

From: Angie Rutherford
Sent: Monday, April 22, 2013 7:39 PM
To: Herb Heimerl
Cc: Kathy Spitzer; Jay Mazalewski; Wendy Danielson; Randy Blough
Subject: Canyon Creek Development Agreement

Herb,

Some initial comments on the Canyon Creek amended development agreement:

1. Is it implied that the sections/articles that are missing from this document are remaining the same from the previous DA? I think it would be best to include them in this documents and basically start over with a completely new DA. If they are not and this is the new document and we are "replacing" the old one with this one, then number sequentially.
2. Article I, Section 3- Phase completion dates: get rid of estimated completion dates. Those need to be hard dates.
3. Still section 3 (I do not see a Section 4) Extensions won't be allowed for "factors beyond the control of the developer" if they are economic in nature.
4. Section 5, Final Plat approval- the letter of credit must be in the control of the County prior to construction of infrastructure (the cost estimate doesn't do us much good, we want the money based on the up-to-date cost estimate).
5. Article III, Section 1- Future phases must be approved by the BOCC, not the planning administrator.
6. Section 3- again, no estimated dates- hard dates for future phases.
7. Article IV, Section 2- No **Building Permits or** Certificates of Occupancy shall be issued in a specific phase prior to the completion of public improvements of such phase.
8. Section 6- Street signs shall comply with Title 13. (I think that we want road signs reflective).
9. Article V- What open space? All the lots in unplatted phases? Please state that and have a management plan/statement of management responsibility for all unplatted phases and unsold lots.
10. Article VII, Section 1- it's the county's *obligation* to enter the property?
11. Section 2- this seems pretty demanding of our County Engineer. Any inspection not completed within 7 days constitutes an approval and the County shall give "immediate" written notice of findings of the inspection? At least 14 days to do the inspection and immediate implies same-day which is not practical.
12. Article VIII- Cash Deposit- we will not release any part of a cash deposit (or any surety) for any part of infrastructure improvements until the entire line-item is complete and we will not release the contingency until the entire phase is complete and county has approved and the warrantee period is finished. Same with section 3- no release if a "section" of the subdivision is complete- only a complete phase.
13. Section 4- In the event that the developer fails to cure the default as specified above, the developer... County's option, to notify the Developer by Certified Mail, RRR, that the County intends **to vacate the subdivision** or complete the construction of the improvements. **If, at its sole discretion, the County chooses to complete the construction of the improvements, the County shall...**
14. Article IX, Section 1- you might have guessed I wasn't going to like this. Firm dates. Period. Unless formally amended via process in place at the time of amendment or extension request.
15. Section 7- the Courthouse address is 150 Courthouse Drive, Room 107
16. Section 12- only Kelly Park Signature Line (one park. Kelly Park, Chair, Board of County Commissioners)
17. Why are the sections after the signature lines not included in Article IX- Miscellaneous?
18. 1. Open Space Areas- again, what open space areas- but there should be a provision somewhere that until lots are sold, the developer will be responsible for maintaining the property free from all noxious weeds, fire hazards etc.
19. 2. I need fire protection improvement plans.
20. 3 Environmental considerations. Please send a copy of water quality monitoring plan and DEQ approval when received.
21. 4- on site security? More details please.

Like I said, this is an initial review of the development agreement. Kathy and Jay have not yet reviewed the documents. I'm still waiting on a response from my email last week. Fire protection, as I see it is a pond- I need more details please. You are scheduled for May meeting so please get me responses to this and the previous email asap as I need to post a staff report by Thursday.

Thanks,
Angie

Angie Rutherford
Planning Administrator
Teton County, Idaho

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
FOR CANYON CREEK RANCH**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of May, 2013 by and between Idaho Ranch Subdivision, LLC (Developer) and Teton County, Idaho (County).

WHEREAS, a Master Plan and Preliminary Plat for the Canyon Creek Ranch Planned Unit Development (the "CCR") was approved by the Board of County Commissioners of Teton County on the 12th day of February, 2009 pursuant to; and

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement to provide for the terms and conditions of the CCR as it has been re-plated as a subdivision pursuant to the applicable ordinances of Teton County, and said re-plat, as approved by the Board of County Commissioners of Teton County on the ____ day of May, 2013, is to be recorded in the Teton County real estate records.

