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Blue Indian Phase II

NAME OF SUBDIVISION/PLANNED UNIT DEVELOPMENT

### FINAL PLAT & MASTER PLAN

SUBDIVISION/PLANNED UNIT DEVELOPMENT APPLICATION

The Final Plat is the last of three steps in the development process. Upon receipt of the required materials the planning staff shall stamp the application received and prepare a staff report. Once the Planning Administrator has reviewed the staff report and deemed the application complete a public hearing will be scheduled with the Board of County Commissioners. It is recommended that the Applicant review Titles 6, 8 and 9 of the Teton County Code prior to submittal. These Titles along with application materials are located on the County website at [www.tetoncountyidaho.gov](http://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: Buxton West LLC

Applicant: Matt Hail E-mail: LBCmatt@silverstar.com

Phone: 208 399-8080 Mailing Address: P.O. Box 1601

City: Driggs State: ID Zip Code: 83422

Engineering Firm: Harmony Contact Person: Randy Blough Phone: ( ) 354-1331

Address: 110 E Little Ave, Driggs E-mail: randy.blough@harmonydesigninc.com

Location and Zoning District:

Address: NW corner - 6000 W & Bates Parcel Number: RP05N44E268400

Section: 26 Township: 5N Range: 44E Total Acreage: 98.86

Proposed Units/ Lots: 30 Proposed Open Space Acres: 0

Proposing a Subdivision  Zoning: A 2.5 A 20

Proposing a Planned Unit Development  Planned Community  Rural Reserve

- Latest recorded deed to the property  Affidavit of Legal Interest
- ~~with~~ 30% of total base fee (see current fee schedule) 12,300 x 30% = 3,690  Engineer/Surveyor review
- Platting process expires on \_\_\_\_\_
- Preliminary Plat and required materials approved by Planning and Zoning Commission on \_\_\_\_\_

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: Matt Hail Date: 6-6-2012

I, the undersigned, am the owner of the referenced property and do hereby give my permission to Steve Gottschling 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: Matt Hail Date: 6-6-2012

### SECTION II: ITEMS REQUIRED ON THE MASTER PLAN AND FINAL PLAT DOCUMENTS

1. Eight (8) copies of the Final Plat (3 (18" X 27") (5 (11" x 17")):

The Final Plat is labeled as "Final Plat" and "Development Name" is in the lower right hand corner

- Section(s), Township, Range
- Approved development name is shown
- Vicinity Map
- Accurate scale
- Certificates of approval:
  - Assessor
  - Treasurer
  - Fire Marshall
  - Planning and Zoning Commission, Chairperson
  - Recorder Certificate
  - Board of County Commissioners, Chairperson
  - Certificate of Surveyor
  - Certificate of Review Surveyor
  - Certification of the sanitary restrictions on the face of the plat as per Section 50-1326 of the Idaho Code.
  - Certificate of accuracy and workability of water rights distributions and conveyance system to be signed by a land surveyor or engineer registered under the laws of the State of Idaho.
  - Owner's Dedication

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2. Eight (8) copies of the Master Plan (3(18" X 27") (5(11" x 17")) labeled as "Master Plan" and "Development Name":

- Indicate total acres, acres of ROW, total lot acres, open space acres, number of lots/units, as applicable
- Setbacks
- Zoning District
- Section(s), Township, Range
- Approved development name is shown
- Vicinity Map
- Accurate scale
- "Located" Building Envelopes
- Well, septic, hydrant locations, as applicable
- Other Facilities, as applicable

### SECTION III: CHECKLIST OF REQUIRED ITEMS FOR FINAL PLAT

This section contains the checklist of items necessary to fulfill the requirements for approval of the subdivision application.

- Draft 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
- Acceptance letter from city for sewer hookup from the providing community

**SECTION IV: CHECKLIST OF REQUIRED ITEMS FOR RECORDING**

This section contains the checklist of items required for recording of the subdivision plat and documents.

