



**“Local Brokerage, National Results.”**

## Maps & Documents

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# DECLARATION OF COVENANTS

|            |  |
|------------|--|
| RELEASED   |  |
| INDEXED    |  |
| ABSTRACTED |  |
| SCANNED    |  |

THIS DECLARATION, is made on the 07<sup>th</sup> day of May, 2002 by and between **ERIC ELLENBOGEN and PAUL BOILLOT**, hereinafter referred to as "Declarants" and **LUIS FAURA**, hereinafter referred to as the "FAURA".

## WITNESSETH:

**WHEREAS**, Declarants are the owners of two certain contiguous parcels of real property located in the County of Teton, State of Wyoming described as follows:

Lots 15 and 16 of Table Rock Ranch Subdivision, according to that plat recorded in the Office of the Clerk of Teton County on September 17, 1995 as Plat No. 851.

PIN# 22-44-18-20-2-01-001

**WHEREAS**, Declarants entered into an agreement to sell Lot 16 of Table Rock Ranch Subdivision to FAURA, but the sale and purchase of such Lot 16 is conditioned upon Declarants completing the subdivision and development of their remaining Lot 15 of Table Rock Ranch Subdivision in accordance with a certain Development Permit for a Final Development Plan approved by the Board of County Commissioners of Teton County, Wyoming, dated April 14, 2002, a copy of which is appended hereto as Exhibit "A" (the "Development Permit"); and

**WHEREAS**, such sale and purchase of such Lot 16 is further conditioned upon Declarants establishing a permanent conservation easement upon the retained Lot 15 (and the three Lots into which they have proposed it to be subdivided) that limits the location of the improvements that can be placed on such Lots and makes the remaining portions of the property "open space", substantially limiting the use and development of such portions of the Lots.

**WHEREAS**, Declarants desire to complete the sale of Lot 16 to FAURA before completing the subdivision approval and platting process with Teton County and before completing and recording the conservation easement and FAURA has agreed to close on the transaction so long as adequate provisions are made to assure that the said subdivision and development occur within a reasonable time and so long as the conservation easement is recorded limiting the development and use of designated portions of the retained Lot(s).

**NOW THEREFORE**, in order to induce FAURA, in reliance thereon, to consummate the purchase, Declarants hereby declare that Lot 15 of Table Rock Ranch Subdivision, shall be held, developed, subdivided, improved, used, sold and conveyed subject to the following covenants, which are for the purpose of procuring the sale of and protecting the value and desirability of Lot 16, and which shall run with, and shall inure to the benefit of each owner of Lot 16 of Table Rock Ranch Subdivision and the owners heirs, successors and assigns, and the burden and restrictions of

Grantor: ELLENBOGEN, ERIC ET AL  
Grantee: THE PUBLIC  
Doc 0567980 bk 458 pg 362-392 Filed at 3:15 on 05/10/02  
Sherry L Dalgie, Teton County Clerk fees: 66.00  
By MARY D ANTEOBUS Deputy

the following covenants shall run with in Lot 15 of Table Rock Ranch Subdivision (and the three Lots into which they have proposed to be subdivided) and be binding on all parties having any right, title or interest in said lot(s), their heirs, successors and assigns:

1. Compliance With Development Permit. Except for non-material modifications or modifications approved in writing by FAURA, Declarants shall not develop or subdivide Lot 15 of Table Rock Ranch Subdivision in any manner at variance with the Development Permit, and they shall complete the permitting process and record the Subdivision Plat in accordance therewith no later than September 10, 2002.

2. Recordation of Conservation Easement. No later than September 30, 2002, Declarants shall record a conservation easement prohibiting development upon the said lot 15 of Table Rock Ranch Subdivision (and the three Lots into which they have proposed to be subdivided) substantially and materially in the form of that which is appended hereto Marked Exhibit "B" and, after recording such instrument, will not amend such easement without the written approval of the owner of Lot 16 of Table Rock Ranch Subdivision.

3. Enforcement. FAURA and any owner of Lot 16 of Table Rock Ranch Subdivision shall have the right to enforce, by any proceeding at law or in equity - including an action for a prohibitory or mandatory injunction - all of the foregoing covenants of this Declaration. All reasonable attorneys fees, legal cost and expenses of enforcement shall be payable by the Declarant, if they are determined to have correctly pursued any such action.

4. Survival of Covenants. The foregoing covenants shall survive the closing of the sale of Lot 16, and shall not be merged in or extinguished by a deed of conveyance.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have caused this instrument to be executed this 8<sup>th</sup> day of May, 2002.

X [Signature]  
Eric Ellenbogen

[Signature]  
Paul Boillot

STATE OF New York )  
COUNTY OF New York ) ss.

The foregoing instrument was acknowledged before me Eric Ellenbogen, this 8<sup>th</sup> day of May, 2002.

(Seal) WITNESS my hand and official seal.

[Signature]  
Notary Public

My commission expires:

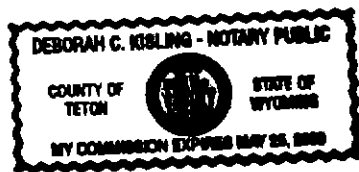
SONJA KEITH  
Notary Public, State of New York  
No. 01KE4896737  
Qualified in New York County  
Commission Expires May 26, 2003

STATE OF WYOMING     )  
                                          ) ss.  
COUNTY OF TETON     )

The foregoing instrument was acknowledged before me Paul Boillot, this ~~10th~~ day of May, 2002.

(Seal)     WITNESS my hand and official seal.  
My commission expires:

Deborah Kislung  
Notary Public



# DEVELOPMENT PERMIT

## GRANTED TO PAUL BOILLOT FOR Table Rock Ranch- Fifth Filing Planned Residential Development

Paul Boillot, having made application for a Development Permit for the Table Rock Ranch Fifth Filing Planned Residential Development and the Teton County Planning Director having determined that all of the required standards are met, the Teton County Planning concludes that the applicant is entitled as a matter of law to the issuance of a permit. The Development Plan was approved on April 16, 2002 and a Development Permit is hereby granted for Table Rock Ranch Residential Development, as set forth in the application materials submitted on December 19, 2001, revised on April 11, 2002. This Permit is subject to the limitations and conditions established by the Teton County Planning Director listed below.

Dated this 24<sup>th</sup> day of April, 2002.  
TETON COUNTY PLANNING DEPARTMENT

  
Tiffany Campbell, Senior Planner

**PERMIT ISSUED FOR:** Table Rock Ranch-Fifth Filing, Planned Residential Development. A 3-unit Planned Residential Development.

