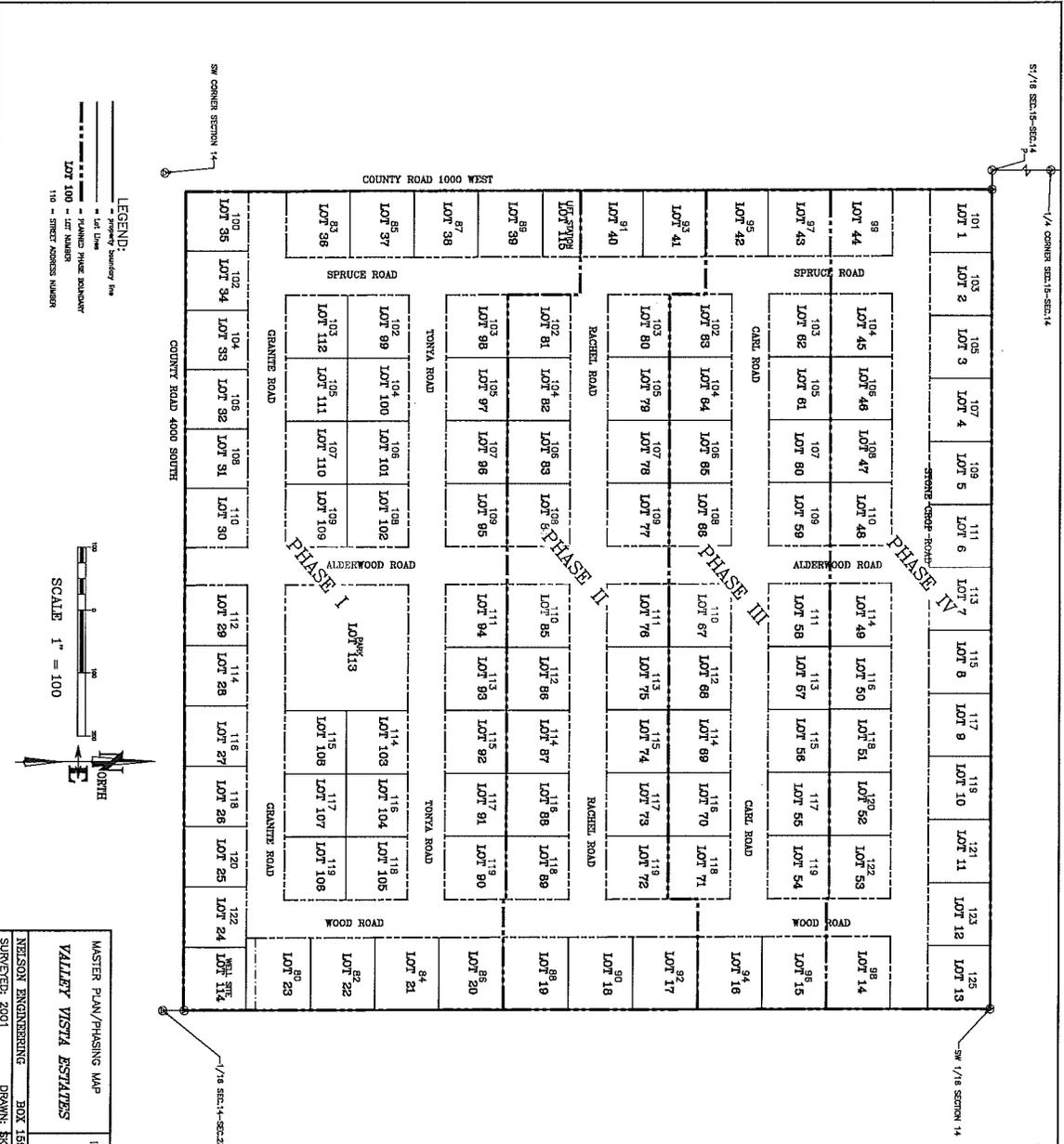
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 FOUND 5/08' FROM PIN WITH CAP  
 INSTRUMENT # 8015

