



Board of County Commissioners - Staff Report

Meeting Date: September 20, 2022

Submitting Dept: Joint Affordable Housing

Presenter: Kristi Malone

Subject: Development Agreement and Ground Lease with Habitat for Humanity to Develop Affordable Townhomes at 445 E. Kelly Ave

Statement / Purpose:

The Board of County Commissioners ("Board") will consider a Development Agreement and Ground Lease with Habitat for Humanity to develop 18 Affordable townhomes at 445 E. Kelly Ave.

Background / Description (Pros & Cons):

In 2020, Teton County purchased a 1.08-acre site at 445 E Kelly Avenue in the Town of Jackson for the purpose of partnering with Habitat for Humanity to redevelop the site by building 18 Affordable townhomes. Since then, the Housing Department has managed this project on behalf of the Board of County Commissioners via Requests for Proposals, contracts with consultants, and development permits from the Town of Jackson. Work completed so far is for site preparation, including subdivision to increase density potential, site clearing, and relocation/restoration of an on-site historic structure.

Today, the Board will consider two agreements with Habitat for Humanity:

1. Development Agreement with Habitat for Humanity – defines terms and legally binds development responsibilities of both Habitat and Teton County in completion of this project.
2. A long-term (99 years) Ground Lease of the property to Habitat for Humanity – allows Habitat to conduct vertical construction of townhomes and structures management role of Habitat over future qualifying homeowners.

Development Agreement Key Terms:

- Teton County agrees to the following:
 1. Provide Property for Development – Teton County will retain ownership and provide Habitat with any necessary legal documentation for construction and management of units, including Letters of Authorization, temporary construction easements, and Ground Lease.
 2. Project Coordination and Collaboration – Teton County will participate and provide input on project development.
 3. Subdivision Plat Approval – Teton County will acquire a subdivision plat showing six lots on the property thereby increasing density potential on the site to 18 dwelling units.
 4. Infrastructure Development – Teton County shall obtain approval of a site-wide Grading Permit and will complete site preparation (removal or relocation of existing structures on the Property, clearing of vegetation and debris in construction areas, and rough grading of the Property to allow for vertical construction to allow for vertical construction), sub-surface infrastructure (installation of site-wide water, wastewater, stormwater and electrical infrastructure to serve the Townhomes, including obtaining Building Permit approval for a mechanical shed to house above-grade appurtenances such as water and electrical controls), and finished grading and surface infrastructure (final elevation of the ground surface after physical development and paving of parking, driveways and walkways).
- Habitat for Humanity agrees to the following:
 1. Declaration of Conditions, Covenants and Restrictions for the Association (the "CC&Rs") – Habitat will record CC&Rs for the Homeowners' Association and will provide these to the Housing Department for review and approval prior to submission of the Townhouse Plat.

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2. Construction Drawings and Building Permits – Habitat will produce and submit all application materials required to obtain Building Permit approvals from the Town of Jackson for each of the 18 dwelling Units to be developed on the Property.
 3. Design-Build Team—Habitat is responsible for the hiring and supervision of its Design-Build Team to design and construct the affordable housing development within the Property.
 4. Construction of Dwelling Units – Habitat will construct 18 Units within the Property which shall be Affordable Ownership <80% MFI Deed Restricted Housing
 5. Townhome Plat Approval – Habitat is responsible for obtaining approval of a Townhouse Subdivision Plat which provides for 18 Townhome lots.
 6. Occupant Selection and Management – Habitat shall follow its selection policies and procedures for selecting occupants for each Unit.
- Both Teton County and Habitat are bound to a Communications Plan that enhances the partnership structure through a mutual internal and external communication policy.

Ground Lease Key Terms:

- Habitat for Humanity has right to occupy and use the site:
 1. For a term of 99 years
 2. Upon annual rental payment of \$10 to Teton County
 3. For the singular use of site for affordable housing with sub-leases to homeowners that have purchased the Townhome improvements.
 4. Upon biannual payment of assessed property tax
- Teton County has right to:
 1. Extend terms of the lease for subsequent 99-year periods
 2. Increase rental payment to market rate if the site is no longer used by Habitat for affordable housing
 3. Review and approve Habitat’s sub-leases to homeowners

Stakeholder Analysis & Involvement:

Stakeholders include Teton County as owner of the subject land, Habitat for Humanity as development partner, future homeowners of the Affordable townhomes to be constructed, and the entire community benefitted by safe and secure Affordable Workforce housing.

Fiscal Impact:

None.

Staff Impact:

County Housing Staff and the County Attorney’s Office conducted multiple reviews of these documents and facilitated lengthy coordination with Habitat for Humanity and their legal counsel in preparation of these documents.

Legal Review:

K. Gingery

Staff Input / Recommendation:

Housing Staff recommends approval of the Development Agreement and Ground Lease as it codifies the terms of construction and management in this partnership between Teton County and Habitat for Humanity and promotes continued progress in development of local Affordable housing.

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Attachments:

1. Proposed Development Agreement
2. Proposed Ground Lease

Suggested Motion:

I move to approve the Development Agreement and Ground Lease with Habitat for Humanity, as presented, for development and management of 18 Affordable townhomes at the County-owned property located at 445 E. Kelly Ave.

MASTER GROUND LEASE
for
445 E. Kelly Ave.
Between
Teton County, Wyoming, the Lessor
and
Habitat for Humanity of the Greater Teton Area, Inc., the Lessee

This Master Ground Lease is entered into this ____ day of _____, 2022 (the “Effective Date”), by and between Teton County, Wyoming, a duly organized county of the State of Wyoming (hereinafter referred to as the “County”) and Habitat for Humanity of the Greater Teton Area, Inc., a Wyoming nonprofit corporation (hereinafter referred to as “Habitat”).

