

**THIRD AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

FOR

Apple Island
A Planned Unit Development

August 12, 2003

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Michael Bleed, Rec. - Filed By TJ
Cache County, UT
For MCINTOSH DEVELOPMENT

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THIRD AMENDED AND RESTATED DECLARATION

This Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions supercedes, replaces, and amends in its entirety any prior recorded declaration of covenants, conditions, and restrictions, including but not limited to that Declaration of Covenants, Conditions, and Restrictions recorded at entry number 776407, Book 1064, Page 161 in the Cache County Recorder's Office at 4:44 p.m. on December 11, 2001. This Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions controls, supercedes, and replaces any and all provisions of any prior Declaration.

Recitals

Section 1: Declarant, McIntosh Development Corporation, a Utah corporation, is the Owner of that certain parcel of real property located in the City of Logan, County of Cache, State of Utah, legally described and set forth as follows:

Part of the East Half of Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian.

Beginning at the Northwest corner of Lot 5 of the Niels Mikkelsen survey, and running thence North 78°12'44" East along the South right-of-way line of Canyon Road (Logan City), 129.68 feet;

- thence South 00°13'55" East 99.11 feet;
- thence North 89°46'05" East 110.44 feet;
- thence South 00°13'55" East 75.73 feet to a found survey marker;
- thence South 86°36'25" East 66.38 feet;
- thence North 87°09'37" East 100.20 feet;
- thence South 00°13'55" East 220.66 feet;
- thence South 21°55'07" West 113.77 feet;
- thence North 88°21'46" West 200.00 feet;
- thence North 02°22'17" East 107.28 feet;
- thence North 88°02'21" West 76.35 feet;
- thence North 02°19'23" East 80.00 feet;
- thence North 87°54'18" West 105.82 feet to the East right of way line of Preston

Avenue (Logan City);

thence along said right-of-way line North 02°23'40" East 274.00 feet to the point of beginning.

Containing 3.04 acres more or less. (the "Property")

Section 2: Declarant desires to create on the Property a Planned Unit Development in compliance with the Ordinances of Logan City, Utah, and desires to provide for the preservation of the amenities of said development. To this end, and for the benefit of the Property and the Owners thereof, Declarant desires to subject the Property to the covenants, conditions, restrictions, charges, easements and liens hereinafter set forth.

Section 3: The property is hereby made subject to the following covenants, conditions, restrictions, charges, easements and liens, all of which shall be deemed to run with the Property and each and every portion thereof, to ensure the proper use and appropriate development and improvement of the property so as to:

- A. Protect the Owners of Lots against such improper development and use of Lots as will depreciate the value and use of Lots and the Property.
- B. Prevent the erection on the Property of structures constructed of improper or unsuitable materials or with improper quality and methods of construction.
- C. Ensure adequate and reasonably consistent use and development of the Property.
- D. Encourage and ensure the erection of attractively designed permanent improvements appropriately located within the Property, in order to achieve harmonious appearance and function.
- E. Ensure the provision of adequate and suitable Landscaping and Lighting.
- F. Provide for proper operation and maintenance of the Land, including without limitation, all Lots and Common areas.
- G. Generally promote the welfare and safety of the Owners of the Lots and the Land.

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Third Amended and Restated Declaration containing covenants, easements, conditions and restrictions relating to this Planned Unit Development which are for the purpose of protecting the value and desirability of the Property, and which shall be an enforceable equitable servitude, where reasonable, and shall run with the Property and be binding on all parties, their heirs, successors and assigns having any right, title or interest in the Property, Lots or any part thereof, and shall insure to the benefit of each Owner thereof:

- 1. Name: The name by which the development shall be known is the Apple Island Planned Unit Development.

2. Definitions: The terms used in this Third Amended and Restated Declaration including Exhibits attached hereto shall have the meaning stated herein, unless the context otherwise requires.
- (a) "Assessment" shall mean and refer to any amounts levied, charged or assessed against an Owner and/or such Owner's Lot in accordance with the provisions of this Third Amended and Restated Declaration.
 - (b) "Association" shall mean Apple Island Home Owners' Association, a corporation formed under the Utah Non-profit Corporation and/or Cooperative Association, its successors and assigns, of which all of the Lot Owners are Members. A Board of Trustees shall be the governing body of the Association and shall have such authority as its Articles of Incorporation (Articles) and Bylaws shall provide. Whenever a 2/3 or majority vote is required by this Third Amended and Restated Declaration, that shall mean a 2/3 or majority vote of a quorum of members at a Regular or Special Meeting of the Association.
 - (c) "Board of Directors" shall mean the Board of Directors of the Association elected in accordance with the Articles and Bylaws of the Association.
 - (d) "Building" shall mean and include, but not be limited to, the main portion of all structures built for permanent use and all projections or extensions thereof, including, but not limited to, homes, garages, storage facilities, canopies, porches and courtyards (to the extent permitted, if at all, by this Third Amended and Restated Declaration).
 - (e) "Building Site" or "Building Area" shall mean and refer to the areas shown as such on any recorded Plat with respect to any Lot and approved by the City of Logan. In the absence of any such specific designation, the "Building Site" shall consist of the actual Building footprint, as constructed as permitted by Logan City Ordinances.
 - (f) "Common Areas and Facilities" shall mean and refer to:
 - (i) The Property.
 - (ii) That portion of the Property not specifically included in the respective Lots as herein defined;
 - (iii) All apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas, and so designated on the Plot.
 - (iv) Apple Drive (a private road)
 - (v) Those areas specifically set forth and designated in the Map attached and incorporated as Exhibit "A" as "Common Area", and
 - (vi) All other parts of the Property necessary or convenient to its existence, maintenance, and safety or normally in common use.
 - (g) "Common Expenses" shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas, except as expressly limited herein, to all items, things, and sums which are assessed against the Lot Owners in accordance with the provisions of this Third

Amended and Restated Declaration, the Articles, and the Bylaws, such rules and regulations which the Association may from time to time adopt, and such other determinations and agreements lawfully made and/or entered into by the Association.

