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TOWN OF ALTA
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**Definitive Settlement and Development
Agreement**

THIS DEFINITIVE SETTLEMENT AND DEVELOPMENT AGREEMENT (hereinafter, the "Definitive Agreement") is entered into this 9 day of November, 2000, by and between **MSI Co., LLC**, a Utah limited liability company (formerly known as "MSI, Inc." and hereinafter referred to as "MSI") and **The Town of Alta**, a political subdivision of the State of Utah ("Alta").

Recitals

WHEREAS, approximately 25 acres of land known as the Sugarplum property was originally located within the boundaries of Salt Lake County and an annexation dispute with accompanying litigation arose concerning the proposed annexation of the Sugarplum property into Alta;

WHEREAS, Alta and Sorenson Resources Company, as the owner of the Sugarplum property at the time, were parties to a June 16, 1982 Agreement (the "Agreement") that resolved the annexation dispute and permitted annexation and development of what has become known as the Sugarplum Planned Unit Development ("Sugarplum PUD") under certain general conditions set forth in the Agreement;

WHEREAS, five phases of development have occurred to date within the Sugarplum PUD, with such development consisting of 100 or more approved units, all of which were developed and constructed pursuant to the terms of the Agreement and under the provisions of applicable law and ordinances;

WHEREAS, a Sugarplum PUD Amended Plat (the "Amended Plat") was duly recorded with the Salt Lake County Recorder on November 26, 1984 and shows anticipated dwelling densities for each "lot" or phase within the Sugarplum PUD;

WHEREAS, MSI is the current owner of Lots 4, 5 and 9 within the Sugarplum PUD, having succeeded to the title by mesne conveyances and also being, in other respects, successor in interest to the rights of Sorenson Resources Company with respect to the Agreement and the Sugarplum PUD with respect to the development therein of Lots 4, 5 and 9;

WHEREAS, MSI commenced suit against Alta on or about September 11, 1996 in an action styled MSI, Inc. v. The Town of Alta, Civil No. 960906424 (the "Action"), which is currently pending in the Third Judicial District Court in and for Salt Lake County, State of Utah (the "Court");

WHEREAS, Alta has denied the allegations in the Action and maintains, notwithstanding the allegations to the contrary, that it has acted in accordance with the terms of the Agreement and all applicable land use ordinances, laws and regulations;

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WHEREAS, Alta has now conducted and completed all aspects of the impact analysis that the Agreement contemplated to occur upon completion of the first 100 units of the Sugarplum PUD and Alta has concluded and is willing to commit and agree with MSI that there are no conclusions found in the said impact analysis that would, in any way, give rise to any basis for an impediment or objection to the development of ten (10) single-family luxury homes that is proposed by MSI with respect to Lots 4, 5 and 9, as more fully detailed hereinafter;

WHEREAS, Alta and MSI have previously executed a Memorandum of Understanding contemplating and setting forth the principal term and provisions of a compromise and settlement arrangement (the "Memo of Understanding"); and

WHEREAS, the parties now desire to fully implement the Memo of Understanding and complete a definitive agreement, merging the Memo of Understanding into such definitive agreement and finally compromise their differences, settle the Action and eliminate any confusion or disagreement concerning either their respective rights under the Agreement or the development of "Lots" 4, 5 and 9, it being expressly understood that the subject settlement is a compromise of disputed claims and that the consideration provided for herein may not be construed to be an admission by either party of any liability claimed in the Action;

WHEREAS, the parties are exchanging mutual consideration described herein that will benefit the public interest by development and other approvals that lower the density of land uses on the subject property and within the Sugarplum PUD, thereby fostering uses that are more compatible with the development patterns already existing within the Sugarplum PUD than might otherwise occur if the potential densities described in the Agreement and otherwise provided in the Amended Plat were to be developed to the maximum potential provided in either the Agreement or the Amended Plat;

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual covenants, promises and agreements hereinafter set forth, the parties contract and agree as follows:

Section 1. Development Scope and Detail. Alta covenants and agrees that, subject to the provisions and conditions set forth in this Definitive Agreement, MSI is entitled to develop ten (10) building pads (an aggregate total) on Lots 4, 5 and 9 in the Sugarplum PUD. For purposes hereof, a building pad shall mean the real property (including both the building footprint and the surrounding yard and other open areas appurtenant to the same) for the construction of single-family luxury homes with attached or detached garages and other associated improvements ("Building Pad" or, where more than one is referenced, the "Building Pads"). In the aggregate, the total number of bedrooms and "guest rooms" (as that term is defined in the Alta Zoning Ordinance in effect on the date hereof)(for all purposes arising hereafter in this Definitive Agreement, the use of the term "bedroom" shall mean and include guest rooms) for all ten (10) Building Pads and the homes to be constructed thereon, shall not exceed forty (40). MSI shall retain the discretion to allocate the aforesaid aggregate bedroom building allowance amongst the ten (10) Building Pads and homes, as it sees fit in its absolute and sole discretion.

1.1 Bedroom Count Criteria and Agreements. The determination of what constitutes a "bedroom" for these purposes shall be in accordance with the procedures hereinafter set forth and such determination shall be binding upon MSI and upon Alta. In this regard, MSI and Alta agree that the "Final Site Plan" (as hereinafter defined) states the number of the four (4) bedrooms being allocated by MSI to each Building Pad and such allocation shall, except as hereinafter provided, be a final allocation of bedrooms. Nothing herein obligates MSI to be the party who constructs each of the contemplated single-family luxury homes on the subject Building Pads and for ease of reference herein, the term "Pad Owner" shall be a reference to the person or party (including MSI and any successor or assign of MSI) who ultimately submits building plans for a single-family home on a given Building Pad. When a Pad Owner submits building plans to Alta's building official, Alta shall have no obligation to approve the same if the number of bedrooms designated thereon do not conform to the number of bedrooms allocated to that Building Pad pursuant to this Definitive Agreement. Any disagreement as to whether a room constitutes a bedroom or functional bedroom will be resolved in connection with the approval of the building plans. The Alta building official's approval of the building plans will constitute a final and binding determination that the Pad Owner has complied with the allocation of bedrooms for that Building Pad. Nothing in this paragraph shall be construed to preclude Alta from initiating legal action (including but not limited to citations, fines, injunctive relief, etc.) against the Pad Owner or other occupant in the event that Alta discovers conversion of any room into an additional bedroom or functional equivalent contrary to the final approved building plans. Alta specifically agrees that it will not seek to require any reallocation of bedrooms among the Building Pads. Alta also agrees that it will not preclude Pad Owners (including MSI while MSI is the owner of the relevant Building Pads) from a reallocation of the number of bedrooms for specific Building Pads so long as there is a written agreement between the Pad Owners of the Building Pads that are the subject of the reallocation and so long as such reallocation is accomplished in compliance with the covenants, conditions and restrictions applicable to Lots 4, 5 and 9 and so long as Alta's written acknowledgement is obtained in advance. Alta agrees to act promptly to acknowledge any such reallocation notification, subject to the requirement that the involved Pad Owners have submitted all papers, agreements and instruments that are necessary to evidence satisfaction of the allocation conditions set forth hereinabove. In connection with the determination of what shall constitute a "bedroom," both parties are obligated to act reasonably and in good faith, each covenanting hereby to so act. For this purpose, the existence of usable space, undesignated space or plan labeling of space shall not, in and of itself be sufficient to accommodate a conclusion that the space is or is not a "bedroom." Further, the fact that a space designated on the building plans might be converted to a bedroom shall not be the basis for a conclusion that the room is a bedroom.

