

TRONA HEIGHTS PLANNED UNIT DEVELOPMENT

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
AND
TRANSFER OF COMMON AREA

March 10, 1982

THIS DECLARATION, is entered into effective March 10, 1982 by DAVID M. RODERICK and M. J. GILPATRICK, JR., d/b/a RODCO, a joint venture, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Green River, County of Sweetwater, State of Wyoming, which is more particularly described as:

All that certain real property described in Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, through inadvertence an instrument executed by Trona Heights Home Owners Association, a Wyoming corporation, entitled "Declaration of Covenants, Conditions and Restrictions of Trona Heights Planned Unit Development", dated April 8, 1982 and covering certain real property therein described and/or as hereinabove described was erroneously recorded in the records of Sweetwater County, Wyoming in Book 732 at Page 415; and

WHEREAS, the aforescribed instrument dated April 8, 1982 was not executed by the record title owner of the property therein or hereinabove described and is without legal force and effect for any purpose; and

WHEREAS, the said Trona Heights Home Owners Association, a Wyoming corporation, by the execution of the within instrument acknowledges the facts and circumstances as set forth above and desires to correct the record in such regard.

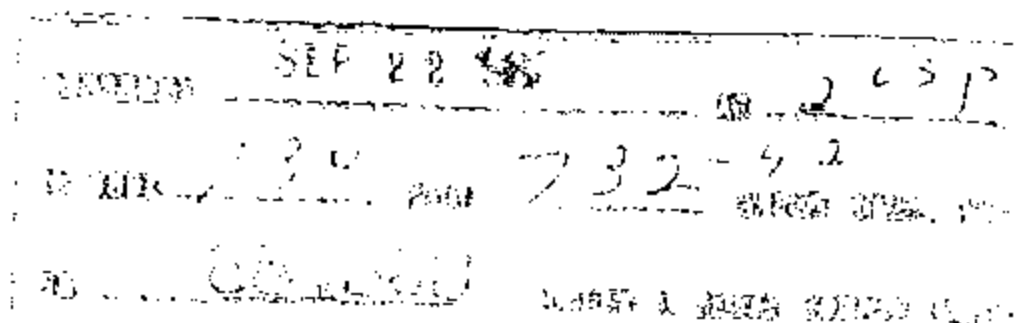
NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" attached hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, to protect the value, desirability and use of the Properties for single family, residential purposes, and which shall run with the land and be binding on all parties having any right, title or interest in the same or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to a Living Unit situate on any portion of the Properties, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Properties" shall mean and refer to all that certain real property described in Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.



Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Living Unit is all land areas which have not been lotted as shown on the Trona Heights Planned Unit Development, an Addition to the City of Green River, Sweetwater County, Wyoming dated March 10, 1982.

Section 5. "Association" shall mean and refer to Trona Heights Home Owners Association, a Wyoming (non-profit) corporation, its successors and assigns.

Section 6. "Living Unit" shall mean and refer to that certain measured portion of a Lot, including the improvements thereto which is designed and intended for use and occupancy as a single family residence, together with any other improvements located thereon.

Section 7. "Declarant" shall mean and refer to David M. Roderick and M. J. Gilpatrick, Jr., d/b/a RODCO, a joint venture, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to each Living Unit and in no event shall be separated therefrom, subject to the following provisions:

- (a) Ownership of a Living Unit shall entitle the Owner to the exclusive use and benefit of not less than two (2) parking spaces in the Common Area as constructed, which may be permanently assigned by Declarant or the Association. No portion of the Common Area shall be used for the parking or storage of wrecked vehicles or other unsightly modes of conveyance.
- (b) The right of the Association to suspend any Owner's right and easement of enjoyment to the use of any amenities (other than such Owner's right to parking included in the Common Area) for any period during which any assessment against such Owner's Living Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction by such Owner of any provision of this Declaration or of any rule or regulation promulgated by the Association.
- (c) The right of the Association to impose reasonable limitations on the number of guests per Living Unit who at any given time are permitted to use the Common Area.
- (d) The right of the City of Green River, the County of Sweetwater, and any other governmental or quasi-governmental body having jurisdiction over the Properties for access and rights of ingress and egress over and across any street, parking area, walkway or open area contained within the Properties for purposes of providing police and fire protection, transporting school children, and providing any other governmental or utility service.

- (e) The right of the Association to dedicate or transfer any part of the Common Area to any public agency, authority or utility for public or utility purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer by the Association must, however, be assented to in writing by two-thirds (2/3) of each class of membership.

Section 2. The Association and every Owner shall have a reasonable non-exclusive right and easement for construction, reconstruction, maintenance, enlargement, use and repair of any facilities, or for postal service, refuse collection, television, telephone, electrical, irrigation, water, and sewer lines or other similar purposes in, on or across the Common Area and the non-structural portion of Living Units.

Section 3. Delegation of Use. Any Owner may delegate the foregoing rights of enjoyment to the Common Area and facilities to the members of his family, household guests, tenants, lessees, contract purchasers, or other persons residing in such Owner's Living Unit.

Section 4. Encroachments. If all or any portion of a general common element encroaches upon any Living Unit, an easement for such encroachment and for the maintenance of the same, shall be and the same, by these presents is hereby declared a valid and non-exclusive existing easement in the Association for the benefit of the Common Area so affected; and if any portion of a Living Unit encroaches upon general common elements, or upon an adjoining Living Unit, an easement for such encroachment and for the maintenance of the same, shall be and the same, by these presents is hereby declared a valid and non-exclusive existing easement for the benefit of the Owner of the Living Unit so affected. Any such encroachment and easement shall not be considered or treated as an encumbrance either on the affected general common element or on the affected Living Unit for any purpose.

ARTICLE III

Transfer of Title to Common Area

Effective on the date of the conveyance of the first Living Unit, Declarant hereby conveys to the Trona Heights Home Owners Association, a Wyoming corporation, all of its right, title and interest in and to the Common Area, subject to the terms of this Declaration, free and clear of all liens, other than the lien of current general taxes and the lien of any assessments, charges or taxes imposed by governmental or quasi-governmental authorities pro-rated from the effective date of said conveyance.

ARTICLE IV

Membership and Voting Rights

Section 1. Every owner of a Living Unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Living Unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and each such Owner shall be entitled to one vote for each Living Unit owned. When more than one person holds an interest in any Living Unit, all such persons shall be members. The vote for such Living Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Living Unit.

Class B. The Class B member(s) shall be Declarant and shall be entitled to three (3) votes for each Living Unit owned.

The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On the tenth day of March, 1987.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Living Unit owned within the Properties, hereby covenants, and each Owner of any Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association his prorata share of any authorized assessment, i.e.: (1) annual assessments or charges, and (2) special assessments for capital improvements, maintenance or repair; such assessments to be established and collected as hereinafter provided. Any such assessment, together with interest, costs and reasonable attorney's fees, shall be a charge on the Living Unit and a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and a reasonable attorney's fees, shall also be the personal obligation of the person who was an Owner of such Living Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title unless expressly assumed by such successor.

Section 2. Purpose of Assessment. Any assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the preservation, improvement, repair and maintenance of the Common Areas, and of the exterior portions of Living Units.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Living Unit to an Owner, the maximum annual assessment shall be not more than Three Hundred and No/100 Dollars (\$300.00) per Living Unit.

- (a) Thereafter, such maximum annual assessment may be increased each year by not more than five percent (5%) above the maximum assessment for the previous assessment period without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Living Unit to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements, Maintenance or Repairs. In Addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance or replacement of a capital improvement upon the Common Area or the exterior portions of Living Units, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than twenty (20) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum of the preceding meeting. No such subsequent meeting(s) shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Living Units and may be collected on a monthly basis. However, the Declarant shall pay minimally one-third ($\frac{1}{3}$) of the applicable assessment for each Living Unit which is unimproved at the time such assessment is levied.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The period for annual assessments as provided for herein may commence as to all living units on the first day of the month following conveyance of the first Living Unit to an Owner. Such first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Directors of the Association shall fix the amount of the annual assessment against each Living Unit at least fifteen (15) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Living Unit have been paid. A properly executed certificate on a Living Unit is binding upon the Association as of the date of its issuance.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment levied and not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Living Unit.

Section 9. Subordination of the Lien to Mortgages. The lien of any assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Living Unit shall not affect the assessment lien. However, the sale or transfer of any Living Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

General Restrictive Covenants

Section 1. General Use Restrictions. A Living Unit shall be used exclusively for single family, residential purposes:

(a) Except that any Living Unit may be used by the Owner thereof for rental income purposes, no business, commercial, or manufacturing enterprise, or any enterprise of any kind or nature (other than the temporary business activities of Declarant) or religious undertaking or activity, whether or not conducted for a profit, shall be operated,

maintained or conducted on or in any Living Unit or Common Area, nor shall any living unit or any portion thereof, be used as a boarding or rooming house, nor shall any sign, billboard, or advertising device, except as hereinafter provided, be erected, placed or permitted to remain on the Properties or any portion thereof, unless approved by the Association, provided, however, that one (1) "for rent" or "for sale" advertising sign which shall not exceed nine square feet, shall be permitted on the street-side of any Living Unit, and traffic control or such entrance signs designating, numbering or otherwise identifying the Owner or occupant of each living unit shall be permitted; otherwise, no advertising signs, billboards, unsightly objects or nuisances will be erected, or permitted on the properties or any portion thereof.

(b) No noxious or offensive activity of any kind, including specifically activities productive of noise, odors, or other objectionable manifestations, as determined by the Association, shall be conducted or permitted on or in any Living Unit or Common Area nor shall anything be done which may be or become an unreasonable annoyance or nuisance to the Owners of any part of the Properties.

Section 2. Exception for Declarant. Notwithstanding the restrictions contained in this Article, for the five (5) year period following the date hereof, Declarant shall have the right to use any property owned by it, and any part of the Common Area reasonably necessary or appropriate, in furtherance of any construction, reconstruction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Area or improvements to and/or sale of Living Units owned by Declarant, provided said use does not unreasonably interfere with the use of the Common Area by any other Owner.

ARTICLE VII

Architectural Control

Other than the structures and appurtenances as constructed by Declarant, no building, fence, wall or other structure shall be commenced, erected or maintained upon any Living Unit, nor shall any exterior addition to or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Directors of the Association, or by an architectural committee composed of three or more representatives appointed by the Directors. In the event that such Directors, or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

Party Walls

Section 1. General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction of a Living Unit upon the Properties and placed on the dividing line between Living Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of rea-

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sonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the other Owner, shall contribute to the cost of the restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes the (non-fence) party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX

Exterior Maintenance

In addition to maintaining the Common Area, the Association may provide exterior maintenance to each Living Unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. However, in the event the need for maintenance or cause for repair of a Living Unit, including improvements thereon shall arise by reason of any willful or negligent act of its Owner, or through the willful or negligent act(s) of the family, or invitees of the Owner of such Living Unit, the cost thereof shall be added to and become part of the assessment to which such Living Unit is subject.

ARTICLE X

Insurance and Management

Section 1. Casualty Insurance on Insurable Common Area. The Association may keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire or other casualty for the insurance replacement value thereof, and may obtain liability insurance against such other hazards as the Board of Directors of the Association may deem desirable. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was obtained. If such insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a special reconstruction assessment against all Owners to cover the additional costs of repair or replacement not covered by the insurance proceeds, in addition to any other annual or special assessments. Any premiums for any such insurance shall be treated as common expenses and included in the annual assessments made by the Association.

Section 2. Additional Insurance Provision. The following additional provision shall apply with respect to any insurance:

- (a) In addition to the insurance described above, the Board of Directors of the Association may secure and maintain insurance against such other risks as are or hereafter may be customary or desirable for similar real property developments.
- (b) The Board of Directors of the Association shall have the authority to adjust losses.
- (c) Insurance secured and maintained by the Association shall not be brought into contribution with the insurance held by any Owner or Owner's mortgagee.
- (d) All insurance policies maintained by the Association shall be reviewed at least annually by the Board of Directors of the Association.

Section 3. Management. The Association may carry out through a property manager any of its functions which are properly the subject of delegation. Any manager so engaged shall be an independent contractor and not an agent or employee of the Association, and shall be responsible for managing the properties for the benefit of the Association and the Owners and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any other functions or acts required or permitted to be performed by the Association itself.

ARTICLE XI

General Provisions

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants and reservations, liens and charges now or hereafter imposed by any provision of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by Judgment or Court Order shall not effect the validity of any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration, shall run with and bind the Properties, for a term of thirty (30) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than eighty percent (80%) of the Owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the Owners. An amendment must be recorded.

Section 4. Annexation. Additional residential property and common areas may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members; or by the Declarant within five (5) years of the date of this instrument provided that the annexation is in accord with any general plan approved by the Federal Housing Administration and/or the Veterans Administration.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas to the public and the amendment to any covenant or restriction herein contained.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused this instrument to be executed effective March 10, 1982.

"DECLARANT":

DAVID M. RODERICK AND
M. J. GILPATRICK, JR.,
d/b/a RODCO, a joint
venture

By: M. J. Gilpatrick Jr.
General Partner

By: David M. Roderick
General Partner

^ (there is no corporate seal)

ATTEST:

TRONA HEIGHTS HOME OWNERS
ASSOCIATION, a Wyoming corporation

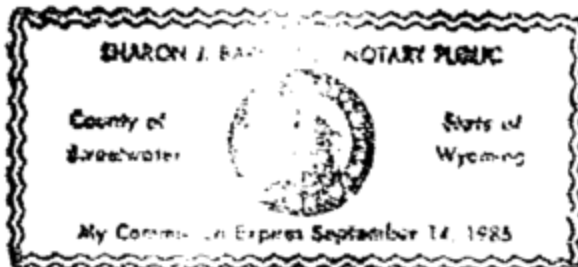
M. J. Gilpatrick Jr.
Secretary

By: David M. Roderick
President

STATE OF WYOMING)
COUNTY OF Sweetwater) ss.

The foregoing instrument was acknowledged before me by DAVID M. RODERICK, General Partner of "David M. Roderick and M. J. Gilpatrick, Jr., d/b/a RODCO, a joint venture", this 20th day of August, 1982.

Witness my hand and official seal.



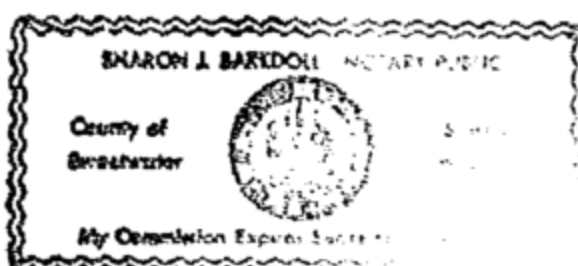
Sharon J. Baridoll
Notary Public

My commission expires: 9-14-85

STATE OF WYOMING)
COUNTY OF Sweetwater) ss.

The foregoing instrument was acknowledged before me by M. J. GILPATRICK, JR., General Partner of "David M. Roderick and M. J. Gilpatrick, Jr., d/b/a RODCO, a joint venture", this 20th day of August, 1982.

Witness my hand and official seal.



Sharon J. Baridoll
Notary Public

My commission expires: 9-14-85

STATE OF WYOMING)
) ss.
 COUNTY OF Sweetwater

The foregoing instrument was acknowledged before me by David
M. Roderick, President of Trona Heights Home Owners Associa-
 tion, a Wyoming corporation, this 20th day of August, 1982.

Witness my hand and official seal.



Sharon J. Barkdoll
 Notary Public

My commission expires: 9-14-85

A Tract of land situated in the SW $\frac{1}{4}$ of Section 15, Township 18 North, Range 107 West of the Sixth Principal Meridian, Sweetwater County, Wyoming, being particularly described as follows:

Beginning at a point N.52°59'W., 200.00 feet (record) 198.63 feet (measured) from the south-westerly corner of Lot 6, Block 6 of the Union Pacific Railroad 3rd Addition to the Town of Green River as recorded in the Sweetwater County Clerk's Office; thence N.52°59'W., 281.37 feet to a point, thence, S.37°01'W., 34.99 feet to a point; thence, N.52°59'W., 250.00 feet to a point on the easterly right-of-way line of Hillcrest Way; thence along said right-of-way line N.37°01'E., 105.00 feet to a point, thence S.52°59'E., 110.00 feet to a point; thence N.37°01'E., 70.00 feet to a point on the south-erly right-of-way line of West 3rd North Street; thence along said right-of-way line S.52°59'E., 391.39 feet (record 390.00 feet) to a point; thence S.37°01'W., 46.67 feet to a point; thence S.53°02'E. (record S.52°59'E.), 30.00 feet to a point; thence S.37°01'W., 93.35 feet to the point of beginning. Said Tract of land contains 1.70 acres, more or less. Excepting from said Tract of land a strip of land as recorded in Book 722, Page 808 at the Clerk and Records Office, Sweet-water County, Wyoming, being more particularly described as follows: "A strip of land being 10 feet in width and being located in the Southwest $\frac{1}{4}$ of Section 15, Township 18 North, Range 107 West of the Sixth Principal Meridian, Sweetwater County, Wyoming, being a portion of land as of record in Book 679, Pages 120 in the records of the Sweetwater County Clerk's Office, being more particularly described as follows:

Beginning at a point which lies North 52°59'W., 730 feet from the Southwesterly corner of Lot 6, Block 6 of the Union Pacific Railroad Third Addition to the Town of Green River as recorded in the Sweetwater County Clerk's Office;

Thence N.37°01'E. along the Northwesterly property boundary as recorded in Book 646, Pages 373-378, a distance of 60.00 feet more or less, to the true point of beginning;

Thence N.37°01'E., 10.00 feet to a point; thence S.52°59'E., 110.00 feet to a point; thence N.37°01'E., 70.00 feet to a point; thence S.52°59'E., 10.00 feet to a point; thence S.37°01'W., 80.00 feet to a point; thence N.52°59'W., 120.00 feet to the point of beginning, containing an area of .04 acres, more or less.

Subject to an easement granted to Pacific Power and Light Company and a perpetual easement 20 feet in width for utility and drainage purposes, recorded May 29, 1981 in Book 721, Page 591, Sweetwater County, Wyoming.