- (h) "Declarant" shall mean and refer to McIntosh Development Corporation, a Utah corporation, its successors and assigns if such successors and assigns are Owners of all or any portion of the Property and are designated by the Declarant to perform the obligations or succeed to the rights of Declarant hereunder.
- (i) "Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions located in the Cache County Recorder's Office at Entry 776407, Book 1064, Page 161 recorded December 11, 2001, by which Apple Island was established as a Planned Unit Development, as amended.
- (j) "Property" shall mean and refer to the real Property described in the Recitals, Section 1.
- (k) "Dwelling" shall refer to the single family residential lot which must be constructed on each Lot.
- (k(a)) "Third Amended and Restated Declaration" shall mean this document by which Apple Island's Declaration was amended and restated.
- (l) "Lienholder" (lienholder) shall mean the beneficiary of a recorded trust deed or the mortgagee of a recorded mortgage under which the interest of a Lot Owner in a Lot is pledged.
- (m) "Manager" shall mean and refer to the person, persons or corporation elected by the Association to manage the affairs of the Association and the Property.
- (n) "Map" shall mean and refer to the Record of Survey Map of the Final Plat of Apple Island as on file in the office of the Recorder of Cache County, Utah.
- (o) "Member" shall mean each Lot Owner who automatically is a Member in the Association as provided herein.
- (p) "Owner" shall mean and refer to the record Owner (or an officer or agent of the record Owner), whether one(1) or more persons or entities, of fee simple title to any Lot, but excluding those having such interest solely as security for the performance of any obligation, in which event the equitable Owner of such fee simple title shall be deemed to be the Owner thereof.
- (q) The "Planned Unit Development" or sometimes "the Project" shall mean and refer to the entire Property, as defined, together with all rights, obligations and organizations established by this Third Amended and Restated Declaration.
- (r) "Property" shall mean and include the Property, all easements, rights and appurtenances belonging thereto.
- (s) "Lot" shall mean and refer to one of the Lots designated as a Lot of the Map and hereinafter shall be jointly described as "Lot". No Lot may be assessed until it is sold to a third party other than the Developer, at which time it will be subject to assessment upon the first to occur of the passage of 12 months from the date of sale or upon construction of a home and a certificate of

occupancy issued. There shall be no assessment for prior Common Area costs and expenses. Lot 1 has an existing home and the existing home is exempt from the design requirements of the Planned Unit Development unless it is demolished or removed. The existing home on Lot 1 may be remodeled and expanded and remain exempt from the design requirements herein.

3. **Submission to Ownership.** No portions of the property are for use by the general public. Declarant hereby submits the Common Areas as a Planned Unit Development.
4. **Covenants to Run with the Property.** This Third Amended and Restated Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the Property and the Lots and this Third Amended and Restated Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Lot Owners or subsequent Lot Owners, their grantees, mortgages, successors, heirs, executors, administrators, devisees and assigns.
5. **Description of Property.**
 - (a) **Description of Property.** The Property is that tract or parcel, more particularly described in the Recitals, Section 1.
 - (b) **Description and Legal Status of Lots.** The Map shows the Lot Number of each Lot, its location, and the Common Areas and Facilities to which each Lot has access (Common Area and Apple Drive). All Lots, of whatever type, shall be capable of being independently owned, encumbered and conveyed and shall each own 7.6927% of the Common Areas.
 - (c) **Common Areas and Facilities.** Except as otherwise provided in the Third Amended and Restated Declaration, the Common Areas, shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Lots. Without limiting the generality of the foregoing, the Common Areas shall include the following, whether located within the bounds of a Lot or not;
 - (i) Any utility pipe or line or system. Logan City owns and maintains utilities to the meter on each Lot and all ducts, wire, conduits, and other accessories used therewith. The Association is responsible to maintain and repair utility lines on each Lot, unless damaged or caused to require maintenance or repair from the negligent acts of the Lot Owner or occupant, in which case the Lot Owner shall be responsible for the damage, repair and maintenance of the utility pipe line or system.
 - (ii) Apple Drive, a private road.

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- (iii) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas in the Map;
- (iv) Nothing shall be done or kept in any Lot or in the Common Areas, which will increase the rate of insurance beyond that customarily applicable for residential use, without the prior written consent of the Management of the Association. No Lot Owner shall permit anything to be done or kept in his Lot which is in violation of any law, ordinance or regulation of any governmental authority or in violation of this Declaration.
- (v) No noxious or offensive activity shall be carried on or permitted in any Lot or in the Common Areas, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.
- (vi) No Boats, R.V.'s, 4-wheelers, snowmobiles, trailers, junk vehicles or vehicles that are being restored or repaired are to be stored on the Common Areas, Lots, Property, streets, parking lots, driveways or garages.
- (vii) The Common Areas shall be kept free and clear of all rubbish, debris and other unsightly material. Parking in Common Areas is for visitors only.
- (viii) No Owner shall violate the rules and regulations regarding use of the Lots and of the Common Areas and as adopted from time to time by the Management or the Association.
- (ix) A 10 foot by 10 foot easement across the northwest corner of Lot 13 for maintenance and erection of a sign at the entry to the Planned Unit Development together with reasonable rights to access and service the same.
- (x) Mailboxes located near entry from Preston Avenue to Apple Island.
- (xi) The roadway to Lot 13 has ingress and egress easements for Lots 11 and 12. Lots 11, 12, and 13 owners will pay equally for the maintenance, repairs and replacement of the Lot 13 driveway. It is not part of the Common Area, but the Association will provide snow removal on this driveway. No parking will be allowed on the roadway.

