

47 9

8156704

Recording Requested By, and
When Recorded Mail to:

JUSTIN BARNEY, ESQ.
4393 Riverboat Road, Suite 330
Salt Lake City, Utah 84123

8156704
02/21/2002 01:26 PM 111.00
Book - 8568 Pg - 6443-6489
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
JUSTIN BARNEY, ESQ
4393 RIVERBOAT RD
SUITE 330
SLC UT 84123
BY: KLB, DEPUTY - WI 47 P.

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
SUGARPLUM 459,
A PLANNED UNIT DEVELOPMENT
WITHIN THE SUGARPLUM PLANNED UNIT DEVELOPMENT
TOWN OF ALTA
SALT LAKE COUNTY, UTAH

BK 8568 PG 6443

TABLE OF CONTENTS

RECITALS 1

ARTICLE I 2

DEFINITIONS 3

ARTICLE II 5

DESCRIPTION OF PROJECT; RIGHTS OF OWNERS, DECLARANT 6

 2.1. Description of Project 6

 2.2. Rights of Declarant 8

 2.3. Utilities 8

 2.4. Snow Removal and Storage 9

ARTICLE III 9

USE RESTRICTIONS 9

 3.1. Use of Individual Building Sites 9

 3.2. Nuisances 9

 3.3. Parking 10

 3.4. Signs 10

 3.5. Animals 10

 3.6. Garbage and Refuse Disposal 10

 3.7. Radio and Television Antennas 10

 3.8. Right to Lease, Rent 10

 3.9. Power Equipment and Car Maintenance 10

 3.10. Drainage 10

 3.11. Mineral Exploration 11

 3.12. Mineral Exploration Water Use 11

| | |
|--|-----------|
| 3.13. Fair Housing | <u>11</u> |
| 3.14. Timeshare | <u>11</u> |
| 3.15. Lock-Out | <u>11</u> |
| ARTICLE IV | <u>11</u> |
| THE ASSOCIATION MEMBERSHIP AND VOTING | <u>11</u> |
| 4.1. Association | <u>11</u> |
| 4.2. Management of Project | <u>11</u> |
| 4.3. Membership | <u>12</u> |
| 4.4. Transferred Membership | <u>12</u> |
| 4.5. Voting | <u>12</u> |
| 4.6. Record Date | <u>12</u> |
| 4.7. Commencement of Voting Rights | <u>12</u> |
| 4.8. Special Majorities | <u>13</u> |
| 4.9. Membership Meetings | <u>13</u> |
| 4.10. Board of Trustees | <u>13</u> |
| ARTICLE V | <u>13</u> |
| ASSOCIATION POWERS, RIGHTS, DUTIES, LIMITATIONS | <u>13</u> |
| 5.1. Generally | <u>13</u> |
| 5.2. Enumerated Rights | <u>14</u> |
| 5.3. Enumerated Duties | <u>14</u> |
| 5.4. Enumerated Limitations | <u>18</u> |
| ARTICLE VI | <u>19</u> |
| ASSESSMENTS | <u>19</u> |
| 6.1. Agreement to Pay Assessments and Individual Charges | <u>19</u> |
| 6.2. Purpose of Assessments | <u>19</u> |

| | |
|---|-----------|
| 6.3. Regular Assessments | <u>19</u> |
| 6.4. Special Assessments | <u>20</u> |
| 6.5. Individual Charges | <u>20</u> |
| 6.6. Allocation of Regular and Special Assessments | <u>20</u> |
| 6.7. Commencement of Assessments and Individual Charges | <u>20</u> |
| 6.8. Personal Obligation for Assessments and Individual Charges | <u>21</u> |
| 6.9. Master Declaration Assessments | <u>21</u> |
| ARTICLE VII | <u>21</u> |
| ENFORCEMENT OF RESTRICTIONS | <u>21</u> |
| 7.1. General | <u>21</u> |
| 7.2. Specific Enforcement Rights | <u>22</u> |
| ARTICLE VIII | <u>24</u> |
| INSURANCE, DESTRUCTION, CONDEMNATION | <u>24</u> |
| 8.1. Insurance | <u>24</u> |
| 8.2. Destruction Affecting the Common Area. | <u>26</u> |
| 8.3. Condemnation | <u>27</u> |
| ARTICLE IX | <u>28</u> |
| MORTGAGEE PROTECTIONS | <u>28</u> |
| 9.1. Mortgages Permitted | <u>28</u> |
| 9.2. Subordination | <u>28</u> |
| 9.3. Effect of Breach | <u>28</u> |
| 9.4. Incurable Breach | <u>28</u> |
| 9.5. Actions Requiring Mortgage Approval | <u>28</u> |
| 9.6. Right to Appear at Meetings | <u>29</u> |
| 9.7. Right to Furnish Information | <u>29</u> |

| | |
|---|-----------|
| 9.8. Right to Examine Books and Records, Etc. | <u>29</u> |
| 9.9. Owners Right to Ingress and Egress | <u>29</u> |
| 9.10. Notice of Intended Action | <u>29</u> |
| 9.11. First Mortgagee Assessment Liability | <u>29</u> |
| 9.12. distribution, Insurance and Condemnation Proceeds | <u>30</u> |
| 9.13. Taxes | <u>30</u> |
| 9.14. Maintenance Reserves | <u>30</u> |
| 9.15. Notice of Default | <u>30</u> |
| 9.16. Management Contracts | <u>30</u> |
| 9.17. Conflicts | <u>30</u> |
| ARTICLE X | <u>30</u> |
| ARCHITECTURAL CONTROL | <u>30</u> |
| 10.1. Approval of Alteration and Improvements | <u>30</u> |
| 10.2. Architectural Control Committee | <u>31</u> |
| 10.3. Architectural Standards, Guidelines | <u>32</u> |
| 10.4. Committee Approval Process | <u>33</u> |
| 10.5. Waiver | <u>34</u> |
| 10.6. Estoppel Certificate | <u>35</u> |
| 10.7. Liability | <u>35</u> |
| ARTICLE XI | <u>35</u> |
| GENERAL PROVISIONS | <u>35</u> |
| 11.1. Notices | <u>35</u> |
| 11.2. Notice of Transfer | <u>36</u> |
| 11.3. Construction, Headings | <u>36</u> |
| 11.4. Severability | <u>36</u> |

| | |
|---|-----------|
| 11.5. Exhibits | <u>36</u> |
| 11.6. Easements Reserved and Granted | <u>36</u> |
| 11.7. Binding Effect | <u>36</u> |
| 11.8. Violations and Nuisance | <u>36</u> |
| 11.9. Violation of Law | <u>36</u> |
| 11.10. Singular Includes Plural | <u>36</u> |
| 11.11. Conflict of Project Documents | <u>36</u> |
| 11.12. Termination of Declaration | <u>37</u> |
| ARTICLE XII | <u>37</u> |
| AMENDMENT | <u>37</u> |
| 12.1. Amendment by Declarant | <u>37</u> |
| 12.2. Amendment After First Sale | <u>37</u> |
| 12.3. Specific Provisions | <u>37</u> |
| 12.4. Amendment to Satisfy Other State Laws | <u>37</u> |
| 12.5. Amendment Instrument | <u>38</u> |

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
SUGARPLUM 459,
A PLANNED UNIT DEVELOPMENT
WITHIN THE SUGARPLUM PLANNED UNIT DEVELOPMENT**

RECITALS

This Declaration, made on the date hereinafter set forth by MSICo., L.L.C., a Utah limited liability company ("Declarant"), by its President, is made with reference to the following facts:

A. Declarant is the owner of Lots 4, 5 and 9 in Sugarplum, a planned unit development (the "Sugarplum PUD"), located in the Town of Alta, Salt Lake County, Utah (the "Property") and the subject of that certain recorded Master Declaration of Covenants, Conditions and Restrictions of Sugarplum, A Planned Unit Development, Salt Lake County, Utah (the "Master Declaration"), as amended and supplemented by subsequent actions and documents, of record. Declarant desires to develop the Property as a planned unit development (the "Project") within and subsidiary to the Sugarplum PUD. The Project shall consist: of all lands, property and appurtenances comprising the Property.

B. Declarant and the Town of Alta are parties to a Definitive Settlement and Development Agreement that has been recorded as an attachment to that certain Special Declaration of Contractual Conditions, Covenants and Restrictions, recorded on the 1st day of February, 2001, as entry no. 7811910, in Book 8420, commencing at Page 8492 of the records of the Salt Lake County Recorder (collectively, the "Development Agreement").

C. This Declaration is supplemental to and in further elaboration of the covenants, conditions and restrictions that are applicable to the Property and Project under the Master Declaration and the Development Agreement, and, together with the recordation of the "Map" (as more fully hereinafter defined) that is being recorded in connection with the execution and recordation of this Declaration, creates and implements the planned unit development and subdivision regime that was approved and authorized under and in connection with the Development Agreement.

D. The Declaration is designed to complement local governmental regulations, the Master Declaration and the Development Agreement, and where conflicts occur, the more restrictive requirements shall prevail, provided that the Declaration shall govern in all instances in which there is a lack of clarity or ambiguity or an absence of rule or

regulation from the other sources.

E. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Project; maintaining and administering the Common Area; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. Sugarplum 459 Homeowners Association, a property owners' association and a nonprofit corporation, has or will be incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

F. The Association shall also be a "Maintenance Association" (as that term is defined in the Master Declaration) and shall be a member of the Sugarplum Master Homeowners Association as that term is hereinafter defined.

G. Each Owner shall receive fee title to the Building Pad (as that term shall be hereinafter defined) belonging to that Owner and one or more Memberships in the Association as provided herein.

H. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to subdivide the Property and establish thereon a planned unit development complying with the applicable laws, rules and regulations of the State of Utah, Town of Alta, the Master Declaration, the Development Agreement and this Declaration.