- Three mylar copies of the Final Plat Plan with approval signatures
- Three mylar copies of the Master Plan with approval signatures
- Development Agreement including engineers cost estimate of public improvements
- Covenants and Restrictions
- Financial Surety (Letter of Credit or Bond)
- Dwg format of Final Plat/Master Plan on CD (required to record)
- Road donations (voluntary) *D.A. section 23*
- Reconciliation of all fees:
  - o Per lot fees
  - o Engineering/surveyor review fees

**SECTION V: STAFF SUMMARY**

- Required Notification in accordance with Title 67, Chapter 65: Section 6509 of the Idaho Code

This hearing has been duly noticed in the Teton Valley News and notification shall be via mail to surrounding property owners in accordance with Idaho Code 67-6509 and 67-6511.

- Ordinance and standards used to the evaluation of this application

This subdivision application is being reviewed under provisions of Titles 6, 8 and 9 of Teton County, Idaho, as applicable.

**SECTION VI: BOARD OF COUNTY COMMISSION ACTION**

Reasons for Approval – Denial – Continuance:

This application is scheduled for a public hearing on \_\_\_\_\_ 200\_\_ with the Teton County, Idaho Board of County Commissioners. This hearing shall be duly noticed in the Teton Valley News and notification shall be via mail to surrounding property owners in accordance with Idaho Code 67-6509 and 67-6511. At this hearing the Board of County Commissioners shall consider public comment.

Approved or Denied on this the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_  
Chairman

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TETON COUNTY  
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BLUE INDIAN SUBDIVISION  
SPECIFIC CONCERNS

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**Open Space #2**

A small pond was originally planned for this area, as part of the aesthetic stream running through the wildlife setback. Now that the stream and pond has been eliminated from the plan, this open space area is no longer necessary. We would prefer to eliminate this open space, and have it absorbed by the adjoining lots, but we don't want to create a substantial change to the plan that would require full resubmittal of the plat at the preliminary stage.

**Escrow of Funds for Seeding/Planting of Wildlife Setback**

According the Development Agreement, seeding of the wildlife corridor shall occur in conjunction with Phase IV improvements. In order to allow continued farming of the property until farming is no longer suitable, developer is requesting to escrow funds for seeding/planting of the wildlife setback, including 25% contingency, until 10 homes are completed in the subdivision, or the HOA decides to plant the corridor(whichever is sooner). This amounts to an escrow amount of \$4330.

**Fencing Rules**

Development Agreement Section 22 M

CCR's Article 7 Section M

Fences shall be treated as improvements and subject to the prior written approval of the Design Group. The height limit for fencing shall be 60 inches. Should the lot owner not adequately maintain the lot boundary fences, and after proper and adequate notice as to needed maintenance, the Design Group shall take necessary action in order to protect property values, and assess lot owner for expenses incurred. This is not to require every lot owner to fence his or her lot, but if a fence is desired, it must comply with this provision. Fencing wherever feasible and appropriate (as determined by the Design Group) shall be wildlife friendly. No perimeter fencing shall be allowed on lots 6 and 7 of Block 1, in order to protect the wildlife area.

**No Fencing in Wildlife Setback**

Development Agreement Section 22 A-D

CCR's Article 7 Section A-D

The Wildlife Area, as noted on the Blue Indian Master Plan, shall remain free of fencing or structures of any type, unless approved by Idaho Fish & Game Department. Developer maintains right to landscape wildlife area for habitat enhancement.

**Noxious Weed Management**

Development Agreement Section 22 H

CCR's Article 7 Section H

Noxious weeds must be kept under control at all times at the expense of the owner, and lots should not be left in an uncared-for condition. In the event that a lot owner fails to comply with weed control, either the lot owner or the Homeowners' Association, which ever is applicable, shall commence to eliminate the weeds from the infested lots. A \$300 penalty will be assessed to the lot, and a lien recorded in the Office of the Clerk of Teton County, Idaho, to collect the penalty and the cost of the weed eradication if the owner does not reimburse said weed control costs.

**Private Road Maintenance**

CCR's Article 7 Section A-B

Roadways within the development are considered privately maintained roads accessible by the

public. It is the responsibility of the HOA, through collected fees, to maintain the roads within the development.

### CHANGES FROM PHASE I APPROVAL

Landline telephone service has been removed from the remaining phases. Silverstar landline service typically costs about \$1000/lot. The cost for the remaining 30 lots of Blue Indian is \$95,150. Developer feels landline service is unnecessary, given the availability of cell phones for voice, and satellite(Wildblue), RF(MicroServ) and 3G/4G internet service.