**LOCATION:** Lot 15 of Table Rock Ranch Subdivision, North Alta Road, Generally west of North Alta Road, north of Ski Hill Road in Alta, WY, Sec. 20, Twp 44N, Rng. 118W.

**LIMITATIONS AND CONDITIONS:** In addition to the applicant proposed mitigation measures as listed in the project description section of the attached staff report, the following County conditions of approval are required and shall be met at the time the final plat is recorded:

1. The applicant shall incorporate the following standard conditions into the CC&R's prior to recordation of the final plat:
  - a. Provide "wildlife friendly" fencing, if any, around the new home sites.
  - b. Provide animal-proof containers for garbage.
  - c. Prohibit homeowners from feeding or attracting wild animals.
  - d. Ensure that domestic pets are kept under control and do not harass wildlife.
2. The County landscaping requirement for one plant unit/lot shall be required. This requirement may be deferred by recording an Affidavit Affecting Title Covenant and Encumbrance with the final plat to ensure that landscaping requirements be met by each individual lot.
3. All of the County Engineer's comments (attached letter) shall be addressed prior to final plat recordation.

In addition, at the Board of County Commissioners meeting on April 16, 2002, the applicant agreed to provide a voluntary pathway easement to be located in the driveway for the subdivision. This is NOT a condition of approval, but rather a voluntary measure that is hereby incorporated into the project description for the project.

**PERMIT NUMBER: 01-0058**

**EXPIRATION OF A DEVELOPMENT PERMIT:** According to Section 51200.H. of Article V of the Teton County Land Development Regulations, all permits for a Development Plan shall expire twelve (12) months from the date of approval if no building permit has been issued to establish the use authorized by the permit, or if no applications for required subsequent permits have been submitted.

**PERMIT EXPIRATION DATE: April 24, 2003**

**EXHIBIT A**

**FINAL DEVELOPMENT PLAN FOR THE  
TABLE ROCK RANCH SUBDIVISION- A PLANNED RESIDENTIAL  
DEVELOPMENT  
DEV 01-0058**

**STAFF REPORT: TIFFANY CAMPBELL**

**APRIL 8, 2002**

**APPLICANT:** Paul Boillot and Eric Ellenbogen

**REQUEST:** Review of a Final Development Plan for a Planned Residential Development creating a four-lot subdivision in Table Rock Ranch in Alta. This subdivision is the fifth filing for subdivision in Table Rock Ranch and is proposed on Lot 15, a 41.88-acre tract located west of Alta North Road 22-32. The applicant is proposing to subdivide Lot 15 of Table Rock Ranch into 3 single-family residential lots, which would become lots 19, 20 and 21 of Table Rock Ranch (16.83 acres, 12.53 acres and 12.52 acres respectively). (Development Plan amended on April 11, 2002, see attached Map of approved Plan).

**ZONING:** Rural District

**PROPERTY SIZE:** 41.88 acres

**STAFF RECOMMENDATION**

The Planning Commission and Staff recommend **APPROVAL** of the Table Rock Ranch Subdivision Final Development Plan based upon finding that the application meets all applicable standards set forth in the Teton County Land Development Regulations with the following conditions:

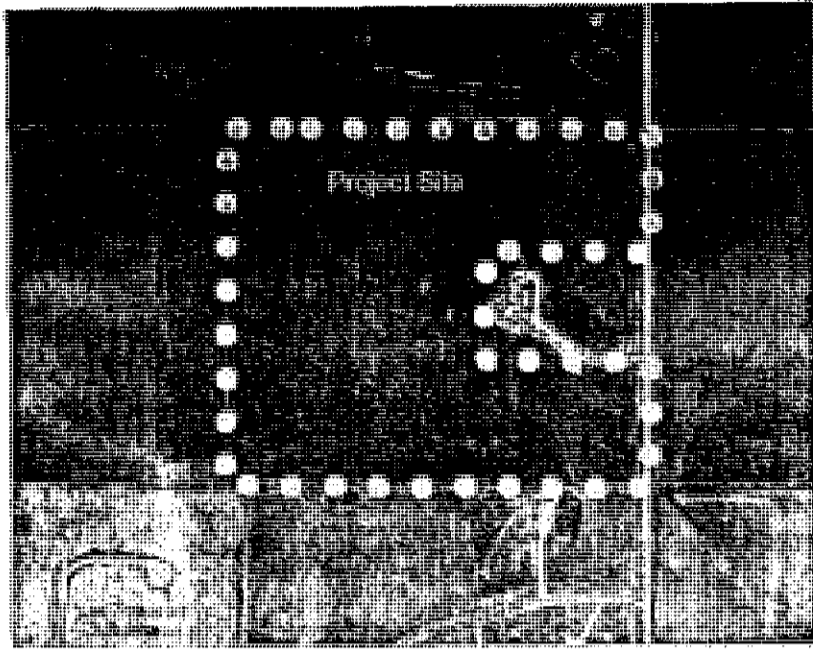
1. The applicant shall incorporate the following standard conditions into the CC&R's prior to recordation of the final plat:
  - a. Provide "wildlife friendly" fencing, if any, around the new home sites.
  - b. Provide animal-proof containers for garbage.
  - c. Prohibit homeowners from feeding or attracting wild animals.
  - d. Ensure that domestic pets are kept under control and do not harass wildlife.
2. The County landscaping requirement for one plant unit/lot shall be required. This requirement may be deferred by recording an Affidavit Affecting Title Covenant and Encumbrance with the final plat to ensure that landscaping requirements be met by each individual lot.
3. All of the County Engineer's comments (attached letter) shall be addressed prior to final plat recordation.

In addition, at the Board of County Commissioners meeting on April 16, 2002, the applicant agreed to provide a voluntary pathway easement to be located in the driveway for the subdivision. This is **NOT** a condition of approval, but rather a voluntary measure that is hereby incorporated into the project description for the project.

**KEY ISSUES**

- Is the proposed subdivision compliant with what was previously approved in original Table Rock Ranch subdivision?
- Is the proposal compatible with the surrounding neighborhood, character and land uses patterns?
- Does the proposal fulfill the intent of the Rural District by providing adequate open space to preserve the agricultural nature of the project vicinity?
- Does the proposal comply with all applicable development standards and is it consistent with the County's Comprehensive Plan?
- Has the proposal attempted to preserve views and maintain a rural character?