RECITALS:

WHEREAS, Teton County, Wyoming, a duly organized county of the State of Wyoming, owns the property located at 445 E. Kelly, Jackson, Wyoming and desires to lease the property to the Habitat for Humanity for the Greater Teton Area, Inc., a Wyoming nonprofit corporation in order to provide a housing project pursuant to Wyoming Statute §15-10-101(a)(ii). Specifically, to provide “safe and sanitary housing and related facilities to person of low income.” The Jackson/Teton County Housing Department was created by Teton County and the Town of Jackson pursuant to Wyoming Statute §15-10-116 and will assist the County with management of this ground lease.; and

WHEREAS, pursuant to Wyoming Statute §15-10-101(a)(iv) “persons of low income” means persons or families who, as determined by the public body undertaking a project, cannot afford to pay the amounts at which private enterprise, unaided by public subsidy, is providing decent, safe and sanitary housing; and

WHEREAS, to address the shortage of affordable, safe and sanitary dwelling accommodations, the County preserves affordable homeownership opportunities through the long-term leasing of land under owner-occupied homes; and

WHEREAS, that certain Property described below was purchased by Teton County for a housing development on such property (the “Project”);

WHEREAS, in exchange for the County leasing the Property to Habitat and installing horizontal infrastructure in accordance with the terms and conditions set forth in this Lease: (i) Habitat will be solely responsible for the permitting, entitlement, development, construction and financing of the affordable housing development in accordance with this Lease and the Development Agreement signed of even date herewith between the parties hereto; (ii) Habitat will be solely responsible for the sale of the units in accordance with the Special Restrictions to be recorded against the Property as defined below; and (iii) Habitat agrees to follow the Communications Plan attached in **Exhibit B**.

WHEREAS, the County and Habitat anticipate entering into a Development Agreement for Construction of Affordable Housing Units on the Property (the “Development Agreement”), and as of the Effective Date , the County will lease the Property, as defined below, to Habitat and Habitat has agreed to administer and manage the Property and improvements for housing, as further set forth herein.

LEASE:

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Habitat and the County agree on all of the terms and conditions of this Master Lease as set forth below.

LEASE OF PROPERTY. The County hereby leases to Habitat, and Habitat hereby accepts the right to possess, occupy and use that certain real property situated in Teton County, Wyoming and further described in **Exhibit A** (the "Property").

1. TERM. The term of this Master Lease is ninety-nine (99) years, unless sooner terminated as provided for herein. Notwithstanding the foregoing, during the 80th year of this Master Lease, the parties shall confer with each other regarding the desirability of continuing the Master Lease beyond the expiration date and the ongoing and projected need to provide housing in Teton County. Prior to the end of the 80th year of this Master Lease, the County may elect to either: (a) extend this Master Lease for subsequent 99-year periods; or (b) take such other action as the County determines, in its sole discretion and acting in good faith, will continue the goal of providing decent, housing for people of low income in Teton County. In the event this Master Lease shall run to the conclusion of its initial term, or the conclusion of any additional terms, at the time of expiration, the County shall honor and observe the terms of all Homeowner Leases (defined below) in effect that are not in default by their own terms and are consistent with providing decent, affordable housing for people of low income in Teton County.

2. RENT. Habitat shall pay to Teton County, without deduction or setoff, at the address herein mentioned, for and throughout each year of this Master Lease, without demand, an annual rental of TEN Dollars (\$10.00) per year. Notwithstanding the foregoing or any other rights or remedies of the County herein or at law or equity, if during any term hereof, the Property is not used for the provision of decent, affordable housing for people of low income in Teton County, the rent shall be increased to an amount determined by appraisal to equal the market rental value of the Property for unrestricted use. In such event, upon the County's election exercised by notice to Habitat, the rent shall be as stated in the notice which shall be provided at least 180 days before such change..

3. USE OF PROPERTY. Habitat shall use and permit the use of the Property solely for providing decent, affordable housing for people of low income in Teton County and in accordance with and subject to a ground lease, the form of which the County shall have the right to approve (the "Homeowner Lease"), by the terms of which Habitat shall lease individual lots to lessees who have purchased the improvements thereon. The principal purpose of the County in entering into this Master Lease is to obtain the management and administration by Habitat of the Property and the improvements located thereon as affordable housing, and both parties agree that it is a material condition of the Master Lease of the Property that Habitat conscientiously enforce the terms of the Homeowner Lease in order to carry out the purposes stated therein. Habitat agrees not to use or permit the use of the Property or any part thereof for any purpose prohibited by this Master Lease, Homeowner Lease, Covenants, Conditions and Restrictions, or any law, rule, code, ordinance or regulation affecting the Property, and Habitat agrees, to comply with and conform to all of the

requirements of the foregoing throughout the entire term of this Master Lease and any extension thereof.

4. TAXES AND ASSESSMENTS. Unless otherwise paid by the homeowners under the Homeowner Leases, Habitat shall pay directly to the taxing authority the full amount of any property taxes or special assessments required to be paid with respect to the Property. In the event any notices of taxes or assessments due are sent to the County, the County will deliver the same, expeditiously, to Habitat.

5. IMPROVEMENTS TO PROPERTY. Habitat may not construct or otherwise make new improvements on any part or all of the Property or demolish, remove, replace, alter, re-locate, re-construct or add to any existing improvements in whole or in part located upon the Property, or modify or change the contour or grade, or both, of the Property, except as in accordance with the Development Agreement. If such consent is given and Habitat at any time or times during this Master Lease shall construct any buildings, structures or improvements on the Property or any part thereof, the same shall be constructed without cost or expense to the County.

