

Recording Requested By and
When Recorded Return To:

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

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT
[NAME OF PROJECT] SUBDIVISION

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of this _____ day of _____, 2022, by and between [DEVELOPER NAME], a [ENTITY TYPE] (the “Developer”) and Teton County Idaho, a political subdivision of the State of Idaho (the “County”).

WHEREAS, the Developer is the sole owner, in law or equity, of the Property; and

WHEREAS, the Development was approved under the Teton County Code effective as of the Application Date by the Teton County Board of County Commissioners on [date of final plat approval under TCC 9-3-2(D-2-g)] (the “Approval Date”); and

WHEREAS, it is the intent and purpose of the Developer to meet the conditions for recording the final plat allowing the creation of the Development, as set forth in Title 9 of the Teton County Code effective as of the Application Date; and

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement to guarantee the full and satisfactory completion of the Required Improvements on the Property described in this Agreement; and

WHEREAS, the County has the authority to enter into a Development Agreement for the construction of the Required Improvements associated with the Development under Idaho Code § 67-6511A .

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

1. Definitions

1.1. APPLICATION DATE: means [DATE], the date the subdivision/PUD application for the Development was deemed complete and officially received by the County as confirmed in

writing and dated by the Planning Administrator.

1.2. APPROVAL DATE: is defined in the recitals.

1.3. CERTIFICATE OF SUBDIVISION COMPLETION: is defined in Section 10.

1.4. CONSTRUCTION PERMIT: is defined in Section 4.

1.5. COUNTY: is defined in the preamble.

1.6. DEVELOPER: is defined in the preamble.

1.7. DEVELOPMENT: The subdivision/PUD designated and identified as [NAME OF PROJECT] located on the Property as further described in **Exhibit B**.

1.8. IMPROVEMENT: Any alteration to the land or other physical construction located on or off the Property that is associated with the Development.

1.9. FINAL APPROVAL: means issuance of a Certificate of Subdivision Completion from the Planning and Building Department of the County completed with all required signatures. The form of Certificate of Subdivision Completion is attached hereto as **Exhibit E**.

1.10. PROPERTY: means and refers to the certain parcel(s) of Property located in Teton County, Idaho, as described in **Exhibit A**.

1.11. RECORDED IMPROVEMENT PLANS: is defined in Section 2.

1.12. REQUIRED IMPROVEMENTS: is defined in Section 2.

1.13. TETON COUNTY STANDARDS: means the development standards and improvement standards in Title 9 of the Teton County Code and any other design and engineering standards separately adopted by the County in effect as of the Application Date.

Capitalized terms not otherwise defined herein shall have the meanings given to such terms in Title 9 of the Teton County Code effective as of the Application Date.

2. Required Improvements.

The Developer shall, at its sole cost and expense, complete the road construction, install entrance and street signs, install telephone and electrical service, install fire protection, install approved landscaping, stabilize and re-seed areas of the Property disturbed by installation of Improvements, and complete all other required infrastructure as detailed in the [NAME OF DEVELOPMENT] Improvement Plans dated [DATE] recorded in the Teton County Clerk and Recorders office on _____, 2022 as Teton County Instrument No. _____ (the "Recorded Improvement Plans" and the Improvements described therein the "Required Improvements"). Developer agrees that the Required Improvements shall be installed in compliance with Teton County Standards and any other design or engineering standards of other agencies responsible for providing services to the Development.

3. Maintenance of Required Improvements.

The Developer shall maintain all Required Improvements and open space for the Development according to Teton County Standards and any standards adopted by the agencies responsible for providing services to the Development, unless or until such time as the responsibility for maintenance of the Required Improvements and open space is turned over to a homeowner's association for the Development which, in Teton County's sole but reasonable discretion is sufficiently funded to perform such maintenance. This transfer of maintenance responsibility shall not occur until at least 50% of the lots or units have been sold. The Developer shall include in the recorded CC&Rs for the Development that the homeowner's association shall collect dues, a portion of which will be used for maintenance of the Required Improvements and open space. The Developer shall notify the Planning Department in writing when the homeowners association is established and when the transfer of maintenance responsibility has occurred. A mailing address for future notifications shall also be provided.