## VICINITY MAP



|                           |                                                                             |
|---------------------------|-----------------------------------------------------------------------------|
| <b>Property Zoning:</b>   | Rural                                                                       |
| <b>Property Size:</b>     | 41.88 Acres                                                                 |
| <b>Property Location:</b> | Generally known as Lot 15 of Table Rock Ranch, Sec. 20, Twn 44N, Rng. 118W. |

## PROJECT DESCRIPTION

The area proposed as the Table Rock Ranch Fifth Filing subdivision, located west of North Alta Road, County Road 22-32, consists of three residential lots and one conservation easement lot. The current and historic use of the project area has been agricultural. The property has been historically used for the growing of alfalfa. A cooperative agreement exists between the current landowners and Lorin Wilson, the owner of the adjacent property to the north of this site, for the continued agricultural use on the site. The proposed open space easement lot will allow for the continuation of the majority of this site to remain in agriculture.

Table Rock Ranch Lot 15 is currently 41.87 acres. The proposal is for the subdivision of Lot 15 into three, 3.5-acre residential lots (proposed lots 20,21,22), and the creation of a 31.27-acre conservation easement lot (proposed lot 19). The residential lots would be located on the western-most portion of the property and the conservation/open space easement would encompass the remaining property area east of the proposed residential lots. The site is neither in a Scenic Resource Overlay (SRO) or Natural Resource Overlay (NRO) and there are no wetlands within the project boundary.

Access to proposed lots 20 and 21 would be via a new driveway (1,100 in length) created along the northern property boundary of the proposed lot 19. The northern driveway would connect to County Road 22-32, North Alta Road. Access to proposed lot 22 would be through a driveway created along the southern property boundary of the proposed lot 19. The southern driveway would run parallel to the southern property boundary for approximately 1,080 feet, then turn north for approximately 350 feet to connect to the existing driveway that serves a residential lot 16 of the Table Rock Ranch subdivision. Lot 16, also owned by this applicant, is currently developed with three small cabins and a driveway. The "jog" of the proposed southern driveway to connect to an existing driveway was designed to comply with County Regulation 4720, which requires that access drives that connect to County roadways be limited to one access unless it can be demonstrated that additional access connections to the County road are warranted. Both of the proposed new driveways would be setback from the property boundary as required by the Teton County Land Development Regulations.

Building envelopes will be created on each residential lot and will be limited in size to 200 feet in diameter. The applicant has stated that the envelopes have been placed in order to assure the preservation of the viewsheds from the neighbors, and more specifically from the neighbors to the west. The applicant further states that the development envelopes have been placed in order to minimize visual impacts from the public thoroughfare, County Road 22-32. The intent of the project is to preserve the existing agricultural operations on the conservation easement and preserve public and private views.

The applicant has stated that the proposed project provides the following benefits:

- New structures will have a height limitation not to exceed 22 feet. (The zone district allows for 30-foot building heights.) Not only will this apply to the new lots created in the subdivision, but will also be applied, via a deed restriction, to the existing Table Rock Ranch - Lot 16 (which is currently owned by the applicant). This will minimize impacts to the view corridors for the neighbors, the neighborhood and from the public thoroughfares.
- New structures will have a size restriction of 5,000 square feet, half that which is allowed by the Teton County LDR's. Not only will this apply to the new lots created in the subdivision, but will also be applied, via a deed restriction to the existing Table Rock Ranch - Lot 16.
- The clustering of the market lots on the western boundary of the project, restricting their heights and their square footage, will allow for the viewsheds from the public thoroughfares to be preserved.
- Visual enjoyment from the public thoroughfare will be preserved by the creation of the conservation easement. A long-term lease will be signed in order to preserve the agricultural use of the conservation easement. This will allow for the preservation of the agricultural use, along a public thoroughfare.
- The preservation of the rural and agricultural character of Alta is being preserved through the creation of an agricultural conservation easement.
- Table Rock Ranch, Lot 16, will be encumbered with deed restrictions for building location, height and square footage of future buildings. This will ensure that the enjoyment of the current agricultural/open space experience by the public is maintained.

### PLANNING COMMISSION RECOMMENDATIONS

At the February 18, 2002 Planning Commission meeting, the commission supported the project, but made a recommendation that the applicant consider providing only one access road to the three residential lots proposed on the eastern portion of the lot. There was concern raised, both from Staff and from two neighbors, that the northern access driveway would result in significant visual impacts. The Commissioners asked the applicant if he would be willing to eliminate this as an access and provide only the southern driveway/road. Both Staff and the Planning Commission feel that one road would result in a better overall site design. **As of April 11, 2002, the applicant has eliminated the northern access and reconfigured the lots to provide three lots instead of four lots. The open space will remain the same as described in this report. See the attached approved Development Plan.**

### RELATIONSHIP TO THE COMPREHENSIVE PLAN

#### Chapter 1 Vision Statement

*"preserve the traditions and character of the Rocky Mountain West and Wyoming, including ranching and through architectural design;"*

*"As a community grounded in values of individualism, fairness and hospitality, the intent of this Plan is to provide property owners and local businesses with as much flexibility as possible in the use and development of their property..."*

*"a continuation of ranching and other traditional agriculture;"*

#### Chapter 2 Population, Economy, and Growth

*"To manage the rate of growth in the residential, resort and commercial sectors in a way that allows the community to change while preserving community character."*



**Chapter 3 Community Character**

*"To maintain a sense of place and of community, and a way of life based upon Teton County's western heritage."*

*"Maintain open space in continuous tracts, to allow the continuation of agricultural options and to protect rural character where appropriate."*

*"Protect key scenic vistas and scenic areas."*

*"Facilitate the protection of important natural, scenic and agricultural areas through conservation easements..."*

**Chapter 4 Natural and Scenic Resources**

*"To foster, promote and encourage ranching."*

*"To preserve open space."*

*"Facilitate the protection of important natural, scenic and agricultural areas through conservation easements to the extent that minimum development may be allowed on sensitive parcels to facilitate protection of large parcels."*

**Chapter 10 Agricultural Resources**

*"Encourage agricultural activities in the County because: it is a productive use of the land; it contributes to the unique community character; it is the primary foreground view for the scenic vistas so popular among tourists and residents alike."*

**Discussion:**

The proposed project is consistent with all of the aforementioned Comprehensive Plan Chapters and the policies contained therein. The creation of the agricultural open space easement as part of this project furthers the intent of several sections of the Comprehensive Plan, which emphasize the importance of rural and agricultural lands being preserved. The project proposes to preserve in perpetuity 31 acres of land that would continue to be maintained as agricultural, thus preserving the rural character of this site and surrounding properties.

**RELATIONSHIP TO APPLICABLE LDRs****Transportation Facilities (Division 4700)**

The County engineer has reviewed this application; the review letter is attached. The applicant is proposing two driveways on the property and one access off of the County road. In that the project is providing only one new access off of the County Road 22-32, it is consistent with Section 4720 and all other provisions of Division 4700. It should be noted that staff attempted to encourage the applicant to provide only one driveway for access to the homesites. From a design standpoint and a reduction of disturbance area standpoint, it would be better to have only one driveway serving the lots. However, the applicant has chosen to provide the two driveways in order to reduce viewshed impacts (i.e., a roadway crossing the front of the lot) to proposed Lot 22.