NOW, THEREFORE, it is hereby declared that the Property and the Project shall be held, sold, conveyed, leased, rented, encumbered and used subject to the following Declaration as to division, subdivision, easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions and uses to which the Project may be put, hereby specifying that such Declaration shall operate for the mutual benefit of all Owners of the Project and shall constitute covenants to run with the land and shall be binding on and for the benefit of Declarant, its successors and assigns, the Association, its successors and assigns and all subsequent owners of all or any part of the Property or Project, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, for the benefit of the Property and Project, and shall, further, be imposed upon all of the Property and Project as a servitude in favor of each and every other Owner of any portion thereof as the dominant tenement.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates otherwise the following terms used in this Declaration are defined as follows:

1.1. "Architectural Control Committee" or "Committee" shall mean the committee created pursuant to Article X.

1.2. "Architectural Control Guidelines" or "Guidelines" shall mean the written review standards, if any, promulgated by the Architectural Control Committee as provided in Subsection 10.3.

1.3. "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

1.4. "Assessments" shall mean the "Regular Assessment" (as that term is defined in Subsection 6.3) and "Special Assessments" (as that term is defined in Subsection 6.4) levied against each Building Pad and its owner by the Association as provided in Article VI.

1.5. "Association" shall mean the SUGARPLUM 459 HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, the Members of which shall be the Owners of Building Pads and Dwellings within the Project as provided herein. The Association is a "Maintenance Association" as provided in the Master Declaration and is or will be a member of the Master Association.

1.6. "Board" shall mean the Board of Trustees of the Association.

1.7. "Building Pad" shall mean each of the subdivided parcels or lots of real property that are designated on the Map as a numbered "Building Pad" within the Project, each of which is intended to be improved with the construction of one Dwelling thereon.

1.8. "Bylaws" shall mean the Bylaws of the Association as amended from time to time.

1.9. "Common Area" shall mean (i) the property designated as common area on the Map, and (ii) any portion of the Project which is owned by the Association for the use and benefit of the Members. Subject to applicable law, rule and regulation, the Declarant may, in its discretion, prior to the conveyance or transfer of any Building Pad, designate or add additional Common Area to the Property by amendment or modification of the Map.

1.10. "Declarant" shall mean MSICo., L.L.C., a Utah limited liability company, or any successor-in-interest by merger or by express assignment of the rights of Declarant hereunder.

1.11. "Declaration" shall mean this instrument as amended from time to time.

1.12. "Dwelling" shall mean a separate single-family residential dwelling together with garages and/or other attached structures on a Building Pad. No more than 10 Dwellings shall be constructed on the 10 Building Pads in the Project. The term

" Dwelling " as sometimes used herein contemplates that such Dwelling (including the underlying Building Pad) is owned, conveyed or mortgaged as a separate parcel of real property, together with such appurtenances and other rights in the Common Area as are hereinafter set forth and provided. In addition to the Architectural Control Guidelines, the provisions of both the Master Declaration and the Development Agreement governing and restricting or regulating the improvements constituting the Dwelling shall apply. Notwithstanding the foregoing, as provided in the Development Agreement under Section 2.5 thereof, at the option of the Declarant or the Association, in agreement with the applicable Owner, a " manager's unit " may be included in any one of the Dwellings and shall not cause a violation of the provisions of this Declaration. Further, as provided in Section 2.5 of the Development Agreement, the said manager's unit may have separate kitchen and bath facilities and a separate entrance. However, it is agreed that for purposes of applying the bedroom count requirements of Section 1.1 of the Development Agreement, the said manager's unit shall not be a " bedroom ."

1.13. " Improvement " shall mean Structures, as defined herein, roads, plants such as trees, hedges, shrubs and bushes and landscaping of every kind. " Improvement " shall also mean any utility line, conduit, pipe or other related facility or equipment.

1.14. " Individual Charges " shall mean those charges levied against an Owner by the Association as provided in Section 6.5.

1.15. " Map " shall mean the P.U.D. subdivision survey map and plat entitled " SUGARPLUM 459, A PLANNED UNIT DEVELOPMENT ", filed concurrently herewith in the office of the Recorder of Salt Lake County, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.16. " Master Association " shall mean the Sugarplum Master Homeowners Association, a Utah nonprofit corporation comprised of the Association and all other " Maintenance Associations " (as that term is defined in the Master Declaration) organized pursuant to the Master Declaration.

1.17. " Master Declaration " shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions of Sugarplum, a Planned Unit Development, as filed of record with the Salt Lake County Recorder and as amended from time to time.

1.18. " Member " shall mean a person or entity entitled to membership in the Association as provided herein.

1.19. " Mortgage " shall mean a mortgage or deed of trust encumbering a Building Pad or Dwelling or other portion of the Project. A " Mortgagee " shall include the beneficiary under a deed of trust. A " First Mortgage " or " First Mortgagee " is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Building Pad or Dwelling or other portion of the Project. A " First Mortgagee " shall include any holder, insurer or guarantor of a First Mortgage on any Building Pad or Dwelling or other portion of the Project. Any and all Mortgagee protections contained in

the Project Documents shall also protect Declarant as the holder of a Mortgage or other security interest in any Building Pad or Dwelling in the Project.

1.20. "Owner" shall mean the person or entity holding a record fee simple ownership interest in a Building Pad and/or Dwelling, including Declarant, as well as vendees under installment purchase contracts. "Owner" shall not include persons or entities who hold an interest in a Building Pad and/or Dwelling merely as security for the performance of an obligation. In the case of Building Pads, "Owner" shall include the record owner or contract vendee of each Building Pad.

1.21. "Property" shall have the meaning set forth in the first recital hereinabove.

1.22. "Project" shall mean the Property, as submitted to the subdivision and planned unit development regime that is implemented hereby, including the described real property and any and all improvements located in Salt Lake County, Utah, and more particularly described on Exhibit "A".

1.23. "Project Documents" shall mean the Articles, Bylaws, Declaration, and Rules and Regulations of the Association.

1.24. "Rules and Regulations" shall mean the rules and regulations promulgated by the Association to further govern the possession, use and enjoyment of the Project, as amended from time to time.

1.25. "Structure" shall mean any tangible thing or device to be fixed permanently or temporarily to real property including, but not limited to all "improvements" (as typically understood in the real estate community), fixtures, any Dwelling, as defined herein, building, garage, driveway, walkway, concrete pad, asphalt pad, gravel pad, porch, patio, shed, greenhouse, bathhouse, tennis court, pool, stable, fence, wall, pole, sign, antennae or tent.

Other capitalized terms used in this Declaration shall have the meanings provided in the text of this Declaration.

ARTICLE II

DESCRIPTION OF PROJECT; RIGHTS OF OWNERS, DECLARANT

2.1. Description of Project.

2.1.1. Project. The Project shall consist of the Property and all of the Building Pads, the Common Area, etc., that comprise the subdivided planned unit development project that is the subject of this Declaration and the Map.

2.1.2. Building Pads. The Project shall consist of no more than 10 Building Pads, each of which is to be improved with one Dwelling. Consistent with the

applicable provisions of the Development Agreement, Declarant reserves the right to adjust or move the location of each Building Pad in order to facilitate proper planning in the discretion of the Declarant. Declarant shall also have the right to sell, convey, transfer, assign or otherwise dispose of any Building Pad, without first constructing a Dwelling thereon. Any purchaser, transferee or Owner of a vacant Building Pad shall be entitled to construct a Dwelling thereon, subject to the approval or supervision of the Architectural Control Committee and, of course, subject to applicable construction rules and regulations, the Master Declaration, the Development Agreement, this Declaration and the Architectural Control Guidelines, as provided and specified in Section 10.3 of this Declaration.

2.1.3. The Association. The Association shall maintain the Common Areas and all improvements thereon, in a safe, sanitary and attractive condition. Such maintenance responsibility shall include, but shall not be limited to, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping visible from other portions of the Project. The Association shall assess and collect fees from its members, in accordance with the provisions hereof. The Association shall also comply with all applicable provisions of the Master Declaration.

2.1.4. Common Area. The Common Area shall consist of (i) the property designated as common area on the Map, and (ii) all real property and improvements thereto within the Project, which are owned and maintained by the Association for the use and benefit of the Members.

2.1.5. Density. The Project is zoned for the construction of a maximum of Dwellings more than the 10 Dwellings contemplated hereby; however, 10 Dwellings have been approved by the Town of Alta pursuant to and in connection with the Development Agreement and, accordingly, no more than 10 Dwellings shall be constructed on the Property or within the Project.

2.1.6. Incidents of Building Pad Ownership, Inseparability. Every Building Pad shall have appurtenant to it the following interests:

(a) one Membership in the Association;

(b) a nonexclusive easement for each Building Pad and Dwelling constructed thereon, for use, enjoyment, ingress and egress over the Common Area subject to such restrictions and limitations as are contained in the Project Documents and subject to other reasonable regulation by the Association; and

(c) a non-exclusive easement to the use of the areas designated under the Master Declaration as "Common Area" (the "Master Common Area"), subject to such restrictions and limitations as are contained in the Master Declaration (including under the "Project Documents," as that term is defined in the Master Declaration).

Such interests shall be appurtenant to and inseparable from ownership of the Building Pad or Dwelling. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Building Pad or Dwelling shall automatically transfer these interests to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.1.7. Owner's Obligation to Maintain Building Pad. Each Owner shall maintain his Building Pad or Dwelling, and all Improvements thereon, in a safe, sanitary and attractive condition. In the event that an owner fails to maintain his Building Pad or Dwelling as provided herein in a manner which the Board reasonably deems necessary to preserve the appearance and/or value of the Project, the Board may notify the Owner of the work required and demand that it be done within a reasonable and specified period. In the event that the Owner fails to carry out such maintenance within said period, the Board shall, subject to the notice and hearing requirements of Section 7.2.1.2, have the right to enter upon the Building Pad or Dwelling to cause such work to be done and individually charge the cost thereof to such Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his Building Pad or Dwelling, the Board shall have the right to immediately enter upon the Building Pad or Dwelling to abate the emergency and individually charge the cost thereof to such Owner.