1.2 MSI Discretion. Nothing herein is a requirement upon MSI to develop the maximum number of bedrooms or the maximum number of Building Pads permitted hereunder and Alta agrees that the discretion to seek development on Lots 4, 5 and 9 less than the permitted maximums shall belong absolutely and solely to MSI.

1.3 MSI Establishment of Building and Architectural Guidelines and Standards. MSI hereby agrees to, in connection with its development efforts and before the sale or transfer of any of the Building Pads, establish a set of rational architectural, building and development

guidelines that will be followed and placed in effect for all of the Building Pads (the "MSI Guidelines"). The MSI Guidelines shall, at a minimum include the following height restrictions applicable to all buildings constructed on the Building Pads. Buildings shall be limited to a height of 35 feet from the midpoint of a gable to the level of ground directly below. For purposes hereof the "level of ground" shall mean an average slope line from the front to the rear of the Building Pad at the existing grade before any excavation or grading is done on the Building Pad.

Section 2. Agreed Development Requirements and Restrictions. MSI and Alta agree that the development contemplated by and described in Section 1 above shall be subject to the following agreed contractual provisions, conditions, restrictions and terms:

2.1 Handling of Slope Issues. Alta hereby expressly confirms, acknowledges, covenants and agrees that MSI may propose construction upon and actually construct upon areas of Lots 4, 5 and 9 that would otherwise be subject to prohibitions set forth in the current FM-20 zoning ordinances and regulations of Alta with respect to areas having a slope in excess of 30%. Both parties acknowledge and agree that the right recognized in the first sentence of this Subsection 2.1 is the direct result of the decision and agreement by Alta to (a) clarify and ratify that its approval of the Amended Plat with the unit density allocations thereon for Lots, 4, 5 and 9 were intended to be a departure from any such slope restrictions, such departure being specifically allowed in a planned unit development approval and (b) acknowledge and confirm that the terms of the Agreement could be and are hereby construed to be the commitment and agreement of Alta to allow construction on the property comprising Lots 4, 5 and 9 under the pre-annexation approvals or expectations of approval that had been obtained for such property when it was yet under the jurisdiction of Salt Lake County. MSI agrees that the right to build on the aforesaid slopes shall be subject to the requirement that MSI place the Building Pads and locate the ultimate building footprints on Lots 4, 5 and 9 in accordance with the recommendations of qualified and licensed geo-technical engineers who have undertaken site-specific engineering studies and planning to designate the Building Pads. MSI agrees to utilize only qualified, licensed geo-technical engineers who have professional liability coverage that is adequate for the purposes hereof, in the reasonable judgment of MSI. MSI acknowledges and agrees that adjustments to the location and siting of specific Building Pads on the "Final Site Plan" (as that term is hereinafter defined) may be required by such site-specific engineering studies and recommendations ("Site-specific Requirement"). Both MSI and Alta agree to cooperate in making such modifications or amendments to the Final Site Plan as are mandated by any Site-specific Requirement, specifically agreeing to cooperate and exercise good faith efforts to preserve the reasonable location and siting expectations of the owner of the specific Building Pad and of the surrounding Building Pads. Specifically, any such modification for a specific Building Pad that requires re-location of other Building Pads may not be effectuated without the consent of the other owners of the affected Building Pads. MSI agrees that it will include in the declaration that is the subject of Subsection 5.2, a covenant that each Building Pad owner will not unreasonably withhold consent to any Building Pad relocation required by a Site-specific Requirement.

2.2 Site Plan – Approval. MSI and Alta have reviewed a preliminary site plan, a copy of which was attached to the Memo of Understanding and preliminarily approved, in concept, by

Alta. Attached hereto as **Exhibit A**, is the final site plan (the "Final Site Plan") depicting ten (10) Building Pads on Lots 4, 5 and 9, seven of which are located on Lots 4 and 5. Alta has had full opportunity to review and analyze the Final Site Plan and by execution of this Definitive Agreement grants full and final approval of the same. Alta specifically acknowledges and agrees that by this approval, Alta is expressing its full acknowledgment that the open space siting and design as set forth on the Final Site Plan is in fulfillment of all requirements for such open space specified in the Memo of Understanding.

2.3 Off-Road Parking Requirements. MSI agrees that each of the ten single-family homes contemplated hereby shall have a minimum of two (2) off-road parking places for motor vehicles. The said parking places may be either covered (including spaces in garages) or uncovered and shall otherwise be in compliance with the requirements of Alta ordinances §§ 22-11-1 et seq.

2.4 Snow Removal and Storage Requirements Approved. MSI has created and provided for a snow removal and storage plan for Lots 4, 5 and 9 (taking into account the development plans contemplated hereby and has incorporated the same into the Final Site Plan and certain narrative and other descriptions of the said plan, all attached hereto as an appendix to the Final Site Plan). By execution of this Definitive Agreement, Alta confirms, acknowledges and agrees that final review and approval by the Alta Technical Review Committee (the "ATR Committee") of the subject snow removal and storage plans has been completed. Alta recognizes that MSI has included in the aforesaid snow removal and storage plan, removal and storage capacities and planning sufficient to accommodate, not only the requirements for Lots 4, 5 and 9, but also Lot 8 (the "View"). Accordingly, Alta agrees that because such approval of MSI's snow removal and storage plan has now been given and granted by Alta and its ATR Committee, any right to temporary or other use of Lot 9 for snow storage for the benefit of any other owners or occupants of property in the Sugarplum PUD (including any owners association) or for any other purpose shall terminate and be immediately and automatically terminated and the provisions and expressions made in that certain February 27, 1985 letter signed by Walter Plumb on behalf of Sorenson Resources Company to the Alta Planning Commission shall be of no further force or effect. Such termination and elimination of storage on Lot 9 is effective without any other consent, authorization or action by Alta. Nothing herein is intended to prohibit or impair MSI's efforts to, in connection with the implementation of the approved plan, take all actions necessary to allocate the removal and storage costs and expenses among the properties served by the approved plan, including with respect to the owners of Lot 8.