**Landscaping Standards (Division 4100)**

The landscape requirement is one plant unit/residential lot, or in this case 3 plant units. When the lots are developed with residences, one plant unit/lot will be required at that time. An Affidavit Affecting Title Covenant and Encumbrance requiring the plant unit shall be required to be filed concurrently with the final plat.

**Portable Water Supply (Section 4810)**

Potable water supply to the subdivision will be provided by individual on-site wells. New wells drilled in this area are generally drilled to depths of 60-100 feet. In review of the applicant's On-Site Water Supply Study, it appears that adequate quantity and quality water will be available to serve the three lots. The proper State Engineer's permits shall be required at the time any new wells are developed. As of the date of this staff report, DEQ review has not been completed. DEQ review and approval is required prior to recordation of the final plat.

**Sanitary Sewer Systems (Section 4820)**

On-site sewage disposal is proposed for the subdivision. The soils information/report provided by the applicant indicates that the property is suitable for on-site wastewater systems. The County Engineers office has reviewed this report and the proposed project and has no specific concerns. The proper County and permits shall be required at the time the lots are developed, and the location and extent of the sanitary sewer system is determined. The County Engineer has reviewed this project and is in concurrence.

**Zoning District Dimensional Limitations and Standards (Division 2400)**

This property is located in the rural zoning district. Table 2400: Schedule of Dimensional Limitations allows for 3 dwelling units/35 acres with a 70% open space ratio. The total site is 41.87 acres and the applicant is proposing three residential lots and one 31.27-acre open space lot. With the creation of over 70% of this site in an open space easement, the project exceeds the requirements of this regulation. The Rural Zone District allows a 30-foot height limit on structures. The applicant is proposing that structure height be limited not to exceed 22 feet in order to preserve viewsheds.

**Schedule of Dimensional Limitations (Table 2400)**

All new development proposed on any of the lots shall be required to comply with the schedule of dimensional limitations. Residential development shall comply with a maximum lot or impervious surface coverage limitation as established by Section 2440. For lots in developments with required open space, the lot/impervious surface coverage shall be calculated for the entire project area and allocated to each lot at the time a Development Plan is approved.

According to 2440.A, Maximum Impervious Surface Coverage for Residential Lots – Rural District, the allowable impervious surface coverage for sites over ten (10) acres is five (5) percent. Development in this subdivision shall be required to the five (5) percent impervious surface limitation. In that the project proposes over 70% open space and proposes a reduction in the allowable square feet allowed on each lot and a reduced development envelop over what is allowed, the project exceeds the requirements of this regulation.

**Access to Roads, Streets and Highways (Section 4720)**

Access to Lots 20 and 21 would be via a new driveway created along the northern property boundary, off of North Alta Road (County Road 22-32). Access to proposed lot 22 would be through a driveway created along the southern property boundary of the proposed lot 19. The southern driveway would run parallel to the southern property boundary for approximately 1,080 feet, then turn north for approximately 350 feet to connect to the existing driveway that serves a residential lot 16 of the Table Rock Ranch subdivision. Lot 16, also owned by this applicant, is currently developed with three small cabins and a driveway. The "jog" of the proposed southern driveway to connect to an existing driveway was designed to comply with County Regulation 4720, which requires that access drives that connect to County roadways be limited to one access unless it can be demonstrated that additional access connections to the County road are warranted. Both of the proposed new driveways would be setback from the property boundary as required by the Teton County Land Development Regulations. An access permit for this easement has been granted by the Teton County Road and Levee Department. The County Engineer has reviewed this proposal and concludes that the proposed access is acceptable for this subdivision. As mentioned previously,

the Planning Department staff attempted to encourage the developer to only provide one driveway, which may be a better design. However, there is nothing in the LDR's, which prohibits the two driveways.

### **Planned Residential Development (Section 2320)**

This proposal complies with Standards for a Planned Residential Development, as described in Section 2320B.

### **Affordable Housing Standards (Division 49400)**

The affordable housing requirement for this project is 6 persons, which results in a \$6,719.90 affordable housing fee. The applicants preferred alternative is to pay the affordable housing in lieu fee pursuant to Section 49450.c, due to the fact that this is such a small subdivision and the small (3.5 acre) residential lots being proposed. The Teton County housing authority has reviewed this application and concurs that the fee in-lieu is acceptable to them. The fee shall be paid in full at the time of Final Plat

### **Development Exactions (Section 49500)**

A development exaction is a requirement that a developer dedicate land for public use or improvements. The Board of County Commissioners shall require a mandatory dedication of land of 0.03 acres per housing unit or lot. If the Board of County Commissioners determines that suitable sites for public facilities or improvements cannot be dedicated, a payment of a fee-in-lieu of land dedication shall be required.

The applicant proposes to pay a fee-in-lieu of dedication of land. Based on our information and calculations, the development exaction associated with a three-lot development would be \$2,250.00 (This fee is based upon the average market value of undeveloped land in Alta of \$25,000/acre which was obtained by the County Assessor 3/4/02. As such,  $0.03 \times 3 \text{ lots} = .09$ ,  $\$25,000.00 \times .09 = \$2,250.$ )

## **OUTSIDE AGENCY REVIEWS**

### **Wyoming Department of Environmental Quality**

The applicant has received a letter that the proposed water and wastewater systems are adequate to serve the proposal. The letter from DEQ is attached. The State Engineer's office also responded to the project regarding water rights (letter attached). The applicant will be required to adhere to the conditions contained in these letters.

No other outside agencies were asked to comment on this project. The project site is not located in the NRO and has no wetlands associated with it. Further, the site has been heavily grazed or cultivated for several years and the wildlife values associated with this site are minimal. However, the applicant will be required to have the project CC&R's list a few of the standard conditions (i.e., wildlife friendly fencing and garbage containers that are animal-proof, and the prohibition of animal feeding) associated with all subdivisions. This provision will reduce any already less than significant impacts to wildlife.

## **NEIGHBOR COMMENTS**

Three neighbors have commented on this development plan as of the publishing of this report.

**Mr. Lorin Wilson**, the property owner to the north of this site, commented on the location of the northern driveway and the building envelope of proposed lot 20, which is adjacent to his property. Mr. Wilson asked that the applicant consider eliminating the northern driveway and moving the building envelope on Lot 20 to the south. Mr. Wilson's letter is attached.