2.1.8. Delegation of Use; Lessees; Tenants. Any Owner may temporarily delegate his rights of use and enjoyment in the Project to the members of his family, his guests, and invitees, and to such other persons as may be permitted by the Project Documents, subject, however, to the Project Documents. However, if an Owner of a Building Pad has leased or rented his Building Pad or one or more Dwellings located on said Building Pad, the Owner, members of his family, his guests and invitees shall not be entitled to use or enjoy that portion of the Project while such lease is in force. Instead, the lessee or tenant, while such lease remains in force, shall be entitled to use and enjoy the Project and may delegate the rights of use and enjoyment in the same manner as if such lessee or tenant were an owner during the period of his occupancy. Each Owner shall notify the secretary of the Association of the names of any lessees or tenants of such Owner's Building Pad or Dwelling. Each Owner, lessee or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner, lessee or tenant has delegated any rights of use or enjoyment in the Project and the relationship that each such person bears to the Owner, lessee or tenant. All persons to whom rights of use and enjoyment of the Project have been delegated shall be subject to the terms and provisions of this Declaration, and such rights are subject to suspension to the same extent as the rights of Owners.

2.1.9. Responsibility for Common Area Damage. The cost of repair or replacement of any portion of the Common Area resulting from the willful or negligent act of an Owner, lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Association. The Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an Individual Charge

against such Owner.

2.2. Rights of Declarant.

2.2.1. Reservation of Easements to Complete, Sell. Declarant hereby reserves in itself the following easements over the Project to the extent reasonably necessary to complete the development of and sell, lease, rent or otherwise dispose of the Building Pads:

(a) easements for ingress and egress, drainage, snow removal and storage, encroachment, utilities, maintenance of temporary structures, operation and storage of construction equipment and vehicles, for doing all acts reasonably necessary to complete or repair the Project, or to discharge any other duty of Declarant under the Project Documents or sales contracts or otherwise imposed by Law.

(b) easements for activity reasonably necessary to sell, lease, rent or otherwise dispose of the Building Pads.

These easements shall exist until the date on which the last Building Pad is sold or otherwise transferred by Declarant.

2.3. Utilities.

2.3.1. Rights and Duties. Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or other utility connections are located or installed within the Project, the Owner of each Building Pad or Dwelling served by said connections shall be entitled to the nonexclusive use and enjoyment of such portions of said connections as service his Building Pad or Dwelling. Every Owner shall pay all utility charges which are separately metered or billed to his Building Pad or Dwelling. The Association shall pay all common utility charges which are metered or billed to the structures served by such Association. Every Owner shall maintain all utility installations located in or upon his Building Pad or Dwelling except for those installations maintained by the Association, or utility companies, public or private. The Association and utility companies shall have the right, at reasonable times after reasonable notice to enter upon the Building Pads, Common Area, or other portions of the Project to discharge any duty to maintain Project utilities.

Whenever sanitary sewer, water, electric, gas, television receiving, telephone lines or other utility connections are located within the Project, the Owner of a Building Pad served by said connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to at reasonable times after reasonable notice enter upon Building Pads, Common Area or other portions of the Project or to have his agents or the utility companies enter upon the Building Pads, Common Area, or other portions of the Project to maintain said connections.

In the event of a dispute between Owners with respect to the maintenance,

repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then the matter shall be submitted to the Board which shall render a decision on the matter within forty-five (45) days thereafter. The Board shall have final authority to resolve each such dispute.

2.3.2. Easements for Utilities and Maintenance. Easements over and under the Project for the installation, repair and maintenance of sanitary sewer, water, electric, gas and telephone lines, cable or master television antenna lines, and drainage facilities, which are of record in the office of the Salt Lake County Recorder, or as may be hereafter required to serve the Project, are hereby reserved for Declarant and the Association, together with the right to grant and transfer the same.

2.4. Snow Removal and Storage. Declarant hereby reserves over the Project, for the benefit of the Owners hereof, a snow removal and storage easement for the purpose of providing appropriate locations for the relocation and storage of snow which may accumulate at the Project. Declarant reserves the right to designate one or more locations located on various Buildings Pads as snow storage easement areas. Such locations may or may not be depicted on the Map and Declarant reserves the right to designate on one or more supplemental Maps the location of such snow removal and storage areas. In the event that such snow removal and storage areas are not so designated on the Map, Declarant nevertheless reserves the right to give notice to the Owners of any area so designated which shall thereupon become a snow removal and storage area. Declarant may unilaterally amend the Declaration and the Map to designate such areas. The provisions of the Development Agreement relative to snow removal and storage are applicable to the Project, the Property, the Building Pads and the Dwellings. Areas between Dwellings are designated as available for snow removal and storage purposes and all improvements, landscaping and other work between the Dwellings shall be accomplished in a manner consistent with such usage, as more fully implemented by independent written plans adopted by the Board from time to time.

ARTICLE III

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each Building Pad therein is subject to the following:

3.1. Use of Individual Building Pads. Except as otherwise provided herein, each Building Pad may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of a Dwelling in accordance with the provisions hereof.

3.2. Nuisances. No noxious, illegal or offensive activities shall be carried on in any Dwelling, Building Pad or other part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with each Owner's quiet enjoyment of his respective Building Pad or Dwelling, or which shall in any way increase the rate of insurance for the Project or for

any other Building Pad or Dwelling, or cause any insurance policy to be cancelled or cause a refusal to renew the same.

3.3. Parking. Unless otherwise permitted by the Board, no motor vehicles shall be parked or left on any portion of the Project other than within a driveway, garage or other parking structure.

3.4. Signs. No sign of any kind shall be displayed to the public view from any Building Pad or from the Common Area or from any other portion of the Project without the approval of the Board except (i) one sign of customary and reasonable dimensions advertising a Building Pad or Dwelling for sale, lease or rent displayed from such Building Pad or Dwelling, and (ii) such signs as may be used by Declarant or its assignees for the purpose of selling, renting or leasing Building Pads as permitted by Section 2.2.1.

3.5. Animals. No animals of any kind shall be raised, bred or kept on any portion of the Project.

3.6. Garbage and Refuse Disposal. All rubbish, trash and garbage and other waste shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Rubbish, trash, garbage and other waste shall be kept in sanitary containers. All equipment, garbage cans, or storage piles shall be kept screened and concealed from the view of other portions of the Project, except during the scheduled day for trash pick-up.

3.7. Radio and Television Antennas. No Owner may construct, use or operate his own external radio, television or other electronic antenna or satellite receiver without the consent of the Board. No Citizens Band or other transmission shall be permitted from the Project without the consent of the Board.

3.8. Right to Lease, Rent. Nothing in this Declaration shall prevent an Owner from leasing or renting his Dwelling. However, any lease or rental arrangement shall be expressly subject to the Project Documents and any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement.

3.9. Power Equipment and Car Maintenance. No power equipment (other than tools and equipment used in the construction or maintenance of the Improvements), work shops, or car maintenance of any nature, other than emergency repair, shall be permitted on the Project without the consent of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, unsightliness, fire hazard, interference with radio or television reception, and similar objections.

3.10. Drainage. No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Project.

3.11. Mineral Exploration. No portion of the Project shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel or earth substance. No drilling, exploration, refining, quarrying, or mining operations of any kind shall be conducted or permitted to be conducted thereon; nor shall wells, tanks, tunnels, mineral excavations, shafts, derricks, or pumps used to mine or drill for any substances be located on the Project. No drilling for water or geothermal resources or the installation of such wells shall be allowed unless specifically approved by the Board.

3.12. Mineral Exploration Water Use. No Owner of a Building Pad or Dwelling contiguous to a stream or body of water shall have any rights over or above those of other Owners with respect to use of the water, the land thereunder or the water therein. No person shall acquire or be divested of title to any land adjacent to or beneath such water within the Project due to accretion, erosion or change in water levels. No Building Pad shall be contoured or sloped, nor may drains be placed upon any Building Pad, so as to encourage drainage of water from such Building Pad into any body of water without the approval of the Board. All streams and other natural bodies of water within the Project are protected as watershed, and access thereto by persons and domestic animals is strictly prohibited.

3.13. Fair Housing. No Owner shall either directly or indirectly forbid or restrict the conveyance, encumbrance, lease, mortgaging or occupancy of his Building Pad to any person on the basis of race, color, sex, religion, ancestry, national origin, or any other basis prohibited by law.

3.14. Timeshare. Except as otherwise approved by the Town of Alta, no Building Pads or Dwellings of the Project shall be developed as timeshare projects, nor shall any "timeshare interests" (as that term is defined in the Utah Timeshare and Camp Resort Act, U.C.A. 57-19-2(17) [1953, as amended]) be created or sold in the Project.

3.15. Lock-Out. In the event of avalanche or the threat thereof, authorized agents of the Town of Alta may prohibit all ingress and egress to and from the Project, as well as all access to or exit from any Dwelling in the Project by any Owners, lessees, guests, employees or any other persons. In the event of any such prohibition on access and travel, neither the Town of Alta nor its authorized agents shall be liable to Declarant, the Owners, their lessees, guests, employees or any other persons for loss or damage occasioned by or resulting from such prohibition.

ARTICLE IV

THE ASSOCIATION MEMBERSHIP AND VOTING

4.1. Association. Sugarplum 459 Homeowners Association, a Utah nonprofit corporation, shall be the Association.

4.2. Management of Project. The management of the Project shall be vested in the Association in accordance with the Project Documents and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency

having jurisdiction over the Project.

4.3. Membership. Each Owner of a Building Pad or a Dwelling shall be a Member of the Association, subject to the Project Documents. There shall be one Membership appurtenant to each Dwelling allocated to a Building Pad.

4.4. Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of ownership or sale by installment contract of the Building Pad or Dwelling to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. Any execution of any installment sales contract or the transfer of title to a Building Pad or Dwelling, or interest therein, shall operate automatically to transfer the appurtenant Membership rights in the Association to the new Owner.