6. Person to Receive Service of Process. The person to receive service of process until such time as the Association is organized and a different resident designated is:

McIntosh Development Corporation
c/o Sharon Z. Parker
2953 West 6900 South
Wellsville, UT 84339

7. Ownership and Use.

- (a) Ownership of a Lot. Except with respect to any of the Common Areas, or as otherwise provided herein, each Lot Owner shall be entitled to the exclusive Ownership and possession of the Lot and Membership in the Apple Island Owners' Association.
- (b) Nature of and Restrictions on Ownership and Use. Each Lot Owner shall have and enjoy the rights and privileges of fee simple Ownership of that Lot. There shall be no requirements concerning who may own Lots, it being intended that they may and shall be owned as any other Property right by persons, corporations, partnerships, or trusts and in the form of common tenancy. Each Lot Owner may lease or rent a lot with its appurtenant right subject to the terms and conditions of this Third Amended and Restated Declaration. All Lot owners, their tenants and other occupants or users of the project, shall be subject to this Third Amended and Restated Declaration, Articles, Bylaws, and all rules and regulations of the Association.
- (c) Prohibition Against Planned Unit Development or Project of Lot. No Lot Owner, by deed, plat or otherwise, shall subdivide or in any manner cause the Ownership of a Lot to be separated into physical tracts or parcels smaller than the whole Lot as shown on the Map.
- (d) Ownership of Common Areas and Facilities. The Common Areas, contained in the Planned Unit Development or Project are described and identified in this Third Amended and Restated Declaration. Said Common Areas shall be owned by and hereby transferred, conveyed, and deeded by Declarant to the Apple Island Home Owners' Association. The Common Areas shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Lots contained in the Project.
- (e) Use of Common Areas. Each Lot Owner may use the Common Areas in accordance with the purpose for which they are intended, but subject to this Third Amended and Restated Declaration, Articles, Bylaws, and the rules and regulations of the Association. This right of use shall be appurtenant to and run with each Lot.
- (f) Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, the right of enjoyment to the Common area and facilities to family members, tenants, or contract purchasers who reside on the Property.
- (g) Residential Lots. All lots will be known as "residential lots." No structure will be erected, altered, placed, or permitted to remain on any "lot" other than one detached single-family dwelling and other complimentary "residential use" structures approved by the Homeowners' Association
- (h) Architectural Building Review. No structure will be erected, placed, or altered on any Lot until building plans, specifications, and a detailed plot plan showing walks, driveway, and general landscaping have been approved in writing by the Homeowners' Association as to conformity and harmony of

external design and color combinations with existing structures in the Planned Development of Project and to location with respect to topography and finished ground elevation. The Homeowners' Association will be made up of not more than five (5) property owners, elected by a majority vote of the Lot Owners. The Homeowners' Association will have full and absolute authority to approve or disapprove. The powers of architectural approval will cease on midnight December 31, 2015.

- (j) **Minimum Area of Dwellings.** No Dwelling will be erected with a finished main floor living area of less than 1000 square feet, exclusive of attic space or storage lofts, one-story open porches, garages and basements.
- (k) **Garages.** All dwellings will have at least a two-car attached garage and paved driveway running from the street to its garage. Garages must be completed upon occupancy of the dwelling. Vehicles should be parked in the garage when not being used. The parking in the front of the Lots and the parking in the Commons Area shall be used only as visitor parking and shall not be used as permanent parking for Lot Owners or Residents.
- (l) **Yard Care.** The Association will be responsible for yard care and maintenance of lawns, trees and shrubs. Lot Owners will be responsible for watering, planting and maintenance of flower beds, gardens, and sprinkler systems, and will keep Lots free of junk vehicles, equipment and other debris. Lot Owners will also be responsible for weed control of flower beds and gardens. If at any time each Owner's water is separately metered or billed by Logan City, each owners will be responsible to pay for the same. The Association will be responsible for payment of water charges until and unless the Association determines otherwise.
- (m) **Construction.** Construction of a Dwelling must begin within eighteen (18) months from the date of the purchase of the Lot from the Developer, and must be completed within one (1) year of the commencement of construction.
- (n) **Roofs.** All roofs will have a minimum pitch of 5 feet to rise to 12 feet of vertical distance.
- (o) **Exterior Dwelling Materials.** Exterior construction materials will be predominately brick, stone, stucco, or vinyl, or a combination of the above.
- (p) **Single Family Dwelling Required.** All Lots must be improved with a single family residential home (Dwelling) and are restricted to such use.
- (q) **Adult Living.** Apple Island is designed and intended to be "housing for older persons." For this reason, residents of 80% of the Dwellings shall be restricted and limited to at least one (1) resident being fifty-five (55) years of age or older. No more than two (2) persons may occupy each Dwelling unless all such persons are a family and are related by blood, marriage, or adoption, and then no more than four (4) such persons may so occupy each Dwelling, except as otherwise allowed or required by law. Of those who are so related, no more than two (2) of those persons may be children of one or both of the other said persons, except as otherwise allowed or required by

law. This restriction is to be understood to limit the occupancy of each home to four (4) persons, who are a family, except as otherwise allowed or required by law. A person shall be deemed a resident for purposes of this section upon residing in the complex for a period of fourteen (14) days in any thirty (30) day period. Renters are considered to be residents and are subject to these restrictions except that no more than two (2) individuals as renters shall occupy a Dwelling at one time without written consent from the Homeowners' Association. The Homeowners' Association may publish and provide to Lot Owners, copies of this Third Amended and Restated Declaration and Articles, Bylaws and Rules of the Association. But it is the responsibility of each Lot Owner and Resident to abide by this Third Amended and Restated Declaration, Articles, Bylaws and Rules and Regulations regardless of whether the Association has provided copies of the same. Lot 1 is exempt from the age restrictions of this paragraph. Lot 1 will continue to remain subject to restrictions of occupancy as required by the Logan City Zoning Ordinance until Lot 1 is sold by the record title owner as of the date of filing this Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions. After that time, Lot 1 will become subject to the age and occupancy provisions of this paragraph and as otherwise contained in the Third Amended and Restated Declaration.

- (r) **Code Compliance.** All Dwellings will conform to Utah Building Code and Logan City Ordinances.
- (s) **Lot Lighting.** Each Lot Owner may install exterior front yard lighting in a location and of a style and size approved by the Homeowners' Association. The lighting must have a light sensor so that it automatically turns on at dusk and turns off at dawn. Each Lot Owner must keep the light functional and shall pay all costs of operation.
- (t) **Fencing.** The Developer or the Association will provide a perimeter 6 foot high vinyl fence around the Planned Unit Development. Any Lot Owner, at the Owner's expense, may install a side yard privacy fence not to exceed 6 feet in height, which privacy fence must match the perimeter fence in style, design, color and material. Any fencing must not extend past the portion of the dwelling closest to Apple Drive so that each Lot has an open front yard (with the exception of Lots 11, 12 and 13). Any fencing must provide adequate access by the Association to the rear yard for yard care and maintenance. All fencing must have a Logan City permit and must be approved in advance by the Association.
- (u) **Pets.** Two (2) indoor pets are allowed in each Dwelling unless specifically required by an applicable federal law to accommodate a resident's needs. No pet may be allowed outside unless on a leash and accompanied by a person. No outdoor pets are permitted. There are no exceptions to these pet restrictions unless specifically provided herein. Lot 1 is exempt from the pet limitations until the owner of Lot 1 as of the date the Declaration is recorded sells the Lot to a third party.