**Erik Schultz** is the neighbor to the west of this site. Mr. Schultz is concerned about the layout of the proposed lots, which are proposed on the western-most portion of the Boillot property, directly abutting the Shultz property line to the west. Mr. Shultz stated that perhaps a more creative lot layout, which does not have the potential to impare his Teton views, could have been proposed. Mr. Shultz' letter is attached.

A phone call was received from **Mr. Roger Shea**, the property owner to the south of the project site. Mr. Shea was concerned about the proposed southern driveway, which abuts his property line.

### STANDARDS FOR APPROVAL OF DEVELOPMENT PLANS

1. *Consistent with Comprehensive Plan. The proposed Development Plan shall be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.*

True. This application meets the Comprehensive Plans intent of providing reasonable use of land. It also provides for the continuation of agricultural activities.

2. *Impact on Public Facilities. The proposed Development Plan shall not have a significant adverse impact on public facilities and services, including transportation, potable water and wastewater facilities, parks, schools, police, fire and EMT facilities.*

True: The project will provide water and wastewater systems on-site. It will not have an adverse impact on public facilities.

3. *NRO/SRO. The proposed Development Plan shall achieve the standards and objectives of both the NRO and the SRO.*

N/A

3. *Other relevant standards of these Land Development Regulations. The proposed Development Plan shall comply with all standards imposed on it by all other applicable provisions of these Land Development Regulations for use, layout, and general development characteristics.*

True. See the "Relationship to Applicable LDRs" section of this staff report.

4. *Conditional and Special uses. The proposed Development Plan shall comply with the conditional and special use standards.*

Not Applicable.



**CONSERVATION EASEMENT**

THIS GRANT DEED OF CONSERVATION EASEMENT is made this the \_\_\_\_ day of \_\_\_\_\_, 2001, by **Paul Boillot and partner**, having an address at \_\_\_\_\_, ("Grantors"), in favor of the Teton Regional Land Trust, Inc., a non-profit Idaho corporation, whose mailing address is P.O. Box 247, Driggs, Idaho 83422, ("Grantee").

**WITNESS THAT**

WHEREAS, Grantors are the sole owners in fee simple of certain real property located in Teton County, Wyoming (the "Property"), described more particularly in Exhibit A, (Legal Description) attached hereto and by this reference made a part thereof, which property remains largely in an undeveloped and natural state; and

WHEREAS, the Property possesses substantial agricultural, scenic, wildlife and natural values (collectively, "Conservation Values") of great importance to the Grantors, Grantee, the people of Teton Valley and the people of Wyoming and the United States, and their protection will yield a significant public benefit; and

WHEREAS, the Property is situated within Teton Valley, Idaho and Wyoming, which includes portions of Targhee National Forest, nationally recognized views of the Teton Mountain Range, significant wildlife habitats, and is an important portion of the Greater Yellowstone Ecosystem; and

WHEREAS, the Property is located within 25 miles of Yellowstone National Park, a part of the National Park System, and within 25 miles of the Jedediah Smith Wilderness, a designated Wilderness within the National Wilderness Preservation System, and is thus recognized as land of importance for open space values by Section 508 of Public Law 105-34, the Federal Taxpayer Relief Act of 1997, and

WHEREAS, the Property features highly productive soils as described by the Natural Resources Conservation Service and is an important part of the productive agricultural land still remaining in Teton County, Wyoming; and

WHEREAS, protection of this Property by means of a Conservation Easement is consistent with and will further the goals and policies of the Teton County Wyoming Comprehensive Plan, which became effective on \_\_\_\_\_ and is consistent with the agricultural lands element of that Plan, which endorses protection of agricultural lands; and

WHEREAS, the Wyoming Department of Game and Fish and United States Natural Resources Conservation Service have recognized the Property's important natural values; and

WHEREAS, the Property lies on the North Alta Road, a primary county access route within the Alta portion of Teton County, Wyoming and is within a very scenic area near the West Slope of the Teton Mountain Range that is nationally renowned for its scenic values; and

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property dated and on file at the offices of the Grantee, and incorporated by this reference ("Baseline Documentation"), Exhibit B, which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective, though noninclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors are authorized to subdivide and develop the Property according to Teton County and State of Wyoming regulations, and Grantors do not wish to develop this Property; and

WHEREAS, the development prohibited by this Conservation Easement would seriously impair the Conservation Values of the Property; and

WHEREAS, Grantors intend that the Conservation Values of the Property be preserved and maintained by permitting only those uses on the Property that do not significantly impair or interfere with them, including, without limitation, those land uses relating to farming, ranching, and recreation existing at the time of this grant; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, a map depicting the Property and presenting information referred to by this Conservation Easement ("the Map of the Property") was filed in the office of the Clerk of Teton County, Wyoming, as Map 1; and

WHEREAS, for the purposes of convenience only and not as a substitute for the Map of the Property, an incomplete and not totally accurate reproduction of the Map of the Property is attached to this Conservation Easement as Exhibit C; and

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, whose primary purpose is the conservation of the natural and agricultural resources, significant ecosystems, scenic open spaces, and traditional lifestyles of the Upper Snake River Valley, Idaho and Wyoming and surrounding areas; and

WHEREAS, Grantee has agreed to accept this grant of certain interests in the Property upon the condition and understanding that the intentions of the Grantors regarding the future uses and preservation of the Property as expressed in this document shall be forever honored and defended; and

WHEREAS, the Property meets the Grantee's criteria for Conservation Easements and the Grantee's Board of Directors has duly adopted a resolution approving the Grantee's execution of this Conservation Easement;

NOW, THEREFORE, in consideration of the Conservation Values described above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Wyoming, and with the intention of making a voluntary and irrevocable gift in perpetuity:

Grantors hereby voluntarily grant and convey to Grantee a Conservation Easement, as hereinafter defined, (the "Principal Easement"), over and across all the Property (as described in Exhibits A and C) to preserve and protect in perpetuity the Conservation Values of the Property, which Principal Easement shall be appurtenant to the Grantee's Parcel, as described below, and shall benefit and be enforceable by Grantee and its successors in ownership of the Grantee's Parcel forever, and shall bind Grantors and Grantors' successors in ownership and/or use of the Principal Parcel forever. Grantors warrant to Grantee that the Principal Easement shall be perpetual and shall not at any time be subject to any senior mortgage, lien, or other encumbrance other than restrictive covenants, road and utility easements, and other similar encumbrances of record existing at the time this Instrument is signed.