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

**ARTICLE I
Subdivision**

Section 1. Subdivision Description. This Agreement pertains to and includes that property, located within the jurisdiction of Teton County, Idaho, which is designated and identified as the "Canyon Creek Ranch Plat" submitted to Teton County and approved by the Board of County Commissioners on May ____, 2013 (hereinafter the "Subdivision").

Section 2. Improvements and Time for Completion. Developer shall, in conjunction with each Phase, construct at its sole cost and expense the road construction and road signs (herein "public improvements") in accordance with the Master Plan for the Subdivision. Such improvements shall be constructed in such a way that each Phase shall "stand alone" as the term is used in the applicable ordinances.

Section 3. Schedule for Completion of the Development. Set forth below is a ~~schedule~~ for completion of the Subdivision. Development is planned to be completed in 5 phases. Each phase shall satisfy the requirements of the applicable ordinances in that "each phase is free standing, that is fully capable of functioning with all required improvements in place in the event that future phases are not completed or are completed at a much later time", as required by such ordinance.

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Phase I - completion date: December 31, 2019

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Phase II - completion date: December 31, 2020

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Phase III - completion date: December 31, 2021

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Phase IV - completion date: December 31, 2022

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Phase V - ~~v~~ completion date: December 31, 2023

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The Developer shall be allowed extensions of time beyond the completion dates for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Developer or any agent or contractor hired by, or on behalf of, the Developer. Market conditions relating to the sale of lots will not be considered a factor for purposes of this section.

Section 4. Final Plat Approval and Recordation. The Developer shall be prohibited from selling or offering for sale any Lots until Teton County approves and records the Final Plat for any given phase. In addition, the Developer shall be prohibited from engaging in any Lot sales prior to obtaining an engineer's cost estimate for the construction of the infrastructure necessary to accommodate such Lots as well fulfilling the financial surety requirements in Article VII below.

**ARTICLE II
Developer's Obligation Phase I**

Section 1. Phase 1 Description. Phase 1 pertains to and includes that property which is designated and identified as Phase 1 of the Master Plan of CCR, the Subdivision, within the jurisdiction of Teton County, Idaho.

Section 2. Improvements and Time of Completion. Developer shall, at its sole cost and expense, complete the road construction and road signage. The estimated cost to complete the public improvements pertaining to Phase I is \$_____.00.

**ARTICLE III
Developer's Obligation Future Phases**

Section 1. Future Phases. The Developer acknowledges that Phase 2 and all subsequent phases of CCR (collectively "future phases"), will require approval by the Teton County Board of County Commissioners,

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Section 2. Improvements and Time of Completion. As to each future phase, Developer shall, at its sole cost and expense complete the road construction signage and shall provide an estimate of costs prepared by a licensed engineer, or a bid reviewed and approved by a licensed engineer, to complete the improvements. As each future phase is prepared for Final Plat approval, an estimate of costs shall be incorporated into this Development Agreement by a written amendment.

Section 3. Schedule for Completion of Improvements. As to each amendment of the Development Agreement pertaining to future phases, the Developer shall provide a completion date for the road improvements for such future phase.

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**ARTICLE IV
Infrastructure Issues**

Section 1. Building Permits and Certificates of Occupancy. No Building Permits or Certificates of Occupancy shall be issued in a specific phase prior to the completion of public improvement in such phase.

Section 2. Dust. The Developer shall make best efforts and comply with industry standards as to dust mitigation while installing infrastructure.

Section 3. Roads. The Developer shall provide a stamped letter from their engineer stating that the roads have been built in accordance with the submitted and approved road plans and are up to Teton County standards. The Developer acknowledges that Pony Creek is a public road, owned by the county. The Developer shall not inhibit travel or parking on this road in any manner. In addition, Pony Creek Road shall be maintained by the Developer within the Subdivision.

Section 4. Signage. The Subdivision entrance sign and street signs shall be non-reflective and built in accordance with Teton County Regulations and in a size and shape appropriate to meet ASHTO standards. These signs shall be installed prior to final inspection and shall comply with all applicable county rules and regulations.