2.5 Interlodge Procedure Compliance. MSI agrees that it will comply with the "interlodge procedures" imposed by the Town of Alta by putting into effect and implementing one of the following two (2) alternatives: (a) provision of a "manager's unit," provided that such manager's unit shall also have designated one (1) parking space (which may be one of the spaces required for the residence in which the manager's unit is being located) or (b) make suitable arrangements with an existing manager in a different phase or portion of the Sugarplum PUD, subject to the review and approval of the Alta Technical Review Committee, which review shall be processed expeditiously and which approval shall not be unreasonably withheld. With respect to the provision of a "manager's unit," Alta hereby consents and agrees that MSI may satisfy this requirement by renting a portion of one of the single-family residences contemplated

by this Definitive Agreement and such rental shall not constitute a violation of the spirit or substance of this Definitive Agreement or the applicable ordinances and regulations in effect in Alta even if such rented portion includes a living area that includes a kitchen facility, bath and bedroom (being one of the approved bedrooms in an approved building plan), so long as such unit is used solely for (a) the purpose of providing living quarters for a manager responsible for meeting the interlodge procedures imposed by Alta or (b) if the unit is not being used for a manager, then only for the guests, invitees and household members of the Pad Owner with no rental arrangement (short or long-term).

2.6 Compliance with Vegetation Ordinance. MSI acknowledges that preservation and renewal of forest resources is an important concern in enhancing the natural beauty and property values in the Town of Alta. MSI agrees that in consideration of the foregoing approval of the Final Site Plan (such approval including the proposed removal of existing vegetation to accommodate the Building Pad and ultimate building sites that are implicated and intended thereby), MSI will meet the following re-planting and re-vegetation plan that has been fully discussed, considered and agreed to by Alta as the fulfillment of the terms of the Alta vegetation ordinance (Ordinance No. 1992-0-1, hereinafter the "Vegetation Ordinance"). In this regard, Alta has agreed to apportion the following described vegetation replacement requirements equally over the ten (10) Building Pads in consideration of MSI's agreement to a replacement formula that, in the material aspect hereinafter described (the "Extra Accommodation"), exceeds the requirements of the Vegetation Ordinance replacement formula. The parties agree that the vegetation replacement formula that shall apply to the Building Pads is as follows:

- (a) As the "Extra Accommodation," for ten (10) of the mature trees (as defined in the Vegetation Ordinance) that are proposed for removal to allow development and building on the Building Pads, MSI agrees to plant five (5) vigorous seedlings at least six inches in height, three (3) vigorous saplings at least five feet in height and two (2) 10-15 foot trees..
- (b) for any mature tree proposed for removal other than the ten (10) specified above, to allow development and building upon the Building Pads, as provided in the Vegetation Ordinance, five (5) vigorous seedlings at least six inches in height and five (5) vigorous saplings at least five feet in height shall be planted.

Based upon the Final Site Plan, the parties agree that the total number of trees that are proposed for removal to accommodate the proposed development and construction on the Building Pads is the number specified on Schedule 2.6 (attached hereto and incorporated herein by this reference and comprised of that certain "Tree Location Map" prepared by Michael Aldrich). Schedule 2.6 shall control for all purposes hereunder. The placement of replacement trees shall be made by MSI in the exercise of its reasonable judgment and discretion, provided that MSI agrees to give due consideration to placement suggestions made by the Mayor of Alta or other public official designated by the Mayor to make such suggestions. The aggregate replacement obligation arising from the application of the foregoing formula shall be equally apportioned among the ten (10) Building Pads. In that regard, Alta accordingly agrees that the requirements of the Vegetation Ordinance that apply to each Building Pad (including any bond required thereunder) shall be limited to the satisfaction of the aforesaid apportioned planting and revegetation

requirement. Alta imposes these requirements after full and due consideration of the requirements of its vegetation ordinance and after reaching the considered conclusion that the foregoing plan is due compliance with the objectives and intent of the same.

2.7 Agreed Remaining Compliance – Conditional Use Permit. The adoption of this Definitive Agreement by Alta and the execution hereof by Alta shall constitute the issuance by Alta of the conditional use permit for the proposed development of Lots 4, 5 and 9. Accordingly, Alta covenants and agrees that this Definitive Agreement shall constitute such official action and that the requirements, conditions and provisions hereof are the definitive requirements, conditions and provisions applicable to the development of and construction upon the Building Pads contemplated by the Final Site Plan approved hereby. To that end, Alta, hereby specifies and agrees, that except for compliance with the express requirements and conditions set forth elsewhere in this Definitive Agreement, development and ultimate construction of contemplated improvements upon the Building Pads, the only other remaining compliance requirements are as follows:

- (a) Compliance of any proposed building plans and specifications with Alta's skier access plan, as attached hereto and incorporated herein as Schedule 2.7 (a).
- (b) Demonstrating compliance with the requirements of "outside agencies" as specified in the outside agency checklist attached hereto and incorporated herein by this reference as Schedule 2.7(b).
- (c) Payment of standard and required fees of Alta applicable to the development and construction review and approval process.
- (d) Compliance with the requirements of Alta's ordinances dealing with construction sites and their management.
- (e) Compliance with the provisions of Alta's Ordinance 1996-0-3 and the execution, by the Pad Owner of the relevant Building Pad, of an avalanche indemnity agreement in the form attached hereto as Schedule 2.7(e).
- (f) Compliance with the terms of the Uniform Building Code, in effect in the Town of Alta at the time of the application for a building permit for the relevant Building Pad.

Alta agrees that neither the foregoing ordinances or requirements listed in this Subsection 2.7 nor any amendments or modifications to the same shall apply to Lots 4, 5 and 9, the Building Pads or the Pad Owners if the same shall result in the imposition of any material additional condition to or restriction upon the development and construction contemplated by this Definitive Agreement or would otherwise result in a material frustration of the purpose, intent or objectives of this Definitive Agreement. Alta has, in the consideration of the content and substance of this Definitive Agreement, concluded that development and construction in compliance with the terms and provisions set forth herein and in accordance with referenced ordinances and

regulations, as in effect on this date, are and shall be fully consistent with the health, safety and welfare objectives of Alta for the general public and for the owners and occupants of the said Lots 4, 5 and 9 and the Building Pads approved hereunder.

