

# DEVELOPMENT AGREEMENT

FOR

## STRAWBERRY ROAN FLATS SUBDIVISION

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **JESSICA L. BEARD** and **NATE CLAYTON BEARD** and/or assigns (hereafter “Developers”) and Teton County Idaho, a political subdivision of the State of Idaho (hereafter “County”).

WHEREAS, the Subdivision was approved under the \_\_\_\_\_, 20\_\_\_\_ Teton County Code.

WHEREAS, it is the intent and purpose of the Developers to meet the conditions of approval for the final plat allowing the creation of **STRAWBERRY ROAN FLATS**, as approved by the Board of County Commissioners of Teton County on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WHEREAS, the Developers are the sole owner, in law or equity, of certain Property located in the County, which Property is hereinafter referred to as the “Development”.

WHEREAS, it is the intent and purpose of the Developers and the County to enter into this Agreement that will guarantee the full and satisfactory completion of the required 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.

WHEREAS, the County has the authority to enter into a development Agreement for the construction of required Improvements associated with the Development.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

### Section 1. Definitions.

- 1.1 **DEVELOPMENT:** The subject of this Agreement, which is designated and identified as **STRAWBERRY ROAN FLATS**, located on the Property described in Exhibit A in the jurisdiction of Teton County, Idaho. This definition shall include any and all future names or titles for **STRAWBERRY ROAD FLATS**.
- 1.2 **IMPROVEMENT:** Any alteration to the land or other physical construction located on or off the Property that is associated with this subdivision/PUD and building site developments.
- 1.3 **OWNERS/DEVELOPERS:** means and refers to **JESSICA L. BEARD** and **NATE CLAYTON BEARD, Developers** whose address is **P.O. Box 434 Driggs, ID 83422**, the party that owns and is developing said Property and shall include any subsequent owner(s) or Developers(s) of the Property.
- 1.4 **PROPERTY:** means and refers to the certain parcel(s) of Property located in the County of Teton, as described in Exhibit A.

1.5 UNAVOIDABLE DELAY: When construction is impeded as a result of strikes, lockouts, acts of God or other factors beyond the control, and ability to remedy, of the Developers.

**Section 2. Planned Improvements.** The Developers have divided the installation of the required improvements into 1 phase. The Developers shall, in conjunction with each phase, and at their sole cost and expense, complete the road construction, install electrical service, stabilize and re-seed areas of the Property disturbed by installation of Improvements, and complete all other required infrastructure for each phase as detailed in the STRAWBERRY ROAN FLATS improvement plans dated \_\_\_\_\_.

Such Improvements shall be constructed so that each phase is “stand alone” in terms of providing Improvements to the lots and units in that phase. Developers agree that such Improvements shall be installed in compliance with Teton County’s Title 9 and any design and engineering standards separately adopted by the County or other agencies responsible for providing services to the Development. The STRAWBERRY ROAN FLATS SUBDIVISION’S engineer’s estimated cost to complete all Improvements as of May 31, 2022 is shown in **Exhibit B** of this Agreement.

**Section 3. Signs.** Two lot subdivisions are not required to install a subdivision sign.

**Section 4. Public Improvements.** No public improvements are part of STRAWBERRY ROAN FLATS Subdivision.

**Section 5. Off-Site Improvements.** No off-site improvements are required for the STRAWBERRY ROAN FLATS Subdivision.

**Section 6. Building Permits.** No lots or units may be offered for sale or sold (warranty deeds transferred) prior to recordation of the final plat. Furthermore, no certificate of occupancy for residential units shall be given until all Improvements have been completed and accepted in writing by the County.

**Section 7. Schedule for Commencement and Completion of the Improvements.** All required Improvements have been completed at the time of the recording of the final plat for the STRAWBERRY ROAN FLATS SUBDIVISION as evidenced by the submittal of the CERTIFICATE OF ACCEPTANCE signed by Teton County officials and submitted to the Teton County Planning and Zoning Department.

