

Entry No. 123717	Book M58
RECORDED 7-5-74 at 4:50 M P 1-15	
REQUEST of M.F.T.	
BY WANDA Y. SPRIGG	SUMMIT CO. RECORDER
\$16.50	By <i>Wanda Y. Sprigg</i>
INDEXED A	ABSTRACT

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
PROSPECTOR SQUARE SUBDIVISION
A PLANNED COMMERCIAL DEVELOPMENT
PARK CITY, SUMMIT COUNTY, UTAH

THIS DECLARATION is made and executed this 5th day of July, 1974, by MFT MORTGAGE CORP., a Utah corporation (hereinafter referred to as "Developer").

RECITALS:

A. Developer is the record owner of that certain tract of Property more particularly described in Article II of this Declaration. Developer desires to create on said Property a commercial and residential development with parking areas, open spaces, and other Common Areas.

B. Developer desires to provide for preservation of the values and amenities in said development and for the maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Developer desires to subject the Property described in Article II of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

C. Developer deems it desirable, for the efficient preservation of the values and amenities in the development, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Developer has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, PROSPECTOR SQUARE PROPERTY OWNERS ASSOCIATION.

NOW, THEREFORE, for the foregoing purposes, Developer declares that the Property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions.

2. Plat shall mean and refer to the subdivision plat of

the "Prospector Square" Subdivision executed and acknowledged by Developer on the 12th day of December, 1973, prepared and certified to by M. Carl Larsen (a duly registered Utah Land Surveyor holding Certificate No. 2970) and filed for record in the office of the County Recorder of Summit County, Utah concurrently with the filing of this Declaration.

3. Property shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article II of this Declaration.

4. Lot shall mean and refer to any of the 47 separately numbered and individually described parcels of land shown on the Plats.

5. Common Areas shall mean and refer to that part of the Property which is not included within the Lots or dedicated streets, but including all parking areas, walking mall streets, and improvements other than utility lines now or hereafter constructed or located thereon.

6. Commercial Unit shall mean and refer to a structure or portion of a structure which is designed and intended for commercial use or occupancy in part as apartments, town houses, condominiums or other type of residence, together with all improvements located on the Lot concerned which are used in conjunction with such Commercial Unit.

7. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Summit County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

8. Association shall mean and refer to PROSPECTOR SQUARE PROPERTY OWNERS ASSOCIATION, a Utah nonprofit corporation.

9. Member shall mean and refer to every person who holds membership in the Association.

II. PROPERTY DESCRIPTION

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Summit County, State of Utah:

Parcel No. 1

Beginning at the Center of Section 9, Township 2 South, Range 4 East, Salt Lake Base & Meridian, and running thence North 0°13'40" East along the West line of the Northeast Quarter of said Section 9, 502.73 feet to a point on a curve to the left, which is the South line of State Highway 248, the

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radius point of which is North 40°22'32" West 1482.26 feet; thence Northeasterly along the arc of said curve and said south line 58.41 feet; thence North 47°22' East along said south line 1153.90 feet; thence South 89°57'18" East 1022.94 feet; thence South 0°04'58" West 186.00 feet; thence East 65.32 feet; thence South 404.77 feet to a point of a 66.00 foot radius curve to the right, thence Southwesterly along the arc of said curve 103.67 feet; thence South 0°04'58" West 111.39 feet to the northerly line of a Union Pacific Railroad right of way; thence along said right of way line as follows: South 73°09'48" West 54.41 feet to a point of a 1482.40 foot radius curve to the left; thence Southwesterly along the arc of said curve 226.39 feet to a point of tangency; thence South 64°24'48" West 1064.18 feet to the South line of the said Northeast Quarter of Section 9; thence leaving said right of way line North 89°44'14" West along said south line of the Northeast Quarter of Section 9, 693.765 feet to the point of beginning. Contains 42.383 Acres.

