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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HOG ISLAND SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions ("covenants") regulating and controlling the use and development of real property made effective this 18<sup>th</sup> day of November 1999, by Philip and Freddie Wilson.

**I. Purpose.** Philip Wilson and Freddie Wilson, husband and wife ("Declarants") are the owners of certain real property located in Teton County, Wyoming and more particularly described in Exhibit A attached hereto and incorporated by reference ("the property"). The Declarants are adopting the following covenants, conditions, and restrictions to preserve and maintain the natural character and value of the property for the benefit of all owners of the property or any part thereof.

**II. Declaration.** Declarants hereby declare that the property described in Exhibit A attached hereto, and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following covenants. The covenants shall run with the property and any lot thereof, and shall be binding upon all parties having or acquiring any legal or equitable interest of any part of the property.

**III. Definitions.** The following terms and phrases used in these covenants shall be as follows.

**1. Common services** – shall mean roadway maintenance, snow removal services, utility lines maintenance or repair services, repair of the Common Road and Shared Access Road and the utility lines located in the right of way of such roads, and the Hog Island Subdivision water system.

**2. Design Committee** – shall mean the committee responsible for the administration and enforcement of the covenants and conditions.

**3. Development** – shall mean any major alterations of the natural land surface, and major alterations or new construction of all buildings, structures or other site improvements placed on the land.

**4. Lot** – shall mean any portion of the property as shown on a recorded plat.

**5. Owner** – shall mean all the recorded owners of a lot, including a contract purchaser, but excluding anyone having a security interest in the lot to serve as security for the performance of an obligation.

**6. Principal Residence** – shall mean the single family residential structure, constructed on any lot of the property, which is the principal use of such lot, and to which other authorized structures on such lot are accessory.

**7. Market Lots** – shall include those lots platted as lots one (1) through eleven (11).

**8. Attainable Lots** – shall include those lots platted as lots twelve (12) through fourteen (14).

**9. Affordable Lots** – shall include those lots platted as lots fifteen (15) through seventeen (17).

**10. Lot 18** – shall be platted as a residential lot, with the express caveat and proviso that Phil and Freddie Wilson's construction business,

Grantor: WILSON, PHILIP ET UX  
 Grantee: THE PUBLIC  
 Doc 0504789 bk 389 pg 627-630 Filed at 11:57 on 11/30/99  
 Sherry L Daigle, Teton County Clerk fees: 37.00  
 By ~~MARY D ANTROBUS~~ Deputy

Grantor: WILSON, PHILIP ET UX  
 Grantee: THE PUBLIC  
 Doc 0504985 bk 389 pg 885-896 Filed at 3:15 on 12/01/99  
 Sherry L Daigle, Teton County Clerk fees: 37.00  
 By MARY D ANTROBUS Deputy

3-B Construction, enjoys grandfathered status at that location, in accordance with the October 11, 1999 memo from John McMullen to the Board of County Commissioners, attached as Exhibit "A", and that the Wilson family may continue to operate that business at that location.

**11. Open Space** - shall include that seven (7) acre portion, known as the hay pasture, of platted lot nineteen (19).

**12. Animal Unit** – shall mean:

- (a) one adult horse or a mare and colt less than one (1) year old; or
- (b) one yearling (or older) horse; or
- (c) one adult cow including a cow with a calf less than six (6) months old; or
- (d) one steer, bull or heifer more than six (6) months old; or
- (e) one adult llama; or
- (f) three sheep or ewes with lambs less than six (6) months old.

**IV. Association Membership.** Every owner of a lot that is subject to assessment shall be a member of the Hog Island Homeowners Association (the "association"). Membership shall be appurtenant to and may not be separated from ownership of any lot that is subject to assessment.

**V. Voting Rights.** The association shall have one class of voting membership. Members shall be all lot owners and each lot shall be entitled to one vote.

**VI. Meetings.** The Design Committee shall call and conduct an annual meeting of association, and shall meet from time to time as necessary to administer and enforce these covenants. The owners through the purchase of their lots, agree to serve on the design committee if selected. The design committee shall adopt such rules for the conduct of its business as are appropriate, including designation of officers and procedure for annual meetings of the association and design committee.