4.5. Voting. The Association shall have two classes of voting membership as follows:

(a) Class A membership shall be that held by each Owner, other than Declarant, of a Building Pad. If a Building Pad and associated Dwelling is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one vote for each Building Pad and associated Dwelling.

(b) Class B membership shall be that held by Declarant who shall be entitled to three votes for each Building Pad owned by it. Further, the Class B membership shall be converted to Class A membership and shall forever cease to exist on the occurrence of whichever of the following is first in time:

(i) The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member;

(ii) The fourth anniversary of the recordation of this Declaration.

4.6. Record Date. The Association shall fix, in advance, a date as a record date for the determination of the Members entitled to vote at and receive notice of any meeting of the Association. The record date shall be not less than ten (10) days nor more than ninety (90) days prior to any meeting or taking action. Notwithstanding the foregoing, the voting right of transferees of a Building Pad from the Declarant shall accrue on the date of such transfer regardless of the aforesaid record date.

4.7. Commencement of Voting Rights. Voting rights with respect to any Building Pad or Dwelling shall not vest until Assessments have been levied against that Building Pad or Dwelling by the Association, as set forth in subsection 6.7 hereof.

4.8. Special Majorities. There are various sections of the Project Documents which require the vote or written assent of a majority of the voting power of the Association residing in Members other than Declarant prior to the undertaking of certain actions by the Association or the Board. In no event shall such provisions be deemed to preclude Declarant from casting the votes to which it is entitled pursuant to subsection 4.5 hereof. Therefore, any provision in the Project Documents which requires the vote or written assent of a majority of the voting power of the Association residing in Members other than Declarant shall also require the following:

(a) So long as there are Class A and Class B voting memberships, the vote or written assent of a majority of the Class B voting power; and

(b) After the conversion of the Class B memberships to Class A memberships in accordance with subsection 4.5(b) hereof, the vote or written assent of a majority of the total voting power of the Association.

4.9. Membership Meetings. Regular and special meetings of the Association shall be held with the frequency, at the time and place and in accordance with the provisions of the Bylaws.

4.10. Board of Trustees. The affairs of the Association shall be managed by the Board of Trustees, which shall be established, and which shall conduct regular and special meetings to the provisions of the Articles and Bylaws.

4.11. Association Succession. Upon the transfer, by the Declarant of the last of the Building Pads held by the Declarant, the discretionary rights and benefits exercisable under this Declaration by the Declarant, if any, shall automatically expire and be of no further force or effect. Nothing herein shall, however, terminate any exculpation, indemnity or other provisions hereof in favor of the Declarant.

ARTICLE V

ASSOCIATION POWERS, RIGHTS, DUTIES, LIMITATIONS

5.1. Generally. The Association shall have the power to perform any action reasonably necessary to exercise any right or discharge any duty enumerated in this Article V or elsewhere in the Project Documents or reasonably necessary to operate the Project. In addition, the Association shall have all the rights and powers of a nonprofit corporation under the laws of the State of Utah.

The Association shall act through its Board of Trustees and the Board shall have the power, right and duty to act for the Association except that actions which require the approval of the Members of the Association shall first receive such approval.

The powers, rights, duties and limitations of the Association set forth in this Article V and elsewhere in the Project Documents shall rest in and be imposed on the Association concurrently with the close for the first sale of a Building Pad in the Project.

5.2. Enumerated Rights. In addition to those Association rights which are provided elsewhere in the Project Documents the Association shall have the following rights:

5.2.1. Delegation. To elect, employ, appoint, to assign and to delegate the rights and duties of the Association to officers, employees, agents and independent contractors.

5.2.2. Enter Contracts. To enter contracts with third parties to furnish goods or services to the Project subject to the limitations of Section 5.4.

5.2.3. Borrow Money. To borrow money and with the approval by vote or written assent of a majority of the voting power of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.2.4. Dedicate and Grant Easements. To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or any other entity for such purposes and subject to such conditions as may be agreed to by the Association; provided, however, that no such dedication or transfer shall be effective unless (i) such dedication or transfer is approved by two-thirds (2/3) of the voting power of the Association, and (ii) an instrument in writing is signed by the Secretary of the Association certifying that such dedication or transfer has been approved by the required vote or written assent.

5.2.5. Establish Rules and Regulations. To adopt reasonable rules not inconsistent with this Declaration, the Articles or the Bylaws, relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their contract purchasers, lessees, tenants and guests with respect to the Project and other owners. Pursuant to those Rules and Regulations, the Association shall have the right to limit the number of guests of an Owner utilizing the Common Area and the manner in which the Common Area may be used. A copy of the Rules shall be mailed or otherwise delivered to each Owner and a copy shall be available, upon request, from the Board.

5.2.6. Entry. To enter upon any portion of the Project, including any Building Pad or Dwelling after giving reasonable notice to the Owner thereof, for any purpose reasonably related to the performance by the Association of its duties under this Declaration. In the event of an emergency such right of entry upon any Building Pad or Dwelling shall be immediate.

5.3. Enumerated Duties. In addition to those Association duties which are imposed elsewhere in the Project Documents the Association shall have the following duties:

5.3.1. Manage, Maintain Common Area. The Association shall manage, operate, maintain, repair and replace any property acquired by or subject to the control of the Association, including personal property, in a safe, sanitary and attractive

condition.

5.3.2. Enforce Project Documents. To enforce the provisions of the Project Documents by appropriate means as provided at Article VII.

5.3.3. Levy and Collection of Assessments and Individual Charges. To fix, levy and collect Assessments and Individual Charges in the manner provided in Articles VI and VII.

5.3.4. Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the Common Area, personal property owned by the Association or against the Association. Such taxes and assessments may be contested or compromised by the Association; provided, that they are paid or that a bond or other security insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

To prepare and file annual tax returns with the federal government and the State of Utah and to make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

5.3.5. Water and Other Utilities. To acquire, provide and pay for utility services as necessary for the Common Area.

5.3.6. Legal and Accounting. To obtain and pay the cost of legal and accounting services necessary or proper to the maintenance and operation of the Project and the enforcement of the Project Documents.

5.3.7. Insurance. To obtain and pay the cost of insurance for the Project as provided in Section 8.1.

5.3.8. Bank Accounts. To deposit all funds collected from owners pursuant to Articles VI and VII hereof and all other amounts collected by the Association as follows:

(a) All funds shall be deposited in a separate bank account ("General Account") with a federally insured bank located in the State of Utah. The Funds deposited in such account may be used by the Association only for the purposes for which such funds have been collected.

(b) Funds which the Association shall collect for reserves for capital expenditures relating to the repair and maintenance of the Common Area, and for such other contingencies as are required by good business practice shall, within ten (10) days after deposit in the General Account, be deposited into an interest bearing account with a federally insured bank or savings and loan association located in the State of Utah and selected by the Association, or invested in Treasury Bills or Certificates of Deposit or

otherwise prudently invested which shall all herein be collectively referred to as the "Reserve Account". Funds deposited into the Reserve Account shall be held in trust and may be used by the Association only for the purposes for which such amounts have been collected.

5.3.9. Annual Report of Domestic Nonprofit Corporation. To make timely filings of the annual report required by Section 16-6-97 and 16-6-98 of the Utah Nonprofit Corporation and Co-operative Association Act. Such annual report shall be made on forms prescribed and furnished by the Secretary of State of Utah and shall be delivered to the Secretary of State between the first day of January and the first day of April of each year, except that the first annual report shall be filed between the first day of January and the first day of April of the year next succeeding the calendar year in which the certificate of incorporation was issued by the Secretary of State.

5.3.10. Preparation and Distribution of Financial Information. To regularly prepare budgets and financial statements and to distribute copies to each Member as follows:

(a) A pro forma operating statement (budget) for each fiscal year shall be distributed no less than sixty (60) days before the beginning of the fiscal year;

(b) A balance sheet as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of a Building Pad, and an operating statement, for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the Building Pad and the name of the Owner assessed.

(c) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year as defined below;

(i) A balance sheet as of the last day of the fiscal year;

(ii) An operating (income) statement for said fiscal year;
and

(iii) A statement of changes in financial position for said fiscal year.

For any fiscal year in which the gross income to the Association exceeds Twenty-Five Thousand Dollars (\$25,000.00), the annual report referred to above shall be prepared by an independent accountant. If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized

Officer of the Association that the statements were prepared without an audit from the books and records of the Association.

5.3.11. Maintenance and Inspection of Books and Records. To cause to be kept adequate and correct books of account, a register of Members, minutes of Member and Board meetings, a record of all corporate acts, and other records as are reasonably necessary for the prudent management of the Project and to present a statement thereof to the Members at the annual meeting of Members.

The Membership register (including names, addresses and voting rights), books of account and minutes of meetings of the Members, of the Board, and of committees shall be made available for inspection and copying by any Member of the Association, or by its duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the principal office of the Association or at such other place within the Project as the Board of Trustees shall prescribe. The Board shall establish reasonable rules with respect to:

(a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;

(b) Hours and days of the week when such an inspection may be made; and

(c) Payment of the cost of reproducing copies of the documents requested by a Member.

Every Member shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Member includes the right, at such Member's own expense, to make extracts and copies of documents.

5.3.12. Statements of Status. To provide, upon the request of any Owner or Mortgagee, a written statement setting forth the amount, as of a given date, of any unpaid Assessments or Individual Charges against any Member. Such statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith. Such written statement shall be provided within ten (10) days of the request.

5.3.13. Architectural Control. To maintain architectural control over the Project and appoint the members of the Architectural Control Committee in connection therewith, pursuant to Article X.

5.3.14. Master Association. The Association shall be a member of the Master Association, formed pursuant to the provisions of the Master Declaration, filed of record in the office of the Salt Lake County Recorder. The Master Association shall own and maintain the Common Areas of Sugarplum, as described in the Master Declaration, including certain amenities which may be constructed in the future for the

use and enjoyment of the Owners. The Association shall pay all assessments imposed upon it by the Master Association and all such assessments will be allocated to an made part of the Assessments.

