

**AMENDMENT NO. 1
TO
MASTER DEVELOPMENT AGREEMENT FOR
THE SUNCREST MASTER PLANNED COMMUNITY**

THIS AMENDMENT NO. 1 TO MASTER DEVELOPMENT AGREEMENT FOR THE SUNCREST MASTER PLANNED COMMUNITY (the "Amendment") is made and entered into as of the 1st day of November, 2000, by and between **DRAPER CITY**, a Utah municipal corporation ("City"), and **DAE/WESTBROOK, L.L.C.**, a Delaware limited liability company ("Master Developer").

RECITALS

WHEREAS, Master Developer is developing a planned unit development within the City known as the SunCrest Master Planned Community ("SunCrest"); and

WHEREAS, the parties have previously executed a Master Development Agreement dated as of August 24, 1999 (the "Agreement") providing for development of SunCrest; and

WHEREAS, the Agreement provided in paragraph 7.g.(iii) for the construction of certain roads related to the development of SunCrest; and

WHEREAS, the parties desire to amend paragraphs 7.g.(iii) and 9(e) to make certain changes related to the development of roads for SunCrest,

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual promises, the sufficiency of which consideration is hereby acknowledged by each of them, the parties agree to the following:

TERMS

1. Amendment of Paragraph 7.g.(iii). Paragraph 7.g.(iii) of the Agreement shall be and is hereby amended by deleting in their entirety subparagraphs (a) through (e), inclusive, thereof, and replacing such subparagraphs in their entirety with the following subparagraphs (a) through (h), inclusive:

(a) Road from Present Southern Terminus of Traverse Ridge Road to State Highway U92. Master Developer shall design, engineer and construct a road ("the Road") on a right-of-way which has been or will be acquired by Master Developer running from the present southern terminus of Traverse Ridge Road in SunCrest

substantially as shown on Exhibit A attached hereto. The Road will serve as a secondary and emergency access.

(i) **Construction of Unpaved All-Weather Road.** On or before December 31, 2001, Master Developer shall construct or cause to be constructed the Road to the improvement level of a two (2) lane, unpaved, all-weather surface ("the Unpaved Road") in compliance with all applicable City's Laws (except where modifications are required in accordance with paragraph 7(a) of the Agreement) and on the timing schedule set forth on Exhibit B attached hereto ("the Schedule"). The parties agree that time is of the essence in complying with the Schedule.

(A) **Tolling of Time Periods.** If any of the time periods specified in the Schedule are not met because of any failure by the City to respond within the time periods set forth on the Schedule, all of the relevant time periods shall be extended by an amount of time equal to the delay caused by any such failure.

(ii) **Construction of Paved Road.** On or before December 31, 2004, Master Developer shall construct or cause to be constructed the Road to the improvement level of a two (2) lane, paved road ("the Paved Road") in compliance with all applicable City's Laws (except where modifications are required in accordance with paragraph 7(a) of the Agreement) and dedicate and convey the Paved Road to the City by satisfactory special warranty deed on or before such date.

(A) **Phased Construction of Paved Road as Plats are Constructed; Acceptance by City.** The parties acknowledge that pursuant to the Agreement, SunCrest is intended to be constructed in phases. Some of these phases may contain portions of the Paved Road. Master Developer shall construct those portions of the Paved Road located within each phase as necessary at the same time as the other improvements within such phase are constructed. Upon satisfactory completion of any portion of the Paved Road, the City shall accept the dedication of the completed portion.

(B) **Schedule for Completion of Construction of Paved Road.** The parties shall reasonably cooperate in determining a detailed schedule for the completion by December 31, 2004 of the design, engineering and construction of those portions of the Paved Road not constructed in phases as provided by paragraph (a)(ii)(A) hereof.