4. Schedule for Commencement and Completion of the Improvements.

The Developer shall commence construction of the Improvements within [one (1) year] after the Approval Date. Following the recordation of this Development Agreement and provision of the financial security in Section 13 by the Developer, the County shall issue a "Construction Permit" permitting commencement of construction of the Required Improvements. The Developer shall complete construction of the Required Improvements within [one (1) year] after commencement of construction of such Improvements. The Developer may apply for extensions of time for commencement or completion of construction pursuant to Section 5 of this Agreement. However, except for extensions of time approved by the County under Section 5, if Developer does not commence or complete construction of the Required Improvements within the aforementioned time periods, the Developer will lose its approvals and entitlements for the Development and will have to reapply for approval for any planned unit development or subdivision under the then current County subdivision ordinance. If the Developer does not complete construction and receive a Certificate of Subdivision Completion by [DROP DEAD DATE], the Developer will lose its approvals and entitlements and will have to reapply for approval for any planned unit development or subdivision under the then current County subdivision ordinance. The County may choose to use the financial security in Section 13 to complete the Required Improvements if the Developer has not done so and the Board of County Commissioners determines there is a public benefit to having the Improvements completed.

5. Extensions of Time.

Applications for extensions of time shall be made on the Teton County "Development Agreement Extension Application" attached hereto as Exhibit D and shall address the criteria presented on that form. The Developer shall pay the fee associated with the request. Developer acknowledges and agrees the Board of County Commissioners has the sole discretion to grant or deny a request for extension. Any application for an extension of time must be submitted to the Planning Department before the expiration of the original deadline.

6. Control of Trash, Weeds, Dust, Erosion, and Sedimentation.

The Developer shall be fully responsible for all dust abatement, erosion, sedimentation, weed, and trash control on the Property. Developer shall use best management practices and industry standards for control. Trash shall be contained at all times. Dumpsters and sanitary facilities are required on site during construction. The financial guarantee in Section 13 will 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 the Required 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.

7. Permits.

The Developer is responsible for obtaining all right-of-way, access, excavation, grading and erosion control, floodplain development, and other permits and approvals required by local, State, and Federal regulations.

8. Inspection.

Prior to commencing construction of the Required Improvements, Developer shall have a pre-construction meeting with Teton County Planning and Engineering representatives, the Fire Marshal for the Teton County Fire Protection District, and the Developer'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 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. The Developer may not deviate from the Recorded Improvement Plans without the prior written approval of the County Engineer.

9. Inspection Fees.

The Developer agrees to pay the inspection fees as required by fee schedule established by Teton County for its Planning and Building Department.

10. Final Inspection and Approval of Improvements.

When the Developer believes the Required Improvements have been fully and properly completed, it shall procure and file a signed and sealed engineer's certificate and "As-Constructed" Improvement Plans (further described in Section 11 below) with the County Engineer and shall request final inspection of the Required Improvements by the County. The County shall provide prompt final inspection of the Required Improvements when notified by the Developer of completion. Following the inspection, the County shall give timely written acceptance of the Required Improvements or a written checklist of material deficiencies, such noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by the Developer. Upon satisfaction that the Required Improvement have passed the final inspection, the County shall issue a "Certificate of Subdivision Completion" substantially in the form attached as Exhibit E. Issuance of the Certificate of Subdivision Completion with all required signatures shall be deemed final approval and acceptance of the Required Improvements by the County. After the Certificate of Subdivision Completion is received, the Developer shall record the final plat and will be permitted to sell lots in the Development.

11. Engineer's Certificate and As-Constructed Plans.

Prior to requesting County inspection and approval of the Required Improvements in the Development, the Developer shall file to the County Engineer signed and sealed "As Constructed" Improvement Plans along with a letter of certification from an engineer licensed in the State of Idaho certifying the following:

- a) The "As Constructed" Improvement Plans show the actual constructed location of all Required Improvements.
- b) Road has been built in accordance with the Recorded Improvement Plans and meet or exceed

Teton County Standards.