6. IMPROVEMENTS/LIENS. Habitat shall pay or cause to be paid the total cost and expenses of all construction and expense of improvement to the Property. Habitat shall not suffer or permit to be enforced against the Property or any part of it any mechanic's, materialmen's, contractor's or subcontractor's lien arising from any work or improvement or construction, however it may arise. Notwithstanding the foregoing, Habitat may in good faith and at Habitat's own expense contest the validity of any such asserted lien, claim or demand, provided Habitat or its agents, sub-lessees or assigns has furnished a bond in a sum equal to the amount claimed as required by a court of competent jurisdiction. Habitat shall defend and indemnify the County against all liability and loss of any type arising out of work performed on the Property by Habitat, together with reasonable attorney's fees and all costs and expenses incurred by the County in negotiating, settling, defending or otherwise protecting against such liens.

7. DEFAULT. If Habitat should default in the performance of its obligations hereunder and such default should continue for 180 days after written notice thereof from the County to Habitat, or such additional time as may be necessary if not capable of being cured within such period so long as Habitat has promptly commenced and diligently pursued such cure, then the County may terminate this Master Lease and recover the Property by summary proceedings or otherwise, and exercise any or all of Habitat's rights under said lease, including the right to enforce the same by any means provided to the Lessor therein, including termination, and may exercise any option to purchase the Improvements upon any lot as set forth in a Homeowner Lease or the right of first refusal to purchase any such Improvements as set forth in a Homeowner Lease, including the right to further assign the same to an eligible assignee. Default shall consist of any of the following:

- (a) Failure to pay any part of the rent or any other sum herein required; or
- (b) If Habitat should dissolve or become defunct, or change its mission such that it no longer provides affordable housing in keeping with the goals of the 445 E. Kelly Avenue Project to provide decent, affordable housing for people of low income in Teton County; or

- (c) Failure to perform any of the other covenants or conditions on its part agreed to be performed herein, including any failure to enforce the terms of any individual Homeowner Lease, or if it shall be unwilling or unable to enforce any default by termination of the rights resulting therefrom, or exercise or assign to an eligible party the right to exercise any option to purchase or right of first refusal provided for in any Homeowner Lease.

Should the County terminate Habitat’s rights under this Master Lease for any reason, it shall honor and observe the terms of all Homeowner Leases in effect that are not in default by their own terms and are consistent with providing decent, affordable housing for people of low income in Teton County.

All remedies herein conferred upon the County shall be cumulative and no one exclusive of any other remedy conferred herein or by law; provided that the County’s right to enforce any remedy shall be subject to the written notice requirement set forth above.

9. NOTICE. Any notice, consent or approval which is required to be given hereunder shall be in writing and shall be deemed given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid to the addresses set forth below. Alternatively, notice may be hand delivered, but any such hand delivery shall require a signed receipt evidencing the same. Failure of either party to pick up and/or sign for a certified mailing does not constitute failure to provide notice provided it was properly addressed and evidence of that mailing is retained. In the event of mailing, notice shall be deemed given when deposited in the U.S. Mail or at such other place or places as may be designated by either party from time to time in writing in the same manner as provided herein. Irrespective of the method of notice selected, notice shall also be given via email.

To the COUNTY: Teton County Clerk
 P.O. Box 1727
 Jackson, WY 83001
 Email: _____

With a copy to: Jackson/Teton County Housing Department
 P.O. Box 714
 320 S. King Street
 Jackson, WY 83001
 Email: _____

To Habitat: Habitat for Humanity of the Greater Teton Area, Inc.
 P.O. Box
 Jackson, WY 83001
 Email: _____

With a copy to: Stefan Fodor
 Fodor Law Office
 P.O. Box 551
 Jackson, WY 83001
 Email: stefan@fodorlaw.com

10. BINDING EFFECT. This agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors, representatives and assigns.

11. REPRESENTATIONS. All representations made by the parties in negotiations of this Master Lease have been incorporated herein, there are no verbal agreements between the parties to modify the terms and conditions hereof and any further modification of the same must be in writing and signed by all the parties.

12. TIME IS OF THE ESSENCE. Time is expressly declared to be of the essence of this Master Lease.

13. WAIVER. Any term or condition of this agreement may be waived in writing at any time by the party entitled to the benefit thereof, and any term and condition may be modified at any time by an agreement in writing executed by the parties hereto.

14. GOVERNMENTAL IMMUNITY. The County does not waive its governmental immunity by entering into this Master Lease and specifically retains immunity and defenses available to it as a governmental entity pursuant to Wyo. Stat. §1-39-104(a) and all other state law.

IN WITNESS WHEREOF, the parties hereto have executed this Master Lease as of the Effective Date.

[remainder of page intentionally left blank, signature pages to follow]

TETON COUNTY, WYOMING

Natalia D. Macker, Chairwoman

Attest:

Maureen E. Murphy
Teton County Clerk

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

On this _____ day of _____, 20____, before me personally appeared Natalia D. Macker and Maureen E. Murphy, to me personally known, and that the foregoing instrument was signed on behalf of Teton County.

WITNESS my hand and official seal.

Notary Public

My commission expires:

HABITAT FOR HUMANITY OF THE
GREATER TETON AREA, INC.

By: _____
Its: _____

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that _____ is the _____ of the Habitat for Humanity of the Greater Teton Area, Inc., and that the foregoing instrument was signed on behalf of said organization.

WITNESS my hand and official seal.