Parcel No. 2

Beginning at a point North 0°13'40" East along the West line of the Northeast Quarter of Section 9, 637.58 feet from the Center of Section 9, Township 2 South, Range 4 East, S.L.B. & M. and running thence North 0°13'40" East along said west line 686.09 feet; thence South 89°57'18" East 741.88 feet to the North line of State Highway 248; thence South 47°22' West along said North line 1012.10 feet to the point of beginning. Contains 5.842 Acres.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent they are located outside the Lots included within the above-described tract.

RESERVING UNTO DEVELOPER, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Developer (in a manner not inconsistent with the provisions of this Declaration) to construct a Commercial Unit on each and every Lot and to improve the Common Areas with such structures and facilities designed for the use and enjoyment of all the Members as Developer may reasonably determine to be appropriate. If, pursuant to this reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated

in accordance with its terms, expire 20 years after the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

III. ANNEXATION OF ADDITIONAL PROPERTY

Any real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 1. Annexation Without Approval and Pursuant to General Plan. Any real property may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the Association without the approval, assent or vote of the Association or its members, providing and on condition that:

(a) Prior to the conveyance of title to any improved lots within the real property to be annexed to individual purchasers thereof, fee simple title or right-of-way to the common area within said real property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

(b) A supplementary Declaration of Covenants, Conditions and Restrictions covering said additional real property described shall be executed and recorded by Developer, the owner of said real property, or its successors and assigns. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said real property shall automatically be members of the Association.

Section 2. Supplementary Declarations. The additions authorized under the foregoing Section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as

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may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration merger or consolidation, revoke, modify or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said real property shall automatically be members of the Association.

Section 3. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the existing property, together with the covenants and restrictions established upon any other property, as one plan.

IV. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following-described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Developer. Class A Members shall be entitled to one vote for each 100 square feet of ground space in each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any 100 square feet of ground space in each Lot. No vote shall be allowed for remaining ground space in each Lot of less than 100 square feet of ground space.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to six (6) votes for each 100 square feet of ground space in each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member.

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(b) The expiration of twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

V. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

2. Transfer of Title. Developer agrees that it shall, at or prior to the time the Class B membership is converted to Class A membership, convey to the Association title to the Common Areas 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, or for easements or rights of way reserved to the Developer or otherwise enforceable in law or equity.)

3. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any walking mall area or parking facilities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for

the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

VI. ASSESSMENTS

1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the commercial development of the Property. The use made by the Association of funds obtained from Assessments may include payment of the cost of: advertising for the common benefit of the Owners, taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. Special Assessments. From and after the date set under Section 6 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, or unexpectedly required repair or replacement of an improvement or of personal property upon the Common Areas. Any such special assessment must be assented to by sixty percent (60%) of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

4. Quorum Requirements. The quorum required for any action authorized by Section 3 above shall be as follows: At the first 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 a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall

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be held more than forty-five (45) days following the immediately preceding meeting.

5. Uniform Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform rate based on the square footage ground area of each Lot; provided, however, that until a Lot has been improved with a Commercial Unit the monthly assessment applicable thereto shall be one-third (1/3) of the monthly assessment fixed for other Lots.

6. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the second month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

7. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

8. Effect of Nonpayment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payment. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

VII. OPERATION AND MAINTENANCE

1. Maintenance of Commercial Units. Each Commercial Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Commercial Unit. The Association shall have no obligation regarding maintenance or care of Commercial Units.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. In addition, the Association shall provide for maintenance and upkeep of any portion of any Lot which lies between the extremities of the Commercial Unit. The Association shall have no obligation regarding maintenance or care of Commercial Units.

3. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(i) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Prospector Square Property Owners Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear."

(ii) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$300,000.00 for any one person injured, \$300,000.00 for all persons injured in any one accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(b) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(c) The Association shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; That it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; That it cannot

be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; That any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

4. Manager. 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, shall be responsible for managing the Property 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 of the functions or acts required or permitted to be performed by the Association itself.

VIII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their mining town concept and with the use restrictions applicable to Lots and Commercial Units.

2. Use of Lots and Commercial Units. All Lots are intended to be improved with Commercial Units and are restricted to such use. However, such use may include residential units such as apartments, town houses or condominium units. No Lot or Commercial Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Commercial Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Non-commercial Use. No part of the properties shall be used for any storing, or other such non-commercial purposes.