- c) The Required Improvements are 100% completed in accordance with the Recorded Improvement Plans to Teton County Standards and any other applicable design or engineering standards of other agencies responsible for providing services to the Development.

12. Warranty of the Improvements.

The Developer warrants the prompt and satisfactory correction of all defects and deficiencies, for both materials and workmanship, in the Required Improvements that occur or become evident within two (2) years for all landscaping Improvements and one (1) year for all other Improvements after acceptance of the Required Improvements by the County. If such defect or deficiency occurs or becomes evident during such period, then the Developer 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 Developer 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. If the Developer fails to commence the correction of the deficiency within thirty (30) days after written demand from the County, the County may cause the deficiency to be corrected at Developer's cost and may draw on the financial security provided in Section 13 of this Agreement to cover such cost. 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.

13. Financial Security Guarantee.

As security to the County for the performance by the Developer of its obligations to complete the Required Improvements in accordance with this Agreement, the Developer shall, prior to the commencement of construction of the Required Improvements, obtain financial security in favor of the County meeting the requirements of Teton County Code §9-4-2(C-2), in the sum of one hundred and twenty-five (125%) of the engineer's cost estimate for the Required Improvements approved by the Teton County Board of County Commissioners and attached hereto as Exhibit C, which engineer's cost estimate shall be revised and updated within ninety (90) days of securing the financial guarantee, by one of the following three methods:

- a) Obtain from a County-approved financial institution authorized to do business in the State of Idaho an irrevocable 12-month letter of credit with guaranteed extensions as needed until the Required Improvements are completed and accepted by the County;
- b) Make a cash deposit into a Teton County escrow account funds in the form of a certified check or cash. The County shall maintain any interest accrued; or
- c) Obtain a negotiable construction or development bond from a County-approved bonding company for a term of not less than 12 months with guaranteed extensions as needed until the Required Improvements are completed and accepted by the County.

The County will not issue the Construction Permit permitting commencement of construction of the Required Improvements until it has received a satisfactory financial guarantee. Following issuance of the Certificate of Subdivision Completion, the County shall release the Developer's financial guarantee; provided, however, ten percent (10%) of the original approved engineer's cost estimate for the Required

Improvements shall be provided in one of the three methods presented above in this Section for the entire warranty period described in Section 12 to guarantee the correction of any defects or deficiencies in the Required Improvements.

14. Remedies.

In the event the Developer 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 and remedies it may have under law. Furthermore, the County reserves the right, in its absolute discretion, to revoke the Developer's approvals for the Development and after such revocation, Developer will have to reapply for approval for any planned unit development or subdivision under the then current County ordinances. 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 required completion date set forth in Section 4 or the cost 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 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.

15. Voided Agreement.

The County, at its option, may void this Agreement and any vested rights should the Developer's failure to perform in compliance with this Agreement result in the County drawing upon the financial guarantee provided under Section 13 to complete the infrastructure or correct the defect or deficiency.

16. Default.

If the Developer 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 Required Improvements, Teton County shall inform the Developer in writing of the specific default or failing. If the default or failing continues for thirty (30) days after such written notice and the Developer 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 Required Improvement(s) or to correct any defect or deficiency in the Required Improvement, using either its own personnel or contractors hired for that purpose. The County shall have the right to draw from the financial security guarantee provided under Section 13 to cover the costs of completing or correcting the Required Improvements. In addition to the costs of the work, the County is entitled to recover reasonable legal fees and reasonable administrative expenses from the Developer.

17. Transfer of Lots or Units.

No lots or units may be offered for sale or sold (warranty deeds transferred) and no building permits for individual lots will be issued prior to a Certificate of Subdivision Completion being issued by the County. Developer hereby agrees to maintain all unsold lots in the Development in safe, sanitary, and orderly condition that does not constitute a public nuisance or adversely affect adjoining properties at the Developer's sole expense, and this responsibility shall run to Developer's successors and assigns.