Notary Public

My commission expires:

EXHIBIT A

Wyoming Title & Escrow - Jackson
211 E Broadway
Jackson, Wyoming 83001

Parcel One:

A tract of land lying wholly within the SE1/4NW1/4, Section 34, T41N, R116W, 6th P.M., Teton County, Wyoming, and being more particularly described as follows:

Beginning at a point S0°02'18" E, 1465.0 feet, and S89°57'42"W, 456 feet from the N1/4 corner of said Section 34;

Thence S0°02'18"E, 181.0 feet to a point;

Thence S62°52'18"E, 92.0 feet to a point;

Thence N19°16'26"E, 236.30 feet to a point;

Thence S 89°57'42"W, 160 feet to the Point of Beginning;

The Basis of Bearing being N0°02'18"W, along the north-south centerline of said Section 34.

PIN: 22-41-16-34-2-00-027.

Including and together with all and singular the tenements, hereditaments, and appurtenances, and improvements thereon or thereunto belonging, but subject to taxes,

reservations, covenants, conditions, restrictions, rights-of-way and easements, of sight and record.

Parcel Two:

A tract of land lying wholly within the SE1/4NW1/4, Section 34, T41N, R116W, 6th P.M., Teton County, Wyoming, and being more particularly described as follows:

Beginning at a point S89°57'42"W, 295.83 feet from a 5/8 inch diameter rebar which is S0°02' 18"E, 1465.30 feet from the N1/4 corner of said Section 34;

Thence N0°02'18"W, 136.65 feet to a point;

Thence S89°39'12"W, 160.00 feet to a point;

Thence S0°02'18"E, 135.76 feet to a point;

Thence N89°57'42"E, 160.00 feet to the Point of Beginning, said points being marked by a 5/8 inch diameter by 16 inch long steel reinforcing bar with aluminum Surv-Kap inscribed "NELSON ENGR PE & LS 578";

The Basis of Bearing being N0°02'18"W, along the north-south centerline of said Section 34.

PIN: 22-41-16-34-2-00-028.

Including and together with all and singular the tenements, hereditaments, and appurtenances, and improvements thereon or thereunto belonging, but subject to taxes, reservations, covenants, conditions, restrictions, rights-of-way and easements, of sight and record.

Exhibit B

Communications Plan for 445 E. Kelly Avenue Public-Private Partnership

Habitat for Humanity (“Habitat”) and Teton County via the Jackson/Teton County Housing Department (“Housing Department”) agree to this Communications Plan for the 445 E. Kelly Avenue Affordable housing development.

Purpose: To ensure consistent communications related to 445 E. Kelly Avenue both between the partners (Habitat and the Housing Department) and by the partners to external parties and/or the public.

Internal Communications between Habitat and Housing Department.

- Both: Weekly onsite meetings through the end of construction.
- Habitat: Inform/copy Housing Department staff contact on any issues related to County responsibility per the Development Agreement during construction.
- Housing Department: Inform/copy Habitat staff contact on any issues related to Habitat responsibility per the Development Agreement during construction.

External Communications Related to the Development.

- All external communications include Habitat, Teton County, and Housing Department logos.
- When talking about costs to construct or build the development, all hard and soft costs for the entire project will be included. These include, but are not limited to: land acquisition, subdivision, horizontal infrastructure, vertical infrastructure, and landscaping.
- The development will always be characterized as a partnership between Habitat for Humanity, Teton County, and the Jackson/Teton County Housing Department.
- Funding for the development shall be described as a blend of private philanthropy, SPET funds, Housing Supply Program funds collected through housing mitigation fees, and HOME funds awarded to Habitat by the Wyoming Community Development Authority.
- Habitat and the Housing Department will collaborate on development collateral, ensuring consistent messaging.
- Key Events include, but are not limited to: groundbreaking, ribbon cutting for each phase, final ribbon cutting. Habitat and the Housing Department will collaborate to plan and execute each Key Event.

**AGREEMENT BETWEEN TETON COUNTY AND HABITAT FOR HUMANITY FOR CONSTRUCTION OF
AFFORDABLE HOUSING UNITS AT
445 East Kelly Ave.**

THIS AGREEMENT is made and entered into on the _____ day of _____, 2022, by **Teton County**, a duly organized county of the State of Wyoming and **Habitat for Humanity of the Greater Teton Area**, a Wyoming nonprofit corporation (hereinafter referred to as “Habitat”).

WHEREAS, Habitat is an Internal Revenue Code §501(c)(3) non-profit organization that works in partnership with families in need to create simple, decent home ownership opportunities in Teton County, Wyoming, Lincoln County, Wyoming and Teton County, Idaho; and

WHEREAS, Teton County, a duly organized county of the State of Wyoming owns the property in Teton County, Wyoming described on **Exhibit A** (the “Property”); and

WHEREAS, the Property was purchased using 2006 Special Purpose Excise Tax (SPET) funds for the Jackson/Teton County Housing Authority’s Affordable Housing Program in Teton County, Wyoming; and

WHEREAS, the Property will be developed by Habitat to include 18 Affordable <80% MFI Townhomes (the “Units”) as defined by Section 6.3.4.B.1 of the Town of Jackson Land Development Regulations;

WHEREAS, Teton County and Habitat wish to enter into an agreement wherein Habitat will construct the Units on the Property; and

WHEREAS, in exchange for the County leasing the Property to Habitat and installing horizontal infrastructure in accordance with the terms and conditions set forth in this Development Agreement: (i) Habitat will be solely responsible for the permitting, entitlement, development, construction and financing of the affordable housing development in accordance with this Agreement; (ii) Habitat will be solely responsible for the sale of the units in accordance with the Special Restrictions; and (iii) Habitat agrees to follow the Communications Plan attached in **Exhibit B**.

