

DEVELOPMENT AGREEMENT FOR HARLAN RANCH SUBDIVISION

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2024, by and between Clear Springs Ranch LLC and/or assigns (hereafter “Developer”) and Teton County Idaho, a political subdivision of the State of Idaho (hereafter “County”).

WHEREAS, the Harlan Ranch Subdivision was approved under the Teton County Land Development Code dated 5-16-13 (the “LDC”).

WHEREAS, it is the intent and purpose of the Developer to meet the conditions of approval for the final plat allowing the creation of the Harlan Ranch Subdivision, as approved by the Board of County Commissioners of Teton County on _____, 2024.

WHEREAS, the Developer is 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 Developer 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.

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 Harlan Ranch Subdivision is 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 Harlan Ranch Subdivision.
- 1.2 **IMPROVEMENT:** Any alteration to the land or other physical construction located on or off the Property that is associated with this subdivision and building site developments.
- 1.3 **OWNER/DEVELOPER:** means and refers to Clear Springs Ranch LLC whose address is 800 W Watersford Dr., Eagle, ID 83616, the party that owns and is developing said Property and shall include and subsequent owner(s) or developer(s) of the Property.
- 1.4 **PROPERTY:** means and refers to the certain parcel 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 Developer.

Section 2. Planned Improvements. The Developer shall complete the road construction, install entrance and street signs, install telephone and electrical service, install fire protection, stabilize and re-seed areas of the Property disturbed by installation of Improvements, and complete all other required infrastructure as detailed in the Harlan Ranch Subdivision Improvement plans. Developer agrees that such Improvements shall be installed in compliance with Teton County's design and engineering standards as adopted by the County or other agencies responsible for providing services to the Development.

Section 3. Signs. The Developer understands and agrees to install subdivision street signs prior to the County being able to issue a building permit for a dwelling within the Development. Such signs shall be non-reflective and built in accordance with Teton County requirements, and in a size and shape appropriate to meet ASHTO standards.

Section 4. Improvements. The Developer shall maintain all Improvements according to Teton County standards and any standards separately adopted by the agencies responsible for providing services to the Development, until such time as the responsibility for maintenance of the Improvements and open space are turned over to the Homeowner's Association of the Development.

Section 5. Building Permits. No lots or units may be offered for sale or sold (warranty deeds transferred) prior to recordation of the final plat which shall be approved upon completion of improvements according to the Improvement Plan. The fire protection, including all weather road(s), shall be operational per the Fire District's inspection and written approval, and street signs installed, before any building permit shall be issued by the County.

Section 6. Schedule for Commencement and Completion of the Improvements. The Developer shall commence construction of the Improvements within three years after final approval of the concept plan for the Harlan Ranch Subdivision, and will complete construction of the Improvements within two years after commencement of construction of such Improvements. The Developer may be allowed extensions of time beyond the commencement or completion date for unavoidable delays caused by strikes, lockouts, acts of God, or other factors beyond the control, and ability to remedy, of the Developer.

Section 7. Extensions of Time. The Developer may be allowed extensions of time for commencement of construction, or for beyond the completion date, for unavoidable delays such as those caused by strikes, lockouts, acts of God, or factors beyond the control of the Developer. Application for extension shall be made on the Teton County "Development Agreement Extension Application" and shall address the criteria presented on that form. The Developer shall pay the fee associated with the request. The application for a development agreement extension must be submitted to the Planning Department before the expiration of the original development agreement.

Section 8. 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. 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 9. Permits. The Developer is responsible for obtaining all right-of-way, access, excavation, and other permits and approvals required by local, State, and Federal regulations.

Section 10. Inspection. Representatives of the County shall have the right to enter upon the Property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the Property at reasonable times. The Developer will not materially deviate from the recorded Improvement Plans without the prior written approval of the County Engineer, which approval will not be unreasonably withheld.

Section 11. Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that the Improvements have been fully and properly completed and shall request final inspection, approval and acceptance of the Improvements by the County. The County will provide prompt interim and final inspection of the Improvements when notified by the Developer of completion. Upon inspection, the county shall give timely written acceptance of the 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 approval of the final inspection, the county shall give express written acceptance of the Improvements. After this written acceptance is received, the Developer shall record the record plat and will be able to sell lots in the development.