**Section 8. Future Phases.** N/A There are no future phases for the STRAWBERRY ROAN FLATS Subdivision.

**Section 9. Request for Additional Phases.** Any request to the County for additional phase(s) shall be made at the same time the application is made for the final plat. (not applicable)

**Section 10. Extensions of Time.** Not applicable.

**Section 11. Construction Dates.** Not applicable. See Section 7 of this Development Agreement.

**Section 12. Control of Trash, Weeds, Dust, Erosion, and Sedimentation.** The Developers shall be fully responsible for all dust abatement, erosion, sedimentation, weed, and trash control on the Property. Developers shall use best management practices and industry standards for or control. Trash shall be contained at all times. Dumpsters and sanitary facilities are required on site during every phase of construction. Final bond installment shall not be released until all onsite trash is removed, construction rubble is leveled, lost soils are replaced, and disturbed areas are reseeded with native vegetation or planned landscaping. The responsibilities in this Section shall run with the land and they shall therefore apply before, during, and until completion of Improvements. This means that trash, weeds, dust, erosion, and sedimentation control on the Property will be fully the responsibility of the current owner of the Property.

**Section 13. Open Space Management Plan. STRAWBERRY ROAN FLATS SUBDIVISION** has no open space requiring an open space management plan.

**Section 14. Permits.** The Developers is responsible for obtaining all right-of-way, access, excavation, and other permits and approvals required by local, State, and Federal regulations.

**Section 15. Inspection.** Not applicable. The required Certificate of Acceptance signed by Teton County officials has been submitted to the Teton County Planning and Zoning Department, certifying inspections were completed and the infrastructure approved.

**Section 16. Inspection Fees.** *Non applicable.*

**Section 17. Final Inspection and Approval of Improvements.** See Section 15 of this Development Agreement.

**Section 18. As Constructed Plans.** Prior to County inspection and approval of the Improvements in the Development, the Developers will file signed "As Constructed" Improvement Plans with the County Engineer. Such "As Constructed" Improvement Plans shall show actual constructed location of all required Improvements.

**Section 19. Warranty of the Improvements.** The Developers warrants the prompt and satisfactory correction of all defects and deficiencies, for both materials and workmanship, in the Improvements that occur or become evident within two years for all open space and landscaping Improvements and one year for all other Improvements after acceptance of the Improvements by the County. If such defect or deficiency occurs or becomes evident during such period, then the Developers shall, within thirty (30) 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 thirty (30) days after written demand from the County, the Developers shall commence the correction of the deficiency within the thirty (30) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The warranty 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 20. Financial Security Guarantee.** The owners deposited the financial security guarantee with Teton County.

**Section 21. Remedies.** In the event the Developers 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 County, at its option, may exercise any rights or remedies it may have under law. Furthermore, the County reserves the right, in its absolute discretion, to revoke the Developers's entitlements for the STRAWBERRY ROAN FLATS SUBDIVISION and after such revocation, if Developers chooses to move forward, Developers will have to reapply for approval under the then current County ordinances. Teton County may impose penalties on the Developers in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out at the scheduled completion date or not to exceed the work to correct the defect or deficiency. The County may withhold the issuance of any building permit or certificate of occupancy for any structure located in the Development, refuse to accept ownership and maintenance of any County Improvements and record a notice of such action in the Teton County Clerk and Recorder's Office, or issue a "stop work" or "cease and desist" order for any building or Improvement under construction in the Development. All of the above remedies are cumulative and to the extent not wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of the County.

**Section 22. Voided Agreement.** The County, at its option, may void this Agreement and any vested right should the Developers's failure to perform in compliance with this Agreement results in the County seizing the escrow to complete the infrastructure or correct the defect or deficiency.

