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DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS

1750

K. Wayne Moberly
C. Wayne Moberly

APR 8 3 17 PM '79

KATIE L. ...
SALT LAKE COUNTY

THIS DECLARATION, made on the date hereinafter set forth by Midwest Realty and Finance, Inc., a Utah corporation and Prize Homes, Inc., a Utah corporation, hereinafter collectively referred to as "Declarant".

WHEREAS the Declarant intends to develop certain lands, including the following property located in Salt Lake County, State of Utah:

Beginning at a point which is N. 0° 08' 10" W. 2041.55 feet and N. 89° 51' 50" E. 1320.00 feet from the Southwest corner of Section 4, T. 2 S., R. 1 W., Salt Lake Base and Meridian, and running thence N. 0° 08' 10" W. 609.00 feet, thence N. 89° 51' 50" E. 659.13 feet, thence S. 0° 01' 27" E. 609.00 feet, thence S. 89° 51' 50" W. 657.94 feet to the point of beginning.

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WHEREAS the Declarant, collectively, owns all the real property described above;

WHEREAS Declarant has obtained the acknowledgement and consent to this Declaration of all parties possessing liens effecting any portion of the said property, which by their consents, attached hereto and by this reference made a part hereof, said third party lien holders hereby join in the submission of this property;

WHEREAS Declarant desires, by filing this Declaration, to submit said property, and all improvements now or hereafter constructed thereon to be performed in accordance with the plans and specifications contained in the official Subdivision Plat, to those certain covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth as a Planned Unit Development to be known as Roxborough;

NOW THEREFORE, Declarant hereby declares that all of the properties as defined in Article I, Section 3 below shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on

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all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Roxborough Association, Inc., its successors and assigns.

Section 2. "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property 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 lot is the property described as lot 62 of Roxborough, Phase I, according to the official plat thereof on file in the Salt Lake County Recorder's Office.

It is understood that the actual location of certain homes and other improvements constructed or to be constructed on the lots might inadvertently deviate slightly from the location indicated by the official plat of the properties. The above described common area shall therefore be subject to minor encroachments of such homes and other improvements which extend slightly beyond the boundaries of their respective lots but are in substantial compliance with the official plat. Each owner shall therefore be deemed to have an easement on the common area to the extent of any such minor encroachment from his lot.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the properties.

Section 6. "Declarant" in addition to referring to Midwest Realty and Finance, Inc. and Prize Homes, Inc., shall also mean and refer to any of their successors or assigns.

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ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area and to enact reasonable rules and regulations governing use of the common area.

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations (it being understood that such suspension of rights shall not terminate the continuing obligation of such owner for past and future assessments against his lot).

(c) the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. In accordance with the By-Laws or Regulations adopted by the Board of Directors of the Association, any owner may delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

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

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

Class B. Class B members shall be the Declarant and shall be entitled to three votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following events:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) three years and six months after this instrument is filed of record in the Salt Lake County Recorders office.

Provided, however, if the Class B membership terminates for the reason set forth in subparagraph (a) of this Section and if Declarant thereafter causes one or more additional parcels of land to be annexed as provided in Article VII, Section 6 below and if, after any such annexations, the total number of lots in which the Declarant is record owner of a fee simple title constitutes more than 25% of the total number of lots in the resulting properties, which include the annexed lands, then the Class B membership shall be reinstated and shall continue until the happening of the first to occur of the two events set forth in subparagraphs (a) and (b) of this Section.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. For each lot owned by Declarant, the Declarant hereby covenant;

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and each other owner of any lot, 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the common area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$150.00 per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased from time to time by the Board of Directors, without a vote of the membership, in an amount not to exceed five percent (5%) per annum.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above five percent (5%) per annum, 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 Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may

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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 or replacement of a capital improvement upon the common area, 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 Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 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, a second meeting may be called subject to the same notice requirement, and the required quorum at the second meeting shall be one-half (1/2) of the required quorum at the preceding meeting. The second meeting shall not be held more than 60 days following the preceding meeting. If the required quorum is not present at the second meeting, a third meeting may be called subject to the same notice requirement, and those members actually present or represented by proxy at such meeting shall constitute a quorum. Such third meeting shall not be held more than 60 days following the second meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty 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 Board of Directors. 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 specified lot

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have been paid. A properly executed certificate of the Association, as to the status of assessments on a lot, is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of six percent (6%) 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, or both. 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 lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to 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, but shall not relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

USE RESTRICTIONS

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single-family dwelling not to exceed two stories in height on any lot. Provided, however, the Declarant may maintain a sales office and model homes until all lots in the properties have been sold.

Section 2. Use of Other Structures as Residence. No trailer, basement, tent, shack, garage, barn or other outbuilding or any structure

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of a temporary character shall be used on any lot at any time as a residence either temporarily or permanently.