5.4. Enumerated Limitations. Except with the vote or written assent of a majority of the total voting power of the Association residing in Members other than Declarant, the Board shall be prohibited from taking any of the following actions:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or to the Association for a term longer than one (1) year with the following exception:

(i) Entering into a contract with a public utility company if the rates charged for the materials or services are regulated by a public utilities entity; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract the regulated rate.

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(b) Incurring aggregate expenditures for capital improvements to the common Area in any fiscal year in excess of five percent 5% of the budgeted gross expenses of the Association for that fiscal year;

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(d) Paying compensation to trustees on the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may reimburse a trustee or officer for reasonable expenses incurred in carrying on the business of the Association.

(e) Filling a vacancy on the Board created by the removal of a trustee.

ARTICLE VI

ASSESSMENTS

6.1. Agreement to Pay Assessments and Individual Charges. Declarant for each Building Pad or Dwelling owned by it, hereby covenants and agrees, and each Owner of a Building Pad or Dwelling is deemed to covenant and agree for each Building Pad or Dwelling owned, to pay to the Association all Regular Assessments and all Special Assessments (collectively "Assessments"), and all Individual Charges, to be established and collected as provided in this Declaration and in the other Project Documents.

6.2. Purpose of Assessments. The purpose of Assessments is to raise funds necessary to operate the Project. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement, maintenance and administration of the Project and other expenditures incurred in the performance of the duties of the Association as set forth in the Project Documents.

6.3. Regular Assessments. "Regular Assessments" are the Assessments that are hereinafter described. The purpose of Regular Assessments is to raise funds necessary to pay the anticipated costs of operating the Project during the fiscal year and to accumulate reserves to pay costs anticipated in future years. No less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare or cause to be prepared, and distributed to each member, a proposed pro forma operating statement or budget for the forthcoming fiscal year. Any Member may make written comments to the Board with respect to said pro forma operating statement. The pro forma operating statement shall be prepared consistently with the prior fiscal year's operating statement and shall include adequate reserves for contingencies and for maintenance, repairs and replacement of the Common Area improvements or Association personal property likely to need maintenance, repair or replacement in the future.

Not more than sixty (60) days not less than thirty (30) days before the beginning of each fiscal year, the Board shall meet for the purpose of establishing the Regular Assessment for the forthcoming fiscal year. At such meeting the Board shall review the proposed pro forma operating statement or budget, and written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, shall establish the Regular Assessment for the forthcoming fiscal year; provided, however, that the Board may not establish a Regular Assessment for any fiscal year which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year without the approval of a majority of the voting power of the Association residing in Members other than Declarant. Not less than thirty (30) days before the beginning of each fiscal year, the Board shall distribute to each Member a final copy of the pro forma operating statement or budget for the forthcoming fiscal year. Regular Assessments shall be payable in equal monthly installments due on the first day of each month, unless the Board adopts

some other basis for collection.

6.4. Special Assessments.

6.4.1. General. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by the Board, it shall become a "Special Assessment." The Board may, in its discretion, provide for the payment in installments of such Special Assessment over the remaining months of the fiscal year or levy the Special Assessment immediately against each building Pad or Dwelling. Special Assessments shall be due on the first day of the month following notice of their levy.

6.4.2. Limitation on Special Assessments. Any Special Assessment which singly or in the aggregate with previous Special Assessments for the fiscal year would amount to more than five percent (5%) of the budgeted gross expense of the Association for the fiscal year, shall require approval of a majority of the voting power of the Association residing in Members other than Declarant.

6.5. Individual Charges. Individual Charges may be levied against an Owner (i) as a monetary penalty imposed by the Association as a disciplinary measure for the failure of the Owner, his family members, lessees, guests, or invitees to comply with the Project Documents, or (ii) as a means of reimbursing the Association for costs incurred by the Association for repair of damage to Common Areas and facilities for which the Owner, his family members, lessees, guests or invitees was responsible, or to otherwise bring the Owner and his Unit into compliance with the Project Documents. Individual Charges against an Owner shall not be enforceable through the lien provisions of the Project Documents. Notwithstanding the foregoing, charges imposed against a Building Pad or Dwelling and its Owner consisting of reasonable late payment penalties and/or charges to reimburse the Association for loss of interest, and/or for costs reasonably incurred (including attorneys' fees) in the efforts to collect delinquent Assessments shall be fully enforceable through the lien provisions of the Project Documents.

6.6. Allocation of Regular and Special Assessments. Except as otherwise provided herein, Regular and Special Assessments shall be levied against each Building Pad for 1/10th of the Assessment.

6.7. Commencement of Assessments and Individual Charges. The right to levy Assessments and Individual Charges shall commence as to all Building Pads on the date of the closing of the first sale or other first transfer of a Building Pad by the Declarant (with appropriate pro-rating). Thereafter, Regular Assessments shall be levied on the first day of each month of the fiscal year of the Association.

6.8. Personal Obligation for Assessments and Individual Charges. All Assessments and Individual Charges, together with late charges, interest, costs, and reasonable attorneys' fees incurred in collecting delinquent Assessments and Individual Charges shall be the personal obligation of the Owner of such Building Pad or Dwelling at the time when the Assessments or Individual Charges fell due. If more than one person or entity was the Owner of a Building Pad or Dwelling at the time the Assessments or Individual Charges fell due, the personal obligation to pay each Assessment and Individual Charge shall be joint and several. No Owner may exempt himself from liability for his Assessment or Individual Charges obligation by waiver of the use or enjoyment of any of the Project.

6.9. Master Declaration Assessments. This Declaration and the Assessments referenced herein are in addition to and supplemental to the provisions of the Master Declaration and the assessments, levies and lien rights therein set forth and nothing herein abrogates, modifies, relieves or otherwise changes the terms or application of the same.

ARTICLE VII

ENFORCEMENT OF RESTRICTIONS

7.1. General. The Association and any Owner shall have the right to enforce compliance with the Project Documents in any manner provided by law or in equity, including without limitation, the right to enforce the Project Documents by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner shall have the right to enforce independently of the Association any Assessment, Individual Charge, or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Building Pad or Dwelling in the manner provided by law. However, no Owner shall proceed to enforce compliance with the Project Documents unless written notice of the noncomplying act or condition is first given to the Association and the Association fails to take action to enforce compliance within thirty (30) days following receipt of such notice, or fails, thereafter, to diligently pursue such enforcement. In the event the Association or any owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner or the Association, as authorized and limited above, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at eighteen percent (18%) per annum, from the due date, or if advanced or incurred by the Association, or any other Owner pursuant to authorization contained in the Project Documents, commencing fifteen (15) days after repayment is demanded. All enforcement powers of the Association shall be cumulative. Failure by the Association or 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.

7.2. Specific Enforcement Rights. In amplification of, and not in limitation of, the general rights specified in Section 7.1 above, the Association shall have the following rights:

7.2.1. Enforcement by Sanctions.

7.2.1.1. Limitation. The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Building Pad or Dwelling on account of a failure by the Owner to comply with provisions of the Project Documents except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay his share of Assessments levied by the Association.

7.2.1.2. Disciplinary Action. The Association may impose reasonable monetary penalties (not to exceed \$1,000 per violation and provided that each failure to comply with a written notice of a failure to comply shall result in a new violation), temporary suspensions of reasonable duration (not to exceed thirty (30) days per violation) of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the Project Documents. Notwithstanding the foregoing, the Association shall have no right to interfere with an Owner's right of ingress or egress to his Building Pad or Dwelling.

Before disciplinary action authorized under this subsection can be imposed by the Association, the Owner against whom such action is proposed to be taken shall be given notice and the opportunity to be heard as follows:

(a) The Board shall give written notice to the Owner at least fifteen (15) days prior to the meeting at which the Board will consider imposing disciplinary action. Such notice shall set forth those facts which the Board believes justify disciplinary action, and the time and place of the meeting;

(b) At such meeting, the Owner shall be given the opportunity to be heard, including the right to present evidence, either orally or in writing, and to question witnesses;

(c) The Board shall notify the Owner in writing of its decision within three (3) days of the decision. The effective date of any disciplinary action imposed by the Board shall not be less than eight (8) days after the date of said decision.

7.2.2. Suit to Collect Delinquent Assessments or Individual Charges. A suit to recover a money judgment for unpaid Assessments or unpaid Individual Charges, together with late charges, interest, costs, and reasonable attorneys' fees shall be maintainable by the Association. In the case of unpaid Assessments such suit shall be maintainable without foreclosing or waiving the lien securing such unpaid Assessments.

7.2.3. Enforcement of Lien. If there is a delinquency in the payment of any Assessment or installment on a Building Pad or Dwelling, any amounts that are delinquent together with the late charges, interest (at 18% per annum), costs of collection and reasonable attorneys' fees, shall be a lien against the Building Pad or Dwelling upon the recordation in the office of the County Recorder of a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall be signed by an authorized representative of the Association and shall state the amount of the delinquent Assessment, a description of the Building Pad or Dwelling assessed, and the name of the record Owner(s). Such lien shall be prior to all other liens and encumbrances, recorded or unrecorded, except only:

(a) Tax and special assessment liens on the Building Pad or Dwelling in favor of any assessing agency or special district; and

(b) The First Mortgage on the Building Pad or Dwelling recorded prior to the date that the Notice of Delinquent Assessment was recorded.

The Notice of Delinquent Assessment shall not be recorded unless and until the Board or its authorized representative has mailed to the delinquent Owner, not less than fifteen (15) days before the recordation of the Notice of Delinquent Assessment a written demand for payment, and unless the delinquency has not been cured within said fifteen (15) day period.