WHEREAS, the Property must be subdivided into 18 Townhome lots; and

WHEREAS, this Agreement will save taxpayer dollars by leveraging Habitat volunteer resources and private donations with Jackson/Teton County Housing Department (“Housing Department”) resources and public funds, and will enable the production of Affordable housing for working families in Teton County meeting income, asset and employment qualifications; and

WHEREAS, it is the mission of both the Housing Department and Habitat to provide Affordable housing opportunities in Teton County, Wyoming, and this Agreement between the two organizations furthers their respective missions and provides significant benefit to the community;

WHEREAS, it is the intent of the Housing Department and Habitat to develop a design that is compatible with the goals and missions of both parties;

WHEREAS, Teton County, a duly organized county of the State of Wyoming, will be responsible for constructing and providing certain infrastructure requirements as set forth below and signs on to this Agreement for that sole purpose.

NOW THEREFORE, in consideration of the mutual exchange of promises contained herein, Teton County and Habitat agree and covenant as follows:

AGREEMENT

The above recitals are incorporated into and made a part of this Agreement.

RIGHTS AND OBLIGATIONS OF TETON COUNTY

- 1. Property for Development.** Teton County shall, pursuant to this Agreement, use its best efforts to obtain for Habitat, any and all temporary construction easements and/or Letters of Authorization as required for construction and staging purposes on the Property and adjacent properties, if necessary.
- 2. Participation in Construction Drawings.** While Habitat is responsible for all steps necessary to produce construction drawings, the Housing Department shall actively and timely participate with Habitat in this process and shall provide input and comment during the design phase.
- 3. Subdivision Plat Approval.** Teton County shall be responsible for acquiring approval from the Town of Jackson for a subdivision plat showing 6 lots on the Property by October 3, 2022 in order to permit Habitat to construct the 18 dwelling units contemplated by this Agreement. This deadline may be extended for a 4-month period for good cause, for circumstances beyond the control of Teton County. Habitat's consent to said extension shall not be unreasonably withheld. Teton County is also responsible for school and park exactions due as a result of this plat.
- 4. Infrastructure Development.** Teton County shall produce and submit all application materials required to obtain Town of Jackson approval of a site-wide Grading Permit for development of the Property, and will complete:
 - a. Site Preparation:** Removal or relocation of existing structures on the Property, clearing of vegetation and debris in construction areas, and rough grading of the Property (defined to be the final elevation of the ground surface before vertical construction) to allow for vertical construction.
 - b. Sub-Surface Infrastructure:** Installation of site-wide water, wastewater, stormwater and electrical infrastructure to serve the Townhomes. Connections for these utilities shall be stubbed out to within 5' of the proposed building

foundations. This task includes obtaining Building Permit approval for mechanical shed to house above-grade infrastructure appurtenances such as water and electrical controls.

- c. **Finished grading and surface infrastructure:** Finished grading (defined as the final elevation of the ground surface after physical development) and paving of parking, driveways and walkways.

Teton County has already begun this work and this work shall continue concurrent with the progression of Habitat’s construction as defined in the Construction Management and Phasing Plan approved with the first Building Permit, or as amended by agreement of both Habitat and the Housing Department. Finished grading for each phase of building construction shall be completed as necessary for building occupancy.

- 5. **Ownership –Ground Lease.** As Habitat will be constructing Townhomes, Teton County shall retain ownership of the Property and convey a separate ground lease to Habitat for the Property. Habitat shall, pursuant to such ground lease have the right to enter into subleases for each townhome lot (the “Homeowner Lease”), to the ultimate owners of the vertical improvements within the Property. Habitat shall, pursuant to the ground lease have the right to enter into a sublease for the common elements to a Homeowners’ Association comprised of the Unit owners that will administer and manage all common elements for the benefit and rights of the owners.
- 6. **Failure to Complete.** In the event Habitat does not complete Substantial Completion of all its Units, as defined and set forth below in Section 12, Habitat's rights, as to those Units not completed within the required timeframe, shall expire, but Teton County shall honor all contractual agreements and obligations previously entered into by Habitat.

RIGHTS AND OBLIGATIONS OF HABITAT

- 7. **Association Declaration.** Habitat shall be responsible for recording in the Teton County Clerk’s Office A Declaration of Conditions, Covenants and Restrictions for the Association (the “CC&Rs”) whenever necessary to secure final plat approval. These CC&Rs shall be reviewed and approved by the Housing Department prior to Habitat’s submission of the Townhouse Plat.
- 8. **Construction Drawings and Building Permits.** Habitat shall produce and submit all application materials required to obtain Building Permit approvals from the Town of Jackson for each of the 18 dwelling Units to be developed on the Property. All design and construction plans shall be in compliance with previously approved permits for the Property. All design and construction plans shall be in compliance with applicable Town of Jackson Building Code requirements for Townhouses (not Condominiums). Habitat has already begun this work and this work shall continue with the progression defined in the Construction Management and Phasing Plan approved with the first Building Permit, or as amended by agreement of both Habitat and the Housing Department.