Section 3. Stipulations Regarding Density. MSI, as part of the consideration for the agreements and promises of Alta hereunder, stipulates and agrees that the interpretation and construction of the term "unit" as set forth in the zoning ordinances of Alta, for purposes of measuring "density" usage, shall mean, regardless of the number of segregated and partitioned building units or "front doors," every two (2) bedrooms. Accordingly, MSI acknowledges and agrees that the 40 bedrooms allowed by Alta hereunder shall be the equivalent of 20 units of density, regardless of how the said bedrooms are allocated between the ten (10) Building Pads and the ultimately constructed residences. MSI further agrees not to hereafter contest or dispute the application of the aforesaid definitional approach to the determination of the number of units of density in the Sugarplum PUD and agrees and stipulates that if all 40 bedrooms are actually constructed, 147.5 units of the density available in the Sugarplum PUD shall have been used. Further, MSI hereby relinquishes, abandons, and agrees not to assert or claim any units of density allocated to Lots 4, 5 and 9 over and above the approved 20 units and will not hereafter attempt to sell, transfer, assign or otherwise grant rights to any other person or party in such density units or rights. Nothing herein shall be a waiver or relinquishment of any voting rights of MSI attributable to the ownership of Lots 4, 5 and 9 under the Master Declaration of Covenants, Conditions and Restrictions of Sugarplum, Recorded as Entry No. 3830328 in the records of the Salt Lake County Recorder (the "Master Declaration"). Alta agrees that the relinquishment of development rights effectuated hereby is not intended to, in any way, diminish, abrogate or otherwise negatively affect such voting rights under the Master Declaration and hereby agrees that MSI may assert the existence of such density rights for the sole purpose of preserving and exercising voting rights provided under the Master Declaration.

Section 4. Indemnification Provisions. The following indemnification provisions are applicable under this Definitive Agreement:

4.1 MSI Indemnification of Alta. MSI agrees to indemnify, defend and hold Alta harmless from any and all loss, liability, expense, charge, claim or action brought by other owners or holders of property located in the Sugarplum PUD that arise out of (a) Alta's approval of development and construction on Lots 4, 5 and 9 as provided and contemplated by this Definitive Agreement; (b) Alta's prior approvals of the Agreement, the original Sugarplum PUD plat, the Amended Plat or conditional use permits in the Sugarplum PUD and (c) breach by MSI of the terms of this Definitive Agreement. This indemnification shall include, but is not limited to, assertions or claims that may be brought by owners of units in Lots 6, 7 or 8 of the Sugarplum PUD ("the View" and the "Village") concerning a prior snow storage designation of Lot 9, concerning any road easements and an identification of Lot 5 for parking, as part of the subject matter or requirements or conditions included in or the subject of prior approvals. Further, in all events, to the extent that the same is applicable, Alta shall assert any and all rights of governmental immunity or other similar immunities afforded by law with respect to any indemnified claims. In the event MSI and Alta are sued jointly based on any allegation covered by this Subsection 4.1, MSI shall assume the defense of both parties. Alta reserves the right at all times to employ legal counsel of its choice at its sole expense. In the event that Alta chooses

to retain independent counsel, MSI shall instruct its legal counsel to consult in good faith with Alta's counsel with respect to the defense of the subject claim or claims. However, Alta shall be solely responsible for any claims asserted (and shall defend itself if sued alone) based upon representations or statements made by Alta, its elected officials, representatives, employees or agents concerning development rights within the Sugarplum PUD. Further, the foregoing indemnification shall not extend to or cover any acts, omissions, statements or representations made by Alta, its officers, agents, bureaus, commissions, departments or other political subdivisions that were clear and intentional violations of known and applicable law or intentionally tortious conduct.

4.2 Alta Indemnification of MSI. Alta hereby agrees to and shall indemnify and hold MSI harmless from and against any and all loss, liability, expense, charge, claim or action brought by any person or party and arising out of (a) any of the matters for which Alta is solely responsible under the provisions of the third sentence of Subsection 4.1 above; (b) any matter exempted from the indemnification of MSI under the penultimate sentence of Section 4.1 above and (c) any breach by Alta of this Definitive Agreement.

4.3 Indemnification Terms. In the event that any other person or party brings or asserts any claim against either of the parties to this Agreement that is the subject of an indemnification obligation, both Alta and MSI hereby covenant and agree to cooperate with one another so that the indemnitor is provided all of the reasonably necessary assistance, information, data and knowledge necessary to effectively defend or otherwise act to avoid the asserted claim, loss, liability, expense or action. This cooperation shall include, but not be limited to, delivery of or providing other reasonable access to relevant documents and the giving of testimony. MSI's defense obligation, when applicable, shall include the payment of all attorneys' fees, costs of court and other expenses incurred in connection with acting to defend or otherwise avoid the claims being asserted. In such situations, MSI shall have the sole and absolute right, to select legal counsel to defend any joint lawsuit asserted against the parties. Further MSI shall have the sole and absolute discretion to settle, compromise or otherwise deal with the indemnified claim or claims.

Section 5. Other Relevant Terms and Provisions - Settlement. With respect to the subject matter of this Definitive Agreement, the Agreement the Sugarplum PUD and the dispute that is subject hereof, the parties also agree to be bound by the following:

5.1 Impact Analysis Fees. With respect to the impact analysis that was conducted by Alta, as set forth in the recitals above, MSI agrees to pay the actual costs and fees incurred by Alta to conduct such analysis up to but not exceeding the sum of \$13,000. Alta will compile all applicable invoices and charges for such analysis and submit the same for payment under cover of a certification that the charges are all reasonably and actually attributable to the conduct of the said analysis. Upon presentation, MSI shall pay the same within ten (10) business days (excluding Saturdays, Sundays and any other holiday observed or recognized by the courts of the United States, the courts of the State of Utah or by any major commercial bank doing business in the State of Utah.).