18. Time of the Essence.

Time is of the essence in the performance of all terms and provisions of this Agreement.

19. Binding Upon Successors and Assigns.

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, 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. Developer shall promptly notify the County of any sale of the Property and update the Developer’s notice address in accordance with Section 20. Notwithstanding any sale of the Property or change of control of the Developer, the County will retain the financial guarantee provided under Section 13 unless acceptable substitute guarantee is provided by the Property or Developer’s new owners. No assignment or succession of this Agreement shall be deemed valid or permitted, nor shall construction continue under a successor or assignee to this agreement until such time as (1) the successor or assignee provides sufficient security under the terms set forth in Section 13 above and (2) such succession or assignment is approved in writing by Teton County, the approval of which shall not be unreasonably withheld.

20. 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 Developer shall be addressed to, or delivered at, the following address:

[ADDRESS]

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

21. 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.

22. Indemnification.

22.1. No Liability for County Approval. The Developer acknowledges and agrees (1) 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) 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.

22.2. 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 Required Improvements, (2) the issuance of any approval or acceptance of Required Improvements, (3) the development, construction, maintenance or use of any portion of the Required 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 Required Improvements provided by this Agreement to the extent the Required Improvements are not in conformance with the Recorded Improvement Plans, except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

23. 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.

24. Recording.

The Developer shall have this Agreement recorded in the office of the Teton County Clerk and Recorder within four (4) months of the Approval Date. The Developer shall be responsible for all recording fees associated with the Development.

25. No Conflicts.

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. The County and the Developer also acknowledge and agree that this Agreement is in compliance with and required by Title 9 of the Teton County Code. The County and the Developer 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.

26. Authority to Execute.

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 Board of County Commissioners. The Developer hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the Property, (2) that the persons executing this Agreement on its behalf have 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 Developer 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 Property

is bound or (ii) violate any statute, law restriction, court order, or agreement to which the Developer or the subdivision is subject.

27. Codes.

The Developer agrees to abide by all ordinances, regulations, and codes of Teton County and those of the special purpose districts providing services to the Development.

28. 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.

29. 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.

30. Final Agreement.

This Agreement sets forth all promises, inducements, agreements, condition and understandings between the Developer and the County relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between the Developer and the 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.

31. Amendment.

No 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.

32. 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 continuing 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. Developer acknowledges that Teton County reserves the right to revoke all approvals for the Development if Developer fails to comply with any of the conditions of approval of the final plat of the Development, violates or fails to comply with any provision of Title 9 of the Teton County Code effective as of the Application Date, or makes, or is found to have made any misrepresentations or material omissions to the Teton County Planning Commission or Board of County Commissioners.

33. Mitigation Measures / Special Conditions of Approval. [Reserved]

34. Sharing Development Costs.

Teton County Code, Title 9 § 9-4-2(G) provides the Developer a mechanism to recoup a portion of costs

associated with Improvements benefitting adjacent landowners in certain circumstances. This Agreement shall not be deemed to waive any shared development rights afforded the Developer under Teton County Code Title 9.

35. 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 Recorder's 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 cause this agreement to be executed on the date first written above.

COUNTY:
TETON COUNTY, IDAHO

By: _____
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 _____, known to me to be the person whose name is executed above, and acknowledged that he executed the same.

(SEAL) _____
Residing _____
Commission expires _____
Notary Public

DEVELOPER:
[DEVELOPER NAME]

By: [Name], [Title]

STATE OF _____)
) ss:
COUNTY OF _____)

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

(SEAL) _____
Residing _____
Commission expires _____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
SUBDIVISION PLAT

EXHIBIT C
ENGINEER'S COST ESTIMATE

EXHIBIT D
DEVELOPMENT AGREEMENT
EXTENSION APPLICATION

EXHIBIT E
FORM OF CERTIFICATE OF
SUBDIVISION COMPLETION