After the recording of the Notice of Delinquent Assessment, the Board or its authorized representative may cause the Building Pad or Dwelling with respect to which a Notice of Delinquent Assessment has been recorded to be sold in the same manner as a sale under Utah law for the exercise of powers of sale, or through judicial foreclosure. In connection with any sale under Utah law for the exercise of a power of sale, the Board is authorized to appoint its attorney, any other attorney licensed to practice law in the state of Utah, or any title insurance company authorized to do business in Utah as trustee for purposes of giving notice and conducting the sale, and such trustee is hereby given a power of sale. If a delinquency including Assessments and other proper charges is cured after recordation of the Notice of Delinquent Assessment but before sale, or before completing a judicial foreclosure, the Board or its authorized representative shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction of such claim and release of such lien. The Association, acting on behalf of the Owners, shall have the power to bid upon the Building Pad or Dwelling at foreclosure sale and to acquire, hold, lease, mortgage and convey the Building Pad or Dwelling.

7.2.4. Transfer by Sale or Foreclosure. In a voluntary conveyance, the grantee of a Building Pad or Dwelling (which shall also include the purchaser of a Building Pad or Dwelling under an installment sales contract) shall be jointly and severally liable with the grantor (which shall also include the seller of a Building Pad or Dwelling under an installment sales contract) for all unpaid assessments against the latter for his share of the assessments up to the time of the grant, sale or conveyance,

without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board or its agent setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Building Pad or Dwelling conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth. Otherwise, the sale or transfer of any Building Pad or Dwelling shall not effect the Assessments lien or lien right. However, the sale or transfer of any Building Pad or Dwelling pursuant to the exercise of a power of sale or judicial foreclosure involving a default under a First Mortgage shall extinguish the lien for Assessments which became due prior to such sale or transfer. However, no transfer of the Building Pad or Dwelling as the result of a foreclosure or exercise of a power of sale shall relieve the new owner, whether it be the former beneficiary of the First Mortgage or another person, from liability for any Assessments or Individual Charges thereafter becoming due or from the lien thereof.

ARTICLE VIII

INSURANCE, DESTRUCTION, CONDEMNATION

8.1. Insurance. In addition to other insurance required to be maintained by the Project Documents, the Association shall maintain in effect at all times the following insurance:

8.1.1. Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, the Board, the Declarant, Owners, occupants of Building Pads and Dwellings, their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership, use or maintenance of the Common Area and shall include a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured, and which shall preclude the insurer from denying the claim of an Owner based on negligent acts of the Association. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against any liability customarily covered with respect to projects similar in construction, location, and use.

8.1.2. Fire and Extended Coverage for Common Area. The Association also shall obtain and maintain a policy of fire and extended coverage insurance for no less than the full replacement cost (without deduction for depreciation) of all of the insurable improvements within the Common Area. Such insurance shall include coverage against any risk customarily covered with respect to projects similar in construction, location, and use. The policy shall name as insured the Association for the benefit of the Owners and Declarant, as long as Declarant is the Owner of any Building Pad and Dwelling or Building Pads and Dwellings, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of any trustee described in Section 8.1.3.

8.1.3. Trustee. All casualty insurance proceeds payable under Section 8.1.2. for losses to real property and improvements may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. Said trustee shall be a commercial bank or trust company in the County in which the Project is located that agrees in writing to accept such trust.

8.1.4. Other Insurance. The Board shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity coverage against dishonest acts on the part of Trustees, Officers, managers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds or insurance shall name the Association as the named insured, and shall be written in an amount greater than or equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves. In connection with such fidelity coverage, an appropriate endorsement to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The Board shall also purchase and maintain insurance on personal property owned by the Association for one hundred percent (100%) of the replacement cost of such property, and any other insurance that it deems necessary, that is required by any First Mortgagee or is customarily obtained for projects similar in construction, location and use.

8.1.5. Owner's Liability Insurance. Subject to the limitations herein, an Owner, individually may carry whatever personal and property damage liability insurance with respect to his Building Pad or Dwelling that he desires.

8.1.6. Owner's Fire and Extended Coverage Insurance. Each Owner shall obtain and maintain fire, casualty and extended coverage insurance for the full replacement cost of his Structures and Dwelling.

8.1.7. Officer and Director Insurance. The Association may purchase and maintain insurance on behalf of any trustee, officer, or member of a committee of the Association (collectively the "agent") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under applicable law.

8.1.8. Waiver of Subrogation. All property and liability insurance carried by the Association, or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Trustees, Officers, Committee members, Declarant, Owners, their family, guests, agents and employees.

8.1.9. Mortgagee Clause. All policies of hazard insurance must include a standard mortgagee clause commonly accepted by the private institutional mortgage investors doing business in the State of Utah. The mortgagee clause must require the

insurer to notify any First Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

8.1.10. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate in light of increased construction costs, inflation or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interest of the Association.

8.1.11. Payment of Premiums. Premiums on insurance maintained by the Association shall be a common expense funded by Assessments levied by, the Association.

8.1.12. Rating of Insurance Carrier. Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each insurer must be specifically licensed or authorized by law to transact business within the State of Utah. Policy contracts shall provide that no assessment may be made against any First Mortgagee, and that any assessment made against others may not become a lien on any property in the Project superior to the First Mortgage on such property.

8.2. Destruction Affecting the Common Area. The Board shall have the duty to repair and reconstruct the Common Area without the consent of Members and irrespective of the amount of available insurance proceeds, in all instances.

8.2.1. Special Assessment to Rebuild. If necessary, the Association may levy a Special Assessment against all Members to cover the cost of rebuilding not covered by insurance proceeds.

8.2.2. Rebuilding Contract. The Board shall obtain bids from at least two (2) reputable contractors, and shall award the repair and reconstruction work to the most reasonable bidder in the opinion of a majority of the Board. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction within a reasonable time.

8.2.3. Destruction Affecting Dwelling. If there is a total or partial destruction of a Dwelling, the Owner of the Dwelling shall have the following options:

(a) The Owner shall rebuild or repair the Dwelling in substantial conformity with its appearance, design and structural integrity immediately prior to the damage or destruction all in accordance with the approval

provisions of Article X; or

(b) The Owner shall clear all structures from the Building Pad and shall landscape it in a manner which is approved by the architectural control committee.

Rebuilding or landscaping shall be commenced within a reasonable time after the date of the damage or destruction and shall be diligently pursued to completion.

8.3. Condemnation.

8.3.1. Condemnation Affecting Common Area.

(a) Sale in Lieu. If an action for Condemnation of all or a portion of the Common Area is proposed or threatened by any entity having the right of eminent domain, then on the written consent of seventy-five percent (75%) of the Owners and subject to the rights of all Mortgagees, the Common Area, or a portion of it may be sold by the Board. The proceeds of the sale shall be distributed among the Owners on the same basis as their Regular Assessment obligations and between the Owners and their Mortgagees as their respective interests shall appear.

(b) Award. If the Common Area, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award then the award shall be distributed as provided in subsection 8.3.1(a).

8.3.2. Condemnation Affecting Building Pads or Dwellings. If an action for condemnation of all or a portion of, or otherwise affecting a Building Pad or Dwelling is proposed or threatened, the Owner and the Mortgagee of the affected Building Pad or Dwelling, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Building Pad or Dwelling.

If any Building Pad or Dwelling is rendered irreparably uninhabitable as a result of such a taking, that portion of the Building Pad or Dwelling so taken shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Building Pad or Dwelling, upon receiving the award and any portion of the reserve funds of the Association reserved for the Building Pad or Dwelling, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area. Any portion of such Building Pad or Dwelling remaining after the taking shall, thereafter, be included as part of the Common Area of the Project.

ARTICLE IX

MORTGAGEE PROTECTIONS

9.1. Mortgages Permitted. Any Owner may encumber his Building Pad or Dwelling with Mortgages.

9.2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers any Building Pad or Dwelling or other portion of the Project, made in good faith for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the First Mortgagee expressly subordinates his interest, in writing, to such lien.

9.3. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

9.4. Incurable Breach. No Mortgagee who acquires title to a Building Pad or Dwelling by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall be obligated to cure any breach of this Declaration that is incurable or of a type that is not practical or feasible to cure.

9.5. Actions Requiring Mortgage Approval. Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or at least two-thirds (2/3) of the Owners (other than Declarant) in the Project have given their prior written approval, the Association shall not be entitled to:

(a) by act, or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or other property owned, directly or indirectly, by the Association for the benefit of the Building Pads in the Project (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Owners shall not be deemed a transfer within the meaning of this clause);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner;

(c) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of the Common Areas, or the upkeep of landscaping in the Project;

(d) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement

cost);

(e) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such facilities.

9.6. Right to Appear at Meetings. Any Mortgagee may appear at meetings of the Association or the Board, in accordance with the provisions of the Bylaws.

9.7. Right to Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

9.8. Right to Examine Books and Records, Etc. The Association shall make available to owners, prospective purchasers and First Mortgagees, current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Any First Mortgagee shall be entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year, free of charge. Such financial statement shall be furnished by the Association within a reasonable time following such request.

9.9. Owners Right to Ingress and Egress. There shall be no restriction upon any Owner's right of ingress and egress to his Building Pad or Dwelling which right shall be perpetual and appurtenant to his ownership.

9.10. Notice of Intended Action. Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of:

(a) Any proposed termination of the legal status of the Project as a Planned Unit Development.

(b) Any condemnation loss or casualty loss which affects a material portion of the Project or any Building Pad or Dwelling on which there is a First Mortgage held, insured, or guaranteed by such requesting party.

(c) Any delinquency in the payment of Assessments or Individual Charges owed by an Owner of a Building Pad or Dwelling subject to a First Mortgage held, insured, or guaranteed by such requesting party which remains uncured for a period of sixty (60) days.

9.11. First Mortgagee Assessment Liability. Any First Mortgagee who obtains title to a Building Pad or Dwelling pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage shall not be liable for such Building Pad's or Dwelling's unpaid Assessments or Individual Charges which accrue prior to the acquisition of title to such Building Pad or Dwelling by the Mortgagee, but shall be liable for Assessments and Individual Charges assessed at accrued thereafter.