Grantors convey and warrant to the Grantee that portion of the Property described in Exhibit D (the "Grantee's Parcel"), excepting and reserving, with respect to the Grantee's Parcel, a conservation easement, as hereinafter defined (the "Retained Easement"), to identify, preserve, and protect in perpetuity the Conservation Values of the Grantee's Parcel in perpetuity together with the right to enter upon and use the Grantee's Parcel for all purposes authorized under the terms of Paragraphs 3 and 4 below. The Retained Easement and other rights of entry and use reserved by Grantors with respect to the Grantee's Parcel shall be appurtenant to that portion of the Property described in Exhibits A and C (the "Principal Parcel") and shall benefit and be enforceable by Grantors and Grantors' successors in ownership of the Principal Parcel.

The "Principal Easement" and "Retained Easement" shall hereinafter collectively be referred to as the "Easement".

1. Purpose. It is the primary purpose of the Conservation Easement granted herein to assure the protection of productive soils and other resources needed to support the Property's agricultural uses, including cultivation of all forms of seed and forage crops and forage for livestock and to protect the open space, scenic values, and wildlife habitats found on the Property and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantors intend that this Conservation Easement will confine the use of the Property to such activities, including, without limitation, agricultural, scenic, and limited recreational, as are not inconsistent with the purpose of this Conservation Easement.

1.1. Paragraphs 2 and 3 of this Conservation Easement identify rights conveyed to Grantee and rights reserved to Grantors respectively. It is the intention of this instrument to better define those rights so that Grantors and Grantee can accomplish the purposes of this Conservation Easement in a cooperative and amicable manner.

2. Affirmative Rights Conveyed by the Conservation Easement to Grantee. To accomplish the purpose of the Conservation Easement, the following rights are conveyed to Grantee by this easement:

2.1. To identify, preserve and protect in perpetuity the Conservation Values of the Property, subject to the terms of the grant of this easement and in keeping with permitted practices noted in Paragraph 3.

2.2. To enter upon the Property to enforce the rights herein granted and in connection therewith to inspect, observe, study, and make scientific observations of the Property, all in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such entry, provided that, except in cases where Grantee determines that immediate entry upon the Property is essential to prevent or mitigate a significant violation of this Conservation Easement, such entry shall be upon reasonable prior notice given by or on behalf of Grantee to one or more of the then owners of the Property, and Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

2.3. To prevent any unpermitted activity on or unpermitted use of the Property that is inconsistent with the purpose of this Conservation Easement or which may have a significant adverse impact on the conservation interests associated with the Property, and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in paragraph 6.

2.4. To place and maintain on the Property a sign that a Conservation Easement has been donated to Grantee, subject to the approval of Grantors as to design, size, and location.



3. Permitted Uses and Practices. Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement and will not result in significant injury to or the destruction of a significant conservation value. Without limiting the generality of the foregoing, the following rights are expressly reserved by Grantors:

3.1. To reside on the Property and to designate and to develop, in accordance with the provisions of this paragraph 3.1, three "Building Areas" as described below, provided that Grantor agrees that the "Building Areas" shall not exceed the acreage described for each below, and that the following permitted uses and practices and restrictions apply to the "Building Areas". Notwithstanding anything in this paragraph to the contrary, all structures permitted hereby shall be located within the "Building Areas" defined herein. Grantors and Grantors assigns shall comply with local, state, and federal regulations that deal with building construction and location, and acquire all appropriate local, state and federal building permits. The designated "Building Areas" shall be located as described below and within the area designated "Area Suitable for Buildings" on the accompanying map, Exhibit D. To the extent reasonably feasible, the "Building Areas" shall not be located in wetlands nor near streams. Further, to the extent reasonably feasible, access roads shall avoid wetlands and streams and shall be located so as to minimize conflicts with agricultural uses of the Property. Grantors agree to provide Grantee with prior written notice pursuant to paragraph 6.1 herein before any construction of new residences or guesthouses. Construction or reconstruction of non-residential, farm related structures shall not require the approval of Grantee.

3.1.1. To construct, use, own, occupy, lease, repair, and reconstruct within each Building Area one "Principal Residence" and normal residential and structures, utility systems and related improvements, including, but not limited to a garage, well, irrigation system, and fencing. Notwithstanding anything in this paragraph to the contrary, all structures permitted hereby shall be located within the designated Building Areas defined herein.

Each "Building Area" shall consist of 2 (two) acres and shall be located within the area designated as "Area Suitable for Buildings" shown in Exhibit D.

The "Principal Residences" shall not exceed 5,000 square feet of living area, and shall not exceed 30 feet in height from the natural ground level, except with the prior written permission of the Trust, which permission shall not be unreasonably withheld.

3.1.2. To install and maintain all reasonably necessary water, sewage, and other utilities in connection with the permitted structures described in the subparagraphs of this Paragraph 3.1, so long as all such utilities are installed and maintained underground, it being understood that any septic system must be constructed in strict conformity with all applicable state and local laws.

3.1.3. To construct, maintain and use for pedestrian and vehicular access, roadways as needed to access the Building Areas as determined by mutual written agreement of Grantors and Grantee. Grantors agree to provide Grantee with prior written notice pursuant to paragraph 6.1 herein before any construction of new roadways.

3.1.4. Anywhere within the designated Building Areas, to construct, locate, maintain, repair and use minor, insubstantial structures and improvements which

might be considered part of usual residential activities, including but not limited to equipment storage buildings, outdoor walkways, decks attached to buildings, landscaping, art, lawns and flower and vegetable gardens and associated fences.

3.1.5. Within the designated Building Areas only, normal residential ashes, trash and garbage may be stored on a temporary basis for burning or disposal off the property. Building materials may be stored temporarily during construction activities.

3.1.6. No residential buildings or associated developments or utilities except those specifically permitted by this paragraph 3.1 for the Building Areas shall be constructed or located anywhere on the Property.

3.1.7. Use of the Property for lawful "home-occupancy" commercial use is permitted, provided that said use occurs solely inside a residential building and has no effect on the wildlife, scenic, agricultural and natural values of the Property, and in particular has, at most, negligible impact on the amount and character of traffic on the Property.

3.1.8. Pets, most specifically dogs, shall be under the control of property owners such that harassment of wildlife is prevented.

3.2. To engage in any and all agricultural uses of the Property in accordance with sound, generally accepted agricultural practices. For the purposes of this easement, "agricultural uses" shall be defined as: breeding, raising, pasturing, and grazing livestock of every nature and description according to specifications included under paragraph 3.3; breeding and raising bees, poultry, and other fowl; cultivating, raising, harvesting, and producing grains, hay, potatoes, and other crops in accordance with accepted standards for crop rotation to protect soils; and the primary processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Property.