5.2 Binding Declaration. MSI agrees that it shall, prior to the sale or transfer of any of the Building Pads or the entering into of a contract to so sell or transfer, draft a declaration of covenants, conditions and restrictions for Lots 4, 5 and 9 that, at a minimum, sets forth the applicable covenants of MSI herein as restrictions, covenants, conditions and equitable servitudes upon all of said Lots 4, 5 and 9 and shall, execute the same and record the same in the real estate records of Salt Lake County, State of Utah. The said declaration shall include a provision that the provisions of the said declaration that implement the restrictions imposed by this Definitive Agreement may not be modified or amended without the prior written consent of Alta and Alta agrees that it will not unreasonably withhold such consent. MSI is at liberty to incorporate other conditions, covenants, restrictions and equitable servitudes not contrary to applicable law and it is the intent of MSI that the MSI Guidelines shall become part of such declaration. Alta hereby acknowledges that the Sugarplum PUD is a planned unit development and that Lots 4, 5 and 9 may be, consistent with such planned unit development, be developed hereunder as a "sub" planned unit development or, as elsewhere in the Sugarplum PUD, condominium regimes (townhouse or otherwise) and hereby consents to such development without the imposition of further subdivision requirements, except as necessary under the applicable PUD or condominium laws, to identify severable or salable units.

5.3 Final Compromise, Release and Settlement. Upon execution of this Definitive Agreement, except as expressly hereinafter provided, the disputes, disagreements and claims set forth in the Action shall be deemed to be and are, fully and finally compromised, settled, released and discharged and MSI shall execute and file a dismissal on the merits of the Amended Complaint, with prejudice and each side shall bear their own attorneys' fees, costs and expenses. Notwithstanding the foregoing, both sides agree that the Court, both before and after such dismissal of the Amended Complaint shall continue to exercise and have jurisdiction over the implementation of this Definitive Agreement and the parties stipulate and agree that the Court may appoint a special master, as mutually agreed by both sides, to resolve disputes in the enforcement and implementation of the terms of this Definitive Agreement. In order to facilitate and legally base such retained jurisdiction, the parties agree that the dismissal of the Amended Complaint shall provide for a partial dismissal of the Amended Complaint, provided that such partial dismissal shall be fully and finally effective for all purposes except the limited oversight and dispute resolution provisions hereinabove set forth. Both Alta and MSI agree that disputes over the implementation of this Definitive Agreement and with respect to the review and approval process associated with the development of and construction on Lots 4, 5 and 9 shall be fully and finally decided by the Court under the procedures set forth hereinabove.

Section 6. Warranties and Representations. The parties make the following representations and warranties in connection with this Definitive Agreement and the subject matter hereof.

6.1 Alta Warranties and Representations. Alta hereby warrants and represents that it has all power, authority and right to enter into this Agreement and to perform in accordance with the provisions and terms hereof. No consent, permit, authorization, approval or other action is required as a condition to such power, authority and right except the ratification of this Definitive Agreement and the Final Site Plan by the Town Council of Alta, as contemplated by the Memo of Understanding. Further, Alta has not assigned, transferred, conveyed or otherwise alienated or granted other rights or interests in the subject matter of this Definitive Agreement. The officer

signing this Definitive Agreement is fully authorized and empowered by applicable law to execute this Definitive Agreement on behalf of Alta and to bind Alta thereby.

6.2 MSI Warranties and Representations. MSI hereby warrants and represents that it has all power, authority and right to enter into this Agreement and to perform in accordance with the provisions and terms hereof. No consent, permit, authorization, approval or other action is required as a condition to such power, authority and right. Further, MSI has not assigned, transferred, conveyed or otherwise alienated or granted other rights or interests in the subject matter of this Definitive Agreement, including any of the claims, rights or interests that are being asserted in the Action. The officer signing this Definitive Agreement is fully authorized and empowered by applicable law to execute this Definitive Agreement on behalf of MSI and to bind MSI thereby.

Section 7. Miscellaneous Provisions. This Definitive Agreement is executed under and shall be governed by the laws of the State of Utah. This Definitive Agreement shall be binding upon all successors and assigns of the parties hereto (any reference to the said parties herein being also a reference to such successors and assigns) and it is the intent of the parties that the terms shall bind and restrict and otherwise condition the use of the real property comprising Lots 4, 5 and 9 and this Definitive Agreement shall be recorded in the real estate records of Salt Lake County and MSI hereby agrees that the same shall be a "declaration" of binding covenants, conditions and restrictions applicable to the referenced real property, constituting an equitable servitude thereon and is intended to be and shall run with the land. This Definitive Agreement is divisible and severable so that, so long as the principal objectives and intent hereof are not materially frustrated thereby, the unenforceability of any provision or provisions hereof shall not result in the unenforceability of any remaining provisions. No amendment or modification of this Definitive Agreement may be made unless the same is in writing signed by both of the parties hereto. No waiver of any term or provisions, covenant or agreement, right, remedy or interest arising hereunder or provided hereby shall be binding upon any party hereto unless the same is expressed clearly in a writing signed by the party to be charged with the same. This Definitive Agreement is the result of a joint drafting effort by both parties hereto and any ambiguity contained herein shall not be, by reason of the allocation of drafting responsibility, construed against either party. The breach by a party of the terms of this Definitive Agreement shall give rise to the obligation, in addition to all others available at law or in equity, to pay and reimburse to the other party, all reasonable attorneys' fees and expenses (including costs of court) incurred in any way by reason of such breach or the pursuit of rights, remedies, damages, or interests hereunder. Such obligation includes any and all such expenses, including but not limited to those incurred in connection with demands, notices, negotiations, actions, suits, alternate dispute resolution, trial, appeal and bankruptcy or other insolvency proceedings. In the event of any conflict between the terms of this Definitive Agreement and the Agreement, the terms hereof shall govern. This Definitive Agreement and the subject resolution of the Action are the reasonable and due exercise by Alta of its police power and the discretion delegated to Alta by virtue of Utah Code Ann. Sections 10-1-2 and 10-9-102 et. seq. and by virtue of the Planned Unit Development ordinance of Alta and as the administrative implementation of prior legislative decisions of Alta (including, the subject matter of the Agreement and the associated annexation of the subject real property). This Definitive Agreement does not constitute the unlawful delegation of the police powers or other governmental powers or discretion of Alta and Alta is at

liberty to continue to exercise the same, including the enactment of ordinances and regulations for the health, safety and welfare of the community (including the Sugarplum PUD community), provided, that such additional ordinances, rules and regulations do not conflict with the terms hereof or frustrate the intent, purposes or objectives hereof or rights vested hereunder.

IN WITNESS WHEREOF, this Definitive Agreement is executed as of the day and date first set forth hereinabove.

MSI Co, LLC, a Utah limited liability company

Town of Alta

By Ralph B. Johnson
Name: Ralph B. Johnson
Title: President

By William H. Levitt
William H. Levitt, Mayor

State of Utah

County of SALT LAKE

The foregoing instrument was acknowledged before me this 9 day of November, 2000 by William H. Levitt Mayor of the Town of Alta.