Developer originally planned for an aesthetic stream running from the water ditch on the west side of the subdivision to the fire pond on the east side. The purpose of this stream was for refilling the fire pond, and would almost never be used, so it's been eliminated.

Trail easements have been removed from the north and west edge of the subdivision. The easement along Bates Road remains, as developer feels this is the only meaningful trail easement.

Revised 10/09/2012  
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**DEVELOPMENT AGREEMENT  
FOR BLUE INDIAN SUBDIVISION**

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THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between Buxton West LLC. and/or assigns (hereafter "Developer") and Teton County Idaho (hereafter "County").

WHEREAS, it is the intent and purpose of the Developer to meet the conditions of approval for the final plat allowing the creation of **BLUE INDIAN SUBDIVISION**, as approved by the Teton County Commission on \_\_\_\_\_ 20\_\_; and

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement, which will guarantee the full and satisfactory completion of the improvements on the property described in this Agreement and it is the intent of this Agreement and the parties to satisfy the improvement guarantee requirements for the final plat recordation of the subdivision.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed as follows:

**Section 1. Subdivision Description.** This agreement pertains to and includes that property, which is designated and identified as **BLUE INDIAN SUBDIVISION**, located within the jurisdiction of Teton County, Idaho.

**Section 2. Planned Improvements.** The Developer shall, at its own cost and expense, complete the road construction, install telephone service, electrical service, road signs, and fire protection for all remaining phases. The estimated cost to complete these improvements is \$378,044.41, which includes \$110,190.41 for Fall River electric service, \$95,150 for Silverstar telephone/internet service, and \$172,704 as shown on the Final Cost Estimate. Developer shall restore County Road 6000 West to County Standards in conjunction with these improvements.

**Section 3. Schedule for Completion of the Improvements.** The Developer shall complete all improvements within one year of final plat approval by the BOCC. The Developer shall be allowed extensions of time beyond the completion date for unavoidable delays caused by strikes, lockouts, acts of God or other factors beyond the control of the Developer.

**Section 4. Estimated Construction Dates.** It is estimated the actual date construction will begin is October 2012. It is estimated that all infrastructure will be completed by November 30, 2013. The seeding of the wildlife corridor shall be completed upon the completion of 10 homes in Blue Indian Subdivision, based upon a Wildlife Management and Open Space Management Plan dated 10-16-2009, which is recorded with the development agreement as Exhibit C.

The Developer will be solely and fully responsible for the supervision of subcontractors and timely completion of installation of roads, water, electric and phone. The Developer will be fully responsible for all dust abatement during construction. Developer is required to maintain the property prior to the sale of lots.

**Section 5. Inspection.** Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the property at reasonable times.

**Section 6. Final Inspection and Approval of Improvements.** Owner shall notify Teton County when it believes that the improvements have been fully and properly completed and shall request final inspection and approval of the improvements by Teton County. Developer must provide a stamped letter from an engineer stating the roads have been built in accordance with the submitted road plans and are up to county standard. Upon approval, Teton County shall provide written notice to the Owner that the improvements have met the satisfaction of Teton County, verifying that this Development Agreement has been fulfilled and waiving any further obligation of the Owner to complete any further improvements.

**Section 7. Control During Development.** The Developer shall have the Engineer on hand for observations of the construction of this development as to make sure it is in compliance with this agreement. Dust shall be controlled during construction by sprinkling or other methods approved by the engineer. The developer is responsible for control weeds during construction and on unsold lots.

**Section 8. One-Year Guarantee of the Improvements.** The Developer guarantees the prompt and satisfactory correction of all defects and deficiencies in the improvements that occur or become evident within one year after acceptance of the improvements by the County. If such defect or deficiency occurs or becomes evident during such period, and then the Developer shall, within ten (10) days after written demand by the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot be reasonably corrected within ten (10) days after written demand from the County, the Developer shall commence the correction of the deficiency within the ten (10) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The guarantee provided by this Section shall be extended for a full year from the date of repair or replacement of any improvements repaired or replaced pursuant to such demand.