9.12. Distribution; Insurance and Condemnation Proceeds. No owner, or any other party, shall have priority over any rights of the First Mortgagee pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Building Pad, the Dwelling and/or Common Area.

9.13. Taxes. First Mortgagees of Building Pads may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, or any portion thereof, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and First Mortgagees making such payments shall be entitled to immediate reimbursement therefore from the Association.

9.14. Maintenance Reserves. Assessments shall include an adequate reserve fund for maintenance, repairs, and replacement of those elements of the Common Area that must be replaced on a periodic basis, and such reserves shall be payable as part of the Regular Assessments made pursuant to Section 6.3 hereof.

9.15. Notice of Default. First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by the affected owner of any obligation under the Project Documents which is not cured within sixty (60) days.

9.16. Management Contracts. Any agreement for professional management of the Project, or any contract for the Declarant to perform services for the Project or the Association shall not exceed one (1) year, and shall provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days or less written notice.

9.17. Conflicts. In the event of a conflict of any of the provisions of this Article IX and any other provisions of this Declaration, the provisions of this Article IX shall control.

ARTICLE X

ARCHITECTURAL CONTROL

10.1. Approval of Alteration and Improvements.

10.1.1. General Limitation. Subject to the exceptions described at Section 10.1.2 no Improvement may be constructed, painted, altered or in any other way changed on any portion of the Project without the prior written approval of the Architectural Control Committee ("Committee").

10.1.2. Exemption. Notwithstanding Section 10.1.1, no Committee approval shall be required for (i) initial Improvements constructed by, at the direction of, or with the express written approval of Declarant; (ii) normal maintenance of exempt or

previously approved Improvements; (iii) rebuilding an exempt or previously approved Improvement in accordance with its original design and dimensions; (iv) changes to the interior of an exempt or previously approved Structure; (v) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

10.2. Architectural Control Committee.

10.2.1. Number, Appointment, Terms. The Committee shall be composed of three (3) members. Declarant shall appoint all of the initial members, and reserves the right to appoint a majority of the members of the Committee until ninety (90%) of all Building Pads in the Project have been sold or otherwise transferred to persons or parties other than the Declarant or until the seventh anniversary of the recording hereof, whichever first occurs.

After one (1) year from the date hereof, the Board shall have the right to appoint one (1) member of the Committee until ninety percent (90%) of all Building Pads in the Project have been sold or transferred by the Declarant or until the seventh anniversary of the original recording hereof, whichever first occurs. Thereafter the Board shall have the right to appoint all members of the Committee.

Members appointed to the Committee by the Board shall be from the Membership of the Association. Persons appointed to the Committee by Declarant need not be Members of the Association.

The terms of the Committee members shall be two (2) years. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Vacancies on the Committee caused by resignation or removal of a member shall be filled by the party empowered to originally appoint such member. No member of the Committee may be removed without the vote or written consent of the Board; provided, however, that Declarant may change its designated members of the Committee without such vote or consent.

10.2.2. Operation. The Committee shall meet from time to time as necessary to properly perform its duties hereunder. The requirements for valid Committee meetings and actions shall be the same as that which is required for valid Board meetings and action as provided in the Bylaws. The Committee shall keep and maintain a record of all action from time to time taken by the Committee at meetings or otherwise, and shall maintain files of all documents submitted to it, along with records of its activities. Unless authorized by the Association, the members of the members of the Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement by the Association for reasonable expenses incurred by them in connection with the performance of their duties.

10.2.3. Duties. The Committee may adopt Architectural Control Guidelines ("Guidelines") as provided in Section 10.3 and shall perform other duties imposed upon it by the Project Documents or delegated to it by the Board.

The address of the Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where current copies of the Guidelines shall be kept.

10.3. Architectural Standards, Guidelines.

10.3.1. Committee Guidelines. The Board shall approve the initial Guidelines adopted by the Committee. In all events, the Guidelines shall incorporate the applicable provisions, terms and restrictions pertinent to architectural control, plans, specifications and design of the Dwellings that are found in the Development Agreement. The Committee may, from time to time, amend said Guidelines prospectively, but only if approved by 2/3rds of the Members, in writing. Said Guidelines shall interpret and implement the provisions of this Article X and the Development Agreement by setting forth more specific standards and procedures for Committee review. All Guidelines shall be in compliance with all applicable laws and regulations of any governmental entity having jurisdiction over Improvements on the Project, shall incorporate high standards of architectural design and construction engineering, shall be in compliance with the minimum standards of Section 10.3.2, the Development Agreement and otherwise shall be in conformity with the purposes and provisions of the Project Documents.

A copy of the current Guidelines shall be available for inspection and copying by any owner at any reasonable time during business hours of the Association.

10.3.2. Standards. The following minimum standards shall apply to any Improvements constructed on the Project:

(a) All Improvements shall be constructed in compliance with the applicable zoning laws, building codes, subdivision restrictions and all other laws, ordinances and regulations applicable to Project Improvements.

(b) In reviewing proposed Improvements for approval, the Committee shall consider at least the following:

(i) Does the proposed Improvement conform to the purposes and provisions of the Project Documents and the Development Agreement?

(ii) Is the Proposed Improvement of a quality of workmanship and materials comparable to other Improvements that are proposed or existing on the Project?

(iii) Is the proposed Improvement of a design and character which is harmonious with proposed or existing Improvements and with the natural topography in the immediate vicinity?

10.4. Committee Approval Process.

10.4.1 Approval Application. Any Owner proposing to construct, paint, alter or change any Improvement on the Project which requires the prior approval of the Committee shall apply to the Committee in writing for approval of the work to be performed and a proposed time schedule for performing the work. The Committee may charge an Owner a reasonable fee for application review. Any such application shall include site plans, floor plans, elevations, landscape plans and plans and detailed specifications with respect to color and proposed building materials and such other relevant material, information or data as shall be reasonably required by the Committee.

In the event additional plans and specifications for the work are required by the Committee, the applicant shall be notified of the requirement within thirty (30) days of receipt by the Committee of his initial application or the application shall be deemed sufficiently submitted. If timely notified the applicant shall submit plans and specifications for the proposed work in the form and context reasonably required by the Committee and the date of his application shall not be deemed submitted until that date. Such plans and specifications may include, but are not limited to, showing the nature, kind, shape, color, size, materials and location of the proposed work, or the size, species and location of any plants, trees, shrubs and other proposed landscaping.

10.4.2 Review and Approval. Upon receipt of all documents reasonably required by the Committee to consider the application, the Committee shall proceed expeditiously to review all of such documents to determine whether the proposed work is in compliance with the provisions and purposes of the Project Documents and all Guidelines of the Committee in effect at the time the documents are submitted. In the event the Committee fails to approve an application, it shall notify the applicant in writing of the specific matters to which it objects. In the event the Committee fails to notify the applicant within forty-five (45) days after receipt of all documents reasonably required to consider an application or a correction or resubmittal thereof of the action taken by the Committee, the application shall be deemed approved. One set of plans as finally approved shall be retained by the Committee as a permanent record. The determination of the Committee shall be final and conclusive and, except for an application to the Committee for reconsideration, there shall be no appeal therefrom.

10.4.3 Commencement, and Completion of Approved Work. Upon receipt of the approval of the Committee, the applicant shall proceed to have the work commenced and diligently and continuously pursued to completion in substantial compliance with the approval of the Committee including all conditions imposed therewith. The approval of the Committee shall be effective for a period of one (1) year after the date of the approval subject to the right of the Committee to provide for a longer period at the time of its approval, or subsequently to extend the period upon a showing of good cause, and in the event the approved work is not commenced *within the* effective period of the approval, then the applicant, before commencing any work, shall be required to resubmit its application for the approval of the Committee.

All work approved shall be completed within two (2) years after the date of commencement, or such other reasonable period specified by the Committee at the time of approval, with the period of time subject to extension, at the option of the Committee, by the number of days that work is delayed by causes not under the control of the applicant or his contractor or as otherwise extended by the Board. Upon completion of approved work, the applicant shall give written notice thereof to the Committee.

If for any reason the Committee fails to notify the applicant of any noncompliance within sixty (60) days after receipt of said notice of completion from the application, the improvement shall be deemed to be completed in accordance with said approved plans.

10.4.4 Inspection, Noncompliance. The Committee, or any authorized representative shall have the right at any reasonable time, after reasonable notice, to enter upon any portion of the Project for the purpose of determining whether or not any work is being performed or was performed in compliance with the Project Documents.

If at any time the Committee determines that work is not being performed or was not performed in compliance with the Project Documents or the Guidelines, whether based on a failure to apply for or obtain approval, a failure to comply with approval, a failure to timely commence or complete approved work or otherwise, the Committee shall notify the Owner in writing of such noncompliance specifying the particulars of noncompliance within a reasonable and specified time period.

In the event that the offending owner fails to remedy such noncompliance within the specified period the Committee shall notify the Board in writing of such failure. The Board shall, subject to the notice and hearing requirements of Section 7.2.1.2, have the right to remedy the noncompliance in any appropriate manner permitted by the Project Documents or otherwise permitted by law, or in equity, including but not limited to removing the noncomplying Improvement, or recording a notice of noncompliance on the property, as appropriate. The owner shall have the obligation to reimburse the Association for any costs incurred in enforcing these provisions and if the Association is not reimbursed upon demand the Board shall have the right to cause an Individual Charge of the cost thereof to such owner.

10.5. Waiver. The approval by the Committee of any plans, drawings, specifications of any Improvements constructed or proposed, or in connection with any matter requiring the approval of the Committee under the Project Documents shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter submitted for approval. Where unusual circumstances warrant it, the Committee may grant reasonable variances from the architectural control provisions hereof or from the Guidelines. Such variances shall be made on a case-by-case basis and shall not serve as precedent for the granting of any other variance.