Katherine S. Black
Notary Public

My Commission expires: 3/15/04

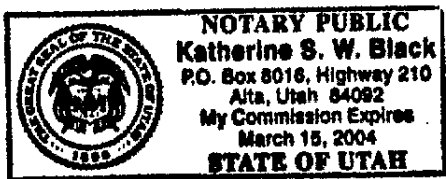


EXHIBIT A
TO
DEFINITIVE SETTLEMENT AND DEVELOPMENT
AGREEMENT

Attached hereto is a copy of the fully executed and approved Final Site Plan.

DK8420PG8504

SCHEDULE 2.6

**TO
DEFINITIVE SETTLEMENT AND DEVELOPMENT
AGREEMENT**

Attached hereto and incorporated herein is the Sugarplum Tree Location Map applicable as between the parties.

To be submitted and recorded at a later date.

BK8420PG8505

SCHEDULE 2.7(a)

**TO
DEFINITIVE SETTLEMENT AND DEVELOPMENT
AGREEMENT**

Attached hereto and incorporated herein by this reference is the Skier Access Plan proposed and approved by the parties.

To be submitted and recorded at a later date.

BK8420PG8506

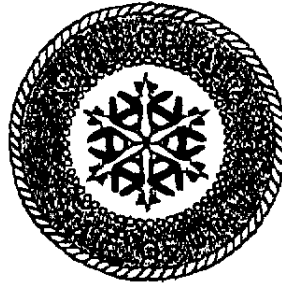
SCHEDULE 2.7(b)

**TO
DEFINITIVE SETTLEMENT AND DEVELOPMENT
AGREEMENT**

Attached hereto and incorporated herein by this reference is the "Outside Agency Checklist" agreed to by the parties.

3K8420PG8507

MAYOR
WILLIAM H. LEVITT
TOWN COUNCIL
ROSALEE GALE
GLEN HENNINGSON
BILL LENNON
JODY SHRONTZ



TOWN OF ALTA
P.O. BOX 8016
ALTA, UTAH
84092-8016
TEL. (801) 363-5105 / 742-3522
FAX. (801) 742-1006

May 15, 2000

Outside Agency Checklist for Building Approval Prior to Planning Commission Review.

<u>Agency</u>	<u>Phone</u>
Salt Lake City Department of Public Utilities, Water Division	483-6768
Salt Lake City/County Health Department And Division of Water Quality (Sewer, Water, Water Quality Issues, JoAnne Smith)	313-6700
Salt Lake City/County Health Department Environmental Health Division, Bureau of Food Protection Re: Construction or Remodeling of Food Establishments (Kerry Cramer)	944-6628
Salt Lake County Service Area #3 (Water connection procedures)	278-9660
Cottonwood Improvement District (Sewer connection procedures)	943-7671
Utah Department of Transportation (Access/encroachment on state roads, Francine Rieck)	975-4900
U.S. Army Corps of Engineers (Wetlands delineations and permits)	1.801.295.8380
Alta Marshal's Department	363-5105
Alta Fire Department	363-5105

Any further questions should be referred to the Alta Town Office at 742-3522 or 363-5105.

• POOR COPY •
CO. RECORDER

9K8420P68508

SCHEDULE 2.7 (c)

**TO
DEFINITIVE SETTLEMENT AND DEVELOPMENT
AGREEMENT**

Attached hereto and incorporated herein by this reference is the form of indemnity agreement that is applicable with respect to the avalanche ordinance of the Town of Alta.

HOLD HARMLESS AND INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 199___, by and between THE TOWN OF ALTA, Utah, a municipal corporation of the State of Utah, hereinafter "Town of Alta" and _____ hereinafter collectively referred to as the "Property Owner".

WITNESSETH:

WHEREAS, the Property Owner owns the following described real property within the Town of Alta, Salt Lake County, State of Utah (the "Property"):

and

WHEREAS, the Town of Alta has determined and observed the Property is located in an area frequented by avalanches and that the hazards and dangers arising therefrom pose serious threats of destruction, injury and harm to property located within said area or to individuals residing or visiting said area; and

WHEREAS, the Property Owner is fully apprised of such hazards, dangers and risks to property and individuals but has nevertheless sought to build a building or structure ("Improvements") upon the Property and now desires to occupy the same.

NOW, THEREFORE, in consideration of mutual covenants, agreements and other valuable consideration, the parties agree as follows:

1. That upon proper execution of this agreement by the Property Owner and upon satisfactory compliance by the Property Owner of all applicable ordinances, statutes, and resolutions of the Town of Alta which are conditions precedent to the issuance of occupancy, the

JK8420PG8510

Town of Alta will issue to the Property Owner certificates of occupancy of said building or structure.

2. The Property Owner, his heirs, successors and assigns, agrees and covenants by his execution of this Agreement to hold the Town of Alta, The Utah Department of Transportation and the Forest Service, their employees, agents, successors and assigns, harmless from any and all claims, damages, losses, expenses or costs ("Damages and Claims") arising from injury to persons or property using, occupying or located on or in or used in connection with the Property or Improvements, where such Damages and Claims are the result of avalanches, either natural or manmade.

3. The Property Owner further agrees to hold the Town of Alta, The Utah Department of Transportation and the Forest Service, their employees, agents, successors and assigns, harmless from Damages and Claims arising from injury to persons or property using, occupying or located on or in or used in connection with the Property or Improvements, where such Damages and Claims are the result of activities associated with avalanche control, including but not limited to conduct associated with the use of explosives and projectiles.

4. The Property Owner agrees and covenants to indemnify the Town of Alta, The Utah Department of Transportation and the Forest Service, their successors and assigns, from any and all Damages and Claims connected with or arising out of those activities of the Town of Alta and the Forest Service as hereinabove described in Paragraphs 2 and 3 and brought or made by co-owners, occupants, visitors, tenants, licensees, lessees, sublessees, invitees, or trespassers (including their successors, assignees and survivors where applicable) of the Property or Improvements.

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5. In the event suit is filed to enforce the rights and obligations provided herein, the Property Owner agrees that the Town of Alta, The Utah Department of Transportation and the Forest Service, their successors and assigns, shall be entitled to recover from the Property Owner court costs and reasonable attorney's fees.