**1/4 CORNER SEC. 14-35-014**  
 FOUND 5/08' FROM PIN WITH CAP  
 INSTRUMENT # 8015

EXHIBIT C



MASTER PLAN/PHASING MAP	located in the	MAP PREPARED	27 NOV 2001
VALLEY VISTA ESTABLISHMENTS	SW 1/4 SW 1/4, Section 14	Township 4 North, Range 45 East, B.M.,	
NEISON ENGINEERING	Box 1588	JACKSON, WYOMING 83001	(307) 733 2887
SURVEYED 2001	DRAWN BY	PROJECT NO. 13-125-01	

OWNER - TETON VALLEY DEVELOPMENT CO., LLC  
 P.O. BOX 3393  
 JACKSON, WY 83001  
 307-733-2887

ENGINEER AND SURVEYOR: NEISON ENGINEERING  
 P.O. BOX 1298  
 JACKSON, WY 83001  
 307-733-2087

PHASE III  
 LOTS 19-16, 6-4, 54-71

PHASE IV  
 LOTS 1-14, 44-53

MASTER PLAN  
 NUMBER OF LOTS: 115

PHASE I  
 LOTS 20-26, 90-112

PHASE II  
 LOTS 17-16, 40-41, 72-88

PHASE I  
 LOTS 1-14, 44-53

PHASE II  
 LOTS 17-16, 40-41, 72-88

PHASE III  
 LOTS 19-16, 6-4, 54-71

PHASE IV  
 LOTS 1-14, 44-53

PHASE I  
 LOTS 20-26, 90-112

PHASE II  
 LOTS 17-16, 40-41, 72-88

PHASE III  
 LOTS 19-16, 6-4, 54-71

PHASE IV  
 LOTS 1-14, 44-53

AMENDED DEVELOPER'S AGREEMENT

This Amended Developer's Agreement ("Agreement") is entered into effective the date of last signature affixed hereto between Teton County, Idaho ("the County") and Teton Valley Development Co., LLC, a Wyoming limited liability company ("Developer"):

RECITALS

WHEREAS, Developer and the County entered into a Developer's Agreement dated June 25, 2002 which was recorded on June 27, 2002 as Instrument No. 148905 in the Teton County, Idaho Recorder's Office ("the Original Developer's Agreement").

WHEREAS, in the Original Developer's Agreement the Developer agreed to develop the Valley Vista Estates Subdivision consisting of 112 residential lots and 3 appurtenant common area lots in general accordance with the plat recorded as Instrument 148903, June 27, 2002 ("the Project") on that certain 40-acre parcel of real property described in Exhibit A attached hereto. A copy of the Plat is attached hereto as Exhibit B.

WHEREAS, Section 3.11 of the Original Developer's Agreement stated that the Project would be constructed in four separate phases and contained a requirement that Developer complete construction of all Developer-provided infrastructure in the Project within 10 years (i.e. by June 25, 2012).

WHEREAS, from 2002 through 2003, Developer completed Developer-provided infrastructure serving or capable of serving all phases of the planned residential lots (as defined below), and the common area Park lot (Lot 113), the common area water well lot (Lot 114), and the common area lift station Lot (Lot 115).

WHEREAS, from 2002 through 2007, Developer sold Lots 20 through 30; Lots 32 through 39; Lots 90 through 110; & Lots 112 through 115 to third party purchases and conveyed common area Lots 113, 114 and 115 to the Valley Vista Subdivision Homeowners Association (hereafter "the Homeowners Association").

WHEREAS, the purchasers of Lots 23 through 30, Lots 32 through 39, Lots 90 through 98, and Lots 105 through 108 obtained building permits from Teton County, Idaho and constructed homes.

WHEREAS, Lots 1 through 19; Lot 31; Lots 40 through 89; & Lot 111 are owned by Developer and remain unsold.

WHEREAS, due to the downturn in the national and local economy in 2008 and the corresponding real estate slump Developer was unable to complete all Developer-provided infrastructure in the Project within the 10-year timeframe contemplated by the Original Developer Agreement.

WHEREAS, by letter dated June 27, 2012 the County notified Developer that Developer was in breach of the Original Development Agreement for failing to complete construction of Developer-provided infrastructure to Phases 2, 3 and 4 of the Project, and stating among other

things that no construction activity could henceforth take place within the subdivision until Developer entered into a new development agreement with the County.

WHEREAS, Developer and the members of the County Planning and Zoning Department have met and conferred about what activities must be undertaken by Developer in order to bring the Project back into compliance with County Land Development Regulations and complete the Project; said activities have been outlined and described in that certain Master Plan attached hereto as Exhibit C; and the Teton County, Idaho Board of County Commissioners, at its regularly scheduled meeting held on August 10, 2015, considered and voted to approve the Master Plan attached hereto as Exhibit C and this Amended Developer's Agreement as a result.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and Developer agree to amend the Original Developer's Agreement as set forth herein.

1. **Parcel to be Developed.** This paragraph from the original Developer's Agreement remains unchanged.

2. **Project.** Phase 1 of the Project (as described in Section 3.11 below) has been completed and all Developer-provided infrastructure constructed in relation to Phase 1 has been inspected and approved. The remainder of the Project will be completed in 3 additional phases, as described in Section 3.11 below and the Master Plan attached hereto as Exhibit C.

3. **Agreement.** The County will issue permits to Developer for the development of the Project on the Property subject to the following terms and conditions:

3.1 **Costs and Fees.** Unless specifically stated to the contrary herein, all development costs and fees shall be paid by Developer without right of contribution or reimbursement from the County.

3.2. **Compliance with all Ordinances and Laws.** Development of the Property shall strictly conform to all currently applicable provisions of the applicable laws, rules and regulations of governmental entities having jurisdiction and control over any part or stage of the development. The County or its representatives shall have the right, at all times and upon reasonable notice, to inspect all development work on the Project for compliance with such laws, rules and regulations, but the County shall have no obligation to conduct such inspections.

3.3. **Culinary Water System and Sewer Line System.** The status of prior completion and approval of required water system infrastructure and sewer system infrastructure in the Project is described in the Master Plan attached as Exhibit C. Developer shall install further culinary water lines and sewer lines that are properly engineered and approved by the County Engineer and County as set forth in the Master Plan attached hereto as Exhibit C:

a. The "culinary water system" means the water delivery system installed by Developer between the Project and a connecting point on the existing culinary service main line and shall include the individual hook-up points corresponding to each of the lots in each proposed phase of development. Upon approved installation at each phase of the Project, ownership of the culinary water system shall vest in the Homeowners Association, which

shall be solely responsible for its maintenance thereafter. Each lot owner shall be solely responsible for the maintenance of the delivery line extending from the street hook-up point to and within the lot.

b. The “sewer line system” means the waste disposal system installed by Developer between the Project and a connecting point on the existing sewer service main line as extended and as designated by the Town of Victor and shall include the individual hook-up points corresponding to each of the lots in each proposed phase of development. Upon approved installation at each phase of the Project, ownership of the sewer line system shall automatically vest in the City of Victor, which shall be solely responsible for its maintenance thereafter. Each lot owner shall be solely responsible for the maintenance of sewer line extending from the street hook-up point to and within their lot.

c. During construction and installation through component or partial system approvals following interim inspections by County Engineer, all system components must be inspected “in place” by County Engineer before covering them over with fill.

d. Final “as-built” inspection, testing and approval by County.

3.4. Sewer Connection and User Fees. Developer shall construct and install sewer lines within the Project in conformity with all currently applicable laws, rules and regulations, and performance standards related thereto. The sewer system, connection and user fees shall be paid at the then-currently applicable County or City rate by the owner of a given lot at the time that connection or use is made to or by such lot.

3.5. Streets. The status of prior completion and approval of proposed streets/roads in the Project is described in the Master Plan attached as Exhibit C. All further street/road construction within the Project shall meet minimum construction standards required by Teton County, Idaho.