Section 3. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made nor shall any such structure be painted other than its original color until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design, size and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, 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. In order to obtain review by the architectural committee or the Board of Directors, the plans and specifications referred to above must be submitted by personally delivering them to one of the members of the architectural committee or, if such committee is not then in existence, by personally delivering them to the President, Vice President or Secretary of the Association.

Section 4. Failure to Maintain. All yard areas within each lot shall be landscaped by the owner thereof (unless already landscaped by previous owner) within six months from the date owner acquires title to said lot. Each lot, including all improvements thereon, shall be maintained by the owner in an attractive condition. In the event an owner of any lot in the properties shall fail to perform such landscaping or to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to landscape, repair, maintain, and restore the lot and the exterior of the buildings and any other improvements erected thereon. The cost of such landscaping and exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

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Section 5. Easements. Easements for installation and maintenance of utilities and drainage facilities may be reserved by being shown on the recorded plat of the properties. Within any such easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels in the easements. Any easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 6. Drainage. No structure or other obstacle shall be erected, placed, or permitted to remain on any lot in such a way as to interfere with the established drainage pattern over the lot to and from adjoining land, or, in the event it becomes necessary to change the established drainage over a lot, adequate provision shall be made for proper drainage.

Section 7. Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five feet square advertising the property for sale or rent, or signs used by the Declarant or a builder to advertise the property during the construction and sales period.

Section 8. Livestock Poultry, and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose, and provided that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the properties upon 10 days written notice from the Board of Directors of the Association. No pet shall be permitted to run at large.

Section 9. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 10. Garbage and Refuse Disposal. No lot shall be used as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. Each lot shall be kept free of

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weeds and other unsightly objects and conditions.

Section 11. Excavations and Completing Improvements. No excavation shall be made on any lot except in connection with the erection, alteration or repair, of a dwelling or other improvement thereon. When excavation or the erection, alteration or repair of a structure or other improvement has once begun, the work must be prosecuted diligently and completed within a reasonable time.

Section 12. Vehicles. No vehicles shall be parked over night on any of the streets or roadways within the subdivision. No boat, trailer, truck, camper unit, equipment, or commercial vehicle shall be stored or parked on any residential lot except while in a closed garage.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Utility Refunds. Notwithstanding the ownership of the common area by the Association, it is understood that Declarant shall be entitled to receive all payments and refunds that may be made by any utility company, special improvement district, or other entity or governmental agency on account of the cost borne by Declarant toward the installation on the properties of water lines, sewer lines and other utility systems.

Section 2. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions 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 3. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty year period by an

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instrument signed by the owner(s) of not less than ninety percent (90%) of the lots, after which time it may be amended by an instrument signed by the owner(s) of not less than seventy-five percent (75%) of the lots. Any amendment must be recorded.

Section 5. Annexation. Additional residential property and common area may be annexed to the properties with the consent of two-thirds (2/3) of each class of members, except that Declarant, without the consent of any other member of the Association, may cause to be annexed to the properties within four years from the date of this instrument all or any part of the following described real property located in Salt Lake County, State of Utah.

Beginning at a point which is N. 0° 08' 10" W. 2130.50 feet from the Southwest corner of Section 4, T. 2 S., R. 1 W., Salt Lake Base and Meridian and running thence N. 0° 08' 10" W. 50.00 feet, thence N. 89° 51' 50" E. 488.40 feet, thence N. 0° 08' 10" W. 140.00 feet, thence N. 89° 51' 50" E. 831.60 feet, thence S. 0° 08' 10" E. 279.00 feet, thence N. 89° 51' 50" E. 657.94 feet, thence S. 0° 01' 27" E. 770.51 feet, thence S. 89° 51' 30" W. 658.80 feet, thence S. 0° 03' 43" E. 262.07 feet, thence S. 89° 51' 30" W. 200.00 feet, thence N. 0° 03' 43" W. 262.07 feet, thence N. 89° 51' 30" E. 171.57 feet, thence North 484.08 feet, thence West 640.86 feet, thence North 35.00 feet, thence West 120.00 feet, thence N. 0° 08' 10" W. 338.55 feet, thence S. 89° 51' 50" W. 528.00 feet to the point of beginning, encompassing an area of 23.55 acres, more or less.

Provided, however, that if at the time of annexation, the F.H.A. or the V.A. has already insured or guaranteed any financing of any of the lots or then holds itself out as willing to do so, then such annexation without the consent of two-thirds of each class of members shall take place only if the F.H.A. or the V.A. determines that annexation is in accord with the general plan heretofore approved by it.

The common area of any annexed property, including any recreational facilities constructed on said common area, shall be fully available for the use and enjoyment of the owners of all lots on the properties to the same extent as the common area described in Article 1, Section 4, above.