(b) **Bond for Construction of Road.** Contemporaneously with the date hereof, Master Developer has posted with the City as Obligee a bond (the "Bond") in the form attached hereto as Exhibit C for construction of the Road. The Bond is in the amount of \$8,550,508.56 in accordance with the engineering estimate (the "Estimate") attached hereto as Exhibit D. The Bond shall be in lieu of the bond otherwise required by paragraph 9(e) of the Agreement for the same items of work.

(c) **Partial Releases of Security.** As portions of the Road, either the Unpaved Road or the Paved Road, are constructed and accepted by the City in phases pursuant to paragraph (a)(ii)(A) hereof, the Bond shall be partially released. The amount of any partial release shall be ratable based on the scheduled costs of those portions completed as set forth in the Estimate less any required retention compared with the total engineering estimate set forth therein.

(d) **Maintenance of Road.** Master Developer shall be solely responsible for maintenance of those portions of the Unpaved Road that have not been replaced by a portion of the Paved Road that has been dedicated to and accepted by the City. Upon acceptance by the City of any portion of the Paved Road, the responsibility for maintaining the Paved Road shall become the City's, subject to any applicable warranties from the contractor or contractors which have constructed the Road.

(e) **Issuance of Certificates of Occupancy.** Upon execution of this Amendment, the City shall issue twenty-five (25) certificates of occupancy for such buildings otherwise complying with the Agreement and the City's Laws, which buildings shall be designated by Master Developer. At such time as Master Developer provides satisfactory evidence to the City that Master Developer has the right to construct the emergency access road off Traverse Mountain, the City shall issue thirty-five (35) additional Certificates of Occupancy for such buildings otherwise complying with the Agreement and the City's Laws, which buildings shall be designated by Master Developer. After the emergency access road is completed and in operation being passable and open for full use by the public, the City will issue additional occupancy permits for such buildings otherwise complying with the Agreement and the City's Laws.

(f) **Indemnification, Defense and Hold Harmless.** Master Developer shall indemnify and shall defend and hold the City and its officers, employees and attorneys harmless from any and all losses, damages, causes of action, claims, costs and attorneys' fees arising out of or related to any lack of an "emergency access" required by paragraph 7.g.(iii)(e) of the Agreement prior to its amendment by this Amendment.

(g) **Insurance.** Without the City's intending to waive any of the limitations of liability provided in the Utah Governmental Immunity Act, § 63-30-34, Utah Code Annotated, by being so named, Master Developer shall provide the City with a Certificate of Insurance showing the City to be an additional named insured on a comprehensive general liability insurance policy maintained by Master Developer and/or its related entities.

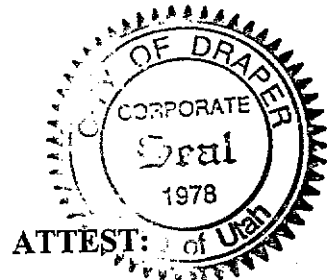
(i) **Limits of Coverage.** Limits on the City's insurance coverage shall be \$250,000 for one person in any one occurrence, or \$500,000 for two or more persons in any one occurrence. From time to time as the liability limitations of the Utah Governmental Immunity Act may change, the limits on the City's insurance shall be changed and adjusted accordingly.

(h) **Termination of Indemnification, Defense, Hold Harmless and Insurance Responsibilities.** Master Developer's obligations pursuant to subparagraphs (f) and (g) of this Amendment regarding indemnification, defense, hold harmless and insurance shall terminate if and when an emergency access road including, but not limited to, Upper Corner Canyon Road or the Unpaved Road is agreed to in writing by the City.

2. **Binding Effect.** This Amendment shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns.

3. **Agreement Otherwise In Full Force.** Other than as specifically modified in this Amendment, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by and through their respective duly authorized representatives as of the day and year first written above.