**VII. Design Committee.**

**1. Membership** - The Design Committee shall consist of Philip Wilson and Freddie Wilson for the first 15 years. Vacancies in the committee caused by death, resignation, or inability to act shall be filled with Wilson family members for the first 15 years. Following the initial 15 year term, the term of a member shall be for three years. All design committee members shall be owners of lots within Hog Island Subdivision. The design committee shall consist of two members. The design committee shall be elected by a majority vote of the owners of the lots within the property.

**2. Authority and Duties** –

(a) The Design Committee shall be responsible for the enforcement and administration of the requirements of these covenants and shall contract for and supervise common services, enforce the development and use regulations and take all other actions necessary to administer and enforce these covenants. Only the Design Committee shall have the power to approve

all structures, water systems, waste disposal systems and livestock facilities. Each lot owner shall obtain written approval from the Design Committee prior to constructing any structures or improvements on his/her lot(s).

(b) The Design Committee shall contract for snow removal, maintenance service on the common road and joint use road, and maintenance of the Hog Island community water system. The Design Committee shall prepare an annual budget and submit annual statements to each of the lot owners based upon its estimate. Lot owner shall pay billing for common services within thirty (30) days of billing date. Each lot owner will be responsible for and billed for their respective share of the cost of all common service costs. The design committee shall send billing to each lot owner in accordance with their proportionate shares. Additional billings shall be paid by lot owners within thirty (30) days of billing date. No assessments should be levied against the owner of lot 19, and lot 19 will not be considered when determining the apportionment of the cost of the common services.

**IX. Development and Land use Restrictions** – All development and use shall conform to the following requirements:

1. **Authorized Structures** – No building or structure shall be constructed on any market lot except single-family residences, garage facilities, guest houses, associated outbuildings, barns, stables and corral facilities.

2. **Required Vegetation** – Each homeowner will be responsible for installing two 8' evergreen trees and three 3" diameter deciduous trees prior to obtaining a certificate of occupancy.

3. **Colors** – Exterior colors of all development shall be painted with indigenous earth tones.

4. **Roof Materials** – Reflective roof materials shall not be used and the colors of roofs shall be similar to the colors of surrounding vegetation or land features.

5. **Building Envelopes** – It is understood that Lots 1, 9, 10 and 11 have building envelopes, which require that all manmade structures be built within the confines of these building envelopes.

6. **Utilities** – Electrical and telephone will be installed underground. All utilities on lots shall be completed underground, at owners expense.

7. **Maintenance** – Each lot and all improvements thereon shall be maintained in clean, safe and slightly condition. Unusable vehicles or units shall be kept in covered or garage area.

8. **Water System** – Each structure designed for occupancy or use by human beings, shall be connected to the Hog Island water supply system at the home owner's expense. Said water is for domestic and animal use only. Any irrigation must be submitted to design committee for written approval, prior to installation.

9. **Waste Disposal** – Each structure designed for occupancy or used by human beings, shall be connected to a private, individual waste disposal system at the owner's expense. Such waste disposal system shall conform to the standards applicable to the area, including without being limited to, the Wyoming Public Health Department, and the specifications and plans must be submitted to the Design Committee for written approval prior to installation. No outdoor toilets shall be permitted, except during construction.

**10. Excavation and Mining** – No excavation for stone, sand, gravel, or earth, shall be made on any lot, except for such excavation as may be necessary in connection with the erection of an approved improvement thereon. No oil drilling, oil development operation, quarrying, or mining operations of any kind, shall be permitted on any lot.

**11. Livestock and Pets** – Livestock or pets shall be controlled at all times so that they do not cause a nuisance to neighboring lot owners and so that the presence or activity of such pets or livestock does not harass or endanger wildlife. Livestock shall be kept and maintained within the approved stables, corral facilities, and pasture areas.