**Section 9. Financial Security Guarantee.** Per section 9-5-3 of the 2005 Teton County Subdivision Ordinance, as security to the County for the performance by the Developer of its obligations to complete the improvements in accordance with this Agreement, the Developer shall, prior to the beginning of construction on the required improvements, obtain a letter of credit from an approved financial institution or deposit into a Teton County bond account escrowed funds available for disbursement upon signatures by the Developer and Teton County in the sum of 125% of the engineers estimated costs for all

improvements listed on Engineer's Final Cost Estimate. At time of submittal of surety, Developer shall include receipts from Silverstar and Fall River Electric as proof that telephone and electric infrastructure have been paid in full. Surety for seeding of Wildlife Area shall remain deposited with Teton County until completed according to Section 4. The amount of the escrowed funds shall be reduced upon payment to the sub-contractor for the completed and approved portion of the scheduled improvements on the subject property. Reduction of surety shall be 100% of line item. Any amount remaining in the escrow account shall be paid to the developer within four banking days of the release of the payment for the final portion of the scheduled improvements. Upon complete installation and approval of all County required improvements and signage, any balance of surety funds or irrevocable letter of credit shall be disbursed to Owner.

**Section 10. Default.** If Owner defaults or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the improvements required by this Agreement, Teton County shall inform the Owner in writing of the specific default or failing. If the default or failing continues for thirty (30) days after such written notice and the Owner makes no attempt to remedy the default, Teton County shall have, in addition to all of its other rights under the law, the right to complete the construction of the improvement or to correct the defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from either/or the financial security guaranty escrow account or credit line provided, those sums, not to exceed 125% of the engineers estimate for individual improvements installed, stated in the attached Exhibit A. Included in the costs of the work, the County is entitled to reasonable legal fees and reasonable administrative expenses. Teton County may impose penalties on the Developer in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out at the scheduled completion date.

**Section 10-A. Agree to Vacate.** In the event that the Developer breaches this Agreement, fails to perform any of the terms, conditions or obligations in this Agreement, or has not resolved a defect or deficiency under this Agreement, the Developer agrees to either cooperate with the County in revoking the Developer's entitlements by vacating the plat for the Blue Indian Subdivision or to be the applicant for such a vacation. In either case, the Developer agrees not to contest a vacation of the Blue Indian Subdivision Plat.

**Section 11. Transfer of Lots.** Transfer of Lots. No lots may be sold (warranty deeds transferred) nor any building permits issued prior to the Board of County Commissioner's final plat approval and the recording of the record plat in the County Clerk's Office. The Planning Administrator will sign and release the record plat for recordation once the required public improvements are installed and have been accepted by the Teton Fire Protection District Fire Marshall, the County Engineer, and Planning Administrator. Reseeding of the Wildlife Corridor may take place at the time enumerated in Section 4 of this development agreement.

**Section 12. Liability and Indemnification of the County.** The Developer shall indemnify and hold harmless Teton County and or its agents from liability for claims arising from the duties and obligations of the Developer under this Agreement.

**Section 13. Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**Section 14. Successors.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties, their heirs, successors and assigns.

**Section 15. Notices.** All notices in connection to this Agreement shall be in writing and shall be deemed delivered to the addressee when delivered in person on a business day at the address set forth below or on the fifth day after being deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the address set forth below.

Teton County Commissioners  
ATTN: Planning Administrator  
150 Courthouse Drive, Room 107  
Driggs, ID 83422

Duplicate to:  
Buxton West LLC  
Attn: Matt Hail  
PO Box 1601  
Driggs, ID 83422

Each party shall have the right to change the address for all future notices, as provided above.

**Section 16. Enforcement.** The parties may without limitation enforce or compel the performance of this Agreement.

**Section 17. Amendments or Alterations.** All changes or amendments to this Agreement shall be in writing and shall be signed by both parties.

**Section 18. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**Section 19. Filing.** The Owner shall have this Agreement recorded in the office of the Teton County Clerk and Recorder at the same time as the final plat is recorded.

**Section 20. Authority to Execute.** The County and the Developer hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect o the approval of this Agreement and agree not to

challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the County Commissioners. The Developers hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law restriction, court order, or agreement to which the Developer or the subdivision is subject.