**Section 23. Default.** If the Developers 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 Developers in writing of the specific default or failing. If the default or failing continues for thirty (30) days after such written notice and Developers 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 Improvements(s) 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 the financial security guarantee which has been deposited with Teton County. Included in the costs of the work, the County is entitled reasonable legal fees and reasonable administrative expense.

**Section 24. Transfer of Lots or Units.** Non applicable since lots can't be sold prior to recording of the final plat of the STRAWBERRY ROAN FLATS SUBDIVISION according to Section 32 of this Document.

**Section 25. Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**Section 26. Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including County's corporate authorities and their successors in office. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

**Section 27. Notices.** All notices in connection with 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 third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, to the address set forth below.

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

Teton County Board of County Commissioners  
ATTN: Planning Administrator  
150 Courthouse Drive, Rm. 107  
Driggs, Idaho 83422

Notices to the Developers shall be addressed to, or delivered at, the following address:

A-W Engineering  
P.O. Bx. 139  
Victor, ID 83455

By notice complying with the requirements of this Section, each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until received as provided above.

**Section 28. Enforcement.** The parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, without limitation enforce or compel the performance of this Agreement.

**Section 29. Indemnification.**

A. No Liability for County Approval. The Developers 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 Developers, 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 Developers 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 Developers of its obligations under this Agreement and all related Agreements. The Developers 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 **STRAWBERRY ROAN FLATS SUBDIVISION** in compliance with each phase, except where such suit is brought by the Developers. The Developers is not an agent or employee of the County.

**Section 30. Amendments or Alterations.** All changes, amendments, omissions, or additions to this Agreement shall be in writing and shall be signed by both parties.

**Section 31. 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 32. Filing.** The Developers 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. The Developers shall be responsible for all recording fees associated with this Development.

**Section 33. No Conflicts.** The County and the Developers 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. The County and the Developers also acknowledge and agree that this Agreement is supported by Title 9 of Teton County Code. The County and the Developers 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.

**Section 34. Authority to Execute.** The County hereby warrants and represents to the Developers that the persons executing this Agreement on its behalf have been properly authorized to do so by the Board of 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 Developers hereunder will (i) result in a breach or default under any Agreement to which the Developers 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 Developers or the subdivision is subject.

**Section 35. Codes.** The Developers agrees to abide by all ordinances, regulations, and codes of Teton County and those of the special purpose districts providing service to the Development.

**Section 36. Governing Law.** This Agreement shall be construed and governed according to the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Teton County, or in the United States District Court for the District of Idaho.

**Section 37. Attorney's Fees.** Should any litigation be commenced between the parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a court of competent jurisdiction.

**Section 38. Final Agreement.** This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developers and County relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner/Developers and County, other than as are stated herein. All Exhibits referenced herein are incorporated in this Agreement as if set forth in full including all text information in

the Exhibits. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to County, to a duly adopted ordinance or resolution of County.

**Section 39. 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 Developers or the acceptance of any Improvement. Developers acknowledges that Teton County reserves the right to revoke all approvals for (name of subdivision/PUD) upon failure to comply with the conditions of approval of Final Plat, upon any of the violations of Teton County Title 9, or for misrepresentations or material omissions made to the Teton County Planning Commission or Board of County Commissioners.

**Section 40. Mitigation of Teton County for Road Improvements.** Upon the issuance of a Certificate of Completion of **STRAWBERRY ROAN FLATS SUBDIVISION** by Teton County and the issuance of the first building permit for such subdivision, the Developers will make a donation to Teton County in the amount of \$\_\_0.00\_ to be designated for road Improvements to \_\_\_\_\_n/a\_\_\_\_\_.

**Section 41. Community Enhancements.** The Developers hereby pledges \$\_0.00\_ from the proceeds of each lot closing in **STRAWBERRY ROAN FLATS SUBDIVISION**. The Developers desires \$ 0.00 to go to n/a, \$ 0/00 to go to \_\_\_\_\_n/a, and \$ \_0.00\_ to go to \_\_\_n/a. These contributions are being given on a voluntary basis and will be donated as follows: Funds will be collected at the closing of the initial sale of each lot sold by the Developers; The Developers will record an Agreement placing a lien on the lots such that the collection of these funds will be facilitated by the title company handling the closing of such lots.