8. **Voting-Multiple Ownership.** Each Owner of a Lot shall be a Member of the Association. The vote attributable to and exercisable in connection with a Member of the Association shall be one vote for each Lot owned. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any meeting of the Association shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purposed whatsoever other than to determine whether a quorum exists.
9. **Association.**
- (a) **Association.** The Association shall have, and is hereby granted the following authority, rights, easements and powers:
- (i) The authority to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common areas, and through utility easements shown across Lots on the Map; and work performed pursuant to such easements must be done in a workmanlike manner and any damage must be repaired.
 - (ii) The authority to execute and record, on behalf of all Members of the Association, any amendment to the Third Amended and Restated declaration or Map which has been approved by a 67% vote of Members at a meeting to authorize such amendment; provided no such amendment shall impair or negatively impact the rights of any lienholder of any Lot unless all lienholders of Lots consent to the same;
 - (iii) The authority to enter into contracts for the Planned Unit Development;
 - (iv) The power and authority to convey or transfer any interest in real Property, so long as a 67% vote of each class of Members at a meeting and the consent of all lienholders has been obtained;
 - (v) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real Property, so long as such action has been authorized by a majority vote of Members at a meeting;
 - (vi) The power and authority to add any interest in real Property so long as such action has been authorized by a majority vote of Members at a meeting;
 - (vii) The power to sue and be sued;
 - (viii) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$5,000.00 without the prior vote or approval of a majority vote of Members at a meeting;
 - (ix) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Management

in carrying out any of its functions or to insure that the Planned Unit Development is maintained and used in a manner consistent with the interest of the Members of the Association; and

- (x) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions for the Members of the Association
 - (xi) To provide snow removal and road maintenance for Apple Drive and for all sidewalks and driveways in the Project.
 - (xii) Easements and rights of access to each Lot to provide yard care and landscaping maintenance.
- (b) **Manager.** The Association may carry out through a Professional Property Manager or other agent any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Lot Owners, and shall, to the extent permitted by law, have authority to conduct the functions or acts required or permitted to be performed by the Association itself. Any agreement for professional management of the project which may be entered into by the Association shall have a term not exceeding one (1) year, renewable by agreement of the parties for successive one-year periods. The initial managing agent of the Project until changed by the Association will be Sharon Parker, 2953 West 6900 South, Wellsville, Utah 84339.

10. **Membership in the Association and Voting Rights.**

- (a) **Membership.** Every Owner of a Lot shall be a Member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.
- (b) **Transfer.** The Association Membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Lot and then only to the purchaser or lienholder of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in the Owner's name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to charge a reasonable Special Assessment against any Owner and the Lot, equal to the cost of the Association of effectuating any such transfer of that Owner's Membership upon the books of the Association.

- (c) Until one of the conditions of paragraph 11 (c) (ii) ((1)) and ((2)) has been met, the Association shall have two classes of voting Membership:
 - (i) Class A Members shall be all Lot Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned.
 - (ii) The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happenings of either of the following events, whichever occur earlier:
 - ((1)) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, or
 - ((2)) October 1, 2007.
- (d) These requirements and covenants are made in order to assure that the Property and Planned United Development will be adequately administered in the initial phases of development and to assure an orderly transition to Association operations.

11. Easements.

- (a) Each Lot shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Areas, together with the signs easement across Lot 13 described herein in Paragraph 5.2.ix.
- (b) The Owners of Lots shall have the irrevocable right, to be exercised by the Association as its agents, to have access to each Lot and to all Common Areas, from time to time during such reasonable hours as may be necessary fore the maintenance, repair or replacement of any of the Common Areas, located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas, or to another Lot or Lots. The Association shall also have such right. Damage to Lot or Lots resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas, or as a result of emergency repairs within another Lot at the instance of the Association or of Lot Owners shall be caused by the negligence of the Owner of a Lot, then such Owner shall be financially responsible for all such damage to the extent the Association or the damaged Lot Owner does not have insurance to cover the same. Such damage shall be repaired and the Property and Lot shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment.
- (c) Declarant hereby dedicates for the mutual and reciprocal benefit of the Association, and employees, agents and contractors, the right and license to enter upon the Common Areas, for the purposes of construction and improvement upon the Common Areas. In connection with any such work or construction, incidental encroachment upon a lot may occur as a result of

the use of ladders, scaffolding, safety barricades, and similar facilities all of which shall be permitted hereunder so long as their use is kept within reasonable requirements of the construction work being expeditiously pursued. Common Area may be utilized for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any such work provided for herein, and temporary storage of materials and vehicles being utilized in connection with such construction provided that same do not unreasonably interfere with access, ingress, egress or other rights of any Lot Owner or the Association.

- (d) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Common Area, shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay vehicular or pedestrian access to or from any Lot or any part thereof, to or from any public right-of-way or driveway located on the Property including, without limitation, the location of any temporary Buildings or construction sheds, the storage of building materials and the parking of construction vehicles and equipment shall be as reasonably needed upon Common Areas. The person performing such work shall, at its sole cost and expense, promptly repair and restore to its prior condition all Landscaping and other improvements damaged in the performance of such work. The person or persons undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the Association and the Owners of the Lots from any and all liability, claims, damages, expenses (including reasonable attorneys' fees), judgments, proceedings and causes of action arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its agents, representatives or employees. Incidental encroachments may occur as a results of the use of ladders, scaffolds, safety barricades and similar facilities resulting in temporary obstruction of portions of the Property, all of which are permitted hereunder so long as all construction requiring the use of such facilities is expeditiously pursued to completion and is performed in such a manner as to minimize any interference with the use and enjoyment of all other Lots or other portions of the Property.