10.6. Estoppel Certificate. Within thirty (30) days after written demand is delivered therefor to the Committee by any owner or Mortgagee, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Committee shall execute and deliver in recordable form, if requested, an estoppel certificate executed by any two (2) of its members, certifying, with respect to any portion of the Project, that as of the date thereof either (a) all Improvements made and other work done upon or within said portion of the Project comply with the Project Documents, or (b) such Improvements or work do not so comply in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Such statement shall be binding upon the Association and Committee in favor of any person who may rely thereon in good faith.

10.7. Liability. Neither the Declarant, the Committee, the Board nor any member thereof shall be liable to the Association or to any Owner or to any third party for any damages, loss, prejudice suffered or claimed on account of (a) the approval or disapproval at such plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any portion of the Project, or (d) the execution and filing of an estoppel certificate pursuant to Section 10.6 or the execution and filing of a notice of noncompliance or noncompletion pursuant to Section 10.4.4, whether or not the facts therein are correct, if the Declarant, the Board, the Committee or such member has acted in good faith on the basis of such information as may be possessed by him. Specifically, but not by way of limitation, it is understood that with respect to plans and specifications neither the Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

ARTICLE XI

GENERAL PROVISIONS

11.1. Notices. Notices provided for in the Project Documents shall be in writing and shall be deemed sufficiently given when delivered personally or 48 hours after deposit in the United States mail, postage prepaid, addressed to an Owner at the last address such owner designates to the Association for delivery of notices, or in the event of no such designation, at such Owner's last known address, or if there be none, at the address of the Owner's Dwelling. Notices to the Association shall be addressed to the address designated by the Association by written notice to all owners.

11.2. Notice of Transfer. No later than five (5) days, after the sale or transfer of any Building Pad or Dwelling under circumstances whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth: (i) the Building Pad or Dwelling involved; (ii) the name and address of the transferee and transferor; and (iii) the date of sale. Unless and until such notice is given, the Association shall not be required to recognize the

transferee for any purpose, and any action taken by the transferor as an owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

11.3 Construction, Headings. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned community and for the maintenance of the Project. The Article headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

11.4 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or provisions contained herein shall not invalidate any other provisions hereof.

11.5. Exhibits. All exhibits, schedules, attachments and appendices referred to in this Declaration are incorporated herein by such reference.

11.6. Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted as applicable, or both reserved and granted, by reference to this Declaration in a deed to any Building Pad.

11.7. Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of any Owner.

11.8. Violations and Nuisance. Every act or omission whereby a covenant, condition or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners.

11.9. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

11.10. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

11.11. Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Articles, Bylaws, Rules and Regulations of the Association and Architectural Control Guidelines.

11.12. Termination of Declaration. This Declaration shall run with the land, and shall continue in full force and effect for a period of fifty (50) years from the date on which this Declaration is executed. After that time, this Declaration and all its covenants and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by an instrument executed by Owners of not less than three-fourths (3/4) of the Building Pads and Dwellings in the Project, and recorded in the Office of the Salt Lake County Recorder within one year prior to the end of said 50-year period or any succeeding 10-year period.

ARTICLE XII

AMENDMENT

12.1. Amendment by Declarant. Until sale or transfer of the first Building Pad, Declarant shall have the sole right to amend this Declaration, subject to the terms and provisions of the Master Declaration and the Development Agreement and any amendment that would result in a modification of any of the restrictions, terms, rules, regulations or covenants of the Development Agreement must be consented to in writing and in advance by the Town of Alta.

12.2. Amendment After First Sale. After the first sale of a Building Pad, this Declaration shall be amended upon the vote or written assent of a majority of the total voting power of the Association. No such amendment shall be contrary to or in opposition to the terms and provisions of the Development Agreement. No amendment or modification of the terms and provisions of the Development Agreement may be made without the express written consent of the Town of Alta.

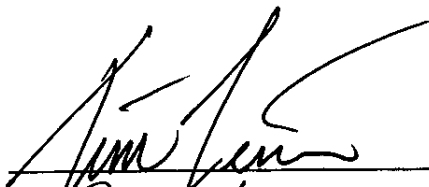
12.3. Specific Provisions. The percentage of the voting power necessary to amend a specific clause or provision herein shall not be less than a percentage of affirmative votes prescribed for action to be taken under such clause or provision.

12.4. Amendment to Satisfy Other State Laws. Declarant or others may sell or otherwise transfer Building Pads in the Project to purchasers or grantees in several states. In the event that the Project documents do not comply with the requirements of any state in which Declarant intends to sell or transfer Building Pads, Declarant shall have the unilateral right, without the approval of the Board or of the members, to amend the Project documents as necessary to conform to the requirements of the applicable state. In the event of conflict between this Subsection 12.4 and any other provision of Article XII, this Subsection 12.4 shall control.

12.5. Amendment Instrument. An amendment shall become effective when it has received the required approvals and the Board has executed, acknowledged and recorded in the Office of the Salt Lake County Recorder, an instrument expressing the amendment and certifying that the required approvals were received.

The undersigned, being the Declarant herein, has executed this Declaration on February 20, 2002.

MSICo., L.L.C., a
Utah limited liability company

By: 
Its: President

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

On this 20th day of February, 2002, personally appeared before me Tim Fenton, who being by me duly sworn, did say that he is the President of MSICo., L.L.C., a Utah limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its articles of organization and operating agreement, and said Tim Fenton acknowledged to me that said limited liability company executed the same.

My Commission Expires:

June 1, 2004

RQN/DM/DOC.580565

Robin J. Blanke
Notary Public
Residing at *Salt Lake City*

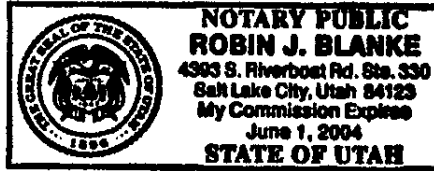


EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Boundary (Parcel 1)

All of Lots 4 and 5 of the Sugarplum Amended plat, as recorded in Book 84-11, Page 181 in the office of the Salt Lake County Recorder, located in the East half of Section 6, Township 3 South, Range 3 East, Salt Lake Base and Meridian, and being more particularly described as follows:

Commencing at a found 2" steel pipe placed in the rock kern of corner #2 of the Blackjack Lode Claim, Mineral Survey #5288, said claim corner being located South 32°13'19" West (calculated) 3377.23 feet, more or less, from the northeast corner of said section 6, (basis of bearing being North 67°08'57" East between said claim corner and a found 2" steel pipe marking corner #2 of the Hellgate Lode Claim, Mineral Survey #5282), thence running North 67°08'57" East along said basis of bearing line a distance of 839.77 feet; thence South 22°51'03" East perpendicular to said line 297.75 feet to the northern most corner of said Lot 4, said point also being the POINT OF BEGINNING; thence South 67°20'00" East 92.25 feet; thence South 22°40'00" West 409.92 feet; thence South 71°42'58" West 92.68 feet; thence North 22°40'00" East 288.71 feet; thence North 22°20'00" West 31.47 feet; thence North 22°40'00" East 159.70 feet to the POINT OF BEGINNING. Containing 0.7948 Acres.

Boundary (Parcel 2)

All of Lot 9 of the Sugarplum Amended plat, as recorded in Book 84-11, Page 181 in the office of the Salt Lake County Recorder, located in the East half of Section 6, Township 3 South, Range 3 East, Salt Lake Base and Meridian, less and excepting those portions Quit Claimed to The View Associates, LTD., a Utah Limited Partnership as described in Book 5676, Page 2032 and in Book 5665, Page 2230 in the office of the Salt Lake County Recorder, said Lot 9 being more particularly described as follows:

Commencing at a found 2" steel pipe placed in the rock kern of corner #2 of the Blackjack Lode Claim, Mineral Survey #5288, said claim corner being located South 32°13'19" West (calculated) 3377.23 feet, more or less, from the northeast corner of said section 6, (basis of bearing being North 67°08'57" East between said claim corner and a found 2" steel pipe marking corner #2 of the Hellgate Lode Claim, Mineral Survey #5282), thence running North 67°08'57" East along said basis of bearing line a distance of 404.09 feet; thence South 22°51'03" East perpendicular to said line 436.67 feet to the northwest corner of said Lot 9, said point also being the POINT OF BEGINNING; thence South 67°20'00" East 110.93 feet along the northerly line of said lot; thence South 38°28'02" East 49.44 feet; thence North 72°09'53" East 7.20 feet; thence South 38°08'00" East 1.64 feet; thence North 73°40'00" East 31.77 feet; thence South 67°20'00" East 10.35 feet along said northerly line to the northeast corner of said Lot 9; thence South 22°40'00" West 90.45 feet; thence South 71°42'58" West 117.06 feet; thence North 67°20'00" West 107.76 feet; thence North 22°40'00" East 167.17 feet to the POINT OF BEGINNING. Containing 0.6541 Acres.

Parcels 1 and 2 also known as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Sugarplum 459 plat, A Subdivision of Lots 4, 5, and 9, Sugarplum P.U.D. (Amended), as recorded November 7, 2001 in Book 2001P, Page 338 in the office of the Salt Lake County Recorder.

BK8568PG6488

| RXLP SUGARPLUM 459 | | BLK, LOT-QUAR | | | OBSOLET |
|--------------------|----------|---------------|----------|--------------------|---------|
| B FLG | BLK/BLDG | IND FLG | LOT/QUAR | PARCEL NUMBER | |
| | | L | 1 | 30-06-428-029-0000 | NO |
| | | L | 2 | 30-06-428-030-0000 | NO |
| | | L | 3 | 30-06-428-031-0000 | NO |
| | | L | 4 | 30-06-428-033-0000 | NO |
| | | L | 5 | 30-06-428-034-0000 | NO |
| | | L | 6 | 30-06-428-035-0000 | NO |
| | | L | 7 | 30-06-428-036-0000 | NO |
| | | L | 8 | 30-06-438-026-0000 | NO |
| | | L | 9 | 30-06-428-027-0000 | NO |
| | | L | 10 | 30-06-428-028-0000 | NO |

PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTE