

AMENDED DEVELOPER'S AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

WHEREAS, by letter dated June 27, 2012 the County notified Developer that Developer was in breach of the Original Development Agreement for failing to complete construction of Developer-provided infrastructure to Phases 2, 3 and 4 of the Project, and stating among other things that no construction activity could henceforth take place within the subdivision until Developer entered into a new development agreement with the County.

WHEREAS, Developer and the members of the County Planning and Zoning Department have met and conferred about what activities must be undertaken by Developer in order to bring the Project back into compliance with County Land Development Regulations and complete the

Project; said activities have been outlined and described in that certain Master Plan attached hereto as Exhibit C; and the Teton County, Idaho Board of County Commissioners, at its regularly scheduled meeting held on August 10, 2015, considered and voted to approve the Master Plan attached hereto as Exhibit C and this Amended Developer's Agreement as a result.

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

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

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

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

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

3.2. **Compliance with all Ordinances and Laws.** Development of the Property shall strictly conform to all currently applicable provisions of the applicable laws, rules and regulations of governmental entities having jurisdiction and control over any part or stage of the development, including but not limited to the Teton County Building Code. The County or its representatives shall have the right, at all times and upon reasonable notice, to inspect all development work on the Project for compliance with such laws, rules and regulations, but the County shall have no obligation to conduct such inspections.

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

a. The "culinary water system" means the water delivery system installed by Developer between the Project and a connecting point on the existing culinary service main line and shall include the individual hook-up points corresponding to each of the lots in each proposed phase of development. Upon approved installation at each phase of the Project, ownership of the culinary water system shall vest in the Homeowners Association, which shall be solely responsible for its maintenance thereafter. Each lot owner shall be solely responsible for the maintenance of the delivery line extending from the street hook-up point to and within the lot.

b. The "sewer line system" means the waste disposal system installed by Developer between the Project and a connecting point on the existing sewer service main line as extended

and as designated by the Town of Victor and shall include the individual hook-up points corresponding to each of the lots in each proposed phase of development. Upon approved installation at each phase of the Project, ownership of the sewer line system shall automatically vest in the City of Victor, which shall be solely responsible for its maintenance thereafter. Each lot owner shall be solely responsible for the maintenance of sewer line extending from the street hook-up point to and within their lot.

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

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

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

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

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

3.7. Street Lighting. The Developer shall install street lighting at 400 South and the entry to the subdivision and 2 street lights within the parking area of the park. All such lighting shall meet Teton County, Idaho Dark Sky ordinances and be completed prior to the construction of Phase 2

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

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

3.10. Weed Control. Developer must comply with the County ordinances for weed control on all lots owned by Developer. Individual third-party owners of lots within the subdivision must comply with the County ordinances for weed control on their own lots. The Homeowners

Association must comply with County ordinances for weed control on all common areas. All lots and common areas may be farmed with a harvestable crop, or clipped, mowed or grazed regularly, in order to avoid a fire hazard.

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

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

Phase 2 (Lots 17 through 19, 40 through 41, and 72 through 89): Developer-provided infrastructure to be completed within 3 years of this Agreement.

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

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

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

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

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

3.14. Notices. Developer shall mail written notification to all owners of properties within the Subdivision at least 60 days prior to commencement of any construction of future phases.

4. **General Terms.**

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

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

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

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

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

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

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

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

4.8 Non-Waiver. The failure of any party to insist upon strict performance of any of the terms of this Agreement in any one or more instances shall not be construed to be a waiver or exercise of that right or of any other term of this Agreement, but all terms of this Agreement shall

remain in full force and effect.

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

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

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

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

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

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

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

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

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

Teton County, Idaho

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

By: William Leake

By: Scott M. Shepherd MM * see attached
Scott M. Shepherd, Managing Member

State of Idaho
County of Teton

On this 25th day of September, 2015, before me, a Notary Public in and for said State, personally appeared William Leake, known or identified by me to be the same person who's name is subscribed to the within instrument & acknowledged to me that he executed the same Wendy R. Daniels



Residency: Victor
commission expires 1-24-2017

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Teton County, Idaho

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

By: _____

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

MS

State of Wyoming)

SS:

County of Teton)

On this, the 21st day of Sept., 2015, before me a notary public, the undersigned officer, personally appeared Scott M. Shepherd President and Manager of Teton Valley Development Co., LLC, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

In witness hereof, I hereunto set my hand and official seal. Bonnie Greenwood Notary Public.

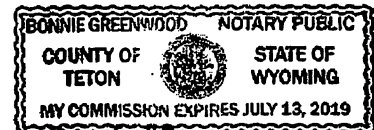


Exhibit A

SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, Township 4 North, Range 45 East Boise Meridian, Teton County, Idaho,
also known as Valley Vista Estates. as per the recorded plat thereof.

Exhibit A to Amended Developer's Agreement (Valley Vista Estates Subdivision)