12. **Change in Ownership.** The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Lot which is owned. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Cache County, Utah. The Association may for all purposes act and rely on the information concerning Lot Owners which is thus acquired by it or, at its option, the Association may act and rely on current Ownership information respecting any Lot or Lots which

is obtained from the office of the County Recorder of Cache County, Utah. The address of an Owner shall be deemed to be the address of the Lot owned by such person, unless the Association is otherwise advised in writing.

13. Association Assessments.

- (a) **General.** Notwithstanding anything herein to the contrary, each Lot will only be assessed when improvements are completed and a certificate of occupancy issued or within 12 months of the date of sale by the Developer, whichever first occurs. Every Lot Owner shall pay an equal share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Association determines in accordance with the Third Amended and Restate Declaration, Articles, and Bylaws. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000.00 shall be made without the same having been first voted on and approved by a majority of the Members of the Association. This shall not limit the Association from taking reasonable emergency actions to preserve and protect the Property.
- (b) **Lien.** The annual and special assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in the title unless expressly assumed by them.
- (c) **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Lots and for the improvement and maintenance of the Common Area.
- (d) **Annual/Monthly Assessment.** The Board of Directors may fix the annual/monthly assessment to each Lot. Assessments shall be paid in advance on a monthly or annual basis by each Lot Owner.
- (e) **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.
- (f) **Notice and Quorum for Any Action Authorized Under sub Paragraphs (d) and (e).** Written notice of any meeting called for the purpose of taking any action

authorized under sub paragraph (d) or (e) above shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

- (g) **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.
- (h) **Yard Maintenance Assessment.** A prorated assessment for each lot will be made, based upon the size of yard, time required for maintenance, and materials used.
- (i) **Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to Lots that are assessable on the first day of the month following the event giving rise to the assessment. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.
- (j) **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot.
- (k) **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

14. **Taxes.** It is understood that each Lot is subject to separate assessment and taxation by assessing each Lot and special district for all types of taxes authorized by law. Each Lot Owner will, accordingly, pay and discharge any and all taxes which may be assessed against a Lot.

15. **Insurance.**
 - (a) **Liability Insurance.** The Association shall at all times maintain in force a Comprehensive policy of public liability insurance covering all of the Common Areas. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of other Owners, or the Association. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to developments similar to the Project in construction, location and use. The limit of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.
 - (b) **Named Insured.** The named insured under the policy required to be maintained by the foregoing items shall be in form and substance essentially as follows: Apple Island Home Owners' Association, or its authorized representative.
 - (c) **General Requirements Concerning Insurance.** The insurance policy maintained pursuant to this Third Amended and Restated Declaration shall be written by an insurance carrier which is licensed to transact business in the State of Utah. No such policy shall be maintained where; (1) under the terms of the carrier's charter, bylaws, policy, contributions may be required from, or assessments may be made against, a Lot Owner, a lienholder, the Association, a Lot, the Common Areas, or the Planned Unit Development; (2) by the terms of the carrier's charter, bylaws, policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders, or Members; (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Lot Owners or their lienholders. The policy shall provide that: (a) coverage shall be not prejudiced by any act or neglect of the Lot Owners when such act or neglect is not within the control of the Association; (b) coverage shall not be prejudiced by any failure by the Association to comply with any warranty or condition with regard to any portion of the Planned Unit Development over which the Association has no control; and (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any lienholder named as an insured. If due

to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under sections 16(a) through 16 (c) hereof cannot reasonable be secured, with respect to such coverage the Association shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist. However, the Association shall not self insure.

(d) **Additional Provisions.** The following additional provisions shall apply with respect to insurance:

- (a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Planned Unit Development or Project in construction, nature, and use.
- (b) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Lot Owners or their lienholders.
- (c) Each policy of insurance obtained by the Association shall, if possible, provide: That it cannot be canceled, suspended, or invalidated due to the conduct of any Member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Lot Owners.
- (d) Any Lot Owner may obtain additional insurance at the Owner's own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Lot Owner who individually obtains insurance covering any portion of the Planned Unit Development or Project shall supply the Association with a copy of the policy within thirty (30) days after acquired.

16. **Payment of Common Expenses.**

- (a) Each Lot Owner shall pay the Association the allocated portion, past, present, and future, of the Common Expenses deemed necessary by the Association to manage and operate the Planned Unit Development or Project, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the

Association. Each installment shall be due on or before the first day of each month. If the Lot Owner shall fail to pay any installment within ten (10) days of the time when the same becomes due, the Owner shall pay a ten dollar (\$10.00) late fee or such amount as the Association may otherwise establish and shall pay interest on the installment at the rate of twelve percent (12%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid common expenses.

- (b) The Common Expenses above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Association from time to time shall determine, in its judgment, is to be paid by all the Owners of the Lots then in existence to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of the Common Areas, which sum may include, among other things, the cost of management, special assessments, snow removal, and other insurance or bond premiums, common lighting, Landscaping, and the care of the grounds, repairs, and renovations to Common areas, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Planned Unit Development. The Association may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. It may include, in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in the previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.
- (c) The portion payable with respect to each Lot in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such Common Expenses for such year, or portion of year, determined as aforesaid, multiplied by the number of Members of the Association (i.e. Lot Owners). Such assessments, together with any additional sums accruing under this Third Amended and Restated Declaration shall be payable monthly in advance, or in such payments and installments as shall be required by the Association
- (d) The Association shall have discretionary powers to prescribe the manner of maintaining and operating the Planned Unit Development and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the

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Association within the bounds of this Third Amended and Restated Declaration shall be final and conclusive as to the Lot Owners, and any expenditures made by the Association, within the bounds of this Third Amended and Restated Declaration shall as against the Lot Owner be deemed necessary and properly made for such purpose.