3.6. Road Maintenance. In the recorded Covenants described in Section 3.9 below, the Developer has required the Homeowners Association to be responsible for repairs and maintenance of all completed and approved streets/roads.

3.7. Street Lighting. The Developer shall install street lighting at 400 South and the entry to the subdivision and 2 street lights within the parking area of the park.

3.8. Postal Service. The Project has a single location for mail boxes for all residential lots within the Project, which is shown on the plat attached hereto as Exhibit B. County and Developer previously agreed that it is appropriate and adequate for the U.S. Postal Service to be able to deliver mail to the entire Project at one location, and Developer previously provided the County with written approval from the U.S. Postal Service for the mail box location and access. The Homeowners Association shall be solely responsible for maintenance of the mail boxes.

3.9. Covenants and Homeowners Association. The Developer recorded a Declaration of Covenants, Conditions and Restrictions as Instrument No. 148904 on June 27, 2002, and created the Homeowners Association as an Idaho non-profit corporation on February 12, 2003. Nothing in this Section will prohibit changes or amendments to the Covenants in accordance

with the terms thereof.

3.10. Weed Control. Developer must comply with the County ordinances for weed control on all lots owned by Developer. Individual third-party owners of lots within the subdivision must comply with the County ordinances for weed control on their own lots. The Homeowners Association must comply with County ordinances for weed control on all common areas. All lots and common areas may be farmed with a harvestable crop, or clipped, mowed or grazed regularly, in order to avoid a fire hazard.

3.11. Phased Development. The entire Project will be completed in four separate phases. The phases are described on the Master Plan (attached hereto as Exhibit C). Construction of all Developer-provided infrastructure for each phase, and as described in the plat, must be completed in accordance with the schedule as follows:

Phase 1 (Lots 20 through 39, 90 through 112, and Lot 113 (Park), Lot 114 (Well), and Lot 115 (Lift Station)): Developer-provided infrastructure has been completed.

Phase 2 (Lots 17 through 19, 40 through 41, and 72 through 89): Developer-provided infrastructure to be completed within 2 years of this Agreement.

Phase 3 (Lots 15 through 16, 42 through 43, and 54 through 71): Developer-provided infrastructure to be completed within 5 years of this Agreement.

Phase 4 (Lots 1 through 14, and 44 through 53): Developer-provided infrastructure to be completed within 10 years of this Agreement.

Developer agrees to not sell or transfer for consideration any Lot in any Phase described above until such time as infrastructure required by this Agreement to be installed by Developer has been installed, inspected and approved by the County.

3.12 Financial Security Guaranty. As security from the Developer to County for the performance of the Developer's obligations to complete the infrastructure improvements pursuant to and in accordance with this Agreement, Developer shall, prior to commencing each remaining phase of the Project, deposit security with the County in the amount of one hundred ten percent (110%) of the anticipated cost of such infrastructure developments for that phase of the Project. Nothing in this provision is intended to require Developer to post financial security for the entire project at the time of commencing any remaining phase of the Project. No Lots within a particular Phase described in Section 3.11 can be sold or building permits issued until public improvements are completed, except if the developer wants to provide a bond or cash deposit to guarantee completion of those public improvements.

3.13 Park. Developer has constructed a Park on common area Lot 113 as required by the Original Developer's Agreement. The Homeowners Association shall be solely responsible for maintenance of the Park area.

#### 4. **General Terms.**

4.1 Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between the parties, and supersede and replace the Original Developer's Agreement. There are no representations, inducements, promises or agreements, oral or written,

not embodied in these documents. All prior discussions, negotiations, commitments, and understandings relating to the subject matter of this Agreement are merged into this agreement. There are no conditions precedent to the Project other than those stated in this Agreement. There are no other collateral agreements between the parties not referenced in this Agreement.

4.2 No Agency. The parties agree that the relationship created by this Agreement is solely that of a private developer and a municipal corporation. Nothing contained in the Agreement shall constitute Developer or County as an agent, legal representative, partner, subsidiary, joint venturer, or employee of the other. Neither Developer nor County shall have any right or power to, and shall not, bind or obligate the other in any way, manner or thing whatsoever, nor represent it has any right to do so, except as provided in this Agreement.

4.3 Time. Time is of the essence in the performance of each term of this Agreement.

4.4 Modification. Neither this Agreement nor any term or provision of it may be changed, waived, discharged, amended, modified or terminated in any other manner other than by a written instrument signed by all parties.

4.5 Documents. Each party to this Agreement shall do all acts and execute and deliver all documents proper to accomplish the intents and purposes of this Agreement.

4.6 Arbitration. With the sole and exclusive exception of actions instituted by County for injunction to mandatorily compel compliance with the provisions of this Agreement, all other disputes or controversies arising out of or in any way relating to this Agreement, including its formation, performance, modification or extension, for any form of relief (including damages in contract or tort, rescission, specific performance, and injunction, but excluding punitive damages which shall not be awarded) shall be settled by arbitration rather than court action. The arbitration shall be held in the City of Driggs, Idaho or at such other location as the parties may agree in writing. It shall be conducted under the auspices of and by the American Arbitration Association. Discovery shall be allowed at the discretion of the arbitrator. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in a court of competent jurisdiction, as provided in the Idaho Uniform Arbitration Act, §7-901, et seq. The parties consent that any notice, motion, application or any paper concerning the arbitration may be served by certified mail, return receipt requested or by personal service provided reasonable time for appearance is allowed. The arbitration proceedings must be commenced within two (2) years after the claim arises. Failure to bring arbitration proceedings within that period shall constitute a waiver of that claim and shall be an absolute bar to the institution of any proceedings on that claim.

4.7 Remedies. Because of the nature of this Agreement, damages may not be an appropriate remedy upon breach of this Agreement by Developer. County shall have the right to bring an action in equity to restrain or enjoin Developer from taking any action inconsistent with this Agreement and to recover all costs and attorneys' fees incurred by County in enforcing this Agreement, regardless of whether legal action is actually commenced.

4.8 Non-Waiver. The failure of any party to insist upon strict performance of any of the terms of this Agreement in any one or more instances shall not be construed to be a waiver or

exercise of that right or of any other term of this Agreement, but all terms of this Agreement shall remain in full force and effect.

4.9 Limitations of Actions. No action, whether in contract or tort, arising out of the performance of either party under this Agreement may be brought by the other party more than twenty-four (24) months after the cause of action arises.

4.10 Law. This Agreement shall be governed by, construed and enforced under the laws of the State of Idaho without giving effect to the principles relating to conflicts or choice of laws.

4.11 Costs and Attorneys' Fees. If any party shall bring a suit, action or arbitration against the other for relief, declaratory or not, arising out of this Agreement, the prevailing party shall recover against the other party all court or arbitration costs and disbursements, together with reasonable attorneys' fees.

4.12 Binding Effect. This Agreement shall be binding on all affiliates, subsidiaries and permitted successors and assigns of the parties.

4.13 Headings. The paragraph headings are for convenience only and do not define, limit, extend or interpret the scope of this Agreement or its paragraphs.

4.14 Validity. If any term of this Agreement is invalid, illegal or unenforceable, in whole or in part, the validity of the other terms shall remain operative and binding.

4.15 Duplicate Originals. This Agreement shall be executed in duplicate originals, and each party shall receive one fully executed copy of this Agreement.

4.16 Recording. The County shall cause this Agreement, or a memorandum thereof, in a form agreed to by the parties, to be recorded in the office of the Teton County, Idaho Clerk.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date set forth above and intend to be fully and legally bound thereby.

Teton County, Idaho

Teton Valley Development Co., LLC, a  
Wyoming limited liability company

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

By: \_\_\_\_\_  
Scott M. Shepherd, Managing Member

Exhibit A

SW¼ SW¼ Section 14, Township 4 North, Range 45 East Boise Meridian, Teton County, Idaho, also known as Teton Valley Townhomes P.U.D. as per the recorded plat thereof.