ARTICLE V

Access and Natural Resource Management Area

Pursuant to the Master Plan and the Subdivision's Covenants, Conditions, and Restriction, CCR shall provide for and manage the Access and Natural Resource Management Area. The Access and Natural Resource Management Area will be maintained in such a way as to protect the agricultural and wildlife heritage of the property as effectively as plausible considering the nature of the Subdivision. Further the Master Plan being recorded provides that no structures or fences may be built in this area and that the existing vegetation (which is all native) is to be maintained.

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**ARTICLE VI
Inspection**

Section 1. Inspection. Prior to construction of public improvements, a pre-construction meeting is required with the a Teton County zoning official, the Teton County Fire Marshal, the Subdivision's engineer and contractor. The Developer's engineer shall make regular inspections and maintain control of the development while it is under construction. Representatives of the County shall have the right to enter upon the property at reasonable times and intervals, upon reasonable notice, to inspect and to determine if the Developer is in compliance with this Agreement. The Developer shall

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permit the County and its representatives to enter upon and inspect the property at any reasonable time, upon reasonable notice. Reasonable notice pursuant to this Section may be made by telephone to Developer at such telephone number(s) provided by Developer and to Developer's Engineer.

Section 2. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that any improvements have been fully and properly completed and shall request final inspection by the County. The County shall provide prompt interim and final inspection of any improvements that will be covered by soil or otherwise when notified by Developer of interim completion. Any inspection not completed within ~~fourteen~~ (14) days of receipt by the County of written request for inspection from the Developer shall be deemed conclusive evidence of acceptance by the County. Upon timely inspection the County shall give ~~prompt~~ written notice of acceptance of the improvements or a written checklist of material deficiencies. Any noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by Developer.

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ARTICLE VII Financial Matters

Section 1. Financial Security Guaranty. In lieu of the actual installation of required public improvements the Developer shall, prior commencement of construction of each phase of the Master Plan of the Subdivision, provide the County with a letter of credit, bond, or cash deposit, in the amount to be identified and attached to each amendment hereto for each phase which is 125% of the estimated bid cost of the improvements.

Section 2. Cash Deposit. In the event that the Developer makes a cash deposit to satisfy the obligation set forth herein, the cash shall be deposited in an interest bearing account with a financial institution mutually acceptable to the parties hereto, with interest accruing to the Developer. Developer may draw funds from the account to pay for the improvements. The parties shall establish a method for inspection (including a regular schedule therefor) and Developer shall pay, from the cash deposit, the cost of improvements on a percentage of completion basis. Notwithstanding foregoing, the County will not release any part of a cash deposit (or any surety) for any part of infrastructure improvements until the entire line-item for such component is complete and the County will not release the contingency until the entire phase is complete and the County has approved the same and the warrantee period is finished.

Section 3. Reduction and Release of Guarantee. After the inspecting engineer certifies that the improvements to any phase are complete, the county shall release the Developer from the Financial Security as outlined above.

Section 4. Default. If the Developer defaults in or fails to perform any of its obligations in accordance with this Agreement the County shall, by Certified Mail, Return Receipt Requested, provide notice to Developer specifying the default. Within

Deleted: Partial releases shall be given any time a phase or section of the Subdivision is completed.

sixty (60) days of the Developer's receipt of said notice, the Developer shall cure such default or, in the event that the default cannot be reasonably cured within said period, Developer shall commence to take corrective action within said period and shall pursue such corrective action diligently to completion. In the event that the Developer fails to cure the default as specified above, the Developer hereby grants to the County, in addition to all other rights afforded to the County in this Agreement and by law the right, at the County's option, to notify Developer by Certified Mail, Return Receipt Requested, that the County intends to vacate the subdivision or complete the construction of the improvements. If at its sole discretion the County chooses to complete the construction of the improvements the County shall provide a bid to the Developer of the estimated costs to so complete or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. Thereafter, the County shall have the right to draw from the financial security guarantee of this Agreement an amount of money sufficient to pay the entire cost of the work as completed by the County, including legal fees and administrative expenses. All work performed by the County shall meet the construction standards specified in this Agreement.

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Section 5. Liability and Indemnity of County.