6. In the event the Property Owner sells, assigns, transfers, conveys his interest in the Property or Improvements , he agrees that he will bind his successors, heirs and assigns, to the terms and conditions of this Hold Harmless Agreement by recording a special warranty deed or similar conveyance setting forth the restrictive covenants and conditions of this agreement to run forever with the Property and Improvements.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE TOWN OF ALTA

by _____

ATTEST:

Property Owner

BK8420PG8512

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

The foregoing instrument was acknowledged before me this _____ day of
_____, 199 __, by _____ and _____
owner(s) of the above described property.

NOTARY PUBLIC

RQN/563793

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SCHEDULE 2.7 (d)

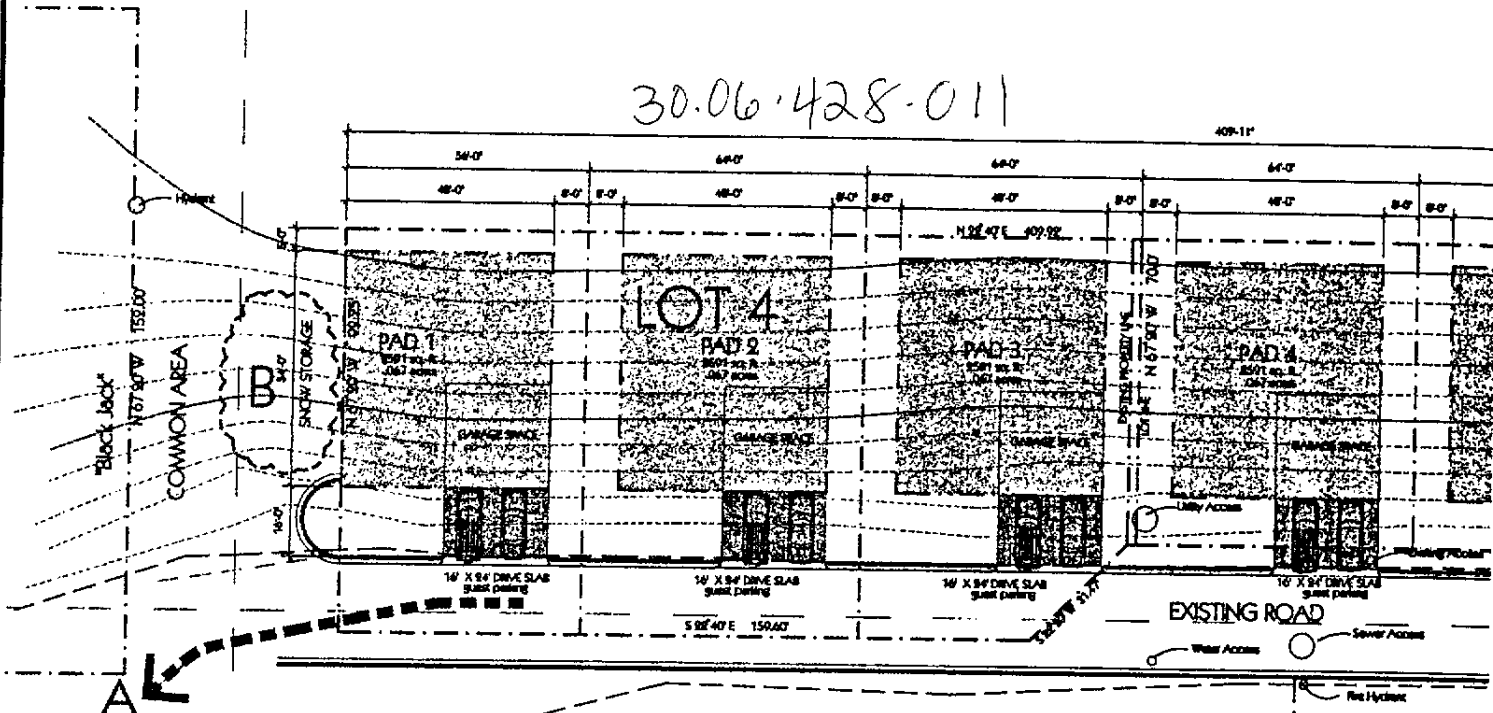
**TO
DEFINITIVE SETTLEMENT AND DEVELOPMENT
AGREEMENT**

Attached hereto and incorporated herein by this reference is the avalanche interlodge notification plan agreed to by the parties.

To be submitted and recorded at a later date.

3K8420PG8514

30.06.428-011



SNOW STORAGE PLAN "A"
Primary Removal to North Side of Bypass Road

"Exhibit A"
TO THE DEFINITIVE SETTLEMENT
AND DEVELOPMENT AGREEMENT

ALTA-MSI-CO., LLC. PROPERTIES
A UTAH BASED LIMITED LIABILITY COMPANY
ALTA, UTAH NOVEMBER 9, 2000

P. U. D. Site Plan

SCALE 1" = 20'-0"

View Part

Sugar Plum P. U. D.

LOTS 4, 5, & 9 — Plan 2

Snow Removal Schemes

- A. Remove snow to common dumping area on North Side of Access Road
- B. North End of PUD Lot 4 (Temporary)
- C. Open space at new autocourt on Lot 9 (Temporary)
- D. Snow to be pushed by snow cat down hill on Lot 9
- E. End of Road (Temporary)

Additional Notes

- A. All houses to be fire sprinkled.
- B. Architect of Future homes to pay attention to spacing between houses, especially on Pads 8, 9 & 10 to mitigate drifting snow.
- C. 20' wide area to be provided behind houses on lots 4 & 5 to allow snow cat access.
- D. Each Pad is allocated four bedrooms pursuant to the provisions of the Definitive Settlement and Development Agreement.

ACKNOWLEDGEMENT

STATE OF UTAH)
COUNTY OF SALT LAKE)

On the 14th day of December, 2000 A.D. personally appeared before me, RAULB E. JOHNSON, who being by me duly sworn or affirmed did say that he is the President of MSI-CO., A Utah Limited Liability Company, and that the Within Owner's Declaration was signed in behalf of said Company by Authority of its Operating Agreement.

Acknowledged to me that the Said Company executed the same.

My Commission Expires: April 2004 *Raulb E. Johnson*
Notary Public

OWNERS DECLARATION

Know all persons by these presents that MSI-CO. LLC, a Utah Limited Liability Company is the owner of Sugar Plum P.U.D., lots 4, 5 & 9 as amended and as shown on the above Site Plan.