**12. Grazing** – Grazing on the lots will be conducted in accordance with the instructions contained in "Living on a Few Acres in Wyoming" (University of Wyoming Cooperative Extension Miscellaneous Publication # 86) which will be provided to each owner and is incorporated herein by reference and in accordance with Proposed Pasture Grazing Guidelines for Hog Island Subdivision, South of Jackson, Teton County, Wyoming incorporated herein by this reference and the guidelines below. Grazing on the open space, or the seven (7) acres of the ten (10) acre Lot 19, shall be governed by the terms and conditions of the document entitled "Management of the Ten Acre Open Area", attached as Exhibit "B". Individual lot owners do not have the right to utilize the open space for grazing livestock at any time.

(a) Number of Animals: For the lots either with or without pastures, excepting lot 19 in the Hog Island Subdivision, the maximum animal units allowed per lot are four (4). These limits apply if animals are corralled at all times or if they are on pasture part of the time and corralled for the remainder of the year. Affordable lots shall have no livestock corralled or pastured thereon after construction of any building or structure to be used by human beings has begun. Lots 1 and 2 shall have no animals on them at any time, either before or after construction of any building or structure has begun.

(b) Pasture and Management Restrictions:

- (i) Each lot upon which livestock is permitted, excepting lot 19, must have at least two (2) pastures.
- (ii) Each lot upon which livestock is permitted, excepting lot 19, must have a secure corral. Horses or other animals must be corralled and fed when not on pasture.
- (iii) Access to pastures must be restricted in winter except for lot 19.
- (iv) Weeds must be controlled in pastures, fences and around barns and corrals.
- (v) Animals are not allowed in pastures during and for two (2) days following irrigation or for two (2) days following heavy rains when ground is very muddy.
- (vi) Manure piles from corrals and barns must be in areas where they are not conspicuous and removed from property at least twice a year.

- (vii) Owners must drag pastures at least once a year to break up and spread manure.
- (viii) Hay must be stored neatly and either covered or in a permanent roofed facility.
- (ix) At no time shall areas outside of corrals be grazed when forage is below three inches in height and no bare dirt shall be allowed outside of corrals. When forage reaches three inches, animals will be corralled until a height of five inches is reached.

**13. Fencing** – Fences shall be treated as improvements and are subject to approval of the design committee. Additionally, all fencing must comply with the requirements of the Teton County Land Use Regulations.

**X. Easements.** There is, hereby, reserved for the purpose of installing and maintaining utility facilities an easement on the lots. There is also reserved a ten (10) foot utility easement on the south side of the rodeo arena for U.S. West and AT&T.

**XI. Assessments.** The following assessments will be levied against association members:

**1. Yearly Assessments** – An assessment for power to run the common pumps, to maintain the water system, to provide and maintain water treatment and to maintain and replace common water pumps will be assessed on a yearly basis.

**2. Special Assessments** – Special Assessments shall be assessed by the design committee to meet emergency or unusual conditions that have arisen with regard to common services, access facilities and utilities. Said billing shall be paid by lot owners within thirty days of the billing date.

**3. Road Paving** - If Declarants pave the subdivision's roadway(s), they may assess the association members pro rata for the cost of that paving.

**XII. Employee Housing Triplex.** A triplex to be used for employee housing shall be allowed on Lot 18, and these Units shall be deed restricted so that they may only be used by persons employed in Teton County.

**XIII. Limitations of Liability.** Neither the Design Committee nor any member thereof shall be liable to any party for any action or inaction with respect to any provision of these covenants, provided that the Design Committee or member thereof has acted in good faith.

**XIV. Violations, Enforcement, Liens and Costs.** The limitations and requirements for land use and development set forth in these covenants shall be enforceable by the design committee. Any lot owner who uses or allows his/her lot to be used or developed in violation of these covenants further agrees to pay all costs incurred by the Design Committee as a result of any actions necessary to enforce the covenants.

**XV. Amendment.** These covenants may be amended by the written consent of all association members

**XVI. Duration of Covenants.** All the covenants, conditions and restrictions set forth herein shall continue and remain in full force and effective at all times against the property and the owners, subject to the right of amendment as set forth in article 14 hereof.