- 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 Master Plan of the Planned unit Development or 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.

This indemnification does not extend to claims, costs, and liability asserted by the Developer in the event the County fails in its duties and obligations to Developer set forth herein or by law or in the event that damages are asserted based upon the intentional misconduct or negligence of the County, its officials, employees, agents, representatives or engineers.

Section 6. One-Year Guaranty of the Improvements. The Developer hereby guarantees the prompt and satisfactory correction of all defects and deficiencies in the improvements that occur or becomes evident within one year after construction. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within sixty (60) days after written demand from the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot reasonably be corrected within sixty (60) days after written demand from the County, then Developer shall commence correction of the deficiency within the sixty (60) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The guaranty provided by this Section 6 shall be extended for a full year from the date of repair or replacement of any improvement repaired or replaced pursuant to such demand.

ARTICLE VIII Miscellaneous

Section 1. No Waiver of county Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuity waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

Deleted: Section 1. Timing of Future Phases. The parties acknowledge that the timing of development is dependent upon many factors, some of which are beyond the control of the Developer. These factors include, but are not limited to, residential demand, availability of financing on commercially reasonable terms, energy and transportation costs, local and national employment and unemployment), warfare, perception of terrorist threat, weather, availability of contractors, and acts of God. In response to the County's request that the Developer forecast the timing of future events, the Developer has provided the schedule set forth above in this Agreement. Such estimate shall be subject to change based upon factors beyond Developer's control.

Section 2. Governing Law. This Agreement shall be construed according to the laws of the State of Idaho.

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Section 3. Changes of Law. Any reference to laws, ordinances, rules, or regulation shall include such laws, ordinances, rules or regulations as they have been, or they may hereafter, be amended, provided however, that this Section shall not apply to the vested rights of Developer accruing under laws or ordinances in effect at the time of zoning or subdivision approval.

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Section 4. Time of Essence. Time is of the essence in the performance of all terms and provisions of the Agreement, except as otherwise stated in this Agreement.

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Section 5. Successors. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

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Section 6. Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

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Notices to the County shall be addressed to, and delivered at, the following address:

Teton County Commissioners
Attn: Planning Administrator
Teton County Courthouse
150 Courthouse Drive, room 107
Driggs, Idaho 83422

Notices to the Developer shall be addressed to and delivered at, the following address:

Idaho Ranch Subdivision, LLC
PO Box 499
Victor, Idaho 83455

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

Section 7. Enforcement. The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents representatives, engineers or attorneys thereof; solely on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. Provided however, that the preceding limitation shall not apply in circumstances involving the intentional misconduct or negligence of the County in the performance of its obligations hereunder.

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Section 8. Amendments. All amendments to this Agreement shall be in writing and shall be approved by the Developer and the County.

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Section 9. 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.

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Section 10. 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 to 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 Developer 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.

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Section 11. Filing. The Developer shall have this Agreement recorded in the office of the Teton county Clerk and Recorder at the same time the final plat is recorded.

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Section 12 Right to Farm Provision. CCR acknowledges the Right to Farm Act stated below:

Right to Farm Act Idaho Code Chapter 45, Sections 22-4501 through 22-4504
“...It is the intent of the legislature to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the State of Idaho.

“Agricultural Operation” includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the producing for commercial purposes of livestock or agricultural commodities. No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any change conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a

nuisance at he time the operation began; provided that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it.”

Section 13 Fire Protection Plan. CCR will provide a fire suppression pond. Other fire protection considerations defined in cooperation with the Fire Marshall’s office include (1) Conformance to the Unified Fire Code, and (2) Adequate access for emergency vehicles throughout CCR.

Section 14 Improvements Provision. The developer or its successors shall be responsible for all required subdivision improvements and shall not transfer construction obligations and the responsibility for completion of any improvements to the lot owners.

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

**Board of County Commissioners
Teton County, Idaho**

Deleted: _____
Kathy Rinaldi

By: _____
Kelly Parks
Chair Board of County Commissioners

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Sid Kunz

Approved: Clerk and Recorder

Teton County Clerk

Idaho Ranch Subdivision, LLC

Herbert Heimerl, Managing Member