- 9. Design-Build Team.** Habitat shall be solely responsible for the hiring and supervision of its Design-Build Team to design and construct the affordable housing development within the Property.
- 10. Construction of Units.** Habitat shall, at its expense, construct 18 Units within the Property which shall be Affordable Ownership <80% MFI Deed Restricted Housing as currently defined in the Teton County Land Development Regulations with terms of restriction defined in Section 29, below. Applicable deed restrictions shall be recorded in the Office of the Clerk of Teton County prior to the issuance of any certificate of occupancy. Habitat shall be responsible for securing the entirety of the Units under construction and for providing a temporary construction barrier between the Units under construction and the adjacent public and private properties to the west, north, and east; provided, however, that Habitat will only secure the part of Lot 1 on which Habitat is constructing Units. Habitat will not secure the Historic Cabin on Lot 1. Habitat shall comply with all applicable stormwater and erosion control standards during construction Habitat is responsible for installation of landscaping and revegetation of the Property. Habitat has already begun this work and this work shall continue with the progression defined in the Construction Management and Phasing Plan approved with the first Building Permit, or as amended by agreement of both Habitat and the Housing Department.
- 11. Townhouse Plat:** Habitat shall be responsible for obtaining approval of a Townhouse Subdivision Plat which provides for 18 Townhouses to replacing the 6-lot initial Subdivision Plat being applied for by Teton County in Section 3, above. Habitat shall incur the costs of school and park exactions for this residential subdivision and is responsible for obtaining approval of the plat from the Town of Jackson.
- 12. Substantial Completion Defined.** Substantial completion of construction (“Substantial Completion”) is defined as completing the foundation, core, shell, roof and exterior siding of each Unit.
- 13. Deadline for Construction.** Habitat shall begin construction of the Units within 60 days of obtaining each BP approval. Habitat shall achieve Substantial Completion no later than 45 months from when it commences construction. Habitat’s obligations to commence construction shall be tolled from October 15, 2022 until April 1, 2023 due to winter conditions. Construction phasing shall follow the Construction Management Plan approved with the first BP, or as amended by agreement of both Habitat and the Housing Department.
- 14. Occupant Selection.** Habitat shall follow its Board approved and Habitat for Humanity International advised homeowner selection policies and procedures for selecting occupants for each Unit. Such policies and procedures shall also include a restriction that meets the Teton County Qualification and Eligibility requirements as set forth in Housing Department Rules and Regulations as currently defined for Affordable Ownership of Units. Habitat shall have the sole authority and obligation to select qualifying homeowners.

- 15. Project Development Costs.** Habitat shall be financially responsible for all construction approval fees, impact fees, permit fees, architectural fees, engineering fees, soil testing expenses, site preparation work beyond rough grade (defined to be the final elevation of the ground surface in its natural state before physical development), and construction costs associated with the development of the Units excluding infrastructure costs which are the responsibility of Teton County as set forth in Section 3 above.
- 16. Ownership of Improvements.** Habitat shall own all improvements comprising the Units until such time as the improvements located on and within the Units are sold to owners selected by Habitat as set forth herein.
- 17. Insurance.** Habitat shall maintain the following insurance without interruption from the beginning of construction through final completion of construction: a) Commercial General Liability Insurance with project specific limits of not less than \$1M per occurrence, \$1M personal injury and \$2M general aggregate and said policy must cover liability arising from bodily injury (including death), property damage, and premises liability for all work performed by Habitat, must be primary, non-contributing and occurrence-based and must name Teton County as an additional insured; b) worker's compensation and employer's liability insurance for all employees performing work at the Property. Any liability policies by Habitat shall insure against any claims for personal injury, death, or property damage which may arise in the development of the Units, subject to the same exclusions in the preceding sentence, and shall remain in effect until all 18 Units have been constructed and sold for the first time to qualified applicants. Habitat or its contractors or subcontractors shall insure against all acts undertaken by them within the Property.
- 18. Dissolution of Habitat.** In the event that Habitat should be dissolved, either voluntarily, judicially or administratively, any residual interest in the Units owned or retained by Habitat shall be transferred to Teton County, its assigns or successors.

JOINT RIGHTS AND OBLIGATIONS

- 19. Insurance.** Contractors hired to perform work at the Property shall be required to purchase and maintain builder's risk insurance covering the full cost of replacement of materials or equipment incorporated into or destined for incorporation into the Property prior to the time when title to such materials or equipment passes to Teton County or Habitat including those items that are stored away from the Property or are in transit to the Property. Habitat as Lessee of the Property, shall be responsible for purchasing and maintaining property insurance written on a builder's risk, "all risk", or equivalent policy form in the amount covering Owner's interest in the Property on a replacement cost basis without optional deductible. Habitat shall be responsible for and shall insure against all acts or omissions within the Property. Teton County shall insure the Property as set forth in paragraph 17 from the start of any construction work through and including final completion of Teton County's obligations to construct site infrastructure as set forth in Paragraph 3 of this Agreement.

20. Waiver of Subrogation. Teton County and Habitat waive all rights against each other and any of their consultants or agents, employees, contractors, sub-contractors for any damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any insurance obtained. The parties shall require of any of their above enumerated parties similar waivers in favor of each party to this Agreement. The insurance policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation as set forth shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification.

21. Indemnification.

- a) To the fullest extent permitted by law, Teton County shall indemnify, hold harmless and defend Habitat and its consultants, agents, employees and contractors from and against all third party claims, actions, suits, demands, damages, liens, fines and expenses (including but not limited to reasonable attorneys' fees), which arise out of, relate to or result from acts or omissions, whether negligent or not, performed by Teton County, its consultants, agents, employees or contractors on the Property and in connection with Teton County's construction obligations as set forth in this Agreement.
- b) To the fullest extent permitted by law, Habitat shall indemnify, hold harmless and defend Teton County and its consultants, agents, employees and contractors from and against all third party claims, actions, suits, demands, damages, liens, fines and expenses (including but not limited to reasonable attorneys' fees), which arise out of, relate to or result from acts or omissions, whether negligent or not, performed by Habitat, its consultants, agents, employees or contractors on the Property and in connection with Habitat's construction obligations as set forth in this Agreement.