**XVII. Application of Covenants.** Every owner or purchaser of a lot within the property shall be bound by and subject to all of the provisions of this declaration, unless expressly excepted, and every lot owner or purchaser through his/her purchase or ownership expressly accepts operation and enforcement of all of the provisions of this declaration.

IN WITNESS WHEREOF, Declarants have executed this Instrument effective the day and year first above written.

**DECLARANTS:**

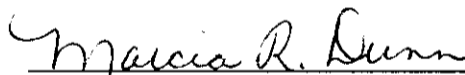
  
\_\_\_\_\_  
PHILIP WILSON

  
\_\_\_\_\_  
FREDDIE WILSON

STATE OF WYOMING        )  
                                  ) SS.  
COUNTY OF TETON        )

The foregoing instrument was acknowledged before me by Philip Wilson and Freddie Wilson, Grantor, this 18<sup>th</sup> day of November, 1999.

Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
3/9/02



MANAGEMENT OF THE 10 A. OPEN AREA (continued)  
Arena Area (continued)

Specific Management Guidelines for the Arena Area include:

- 1) All fences must be kept in good repair and appearance.
- 2) Corrals and stalls must be cleaned regularly and manure removed to prevent odors and flies.
- 3) Hay and other feed must be stored neatly and either covered or in roofed structure.

Hay/Pasture Area

The management of the 7 acres of hay/pasture ground in the open area will also continue as it has been in the past. The area will not be grazed during the summer until the hay has been cut in mid-summer or later. Then, after some re-growth has occurred, the area will be grazed with horses. Continuing this type of management has definite aesthetic and ecological advantages, namely:

- 1) Grass plants are allowed to achieve full growth before they are cut, thus allowing them to maintain maximum vigor.
- 2) Mowing the open area creates a uniform look, whereas pastures grazed and not mowed will always have a somewhat uneven appearance.
- 3) Grazing with horses after mowing will maintain this uniform look which should be aesthetically appealing.

Specific Management Guidelines for Hay/Pasture Area:

- 1) Allow grass in area to mature or reach appropriate height for best hay production.
- 2) Put up and remove hay from area.
- 3) Irrigate area if required (not needed most years).
- 4) Allow green re-growth to achieve at least the height of the stubble left from mowing.
- 5) Graze with horses using guidelines listed for "Lots with Pastures"
- 6) Remove horses from open area after permanent winter snow cover occurs to prevent hoof damage to the root crowns and soil.
- 7) Control weeds in pasture, along fences, and in the arena area.
- 8) Drag area to spread manure after horse are removed or at least once yearly at an appropriate time.
- 9) Generally, apply good management practices to the area.
- 10) Division into more than one (1) pasture is not necessary because the area is not grazed until after haying and not desirable for the general aesthetics of the area.

EXHIBIT

A

Date: October 11, 1999  
From: John McMullen, Planner

To: Board of County Commissioners  
cc: Phil Wilson, 3 B Construction  
Clark Allen, County Attorney  
Teton County Board of Commissioners

## Memorandum

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**RE: Grandfathered Status of 3 B Construction**

3 B Construction is a *Grandfathered Home Business* and is further defined as a *Legal Nonconformity* in the Teton County Land Development Regulations Article VII. According to the Land Development Regulations your business became a Nonconformity on the date that the 1978 Land Development Regulations were adopted. This is the case since a light construction company, of the kind you were running, would not have been allowed in this Zoning District. However, since both Wyoming State Statues and the Teton County Land Development Regulations do not allow the adoption of zoning regulations to enforce a discontinuance of a business, your business became a legal nonconformity.

Please refer to the attached document entitled "SUMMARY OF THE RELATIONSHIP BETWEEN TETON COUNTY LAND DEVELOPMENT REGULATIONS AND PHIL WILSON'S BUSINESS OPERATION" for an in depth explanation of the evolution of 3-B Construction and how our local zoning regulations relate.