**NOTICE OF NON-COMPLIANCE**  
**WITH DEVELOPERS AGREEMENT**

This notice of non-compliance is hereby made in order to provide notice that Teton Valley Development Company, LLC has breached that Developer's Agreement recorded June 27, 2002 in the Teton County Clerk's office as Instrument # 148905 (the "Agreement"), between Teton Valley Development Company, LLC and Teton County, Idaho. The Agreement required Teton Valley Development Company LLC to perform certain actions and complete certain public improvements in regards to the development of the Valley Vista Estates Subdivision, which subdivision plat was recorded on June 27, 2002 in the Teton County Clerk's Office as instrument # 148903 (the "Subdivision"). Affected lots include Lot 1 RP002520000010, Lot 2 RP002520000020, Lot 3 RP002520000030, Lot 4 RP002520000040, Lot 5 RP002520000050, Lot 6 RP002520000060, Lot 7 RP002520000070, Lot 8 RP002520000080, Lot 9 RP002520000090, Lot 10 RP002520000100, Lot 11 RP002520000110, Lot 12 RP002520000120, Lot 13 RP002520000130, Lot 14 RP002520000140, Lot 15 RP002520000150, Lot 16 RP002520000160, Lot 17 RP002520000170, Lot 18 RP002520000180, Lot 19 RP002520000190, Lot 40 RP002520000400, Lot 41 RP002520000410, Lot 42 RP002520000420, Lot 43 RP002520000430, Lot 44 RP002520000440, Lot 45 RP002520000450, Lot 46 RP002520000460, Lot 47 RP002520000470, Lot 48 RP002520000480, Lot 49 RP002520000490, Lot 50 RP002520000500, Lot 51 RP002520000510, Lot 52 RP002520000520, Lot 53 RP002520000530, Lot 54 RP002520000540, Lot 55 RP002520000550, Lot 56 RP002520000560, Lot 57 RP002520000570, Lot 58 RP002520000580, Lot 59 RP002520000590, Lot 60 RP002520000600, Lot 61 RP002520000610, Lot 62 RP002520000620, Lot 63 RP002520000630, Lot 64 RP002520000640, Lot 65 RP002520000650, Lot 66 RP002520000660, Lot 67 RP002520000670, Lot 68 RP002520000680, Lot 69 RP002520000690, Lot 70 RP002520000700, Lot 71 RP002520000710, Lot 72 RP002520000720, Lot 73 RP002520000730, Lot 74 RP002520000740, Lot 75 RP002520000750, Lot 76 RP002520000760, Lot 77 RP002520000770, Lot 78 RP002520000780, Lot 79 RP002520000790, Lot 80 RP002520000800, Lot 81 RP002520000810, Lot 82 RP002520000820, Lot 83 RP002520000830, Lot 84 RP002520000840, Lot 85 RP002520000850, Lot 86 RP002520000860, Lot 87 RP002520000870, Lot 88 RP002520000880, and Lot 89 RP002520000890. As of today Teton Valley Development Company, LLC is not in compliance with the Agreements. Teton County will not issue any building permits or certificates of occupancy for any lots in Valley Vista Estates until such time as Teton Valley Development Company, LLC comes into compliance with the Agreement.

**Instrument # 223738**

TETON COUNTY, IDAHO

8-30-2012 02:41:00 No. of Pages: 2

Recorded for : TETON COUNTY IDAHO PLANNING AND

MARY LOU HANSEN

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: NOTICE OF NON-COMPLIANCE

DATED: As of August 16, 2012

Teton County, Idaho

By: ARF/d  
Name: Angie Rutherford  
Title: Teton County, ID Planning Administrator

SUBSCRIBED AND SWORN by Angie Rutherford before me this 29<sup>th</sup> day of August, 2012.

Wendy A. Danielson  
Notary Public  
State of Idaho

Wendy A. Danielson  
Notary Public for Idaho  
Residing at: Victor, Teton County  
My Commission Expires: 11/24/2017

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