4. Signs. No advertising sign or billboard of any kind shall be displayed to the public view on any portion of the properties or any lot, except as approved pursuant to the provisions of Article IX.

5. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any lot or any part of the properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective Commercial Unit or which shall in any way increase the rate of insurance.

6. Temporary Structures and Equipment. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any lot at any time as a Commercial Unit, either temporarily or permanently unless approved in writing by the Architectural Control Committee. No trailer, camper, boat, truck larger than 3/4 ton, or similar equipment shall be permitted to remain upon any property within

the properties, unless placed or maintained within a garage or unless written approval is given by the Architectural Control Committee.

7. Animals. 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 on the lots. Notwithstanding the foregoing, no animals or fowl may be kept on the properties which result in an annoyance or are obnoxious to residents in the vicinity.

8. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the properties, and shall not be allowed to accumulate thereon. All refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any lot unless obscured from view of adjoining lots and streets by a fence, building, or appropriate screen.

9. Electronic Antennas. No television, radio, or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the houses or structures on the lots in said tract unless and until the same shall have been approved in writing by the Architectural Committee of the Association. No television, radio or other electronic antenna shall be erected, constructed, placed or permitted to remain on any of the lots in said tract, unless and until the same shall have been approved in writing by the Architectural Committee of the Association.

10. Slope Erosion. All slopes or terraces on any lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

11. Exception for Developer. Notwithstanding the restrictions contained in this Article VIII, for the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah, Developer shall have the right to use any Lot or Commercial Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Developer.

IX. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member Committee, at least one of whom shall be an officer selected by Developer, the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Committee.

2. Submission to Committee. No Commercial Unit, accessory or addition to a Commercial Unit, landscaping, or other improvement

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of a Lot shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Commercial Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.

4. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and of the Lots in the vicinity of the activity.

6. No Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article IX.

7. Exception for Developer. The foregoing provisions of this Article IX shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Developer on any Lot or on any part of the Common Areas and which occurs at any time during the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Summit County, Utah.

8. Developer's Obligation. Developer hereby covenants in favor of each Owner: (i) that all Commercial Units erected by it and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another.

X. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person appearing, in the records of the Association at the time of mailing.

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that

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the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) the written consent of Developer. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Developer if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

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(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Mortgage Protection. In the event an Owner neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage (or trust deed) covering such Owner's Lot.

The lien for unpaid assessments provided for under Article VI shall be subordinate to any first mortgage (or trust deed) affecting a Lot, but only to the extent of assessments which become due prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

Unless all holders of first mortgages (or trust deeds) on the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled to:

(a) Alter the provisions of Section 5 of Article VI hereof (pertaining to uniform rate of assessment);

(b) Partition or subdivide any Lot or the Common Areas or dedicate or transfer (pursuant to Section 4 (c) of Article V hereof) all or any part of the Common Areas; or

(c) By act or omission seek to abandon or materially alter the arrangement which is established by this Declaration.

6. Developer's Rights Assignable. The rights of Developer under this Declaration or in any way relating to the Property may be assigned.

7. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

8. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Commercial Unit shall comply with,

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and all interests in all Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

9. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Summit County, Utah.

EXECUTED the day and year first above written.

"Developer":

MFT MORTGAGE CORP.,
a Utah Corporation

ATTEST:

Dean G. Christenson
Dean G. Christenson
Secretary

Edward I. Vetter
Its President

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

On this 5th day of July, 1974, personally appeared before me Edward I. Vetter and DEAN C. CHRISTENSON, who being by me duly sworn, did say that they are the President and Secretary, respectively, of MFT MORTGAGE CORP., a Utah corporation, and that the foregoing Declaration of Covenants, Conditions, and Restrictions of the Prospector Square Subdivision, a Planned Commercial Development, was signed on behalf of said corporation by authority of its By-Laws or a resolution of its Board of Directors, and said Edward I. Vetter and DEAN C. CHRISTENSON acknowledged to me that said corporation executed the same.

My Commission Expires:

4/1/78

Scotty Jean Seltzer
Notary Public
Residing at: Salt Lake City, Utah

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