22. Liens. Teton County and Habitat shall do all things reasonably possible to prevent the filing of any mechanics, judgment or any other lien against the Property and/or Units. If any such lien(s) is filed against either party's interest in the Property and/or Units, that party shall either cause the same to be discharged of record within 20 days of the date of the filing of the same, or if in that party's discretion and in good faith, it determines that such lien should be contested, the party contesting the lien shall furnish such security as shall be necessary or required to satisfy the contesting party's interest in the Property and/or Units during the pendency of such contest. If a party against whom a lien is filed shall fail to discharge such lien within such period, or fail to furnish such security, then, in addition to any other right or remedy of the other party, the other party may, but shall not be obligated to, discharge the lien(s) either by paying the amount claimed to be due or by procuring the discharge of such lien by furnishing adequate security or in such other manner as is or may become prescribed by law. In such event, the party who failed to discharge the lien shall be responsible for all reasonable fees and costs, including attorney fees, incurred by the discharging party. Nothing contained herein shall imply any consent or agreement on the part of either party to subject that party to liability for the other party under any mechanics or other lien law.

23. Communications Plan. Teton County and Habitat shall follow the Communications Plan for the development in **Exhibit B**. Failure to comply with the communications plan can result in default.

DEFAULTS AND REMEDIES

24. Time is of the Essence. Time is of the essence, and if any payment or any other condition hereof is not made, tendered or performed by either Teton County or Habitat as herein provided, then such condition or obligation may be cured by the non-defaulting party and the non-defaulting party may seek contribution or offset from other obligations from the defaulting party as set forth below. Upon written notice of default, the defaulting party shall have 30 days to cure such default. In the event either party fails to cure said default, the following remedies shall apply.

25. Failure to Complete. In the event Habitat has not achieved Substantial Completion of all 18 Units, subject to the tolling provisions of this Agreement, within 45 months of the start of construction, Teton County shall have the right, but not the obligation, to complete construction of the Units which are not deemed Substantially Complete. In the event Habitat fails to achieve Substantial Completion as required under this agreement and Teton County exercises its rights to complete construction, Teton County shall fully assume all of Habitat's contractual obligations for those Units which it assumes completion of construction. .

26. Teton County Failure. In the event Teton County fails to provide the infrastructure as defined above in Paragraphs 3 and 4 necessary for Habitat to build its units in accordance with the terms of this Agreement, or otherwise fails to meet its obligations under this Agreement, deadlines for Substantial Completion shall be extended by the same amount of time the Habitat Units are delayed by reason of Teton County's failure to fulfill its contractual obligations.

27. Mediation. If a dispute arises between the parties relating to this Agreement, and is not resolved by the parties, the parties involved in such dispute shall first proceed in good faith to submit the matter to mediation. The parties will jointly appoint an acceptable mediator with mediation to be conducted in Jackson, Wyoming and will share equally in the cost of the mediation. In the event the parties cannot agree on an acceptable mediator within 10 days of notice of dispute, the mediation shall terminate. In the event the entire dispute is not resolved within 30 calendar days from the mediation, unless mutually agreed otherwise, the mediation shall terminate and the parties may proceed with recourse to the courts.

28. Attorney's Fees. In the event that any party shall become in default or breach of any of the terms of this Agreement and shall fail to cure such default within the timelines set forth above, such defaulting or breaching party shall pay all reasonable attorney's fees and other expenses which the non-breaching or non-defaulting party may incur in enforcing this Agreement, whether a lawsuit is filed or not. This provision shall not limit any other remedies to which the parties may otherwise be entitled.

29. Deed Restriction. Deed restrictions imposed on all Units shall provide: 1) that the owner must use the Unit as their sole and primary place of residence; 2) that the Unit shall not be used for any unpermitted business activity; 3) that the Unit shall not be rented; 4) that Habitat has a right of first purchase on all future sales and conveyances and Teton County has a second right of first purchase; 5) that all future sales or conveyances of the Unit must be made to families qualified through Habitat's Homeowner Selection Committee or through the Teton County qualification process; 6) in the event of a divorce or death, Habitat may consent to the transfer of the Unit to a spouse or heir only upon receipt of a court order requiring such transfer; that Habitat has an option to purchase the Unit in the event of a transfer not in compliance with the Deed Restriction; 7) that capital improvements to the Unit may only be made with Habitat's prior written consent; 8) that the resale price of the Unit shall be the purchase price minus the outstanding balance owed under any mortgage approved by Habitat, minus amounts paid by Habitat to satisfy any liens plus any amounts approved by Habitat as permitted capital improvements; 9) that any default shall allow Habitat to exercise its Option to purchase the Unit; 10) that no liens other than Mortgages approved by Habitat may encumber the Unit; and 11) that the Deed Restriction shall be a covenant running with the land which may only be removed with the joint written approval of Habitat and Teton County.

GENERAL PROVISIONS

30. Notices. Any notice or other communication required, permitted, or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes either (i) upon delivery by hand to any party hereto, (ii) five days after the same has been mailed by prepaid, registered or certified mail, return receipt requested, addressed to the respective parties as follows, (iii) the same day as emailed if prior to 5:00 pm MST, or (iii) one day after the same has been sent by Federal Express or other reputable overnight courier addressed to the respective parties as follows:

If to Teton County:
Jackson/Teton County Housing Department
P.O. Box 714
320 S. King Street
Jackson, WY 83001
ahnorton@tetoncountywy.gov

with CC to:
Maureen Murphy
Teton County Clerk
P.O. Box 1727
200 S. Willow Street
Jackson, WY 83001
mmurphy@tetoncountywy.gov

If to Habitat
Habitat for Humanity of the Greater Teton Area
P.O. Box 4194
850 West Broadway, Suite D
Jackson, WY 83001
kris@tetonhabitat.org

- 31. Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Wyoming and venue shall lie in Teton County, Wyoming.
- 32. Amendment and Modification.** This Agreement shall not be altered, amended, changed, waived, or otherwise modified in any respect unless the same shall be in writing and signed by or on behalf of all parties hereto.
- 33. Severability.** If any provision hereof is invalid and unenforceable, then, to the fullest extent permitted by law, (i) the other provisions of this agreement shall remain in full force and effect and shall be liberally construed in order to carry out the intentions of the parties as nearly as may be possible and (ii) the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provisions of the Agreement.
- 34. Entire Agreement.** This Agreement and any Exhibits incorporated and attached constitutes the entire understanding and agreement of the parties with respect to the subject matter covered in it and supersedes all prior agreements and understandings, written or oral, among any of the parties with respect to such subject matter.
- 35. Joint Drafting Effort.** This Agreement reflects the joint drafting efforts of both parties to this Agreement and any ambiguities in this Agreement shall not be construed against either party.
- 36. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, subsidiaries, executors, heirs and legal representatives.