- (e) If a Lot Owner shall at any time let or sublet a Dwelling and shall default for a period of one month in the payment of any assessments, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Dwelling the rent due or becoming due and payment of such rent to the Association shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.
- (f) Each monthly assessment and each special assessment shall be the separate, distinct and personal obligations of the Owner(s) of the Lot against which the same is assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the following lien securing the same.
- (g) A certificate executed and acknowledged by the Manager or Association stating the unpaid common expenses then outstanding with respect to a Lot shall be conclusive upon the Association and the Owners as to the amount of such indebtedness and the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner or encumbrance or prospective Owner or encumbrance of a Lot upon request at a reasonable fee. Unless the request for a certificate of indebtedness shall be provided within ten (10) days, all unpaid common expenses which became due prior to the date of making of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrance holding a lien on a Lot may pay any unpaid Common Expenses payable with respect to such Lot and upon such payment such encumbrance shall have a lien on such Lot for the amounts paid of the same rank as the lien of the encumbrance.
- (h) Upon payment of delinquent assessments concerning which a notice of assessment has been recorded or other satisfaction thereof, the Association shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien thereof. Such lien for nonpayment of assessment may be enforced by the sale of the Lot by the Association or by a bank or trust company or title insurance company authorized by the Association, such sale to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Lot Owner shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

- (i) In the event of foreclosure, the Lot Owner shall be required to pay a reasonable rental for the Lot and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Association or Manager shall have the power to bid on the Lot at foreclosure or other sale and to hold, lease, mortgage and convey the Lot.

17. Maintenance.

- (a) **Owner Maintenance.** Except for lawn mowing and tree and shrub maintenance, which is provided on a prorated basis by the Association, each Owner of a Lot, at the Owner's expense, shall keep the interior and exterior of such Lot, including its Dwelling and appurtenances, in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of such Lot. The Lot Owner shall promptly repair all injury or damages to the Lot or Dwelling, and all such repairs and restoration shall be of a quality and kind equal to the original work as determined and approved in writing by the Association. Without the written permission of the Association first had and obtained, a Lot Owner shall not make or permit to be made any structural alteration in or to the Lot or in or to the exterior of any dwelling or structure.
- (b) Except as hereinafter provided, the Association shall provide for such maintenance and operation of the Common Areas, as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. If any Owner does not comply with this Third Amended and Restated Declaration in providing maintenance or care of Lots of otherwise as required by this Third Amended and Restated Declaration, the Association may provide such maintenance or care and charge the same to the Owner as an additional assessment, which is immediately payable by the Owner upon billing.
- (c) **Exterior Maintenance.** In the event that the need for maintenance or repair of a Common Area or the improvements thereon is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of a Lot, the cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.
- (d) **Landscaping.** Each Lot must be totally landscaped no later than two (2) years after a Lot has been sold at the expense of the Owner. The Homeowner's Association must approve all landscaping plans, which typically will require placing no less than two (2) trees in the front yard of the Property in question. Any trees that die must be promptly replaced at the expense of the Owner. The types and species of trees permitted will be determined by the

Association, and placement of trees and the type and size of trees must be approved in writing in advance by the Association.

18. **Right of Entry.** The Association and its duly authorized agents shall have the right to enter any and all of the Lots and the Common Areas in case of an emergency originating in or threatening such Lot or any other part of the Project, whether or not the Lot Owner or occupant thereof is present at the time. The Association and its duly authorized agents shall also have the right to enter into any and all of said Lots and Common Areas at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities of the Project or for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to the Lots in the Project; and provided further, that the Lot Owner or occupant affected by such entry shall first be notified thereof if available and if time permits.
19. **Administrative Rules and Regulations.** The Association shall have the power to adopt and establish by resolution, such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Project. The Association may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Lot Owners, such amendment, alteration or provision shall be taken to be a part of such rules. Lot Owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Lot Owners, tenants, subtenants or other occupants of the Lots.
20. **Obligation to Comply with Third Amended and Restated Declaration, Articles, Bylaws, Rules and Regulations and Enforcement.** Each Lot Owner, tenant, subtenant or other occupant of a Lot shall comply with the provisions, this Declaration, Articles, Bylaws, and the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Association or the Lot Owners, when acting in accordance with their authority. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Third Amended and Restated Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
21. **Indemnification of Board of Directors.** Each Member of the Board of Directors shall be indemnified and held harmless by the Lot Owners against all costs, expenses and

liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred in connection with any proceeding to which the Board Member may become involved by reason of being or having been a Member of said Board of Directors; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct, gross negligence or other intentional act of the Board Member.

22. Amendment. For the first fifteen (15) years after recording of this Third Amended and Restated Declaration, this Third Amended and Restated Declaration and/or the Map may be amended upon the affirmative vote or approval and consent of not less than 66 2/3% of the Members of the Association. Thereafter this Third and Restated Declaration and/or the Map may be amended upon the affirmative vote or approval and consent of not less than 51% of the Members of the Association. No additional Property may be annexed to the Planned Unit Development or Project. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Association. In said instrument the Association shall certify that the vote or consent required by this Section has occurred.
23. Consent in Lieu of Vote. In any case in which this Third Amended and Restated Declaration requires the vote of the Members of the Association for authorization or approval of a transaction, such requirements may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from the required number of Lot Owners necessary to approve such action. The following additional provisions shall govern any application of this section:
 - (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;
 - (b) Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.
24. Severability. The invalidity of any one or more phrases, sentences subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections or section or sections had not been inserted.
25. Declarant's Rights Assignable. All of the rights of Declarant under this Third Amended and Restated Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

26. **Lease of Lots.** With the exception of a lender in possession of a Lot following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease or rent the Dwelling/Lot for transient or hotel purposes. No Lot Owner may lease less than the entire Dwelling/Lot. A lease agreement shall be required, and it shall provide that the terms of the lease shall be subject in all respects to the provisions of this Third Amended and Restated Declaration, Articles and Bylaws, and that any failure by the tenant to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and a copy of such lease shall be delivered to the Association five (5) days prior to occupancy by the tenant. The Lot Owner shall notify the Association of the names of the lease of the Lot/Dwelling. In the event of a lease of a Dwelling/Lot, only the tenant and not the Lot Owner shall have the right to the use of the Common Areas, while the Lot/Dwelling is leased. In the event insurance costs or other costs to the Association are increased due to the percentage of rentals, then those Lot Owners then renting Dwelling/Lots shall pay their portion of the increased cost of insurance charged.