**Section 21. Governing Law.** This Agreement shall be construed according to the laws of the State of Idaho.

**Section 22. Unamendable Clauses.** The following sections, taken from Article 7 of the Blue Indian Declaration of Covenants, Conditions and Restriction, shall be made unamendable, and part of this Development Agreement:

**C. Authorized Structures.** No building or structure shall be constructed, placed or maintained on any lot except a single family residence, garage facilities, one guest house, barn, corrals and associated buildings or structures that have been approved in writing by the Design Group prior to any construction of the same. All structures on any lot shall be compatible in design and materials. Driveway access to guest houses shall be the same driveway used to access the main residence, or an extension thereof, so long as a separate driveway from the subdivision interior access road is not installed. It is the intent that driveway accesses to the interior subdivision access road be minimized.

**D. Construction.** Only new construction shall be permitted. No non-approved materials shall be permitted on any lot. No manufactured homes permitted. Only natural materials shall be used. No non-approved used materials shall be used. No A-frame or yurt structures shall be allowed. No vinyl or aluminum siding shall be allowed. The roofs of all structures shall be constructed of shake shingles, cement or ceramic tile, approved metallic roof coverings or such materials as may be approved by the Design Group. Primary roofs shall have a minimum pitch of 5 feet in 12 feet. All primary roofs shall have a minimum overhang of 18 inches. Solar collectors shall not be considered as roofs. Glossy painted finishes shall not be permitted. Exterior colors shall be subdued and in the earth tone range. Color samples, on pieces of all exterior siding and roofing materials to be used, shall be submitted to the Design Group for approval. All construction shall be completed within one year from the commencement date of construction unless the Design Group approves an extension for good cause. All construction and alteration, in addition, shall comply with all zoning and applicable laws of Teton County, Idaho. Unless otherwise permitted by the design group, no garage, stable, corral or other outbuildings shall be prefabricated or constructed from used

materials. All construction must conform to Uniform Building Code(UBC). All construction and alteration shall comply with all current county and state building and safety codes.

**E. Height Limitations, Setbacks, Building Envelopes.** No Building shall be of a height which will unreasonably block views to the surrounding area, especially Grand Teton. Building height shall be measured from established building grade to the highest point of the roof structure, but shall not include chimneys or vents. No building or structure of any kind constructed on the lot shall exceed a height of 30 feet above the established building grade. All structures shall be set back 30 feet from the front and side lot lines, and 40 feet from the rear lot line. Building envelopes will be determined by the Design Group, and all structures must be located within the building envelope, unless prior written approval has been obtained from the Design Group. Both the height and location of any structure to be placed on a lot shall obtain prior written approval from the Design Group and compliance with the ordinances of Teton County.

**F. Utilities.** Electrical and telephone lines will be installed underground along the roads accessing the subdivision.

**G. Temporary Structure Prohibited.** No RV's or temporary structures, such as trailers, tents, shacks or other similar buildings shall be permitted on the lot, except during construction as authorized by the Design Group. No boat, travel trailer, recreational vehicle, motorhome, camper or similar vehicle shall be allowed or stored on any lot unless it is appropriately garaged. No travel-trailers, RV's, motorhomes, boats, tents, temporary structures or like improvements shall be used as a residence or habitation at any time, except by visitors, for a 15-day maximum per calendar year.

**H. Maintenance.** The lot and all improvements thereon shall be maintained in clean, safe and appealing visual condition. Boats, motors, tractors, vehicles other than automobiles and pickups, campers when off the truck, snow removal equipment, and garden or maintenance equipment or parts thereof shall be kept at all times, except when in actual use, within an enclosed structure. Refuse, garbage and trash shall be kept, at all times, in a covered container, and any such container shall be kept within an enclosed structure. Service areas, storage piles, compost piles and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scraps or refuse or trash shall be kept, stored or allowed to accumulate on the lot. Noxious weeds must be kept under control at all times at the expense of the owner, and lots should not be left in an uncared-for condition. In the event that a lot owner fails to comply with weed control, either the lot owner or the Homeowners' Association, which ever is applicable, shall commence to eliminate the weeds from the infested lots. A \$300 penalty will be assessed to the lot, and a lien recorded in the Office of the Clerk of Teton County, Idaho, to collect the penalty and the cost of the weed eradication if the owner does not reimburse said weed control costs.