Teton County has used the Wyoming Statues as a starting point for the elaboration and memorialization of our local zoning ordinances. Our local codes in no way contradict State Statue they do however elaborate many points further than the Statues themselves. Each County in Wyoming is empowered to adopt their own regulations. In 1978 and again in 1994 Teton County did so. The State Statues spell out the parameters within which these regulations are to be framed and each County then elaborates on these points and develops its own ordinances. Unfortunately many of the points made in Mr. Stubson's letter fail to account for our local ordinances and the manner in which they have elaborated on a particular Statue.

As a Legal Nonconformity your business had the right to expand, as spelled out in the 1978 zoning regulations, but only up to a maximum of 25% in floor area, subsequent LDR's amended this to 20% of floor area or 10% in site area. The August 31<sup>st</sup> letter from Tim Stubson spells out some of the growth your company has experienced since this time and it appears that a substantial amount of growth has occurred. The Teton County Planning Department has no intentions of researching this point further. It should however be clearly understood that no additional growth of your company shall be permitted in its existing location without the issuance of a permit or a Variance to Article VII Nonconformities. Our position is that the 20% expansion has clearly been achieved and according to local regulations no more expansion is allowable.

EXHIBIT

B

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One additional potential violation is apparent. That is the regulation that deems the relocation of a Nonconforming Use (7140) to be prohibited unless moving the business would bring the use into conformity. Again, it is clear that your business has been relocated, as stated in Mr. Stubson's letter. In its new location the business does not conform to the Land Development Regulations and a violation seems apparent. It is additionally noted that a permit was issued for placing a "hay shed" on this property and no mention in the building permit application is made of the intended business use. The 40 acre parcel that the business was relocated onto has always had a zoning designation of Agricultural and/or Rural and it has always been assessed this way by the Tax Assessor. Until the current application for subdivision no mention of the establishment of a business on this parcel has been made to either the Assessor or the Planning Department. The Teton County Planning Department has no intentions of researching this point further. Your business is currently located here and is designated as a Grandfathered Home Business. From this date forward it should be clearly understood that a Nonconforming Use cannot be relocated, in whole or in part, unless the relocation makes it conforming.

The point Mr. Stubson makes in his correspondence regarding Section 7130 "Change in Characteristics of Nonconforming Uses" where he states that the nature of a nonconformity may change if it reduces the amount of nonconformity is dubious for two reasons. One, the regulation itself speaks to *changes in characteristics* such as parking and loading and makes no mention of *relocation*. And, two because Mr. Stubson is assuming that some hierarchy of provisions exists where clearly none does, i.e. that one regulation may be violated in exchange for conforming to another. I hope this memorandum demonstrates clearly the position of the Teton County Planning Department as to the status of 3-B Construction. It is a *Grandfathered Home Business* subject to all adopted provisions for such.

attachments

## SUMMARY OF THE RELATIONSHIP BETWEEN TETON COUNTY LAND DEVELOPMENT REGULATIONS AND PHIL WILSON'S BUSINESS OPERATION

1. In telephone meetings between Phil Wilson, Bill Collins, and Phil's attorneys Tim Stubson and Hampton O'Neil, Phil described that he began operating a construction company, 3-B Construction, out of his home (which is his current home on WY 89 south of Town and north of Hoback Junction) in the mid-1970's. Also during the mid-70's he began parking some of his less used construction vehicles and/or equipment on a 40-acre parcel across the highway, which is the location of the current subdivision proposal. Phil explained that he parked these vehicles/equipment in a hay pen near the center of the 40-acre parcel.
2. In 1978, the first Land Development Regulations were adopted for Teton County. These LDRs authorized the Administrator of Planning Services to issue permits for "home occupations." Home occupation was defined as the "... conduct of a business ... in a dwelling or on the site of a dwelling, which is incidental and secondary to the use of the dwelling or site for dwelling purposes...."
3. The 1978 LDRs recognized "nonconforming uses" and allowed them to continue within certain stated parameters.
4. The 1978 LDRs contained provisions that limited the number of employees, prohibited outside storage, defined the relationship between the business and residential dwelling, and other limitations for "home occupations." Particularly relevant is the provision within these LDRs stating that "nonconforming uses" could not be enlarged to occupy site area or building floor area that is more than 25% greater than it occupied on the effective date of the LDRs.
5. In 1978, Phil's home-based construction business became a "nonconforming use" under the provisions of the newly adopted LDRs. Uses that had not been issued permits because they existed prior to the requirement for permits, such as Phil's home-based construction business, were considered legally existing "nonconforming uses" and allowed to continue within certain parameters defined in the LDRs. Phil's business may have been nonconforming in other ways as well, such as, in the number of employees, the outside storage of vehicles and equipment, or the storage of vehicles and equipment on a parcel across the highway. In any event, the specific elements of nonconformity are not disputed or relevant as Phil's business was allowed to continue in the same fashion as it existed prior to the adoption of the 1978 LDRs, and to expand within the parameters outlined in these LDRs.
6. Phil represented that his business has grown at a rate similar to the County's growth and that it "grows a little bit every year". He elaborated that the business may have grown 15% to 25% over the last 4-5 years.