27. **Legal Description of a Lot.** Every conveyance or contract for the sale of a lot and every other instrument affecting title to a lot may describe that Lot by the number shown on the Map with the appropriate reference to the Map and to this Third Amended and Restated Declaration, as each shall appear in the official records of the Recorder of Cache County, Utah, and in substantially the following form:

Lot _____ as shown in the Final Plat Map for Apple Island, a Planned Unit Development appearing in the Records of the County Recorder of Cache County, Utah, in Book _____, Page _____ of Plats, and subject to that Third Amended Declaration recorded _____, 2000, in Book _____, Page _____, as Filing Number _____ in the records of the County Recorder for Cache County, Utah, together with an undivided interest in the Common areas, as provided in said Third Amended Declaration.

This Conveyance is subject to the provisions of the aforesaid Third Amended Declaration.

Such description will be construed to describe the Lot, and to incorporate all the rights incident to ownership of a Lot and all the limitations of such ownership as described in this Third Amended and Restated Declaration.

28. **Rights Reserved to Declarant.**

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(a) Declarant is undertaking the work of developing land for residential use upon the Property. The completion of that work and the sale or other disposal of

Lots is essential to the establishment and welfare of the Property. In order that said work may be completed and the Property be established as a fully completed and occupied development as rapidly as possible, nothing in this Third Amended and Restated Declaration shall be understood or construed to:

- (i) Prevent Declarant, its contractors, or subcontractors from doing to the Property, whatever is reasonably necessary or advisable in connection with the completion of said work; or
 - (ii) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a completed and occupied development; or
 - (iii) Prevent Declarant from conducting on any part of the Property such business or completing said work; or
 - (iv) Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale, lease or disposition of, Lots.
- (b) Any action taken by Declarant pursuant to any provision of this Section will not unreasonably or materially interfere with any Owner's rights and use of its Lot.
- (c) Declarant shall select as the initial Board of Directors of the Association three (3) persons to serve until their successors are elected. This Board shall have the full authority and all rights, responsibilities, privileges and duties to manage the Project under this Third Amended and Restated Declaration, Articles and Bylaws, and shall be subject to all provisions of the Third Amended and Restated Declaration, Articles and Bylaws.

29. **Articles and Bylaws of Association.**

- (a) Articles and Bylaws for the administration of the Association and the Property, and for other purposes not inconsistent with the Act or with the intent of this Third Amended and Restated Declaration, shall be adopted by the Association by concurrence of those voting Owners holding sixty-seven percent (67%) of the voting power at a regular or special meeting. Notice of the time, place and purpose of such meeting shall be delivered to each Lot Owner at least ten (10) days prior to such meeting. Amendments to the Articles and Bylaws may be adopted by the same vote at a regular or special meeting similarly called. The initial Bylaws, until further action of the Association, shall be those attached to this Third Amended and Restated Declaration. Ent 835598, # 1252 Pg 137
- (b) The Articles and Bylaws shall contain provisions identical to those provided in this paragraph, and may contain supplementary, not inconsistent, provisions regarding the operation of the Association and administration of

the Planned Unit Development or Project. The Articles and Bylaws shall establish such reasonable provisions for quorum, ordering of meetings, and details regarding the giving of notice as may be required for the proper administration of the Association and the Property.

30. **Gender.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.
31. **Waivers.** No provisions contained in the Third Amended and Restate Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.
32. **Topical Headings.** The topical headings contained in this Third Amended and Restated Declaration are for convenience only and do not define, limit or construe the contents of the Third Amended and Restated Declaration.
33. **Effective Date.** This Third Amended and Restated Declaration shall take effect upon recording. This Third Amended and Restated Declaration shall run with and bind the Property for a term of fifteen (15) years from the date of this Third Amended and Restated Declaration is recorded in the Office of the Recorder of the County of Cache, state of Utah, after which time it shall be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of all Owners and all lienholders.

IN WITNESS WHEREOF, the Declarant has executed this Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions as of this 12th day of August, 2003.

DECLARANT:

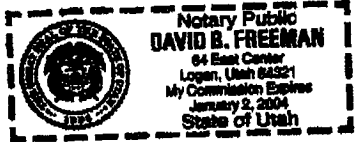
McIntosh Development Corporation, a Utah Corporation

By *Brent Parker*
Brent Parker, Its President

STATE OF UTAH)
 : ss.
County of Cache)

On the 12th day of August, 2003, personally appeared before me Brent Parker, who, being by me duly sworn, did say that he is the President of MCINTOSH DEVELOPMENT CORPORATION, a Utah Corporation and that the said instrument was signed in behalf of said Corporation by authority of a resolution of the Board of Directors or its By-Laws, and the aforesaid officer acknowledged to me that said Corporation executed the same.

David B. Freeman
NOTARY PUBLIC



**FIRST AMENDMENT TO THIRD AMENDED AND RESTATED DECLARATION
FOR APPLE ISLAND, A PLANNED UNIT DEVELOPMENT**

This First Amendment to Third Amended and Restated Declaration of Covenants, Conditions and Restrictions (hereafter "Amendment") amends that Third Amended Declaration of Covenants, Conditions and Restrictions (hereafter "Third Declaration") recorded at Entry No. 835598, Book 1252, Page 0111 in the Cache County Recorder's Office on August 12, 2003.

Recitals

Section 1:

a. Declarant, McIntosh Development Corporation, a Utah corporation, is the Owner of that certain parcel of real property located in the City of Logan, County of Cache, State of Utah, legally described and set forth as follows:

Part of the East Half of Section 34, Township 12 North, Range 1 East of the Salt Lake Base and Meridian.

Beginning at the Northwest corner of Lot 5 of the Niels Mikkelsen survey, and running thence North 78°12'44" East along the South right-of-way line of Canyon Road (Logan City), 129.68 feet;

thence South 00°13'55" East 99.11 feet;

thence North 89°46'05" East 110.44 feet;

thence South 00°13'55" East 75.73 feet to a found survey marker;

thence South 86°36'25" East 66.38 feet;

thence North 87°09'37" East 100.20 feet;

thence South 00°13'55" East 220.66 feet;

thence South 21°55'07" West 113.77 feet;

thence North 88°21'46" West 200.00 feet;

thence North 02°22'17" East 107.28 feet;

thence North 88°02'21" West 76.35 feet;

thence North 02°19'23" East 80.00 feet;

thence North 87°54'18" West 105.82 feet to the East right-of-way line of

Preston Avenue (Logan City);

thence along said right-of-way line North 02°23'40" East 274.00 feet to the point of beginning.