Section 12. As Constructed Plans. Prior to County inspection and approval of the Improvements in the Development, the Developer will file signed and sealed "As Constructed" Improvement Plans with the County Engineer, along with a letter of certification from a licensed engineer as to the accuracy of the corrected plans. Such "As Constructed" Improvement Plans shall show actual constructed location of all required Improvements.

Section 13. Highway 33 Cost Share and Reimbursement. The Developer will pay a one-time lump sum of \$22,744.00 (the "Contribution Funds") to serve as a proportionate share of costs to modify State Highway 33 needed to accommodate the Development. The Contribution Funds will be held in escrow by the County in an interest bearing certificate of deposit FDIC insured account. In the event that the County does not make improvements to the Highway 33 intersection to mitigate impacts by the Development as contemplated by the Harlan Ranch Subdivision Traffic Impact Study (updated 5/24/2023) using the Contribution Funds in escrow on or before the date

which falls seven (7) years from the date of this Agreement, the County will refund the Contribution Funds back to the Developer.

Section 14. Warranty of the Improvements. The Developer 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 one year for all Improvements after acceptance of the 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. 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 15. Financial Security Guarantee. Before beginning construction on the required public improvements, the Developer shall provide a financial guarantee of performance for those requirements which are over and beyond the requirements of any other agency responsible for the administration, operation and maintenance of the applicable public improvement. The Developer may (a) obtain from a County approved financial institution or approved private financier an irrevocable 12-month letter of credit with guaranteed 6 to 12 month extensions as needed until the public Improvements are completed and accepted by the County or 6 months after the expiration date of this Development Agreement; (b) deposit into a Teton County escrow account funds in the form of a certified check or cash available for disbursement upon signatures by the Developer and Teton County. The County shall maintain any interest accrued; or (c) obtain a negotiable construction or development bond from a County-approved bonding company for the estimated length of time to fully complete the Improvements including acceptance by the County. The amount of the escrowed funds shall be released for the completed and approved portion of the scheduled Improvements on the subject Property by line item as described on the engineer's cost estimate. Any amount of the escrowed funds remaining in letter of credit, escrow account, or bond shall not be released until one hundred percent (100%) complete installation and approval of all County required Improvements.

Section 16. Remedies. In the event the Developer fails to substantially 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. Teton County may impose penalties on the Developer in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out at the scheduled completion date 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 17. Default. If the Developer materially defaults or fails to substantially 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 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 Improvement(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 either/or the financial security guarantee escrow account or credit line provided, those sums not to exceed 125% of the engineer's estimate for individual Improvements installed. Included in the costs of the work, the County is entitled reasonable legal fees and reasonable administrative expenses.

Section 18. Transfer of Lots or Units. No lots or units may be offered for sale or sold (warranty deeds transferred) prior to final Improvement completion and a Certificate of Completion being issued by the County. The fire protection, including all weather road(s), shall be operational per the Fire District's inspection and written approval, and street signs installed, before any building permit shall be issued by the County. 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 19. 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 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:

800 W Watersford Dr.
Eagle, ID 83616

Copy to: Herbert Heimerl
20 Cedron (Box 499)

Victor, Idaho 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 21. 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.

Section 22. Amendments or Alterations. All changes, amendments, omissions, or additions to this Agreement shall be in writing and shall be signed by both parties.

Section 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.

Section 24. Filing. The Developer 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 Developer shall be responsible for all recording fees associated with this Development.

Section 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 supported by Title 9 of 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.

Section 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 subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any Agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law restriction, court order, or Agreement to which the Developer or the subdivision is subject.

Section 27. 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 28. 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 29. Final Agreement. This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer 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/Developer 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 30. No Waiver of County Rights. 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.

Section 31. Sharing Development Costs. Teton County Subdivision Regulations, Title 9, provides the Developer a mechanism to recoup a portion of certain costs associated with Improvements made by the Developer. All shared development rights afforded the Developer under Title 9 and this Agreement, in particular Section 7, are hereby retained; any other Agreement, document, or statement by the Developer shall not be deemed to waive any rights afforded the Developer under the LDC and any updated County code provisions.

Section 32. 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.

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EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
FINAL DESIGN SHEETS

[see attached]