3.3. To pasture, graze, feed, water, and care for livestock in compliance with acceptable management practices. For the purpose of this Conservation Easement, acceptable management practices shall be defined by the standards and specifications of a grazing plan to be prepared by the United States Department of Agriculture, Natural Resources Conservation Service or other competent authority, for the purpose of sustaining local range and protecting the natural resources of the Property. Should Grantors elect to graze livestock on the Property, a grazing plan shall be prepared under the terms stated above. The terms and conditions of such grazing plan, upon completion, shall be provided to Grantee pursuant to paragraph 6.1 herein.

3.3.1. Commercial game ranching with confined, native wildlife shall not be permitted. Specifically, domestic elk farming is not permitted.

3.4. To construct, maintain, and repair: (1) Fences along the property boundaries; (2) Cross fences and riparian fences within pasture areas as needed to manage livestock and prevent excessive grazing in accordance with the above mentioned Natural Resources Conservation Service grazing plan; (3) fences as may be necessary or appropriate for the Building Area as defined in subparagraph (3.1) provided that all such fences shall be located within an area designated as a "Building Area" on the Map of the Property and (4) only those additional fences as may be necessary or appropriate within the intent of this Conservation Easement; provided, however, that all fences shall comply with the following requirements, except by prior written permission of Grantee which permission shall not be unreasonably denied.

3.5. To lawfully use agrochemicals, including, but not limited to, fertilizer, herbicides, and biocides, only in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable habitat management purposes, provided that the use of such chemicals shall in all cases be in compliance with local, state, and federal regulations, standards, and guidelines and conducted in such a manner as to minimize adverse effects upon the underlying natural habitat values, and surface and subsurface water resources of the Property.

3.6. To construct or develop on the Property wildlife habitat improvements, provided that any such construction or development shall be in compliance with the intent of this Conservation Easement, which is to conserve the diversity of wildlife species native to the Upper Snake River Watershed and found on the Property.

3.6.1. If Grantors determine to construct or develop wildlife habitat improvements, Grantors agree to develop a general plan for enhancement of wildlife habitats in consultation with Wyoming Department of Fish and Game or other recognized wildlife experts and Grantee. Once Grantors and Grantee agree to the terms of this Enhancement Plan, actions taken to implement this plan will not then require subsequent consultation with wildlife agencies or Grantee except where required by law.

3.7. To reintroduce, plant, and maintain native plant and wildlife species, meaning those species whose natural distributions include the Upper Snake River Watershed, which have been reduced or extirpated from their former range or exist below normal densities, and whose reintroduction is intended to protect, preserve and enhance the natural, aesthetic, scenic, and wildlife habitat values of the Property.

3.8. To conduct studies on resident wildlife species, including those which involve capturing and marking of individual animals, provided that all such studies are to be conducted by competent wildlife researchers with all necessary permits as required by law to conduct such studies.

3.9. To remove trees, bushes, grasses and other vegetation from the Property only if the removal constitutes an action that is compatible with the purpose of this Conservation Easement.

3.9.1. Actions which are not compatible with the purpose of this Conservation Easement, unless specifically permitted by the prior written consent of Grantee, include, but are not limited to: clearcutting of native vegetation, wide-scale removal of vegetation or soil, grading, and similar activities.

3.10. To use the Property for walking, hiking, horseback riding, skiing, fishing, hunting and other recreational uses consistent with the purpose of this Conservation Easement and all applicable governmental regulations in regard to taking of fish and wildlife.

3.11. To introduce and maintain non-native vegetation and animal species on the Property to protect, preserve and enhance the wildlife habitat values of the Property, but only with the prior written consent of Grantee which consent may be refused or limited in Grantee's discretion.

3.12. The eradication, abatement, and control of toxic or noxious weeds or animals are permitted.

3.13. Grantors specifically retain all rights, title and interest in and to all tributary and non-tributary water, water rights, and related interests, in, on, under or appurtenant to the Property.

4. Prohibited Uses and Practices. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

4.1. Division, subdivision or defacto subdivision through sales, leases or otherwise where done so for the purpose of residential development, except as permitted by Paragraph 3 above to allow for sale of residential Building Areas.

4.2. Any residential, commercial or industrial buildings, structures of any kind, or associated developments or utilities, except as permitted by Paragraph 3 above.

4.3. Drilling, filling, excavating, dredging, mining or removal of topsoil, sand, gravel, rock, minerals, hydrocarbons, or other materials on or below the surface of the Property, or other significant changing of the topography of the Property.

4.4. Dumping or storing of ashes, trash, garbage, junk or other offensive materials, except for uses permitted by a subparagraph of Paragraph 3 above.

4.5. Manipulation or alteration of natural watercourses, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.6. Manipulation or alteration of vegetation, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.7. Outdoor burning of any materials except where the burning is in conformity with applicable governmental controls and regulations and, in the case of vegetation, where the burning is also beneficial to wildlife.

4.8. Off-road use of vehicles, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.9. Establishment or maintenance of any livestock feedlots or game farms.

4.10. Commercial timbering of any kind.

4.11. Construction of any road, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.12. Any industrial use.

4.13. Dude ranching.

4.14. Harassment of wildlife by any person or domestic animal.

4.15. Use of the Property for commercial uses is prohibited, except as necessary for uses permitted by a subparagraph of Paragraph 3 above.

4.16. All other uses that are inconsistent with the purpose of this Conservation Easement.

5. Documentation of Use and Condition of Property--Baseline Documentation. In order to establish the present condition of the natural and wildlife resources and man-made features of the Property, so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, an inventory of the Property's relevant resources, features and conditions shall be prepared, which inventory shall be attached hereto and by this reference made a part hereof as "Exhibit B". Grantors and Grantee agree that said inventory is an accurate representation of the Property at the time of the signing of this conveyance. In the event a controversy arises with respect to the nature and/or extent of the historical and/or present use of the Property or the physical condition of the Property as of the date of the signing of this Conservation Easement, the parties shall not be foreclosed from utilizing all relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

6. Notice and Approval.

6.1. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraph 3, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Conservation Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question. The notice shall inform Grantee of all aspects of the proposed activity, including, but not limited to, the nature, situs, magnitude, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement. Such notice shall be sent by registered or certified mail, return receipt requested, addressed to the following: Teton Regional Land Trust, P.O. Box 247, Driggs, Idaho, 83422, or to such other address as Grantee may previously designate to Grantors in writing.

6.2. Grantee's Approval. Where Grantee's approval is required, as set forth in paragraphs 3 and 4, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Conservation Easement.

6.3. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, either party may request in writing to the other that the matter be mediated. Within fifteen (15) days of the receipt of such a request, the two parties may jointly elect a single third-party mediator to hear the matter. A mediated solution is not binding upon the parties and does not set a legal precedent. Notwithstanding the foregoing, Grantee reserves its rights to remedy of a violation of the terms of this Conservation Easement according to Paragraph 7 below.