DRAPER CITY

By: *Richard Williams*
Mayor

Joni Thomas
Deputy City Recorder

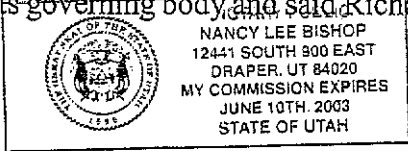
DAE/WESTBROOK, L.L.C.,
a Delaware limited liability company

By: *Edward L. Grampp, Jr.*
Edward L. Grampp, Jr.
Its: Assistant Vice-President

CITY ACKNOWLEDGMENT

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

On the 8th day of November, 2000, personally appeared before me Richard D. Alsop, who being duly sworn, did say that he is the Mayor of **DRAPER CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Richard D. Alsop acknowledged to me that the City executed the same.



Nancy Lee Bishop

Notary Public

Residing at:

My Commission Expires:

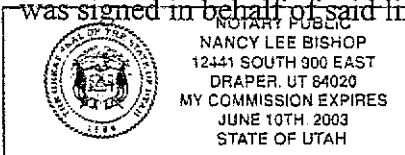
6-10-03

Salt Lake County

DEVELOPER ACKNOWLEDGMENT

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

On the 13th day of November, 2000 personally appeared before me Edward L. Grampp, Jr., who being by me duly sworn did say that he is the Assistant Vice-President of **DAE/WESTBROOK, L.L.C.**, a Delaware limited liability company, and the foregoing instrument, was signed in behalf of said limited liability company.



Nancy Lee Bishop

Notary Public

Residing at:

My Commission Expires:

6-10-03

Salt Lake County

SUNCREST DRIVE

CONCEPTUAL PLAN

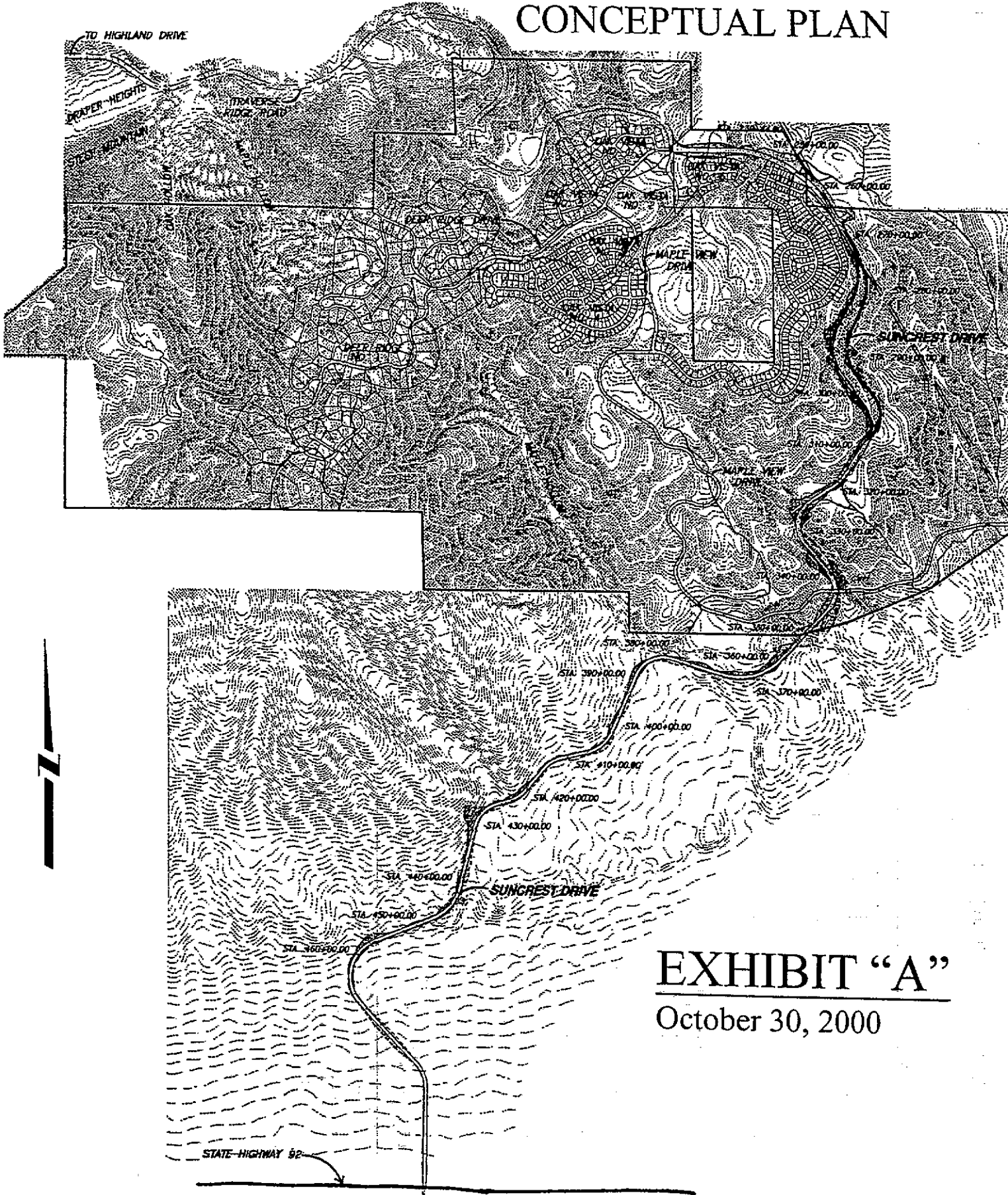


EXHIBIT "A"

October 30, 2000

EXHIBIT "B"

SUNCREST SECONDARY ACCESS ROAD TIMELINE

STATION 239+44 To 499+18 (TO U-92)

Tasks	Timeline Date
Preliminary Plans Submitted to Draper City	11/9/2000
Draper City Preliminary Plan Review and Comment	11/28/2000
Revise Preliminary Plan and Re-submit	11/30/2000
Draper City Staff Report Due for Planning Commission Preliminary Plans	12/6/2000
Draper City Planning Commission Study of Preliminary Plan	12/12/2000
Planning Commission Approval of Preliminary Plan	1/4/2001
Draper City Staff Report Due for City Council Preliminary Plans	1/17/2001
City Council Study of Preliminary Plan	1/23/2001
City Council Approval of Preliminary Plan	2/6/2001
Final Improvement Plans Prepared and Submitted	2/21/2001
Draper City Staff Report Due for Planning Commission Final Improvement Plans	3/7/2001
Draper City Planning Commission Study of Final Improvement Plans	3/13/2001
Draper City Staff Report Due for City Council Final Improvement Plans	3/21/2001
Draper City Planning Commission Approval of Final Improvement Plans	3/22/2001
City Council Study of Final Improvement Plans (Consent Calendar)	3/27/2001
City Council Approval of Final Improvement Plans (Consent Calendar)	4/3/2001
Draper City (Engineering) Final Approval of Final Improvement Plans	4/4/2001
Mobilization	4/4/2001
Limits of Disturbance Marked	4/6/2001
Revegetation Agreement Signed	4/6/2001
Issuance of Grading Permit and Preconstruction Meeting Held	4/11/2001
Commence Construction	4/12/2001
Complete Construction of Roadway	12/31/2001
Total Approval Time for Plan Processing (Work days)	121
Total Road Construction Time (Work days)	188

Alternative 3

Rev. 11/16/00

EXHIBIT "C"

ENT 100462:2000 PG 8 of 10

A bond in the amount of \$8,550,508.56 shall be provided in a form acceptable to the City Attorney.