**Section 42. Sharing Development Costs.** Teton County Subdivision Regulations, Title 9, provides the Developers a mechanism to recoup a portion of certain costs associated with Improvements made by the Developers. All shared development rights afforded the Developers under Title 9 and this Agreement, in particular Section 7, are hereby retained; any other Agreement, document, or statement by the Developers shall not be deemed to waive any rights afforded the Developers under Teton County Title 9.

**Section 43. Effective Date.** This Agreement shall become valid and binding only upon its approval by the Teton County Board of County Commissioners and its recording in the Teton County Clerk and Recorders Office; and it shall be effective on the date first written above.

**\*\*The rest of this page is intentionally left blank\*\***



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

Agreed:

BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, IDAHO

\_\_\_\_\_  
Chairman, Teton County Board of  
County Commissioners

STATE OF IDAHO                    )  
  ) ss:  
COUNTY OF TETON    )

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

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

Residing \_\_\_\_\_

Commission expires \_\_\_\_\_

\_\_\_\_\_  
JESSICA L. BEARD

STATE OF IDAHO                    )  
  ) ss:  
COUNTY OF                        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Idaho, personally appeared JESSICA L. BEARD known to me to be the person whose name is executed above and acknowledged that She executed the same.

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

Residing \_\_\_\_\_

Commission expires \_\_\_\_\_

\_\_\_\_\_  
NATE CLAYTON BEARD

STATE OF IDAHO                    )  
  ) ss:  
COUNTY OF                        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Idaho, personally appeared NATE CLAYTON BEARD known to me to be the person whose name is executed above and acknowledged that he executed the same.

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

Residing \_\_\_\_\_

Commission expires \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

WARRANTY DEED INST. #258675 PARCEL

TAX NO. 3213 BEING MORE SPECIFICALLY DESCRIBED AS:

THAT PORTION OF THE N 1/2 NE 1/4 OF SECTION 23, TWP. 4N. RNG. 45E., B.M., TETON COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT N 89°57'36"E (DEED: N 89°51'04"E), 1212.16 FEET ALONG THE NORTH LINE OF SECTION 23 FROM THE N 1/4 CORNER OF SAID SECTION 23;

THENCE N 89°57'36"E (DEED: N 89°51'04"E), 596.90 FEET ALONG THE NORTH LINE OF SAID SECTION 23 TO A POINT;

THENCE S 00°54'53"W (DEED: S 00°43'33"W), 1331.71 FEET ALONG A FENCE LINE TO A POINT ON THE SOUTH LINE OF THE N 1/2 NE 1/4;

THENCE N 89°46'52"W, 559.87 FEET (DEED: N 89°58'12"W, 559.86 FEET) ALONG THE SOUTH LINE OF THE N 1/2 NE 1/4 TO A POINT;

THENCE N 00°40'47"W (DEED: N 00°52'07"W), 1329.91 FEET MORE OR LESS ALONG A FENCE LINE TO THE POINT OF BEGINNING.

CONTAINS 17.67 ACRES.

SUBJECT TO A 25-FOOT WIDE COUNTY ROAD AND UTILITY EASEMENT BEING WITHIN THE 60-FOOT COUNTY ROAD AND UTILITY EASEMENT FOR WEST 4000 SOUTH.

**EXHIBIT B**  
**ENGINEER'S COST ESTIMATE**

Recording Requested By and  
When Recorded Return To:

Planning Administrator  
Teton County Planning Department  
150 Courthouse Drive, Ste. 107  
Driggs, Idaho 83422

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For Recording Purposes Do  
Not Write Above This Line