6.4. Arbitration. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantors agree not to proceed with the use or activity pending resolution of the dispute, and the parties are not able to arrive at a mediated solution to the dispute, either party may refer the dispute to arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall elect a single arbitrator to hear the matter. In the event that Grantee exercises this right, if Grantors and Grantee agree upon selection of one person to serve as arbitrator, there shall be only one (1) arbitrator. If the parties are unable to agree on the selection of a single arbitrator within thirty (30) days after the demand for arbitration, there shall be three (3) arbitrators, one named by Grantee and one named by the Grantors within sixty (60) days after the demand for arbitration, and a third chosen by those two designated arbitrators. All costs of the

arbitration, including arbitrators' fees and reasonable attorneys' fees, shall be borne by the losing party. Notwithstanding the foregoing, Grantee reserves its rights to remedy of a violation of the terms of this Conservation Easement according to Paragraph 7 below.

## 7. Grantee's Remedies.

7.1. Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

7.2. Injunctive Relief. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty- (30) day period, fail to begin curing such violation within the thirty- (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

7.3. Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Conservation Easement, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

7.4 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this section 7 without prior notice to Grantors or without waiting for the period provided for cure to expire.

7.5. Scope of Relief. Grantee's rights under this section 7 apply equally in the event of either actual or threatened violations of this Conservation Easement. Grantors agree that Grantee's remedies at law for any violation of the Conservation Easement are inadequate and that Grantee shall be entitled to injunctive relief described in paragraph 7.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of other legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7.6. Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Conservation Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

7.7. Forbearance. Forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any term of this Conservation Easement or of any of Grantee's rights under this

Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

7.8 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

7.9 Acts Beyond Grantors' Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, unauthorized use of the Property by trespass, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement pursuant to U.S. Treasury Regulations §§ 1.170A-14(d)(4)(ii)(B) and §§ 1.170A-14(d)(4)(ii)(C).

9. Costs, Liabilities, Taxes, and Environmental Compliance.

9.1. Costs, Legal Requirements, and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate general liability insurance coverage. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, or local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

9.2. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with sufficient evidence of payment upon request.

9.3. Representations and Warranties. Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge:

(a) Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Property prior to the date of this Conservation Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the Property, which is free of all such contamination;

(b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements;

(c) Grantors and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

9.4. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be held responsible therefor.

9.5. Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and corresponding state statutes.

10. Hold Harmless. Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and corresponding state statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraph 9.

#### 11. Extinguishment of Conservation Easement.

11.1. Extinguishment. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to termination or extinguishment, shall be the stipulated fair market value of the Conservation Easement, or proportionate part thereof, as determined in accordance with this Paragraph 11.

11.2. Valuation. This Conservation Easement constitutes a real property interest immediately vested in Grantee upon the execution of this Conservation Easement, which, for the



purposes of this Paragraph 11, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) a fraction, the numerator of which is the value of the Conservation Easement at the time of this conveyance and the denominator of which is the value of the Property, without deduction for the value of this Conservation Easement, at the time of this grant. (The values at the time of this grant [are-or-shall be] those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this Paragraph 11, the ratio of the value of this Conservation Easement to the value of the Property unencumbered by this Conservation Easement shall remain constant.

11.3. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 11.2. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.

11.4. Application of Proceeds. Grantee shall use all or any proceeds received under the circumstances described in this paragraph 11 in a manner consistent with the conservation purposes exemplified in this Conservation Easement.

12. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Grantors and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purposes of this Conservation Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Teton County, Wyoming.

13. Assignment. This Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended, (or any successor provision then applicable), or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way.

14. Conservation Easement Granted in Perpetuity. The Conservation Easement herein granted shall be a burden upon and shall run with the Property in perpetuity and shall bind the Grantors and Grantors' heirs, successors and assigns forever.

15. Subsequent Transfers. The Grantors agree to incorporate the terms of this Conservation Easement by specific reference in a separate paragraph, along with the recording data of this Conservation Easement, in any deed or other legal instrument by which Grantors divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The Grantors further agree to give written notice by certified mail to

Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of the Grantors to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16. Estoppel Certificates. Upon request by Grantors, Grantee shall within twenty (20) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors' compliance with any obligation of Grantors contained in this Conservation Easement or otherwise evidences the status of this Conservation Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors' expense, within thirty (30) days of receipt of Grantors' written request therefor.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid to such address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion in the official records of Teton County, Wyoming, and may re-record at any time as may be required to preserve its rights in this Conservation Easement.

19. General Provisions.

19.1. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Wyoming.

19.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of Wyoming Code. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

19.3. Severability. If any provision of this Conservation Easement, or application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

19.4. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 12 above.

19.5. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

19.6. Joint Obligation. The obligations imposed by this Conservation Easement upon Grantors shall be joint and several.

19.7. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their

respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantors" and "Grantee" wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above named "Grantee" and its successors and assigns.

19.8. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

19.9. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

19.10. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the Grantors and Grantee have set their hands on the day and year first above written.

By \_\_\_\_\_  
"GRANTOR"

By \_\_\_\_\_  
"GRANTEE"

By \_\_\_\_\_  
"GRANTOR"

By \_\_\_\_\_  
"GRANTEE"

STATE OF WYOMING    )  
                              )  
COUNTY OF TETON    )    ss

On this third day of June, 2001, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared (\_\_\_\_\_) known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the Grantors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

S  
E  
A  
L

\_\_\_\_\_  
Notary Public for Wyoming  
Residing at:  
My Commission Expires:

STATE OF WYOMING     )  
                              )  
COUNTY OF TETON    )     ss

On this third day of June, 2001, before me, \_\_\_\_\_, a  
Notary Public in and for said State, personally appeared (\_\_\_\_\_), known  
or identified to me to be the persons whose names are subscribed to the within instrument, and  
acknowledged to me that they executed the same on behalf of the Teton Regional Land Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day and year in this certificate first above written.

S  
E  
A  
L

\_\_\_\_\_  
Notary Public for Wyoming  
Residing at:  
My Commission Expires:

**EXHIBIT A      PROPERTY LEGAL DESCRIPTION**

**EXHIBIT B    PROPERTY BASELINE ASSESSMENT**

**EXHIBIT C      PROPERTY MAP (APPROXIMATE BOUNDARIES ONLY)**

**EXHIBIT D PROPERTY MAP WITH APPROXIMATE LOCATION OF BUILDING AREAS (OR WITH INDICATION OF AREA SUITABLE FOR BUILDING AREAS)**