7. In the early 1980's, the County amended its LDRs to include additional limitations and restrictions on "home occupations." Most relevant among them were the prohibitions of a construction company and the outside storage of construction vehicles and equipment, among the allowable "home occupations." Despite these newly adopted prohibitions, Phil's construction business and outside storage of his vehicles and equipment were allowed to continue as "nonconforming uses" that predated the newly adopted LDRs. The LDRs in the early 1980's recognized pre-existing "nonconforming uses" and allowed their continuance and expansion under certain specific parameters adopted in the LDRs.
8. In 1994, Teton County again revised and adopted new LDRs that, among other things, elaborated upon the type of businesses that can be operated from a residential dwelling. In addition to "home occupation," which continued as a category of use eligible for a permit, the 1994 LDRs established and enacted a new category of land use entitled "home business." This new category of "home business" made allowable a larger business than the previously defined "home occupation." A "home business" was allowed a greater number of employees than a "home occupation," and was allowed outside storage. A construction company was allowable as a "home business."
9. Because the growth in Phil's construction company as measured in the number of employees and allowable area devoted to the business, this new category of land use was a closer match to Phil's construction company than a "home occupation." However, based upon representations by Phil, his home-based business very likely exceeded the allowances even for the newly adopted "home business."
10. Nonetheless, the construction company continues to be a grandfathered "nonconforming use" because it predates the initial county LDRs and has not been permitted. A permit is not required for the continuation of this "nonconforming use." However, expansions and relocations that have occurred since the adoption of the 1978 LDRs, and since the subsequently adopted 1994 LDRs, should have been reviewed for compliance with the LDRs then in effect at the time of the expansions and relocations. Provided the expansions and relocations were within the allowed limitations and restrictions of the LDRs then in effect, permits would have been issued, and such permits were required prior to the expansions and relocations.
11. Therefore, Phil's construction business is considered a grandfathered nonconforming "home business" under the current Teton County LDRs. This is distinguished from a grandfathered nonconforming commercial business/commercial property that operates independently from a residential dwelling.
12. This decision is based in part upon the representations from Phil and his attorneys that:
  - Phil's construction business has always been associated with Phil's residence, and continues to be associated with it today;
  - The storage of construction vehicles and/or equipment on the 40-acre parcel across the road from Phil's residence, that may have occurred prior to the

adoption of the 1978 LDRs, was always secondary and subordinate to the construction business that was conducted from the residence. In fact, it was represented by Phil that the vehicles and/or equipment stored on the 40-acre parcel were less used vehicles and equipment, and they were stored there to improve the appearance of the residence;

- The 40-acre parcel since 1978, has been zoned for agricultural and residential uses and not for commercial uses;
- The 40-acre parcel in fact has been taxed as agricultural land and Phil applied for and received a building permit in 1994 for a "hay shed" to be located on the land. The review and permitting of this proposed structure as an agricultural structure entitled the landowner to certain specific exemptions under the LDRs. This permitted "hay shed" is now the structure that houses the bulk of the construction equipment and vehicles.