IN WITNESS WHEREOF, the parties have hereby executed this Agreement as of the day and year first set forth above.

[remainder of page intentionally left blank – signature pages to follow]

Habitat for Humanity of the Greater Teton Area

By Mark Dalby, President

State of Wyoming)
) ss
County of Teton)

On this _____ day of _____, 2022, before me, the undersigned Notary Public, personally appeared Mark Dalby, to me personally known, who, being by me duly sworn, did say that she is the President of the Board of Directors of Habitat For Humanity of the Greater Teton Area, a Wyoming not for profit corporation and that instrument was signed and sealed on behalf of said corporation, and said Board President acknowledged said instrument to be the free act and deed of said corporation.

GIVEN UNDER my hand and seal the date first above written.

Notary Public

Teton County

By: Natalia D. Macker, Chairwoman
Teton County Board of County Commissioners

Attest:

Maureen E. Murphy, Teton County Clerk

Acknowledgment

State of Wyoming)
) ss
County of Teton)

On this ___ day of _____, 2022, before me, the undersigned Notary Public, personally appeared Natalia D. Macker, for Teton County, Wyoming, a duly organized county of the State of Wyoming, and Maureen E. Murphy, Teton County and the above document was acknowledged before me.

Notary Public

EXHIBIT A

Wyoming Title & Escrow - Jackson
211 E Broadway
Jackson, Wyoming 83001

Parcel One:

A tract of land lying wholly within the SE1/4NW1/4, Section 34, T41N, R116W, 6th P.M., Teton County, Wyoming, and being more particularly described as follows:

Beginning at a point S0°02'18" E, 1465.0 feet, and S89°57'42"W, 456 feet from the N1/4 corner of said Section 34;

Thence S0°02'18"E, 181.0 feet to a point;

Thence S62°52'18"E, 92.0 feet to a point;

Thence N19°16'26"E, 236.30 feet to a point;

Thence S 89°57'42"W, 160 feet to the Point of Beginning;

The Basis of Bearing being N0°02'18"W, along the north-south centerline of said Section 34.

PIN: 22-41-16-34-2-00-027.

Including and together with all and singular the tenements, hereditaments, and appurtenances, and improvements thereon or thereunto belonging, but subject to taxes,

reservations, covenants, conditions, restrictions, rights-of-way and easements, of sight and record.

Parcel Two:

A tract of land lying wholly within the SE1/4NW1/4, Section 34, T41N, R116W, 6th P.M., Teton County, Wyoming, and being more particularly described as follows:

Beginning at a point S89°57'42"W, 295.83 feet from a 5/8 inch diameter rebar which is S0°02' 18"E, 1465.30 feet from the N1/4 corner of said Section 34;

Thence N0°02'18"W, 136.65 feet to a point;

Thence S89°39'12"W, 160.00 feet to a point;

Thence S0°02'18"E, 135.76 feet to a point;

Thence N89°57'42"E, 160.00 feet to the Point of Beginning, said points being marked by a 5/8 inch diameter by 16 inch long steel reinforcing bar with aluminum Surv-Kap inscribed "NELSON ENGR PE & LS 578";

The Basis of Bearing being N0°02'18"W, along the north-south centerline of said Section 34.

PIN: 22-41-16-34-2-00-028.

Including and together with all and singular the tenements, hereditaments, and appurtenances, and improvements thereon or thereunto belonging, but subject to taxes, reservations, covenants, conditions, restrictions, rights-of-way and easements, of sight and record.

Exhibit B

Communications Plan for 445 E. Kelly Avenue Public-Private Partnership

Habitat for Humanity (“Habitat”) and Teton County via the Jackson/Teton County Housing Department (“Housing Department”) agree to this Communications Plan for the 445 E. Kelly Avenue Affordable housing development.

Purpose: To ensure consistent communications related to 445 E. Kelly Avenue both between the partners (Habitat and the Housing Department) and by the partners to external parties and/or the public.

Internal Communications between Habitat and Housing Department.

- Both: Weekly onsite meetings through the end of construction.
- Habitat: Inform/copy Housing Department staff contact on any issues related to County responsibility per the Development Agreement during construction.
- Housing Department: Inform/copy Habitat staff contact on any issues related to Habitat responsibility per the Development Agreement during construction.

External Communications Related to the Development.

- All external communications include Habitat, Teton County, and Housing Department logos.
- When talking about costs to construct or build the development, all hard and soft costs for the entire project will be included. These include, but are not limited to: land acquisition, subdivision, horizontal infrastructure, vertical infrastructure, and landscaping.
- The development will always be characterized as a partnership between Habitat for Humanity, Teton County, and the Jackson/Teton County Housing Department.
- Funding for the development shall be described as a blend of private philanthropy, SPET funds, Housing Supply Program funds collected through housing mitigation fees, and HOME funds awarded to Habitat by the Wyoming Community Development Authority.
- Habitat and the Housing Department will collaborate on development collateral, ensuring consistent messaging.
- Key Events include, but are not limited to: groundbreaking, ribbon cutting for each phase, final ribbon cutting. Habitat and the Housing Department will collaborate to plan and execute each Key Event.