Excepting Lots 3, 4, 7, 10 and 13.

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Date 30-Mar-2004 1:01PM Fee \$22.00
Michael Bleed, Rec. - Filed By TJ
Cache County, UT
For ADVANCED TITLE CO

b. The individual signators to this Amendment are the owners of Lots 3, 4, 7, 10 and 13 of the Property.

c. The Property described in subparagraphs a and b contains 3.04 acres more or less (hereafter collectively the "Property").

Section 2: Pursuant to the powers retained by the Declarant and the Owners in paragraph 22 of the Third Declaration; and

Section 3: Declarant and Owners have unanimously approved this Amendment and the Third Declaration;

NOW, THEREFORE, for such purposes, Declarant hereby makes the following Amendment containing covenants, easements, conditions and restrictions relating to this Planned Unit Development which, are for the purpose of protecting the value and desirability of the Property, and which shall be an enforceable equitable servitude, where reasonable, and shall run with the Property; and be binding on all parties, their heirs, successors and assigns having any right, title or interest in the Property, Lots or any part thereof, and shall inure to the benefit of each Owner thereof:

1. Paragraph 2(i) is stricken and amended to read as follows:

2(i). "Declaration" shall mean the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded August 12, 2003 as Entry No. 835598, Book 1252, Page 0111 in the Cache County Recorder's Office and this First Amendment to Third Amended and Restated Declaration of Covenants, Conditions and Restrictions as recorded.

2. Paragraph 2(k) is stricken and amended to read as follows:

2(k). "Dwelling" shall refer to the single family residential home which must be constructed on each Lot.

3. Paragraph 2(k)(a) is stricken and amended to read as follows:

2(k)(a). "Third Amended and Restated Declaration" shall mean the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions and this First Amendment to the Third Amended and Restated Declaration of Covenants, Conditions & Restrictions.

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4. Paragraph 4 is stricken and amended to read as follows:

4. Covenants to Run with the Property. This First Amendment to Third Amended and Restated Declaration of Covenants, Conditions and Restrictions and the Third Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the Property and the Lots and this Amendment and the Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Lot Owners or subsequent Lot Owners, their grantees, mortgages, successors, heirs, executors, administrators, devisees and assigns.

5. Paragraph 7(k) is stricken and amended to read as follows:

7(k). Garages and Number of vehicles. All Dwellings will have at least a two-car attached garage and paved driveway running from the street to its garage. Garages must be completed upon occupancy of the Dwelling. So far as possible, vehicles should be parked in the garage when not being used. The parking in the front of the Lots and the parking in the Commons Area shall be used only as visitor parking and shall not be used as permanent parking for Lot Owners or Residents. No Owner may keep more than two (2) vehicles on the Property, except Lot 10 may have three (3) vehicles on the Property.

6. Paragraph 7(t) is stricken and amended to read as follows:

7(t). Fencing. The Developer or the Association will provide a perimeter 6 foot high vinyl fence around the Planned Unit Development. Any Lot Owner at the Owner's expense may install a side yard privacy fence not to exceed 6 feet in height, which privacy fence must match the perimeter fence in style, design, color and material. Any fencing must not extend past the portion of the Dwelling closest to Apple Drive so that each Lot has an open front yard or side yard, whichever the case may be. Any fencing must provide adequate access by the Association to the rear yard for yard care and maintenance. All fencing must have a Logan City permit and must be approved in advance by the Association. No fence on Lots 11 and 12 may be closer than ten (10) feet to the driveway to Lot 13 (hereafter "Driveway") and any fence on either lot parallel to the Driveway shall not exceed four (4) feet in height. If a Dwelling on Lot 11 or 12 faces the Driveway, no front yard fence will be permitted.

7. Paragraph 7(v) is added to read as follows:

7(v). Single Level Dwelling. All Dwellings will be single-level construction only, except the existing Dwelling on Lot 1 may be maintained as a two-story Dwelling. The existing Dwelling on Lot 1 may be remodeled as a two-story Dwelling. If the existing Dwelling on Lot 1 is removed or razed, then any Dwelling constructed on Lot 1 shall be in conformity with this Declaration. Subject to approval of the Architectural Building Review Committee of the Homeowner's Association, a Dwelling may have a "bonus" living or storage area in the attic of the garage or home, with minimal dorm windows, such as contained in the Dwelling on Lot 13. No dwelling constructed on Lot 12 may have its front yard face Preston Ave.

8. Paragraph 16(i) is stricken in its entirety.

9. Paragraph 25 is stricken and amended to read as follows:

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- 25. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any assignment or transfer of the rights of Declarant to a third party shall release Declarant from any further duty, obligation, liability, claim or cause of action and the Owners agree to look solely to the third party assignee or transferee regarding the same.

- 10. The parties hereby acknowledge that this First Amendment and the Third Declaration were approved and adopted by a unanimous vote of the Members of the Association and further acknowledge that the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions is hereby ratified, adopted, affirmed and approved by a unanimous vote of the Members of the Association. The parties further acknowledge that except as specifically amended herein, the Third Declaration remains in full force and effect. The Association certifies that this First Amendment to Third Amended and Restated Declaration of Covenants, Conditions and Restrictions was voted upon and consented to as required by paragraph 22 of the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions.

- 11. The current Articles of Incorporation and Bylaws of the Apple Island Homeowners Association are hereby ratified, adopted and approved.

DATED this 1 day of March, 2004.

DECLARANT:

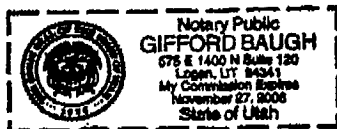
McIntosh Development Corporation, a Utah Corporation

By Brent D. Parker Pres
Its President

STATE OF UTAH)
 : SS.
County of Cache)

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On the 1 day of March, 2004, personally appeared before me Brent D. Parker, who, being by me duly sworn, did say that he/she is the President of MCINTOSH DEVELOPMENT CORPORATION, a Utah Corporation and that the said instrument was signed in behalf of said Corporation by authority of a resolution of the Board of Directors or its By-Laws, and the aforesaid officer acknowledged to me that said Corporation executed the same.



[Signature]
NOTARY PUBLIC