In Witness whereof, I have hereunto set my hand this 14th day of November, 2000 A.D.

by *Raulb E. Johnson*
RAULB E. JOHNSON, President, MSI-CO. LLC

TRACY STOCKING & ASSOCIATES



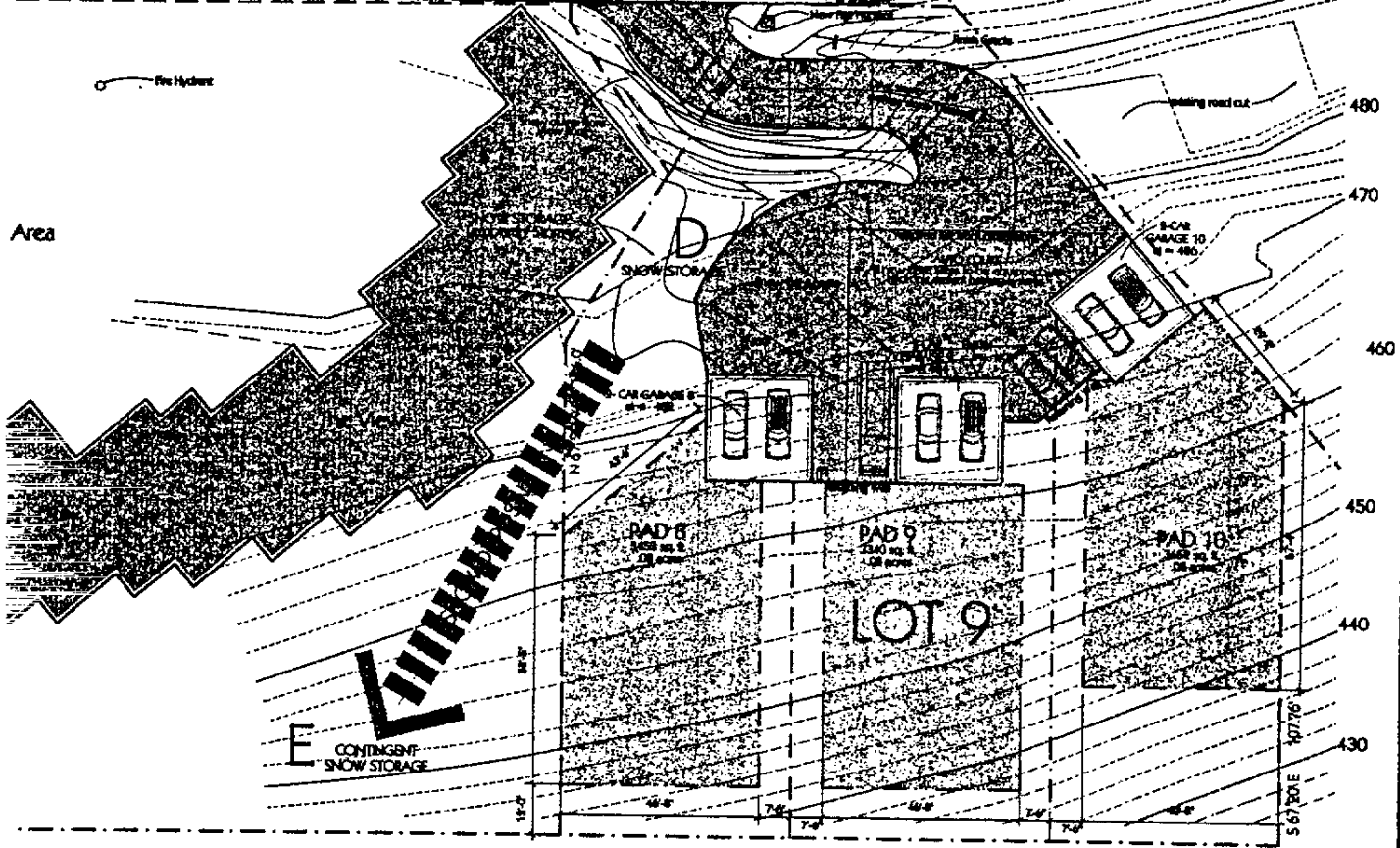
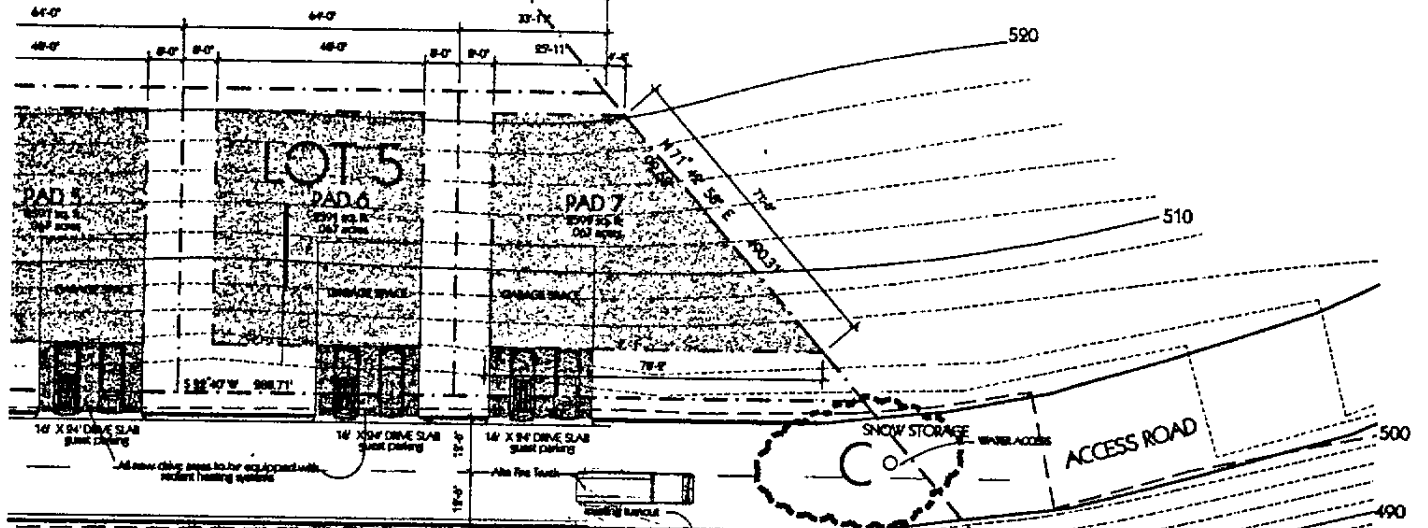
Alta Town Council

presented to the board of ALTA TOWN COUNCIL this 14th day of December, 2000 A.D. at which time this planned unit development was approved and accepted.

William F. Scott
Attested—Alta Town Clerk *William F. Scott*
Alta Town Mayor

JK8420PG8515

30.06.428.010



30 06-428-017

PK0420P68516