Section 6. FHA/VA Approval. Any act of annexing additional property, dedicating of the common area or amending of this instrument shall require the prior approval of the Federal Housing Administration or the Veterans Administration provided that both of the following conditions exist at the time of such act: (1) there is still a Class B membership

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and (2) the F.H.A. or V.A. has insured or guaranteed any financing of any of the lots or then holds itself out as willing to do so.

Dated this 13th day of Sept, 1978.

DECLARANT:

MIDWEST REALTY & FINANCE, INC.

By F. Ray Green

PRIZE HOMES, INC.

By [Signature]

(seal)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 13th day of Sept, 1978, personally appeared before me F. RAY GREEN who, being by me duly sworn, did say that he is the President of Midwest Realty & Finance, Inc., and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said F. Ray Green acknowledged to me that said corporation executed the same.

Virginia G. Estabrook
NOTARY PUBLIC

Residing in Salt Lake City Utah

My commission expires:

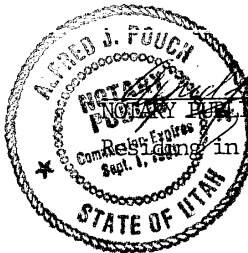
April 1, 1982

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 13th day of Sept, 1978, personally appeared before me R. I. YERGENSEN, who being duly sworn, did say that he is the President of Prize Homes, Inc., and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said R. L. Yergensen acknowledged to me that said corporation executed the same.

My commission expires:

9-1-81



Alfred J. Fouca
Residing in Salt Lake City

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CONSENT OF MORTGAGEE

TRACY MORTGAGE COMPANY, a Utah corporation,
hereby consents, acknowledges and confirms as follows:

1. That it is a Mortgagee (as defined in the Declaration to which this Consent is attached) affecting the real property described in the Declaration of Covenants, Conditions and Restrictions of Roxborough P.U.D. (Phase I); and

2. That the real property described in said Declaration is being developed by Midwest Realty & Finance, Inc., and Prize Homes, Inc. as Roxborough P.U.D., Phase I; that the interest of the undersigned as a Mortgagee is and shall be subject to all of the terms and conditions as set forth in the said Declaration and the related Plat Map, and further that the aforesaid Declaration and Plat Map shall take effect upon recording.

DATED this 4th day of January, 1979.

TRACY MORTGAGE COMPANY

By J. May
Its President

ATTEST:

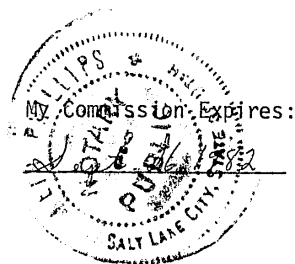
Paula Francis
Its Secretary

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 4th day of January, 1979, personally appeared before me TED MAY and ~~and~~ PAULA FRANCIS, who being by me duly sworn, did say that they are the PRESIDENT and Secretary, respectively, of Tracy Mortgage Company, a Utah corporation, and that the foregoing instrument was signed by them in behalf of said Corporation by authority of a resolution of its Board of Directors and the said TED MAY and PAULA FRANCIS each duly acknowledged to me that the said Corporation executed the same and that the seal affixed is the seal of said Corporation.

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Bette Phillips
NOTARY PUBLIC
Residing at Salt Lake City, Utah



CONSENT OF MORTGAGEE

CITY MORTGAGE SERVICES, INC., a Florida corporation,
hereby consents, acknowledges and confirms as follows:

1. That is is a Mortgagee (as defined in the Declaration to which this Consent is attached) affecting the real property described in the Declaration of Covenants, Conditions and Restrictions of Roxborough P.U.D.(Phase I);and

2. That the real property described in said Declaration is being developed by Midwest Realty & Finance, Inc., and Prize Homes, Inc., as Roxborough P.U.D., Phase I; that the interest of the undersigned as a Mortgagee is and shall be subject to all of the terms and conditions as set forth in the said Declaration and the related Plat Map, and further that the aforesaid Declaration and Plat Map shall take effect upon recording.

DATED this 22 day of January, 1979.

CITY MORTGAGE SERVICES, INC.

By Rodney M. Larsen
Its Vice President

ATTEST:

Philip A. Shaver
Its Secretary

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 22nd day of January, 1979, personally appeared before me Rodney M. Larsen and Philip A. Shaver, who being by me duly sworn, did say that they are the Vice President and Secretary, respectively, of City Mortgage Services, Inc., a Florida corporation, and that the foregoing instrument was signed by them in behalf of said Corporation by authority of a resolution of its Board of Directors and the said Rodney M. Larsen and Philip A. Shaver each duly acknowledged to me that the said Corporation executed the same and that the seal affixed is the seal of said Corporation.

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Christine R. Zappe
NOTARY PUBLIC
Residing at Plainfield, New Jersey

My Commission Expires:

CHRISTINE R. ZAPPE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 17, 1981