**I. Noxious or offensive activities.** No noxious or offensive activity shall be carried out upon any lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to owners in the area in the enjoyment of their lots. In determining whether there has been a violation of this paragraph, recognition must be given to the premise that adjoining owners, by virtue of their interest and participation, are entitled to the reasonable enjoyment of the natural benefits surrounding the lot. Without limiting the foregoing, no light shall be emitted from a lot which is unreasonably bright, or causes unreasonable glare for any adjacent lot owner. Downward-directed, low-wattage, dark sky lighting, in conformance with the Teton County, Idaho, Dark Sky Lighting Ordinance 9-4-12, is required. No unreasonably loud or annoying noises or noxious or offensive odors shall be emitted beyond the lot lines of the lot.

**J. Water System.** Each structure designed for occupancy or use by human beings shall be connected to a water supply system at the owner's expense. Such water system shall conform to the standards applicable for the area, including, without being limited to, the District 7 Health Department and other applicable state or local agencies.

Irrigation ditches can be altered or moved, but water volumes cannot be impeded.

As per Idaho Statutes, access shall be granted as follows:

**TITLE 42**

**IRRIGATION AND DRAINAGE -- WATER  
RIGHTS AND RECLAMATION  
CHAPTER 12**

**MAINTENANCE AND REPAIR OF DITCHES**

**42-1204. PREVENTION OF DAMAGE TO OTHERS.** The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes or other conduits, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. The owners or constructors have the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter.

**K. Waste Disposal.** Each structure designed for occupancy or used by human beings shall be connected to an authorized waste disposal system at the owner's expense. Such waste disposal system will conform to the standards applicable to the area, including without being limited to, the District 7 Health Department and other applicable state or local agencies. No outdoor toilets shall be permitted, except during construction. It must be of a storage type and be serviced on a needed basis.

**P. Size/Split.** The first residential structure built on a lot shall be the "Primary Residence". Each primary residence shall have a minimum of 1150 square feet and a maximum of 4,000 square feet of enclosed living area, with a minimum of 800 square feet on the main floor. Garage space shall not be calculated into the minimum square footage requirements. The second residential structure built on a lot, the "Secondary Residence", shall be no less than 800 square feet and no more than 1,200 square feet of enclosed living area. If there are two residential structures built on a lot, the garage shall be attached to one of the residential structures.

**Q. Limitation of Liability.** Neither the Design Group nor any member thereof shall be liable to any party for any action or inaction with respect to any provision of these covenants, provided that such committee or member thereof has acted in good faith.

**R. Duration of Covenants.** All of the covenants, conditions and restrictions set forth herein shall continue and remain in full force and effect at all times against the property and the owners and purchasers of any portion thereof. These covenants shall be deemed to automatically renew themselves at ten year intervals.

**A-C. Unamendable Clauses.** As referenced in the Development Agreement for Blue Indian Subdivision, Article 7, sections C, D, E, F, G, H, I, J, K, P, Q, R, A-C and A-D from these Declarations shall be made unamendable by the Declarant or HOA.

**A-D. Wildlife Area.** The Wildlife Area, as noted on the Blue Indian Master Plan, shall remain free of fencing or structures of any type, unless approved by Idaho Fish & Game Department.

**Section 23. Mitigation Contributions to County.** In order to secure payment by the Developer towards mitigations on County services, the Developer agrees to file a lien on each lot for the agreed upon amounts with the County. Developer has agreed to contribute \$400 per lot sale to the Fire District, \$400 per lot sale towards the improvement of Bates Rd., and 1% of each lot sale towards Teton County School District 401.

#### **Section 24. Indemnification.**

A. No Liability for County Approval. The Developer acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the Improvements or use of any portion of the

Improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees or any third party, against damage or injury of any kind at any time.

B. **Indemnification.** Except as provided below, the Developer agrees to, and does hereby, indemnify the County, and all of its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs and liability of every kind and nature that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the Improvements, (2) the issuance of any approval or acceptance of Improvements, (3) the development, construction, maintenance or use of any portion of the Improvements and (4) the performance by the Developer of its obligations under this Agreement and all related Agreements. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the Improvements provided by this Agreement only as to Improvements that are not in conformance with the approved and recorded Master Plan of Blue Indian Subdivision in compliance with each phase, except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written:

Agreed:

**BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, IDAHO**

\_\_\_\_\_  
Kathy Rinaldi, Chairman

State of )

SS

)

County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Idaho, personally appeared Kathy Rinaldi, Chairman, known to me to be the person(s) whose name(s) is executed above, and acknowledged that he executed the same.

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