CITY OF DRAPER

PERFORMANCE BOND

ENT 100462:2000 PG 9 of 10

KNOW ALL MEN BY THESE PRESENTS;

THAT WE, DAE/Westbrook, LLC, a Delaware limited liability company, located at 3030 LBJ Freeway, Suite 1500, Dallas, Texas 75234, hereinafter designated as the "Principal", and American Manufacturers Mutual Insurance Company, located at 12377 Merit Drive, Suite 1400, Dallas, Texas 75251-3225, as Surety, are held and firmly bound unto the City of Draper, hereinafter designated as the "Obligee", Salt Lake County, State of Utah, in the penal sum of Eight Million Five Hundred Fifty Thousand Five Hundred Eight and 56/100 (\$8,550,508.56) dollars in lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our administrators, heirs, executors, successors, or assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has agreed in that certain AMENDEMENT NO. 1 TO MASTER DEVELOPMENT AGREEMENT FOR THE SUNCREST MASTER PLANNED COMMUNITY dated as of November 1, 2000 with Obligee (the "Amendment") to construct the "Road" as defined in the Amendment, in accordance with Plans and Specifications to be approved by Obligee and is required by the Amendment to furnish a bond to guarantee construction of the Road.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Amendment, and any alteration made thereof as therein provided, on its part, to be kept and performed at the time and in the manner therein specified and shall fully indemnify and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Obligee all outlay and expense which the Obligee may incur in making good any default; then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.


PROVIDED FURTHER, that the Surety, for value received, hereby stipulates and agrees that in the event of legal action to collect on the bond provided herein, jurisdiction shall be in the State of Utah and venue shall be in the Third Judicial District Court in and for Salt Lake County and Surety hereby submits to the jurisdiction of said Court.

PROVIDED FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the Amendment, or to the work to be performed thereunder, or the specifications accompanying the same shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the Amendment, or to the work or to the specifications

IN WITNESS WHEREOF, the above parties have executed this instrument this 1st day of November, 20 00, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL:

DAE/WESTBROOK, LLC
a Delaware limited liability company

By: 

SURETY:

AMERICAN MANUFACTURERS
MUTUAL INSURANCE COMPANY

By: 
Kelly A. Knisel, Attorney-In-Fact

POWER OF ATTORNEY

Now All Men By These Presents:

That the Lumbermens Mutual Casualty Company, the American Motorists Insurance Company, and the American Manufacturers Mutual Insurance Company, corporations organized and existing under the laws of the State of Illinois, having their principal office in Long Grove, Illinois, (hereinafter collectively referred to as the "Company") do hereby appoint

James W. Baughman, Janice G. Correy, Kelly A. Knisel, Kathleen Day and Carla J. Ball of Dallas, Texas (EACH)

their true and lawful agent(s) and attorney(s)-in-fact, to make, execute, seal, and deliver during the period beginning with the date of issuance of this power and ending on the date specified below, unless sooner revoked for and on its behalf as surety, and as their act and deed:

Any and all bonds and undertakings*****

EXCEPTION: NO AUTHORITY is granted to make, execute, seal and deliver any bond or undertaking which guarantees the payment or collection of any promissory note, check, draft or letter of credit.

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

This appointment may be revoked at any time by the Company.

The execution of such bonds and undertakings in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal office in Long Grove, Illinois.

This Power of Attorney is executed by authority of resolutions adopted by the Executive Committees of the Boards of Directors of the Company on February 23, 1988 at Chicago, Illinois, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or any Vice President, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings, obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the Executive Committee of the Boards of Directors of the Company at a meeting duly called and held on the 23rd day of February, 1988:

"VOTED, That the signature of the Chairman of the Board, the President, any Vice President, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to resolution adopted by the Executive Committee of the Board of Directors on February 23, 1988 and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company."

In Testimony Whereof, the Company has caused this instrument to be signed and their corporate seals to be affixed by their authorized officers, this June 3, 1999.

Attested and Certified:

Lumbermens Mutual Casualty Company
American Motorists Insurance Company
American Manufacturers Mutual Insurance Company

Robert P. Hames



J. S. Kemper III

J. S. Kemper, III, Exec. Vice President

Robert P. Hames, Secretary

by