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AFTER RECORDING RETURN TO:  
Scott Brand, Manager  
Santaquin Orchards Group, LLC  
3115 E Lion Ln, Suite 300  
Salt Lake City, UT 84121



ENT 42030:2010 PG 1 of 28  
RODNEY D. CAMPBELL  
UTAH COUNTY RECORDER  
2010 May 21 4:40 pm FEE 77.00 BY EG  
RECORDED FOR SANTAQUIN CITY CORPORATION

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR**

**APPLE HOLLOW PLAT A**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS (the "Declaration") is made this 14<sup>th</sup> day of May, 2010 by Santaquin Orchards Group LLC, a Utah limited liability company, whose principal address is 3115 E Lion Lane, Suite 300, Salt Lake City, UT 84121 ("Declarant").

**RECITALS**

A. Declarant owns certain real property in the City of Santaquin, Utah County, Utah, and a portion of which, as more particularly described in Exhibit "A", shall constitute the property initially covered by this Declaration ("Original Property").

B. Declarant further reserves the right, pursuant to the terms of this Declaration, from time to time, to add all or any portion of certain other real property, including without limitation multi-family or high density housing, more particularly depicted on Exhibit "B" (the "Annexable Property") to the Original Property.

NOW, THEREFORE, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Annexable Property annexed pursuant to Article VI (collectively, the "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties (as defined in Article I below). The protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes (the "Covenants") set forth below shall run with and burden the Properties and shall be binding upon all Persons, their heirs, successors and assigns having or acquiring any right, title or interest in the Properties, or any part thereof, and shall inure to the benefit of every portion of the Properties and any interest therein. In addition, the Covenants shall inure to the benefit of, be binding upon, and enforceable by, Declarant, and each Owner, their respective heirs, executors and administrators, and successive owners and assigns, and, as set forth in this Declaration, by the Community Council. All Lots within the Properties shall be used, improved and devoted exclusively to single or multi-Family residential use, except that mother-in-law apartments may be permitted consistent with City ordinances.

## ARTICLE I

### 1. DEFINITIONS

1.1 "Annexable Property" shall mean all real property depicted on Exhibit B of this Declaration, as amended.

1.2 "Architectural Review Committee" or "ARC" shall mean the architectural review committee created pursuant to Article III below.

1.3 "Architectural Plan Review Administrator" or "APRA" shall mean the architectural plan review administrator identified pursuant to Article III below. Initially, the APRA shall be DP Santaquin \_\_\_\_\_, a \_\_\_\_\_, whose principal address is 3115 E Lion Lane, Suite 300, Salt Lake City, UT 84121. The APRA may be owned wholly or in part by Declarant's successor in interest or by those with ownership therein.

1.4 "Architectural Committee Rules" shall mean the rules, if any, adopted by the Architectural Committee.

1.5 "Association" shall mean the association of Owners described herein.

1.6 "Association Fees" shall mean those fees described in Section 2.3

1.7 "City" shall mean the city of Santaquin, Utah.

1.8 "Community Council" shall be as defined in Article V.

1.9 "County" shall mean Utah County, Utah.

1.10 "Declarant" shall mean that person identified above as "Declarant", and any Person to whom it shall have assigned any rights hereunder of Declarant by an express written and recorded assignment executed by the Declarant.

1.11 "Family" means: A group of two (2) or more persons related by blood, marriage, or adoption living together in a single dwelling unit and maintaining a common household. A family may include two (2), but not more than two (2) non-related persons living as guests with the residing family. The term family shall not be construed to mean a group of non-related individuals, a fraternity, club, or institutional group.

1.12 "Lot" shall mean any numbered portion of a parcel of real property shown upon any recorded plat of the Properties together with any improvements constructed thereon, with the exception of the areas designated as lettered tracts and areas dedicated to the public or as common areas. Each Lot shall be a separate freehold estate.

1.13 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of record to any Lot. The term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees under Mortgage instruments and Beneficiaries and Trustees under Deeds of Trust.

1.14 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.15 "Plat" shall mean the final plat maps of The Apple Hollow Plat A, No. 1, Recorded on \_\_\_\_\_, 2008, in Book \_\_\_\_\_ of Plats, Page \_\_\_\_\_, and any other plat map(s) of additional parcel(s) subsequently Recorded, as said plat maps from time to time maybe amended or supplemented of record by Declarant, together with any maps which may, in the future, be Recorded with respect to the Annexable Property.

1.16 "Properties" shall mean the real, personal, or mixed property described and defined in the Recitals above which is subject to this Declaration, and all property as may be brought within this Declaration pursuant to Article IX (the "Annexation").

1.17 "Record," "Recorded," "Recorder," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of the County.

1.18 "Residence" shall mean a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

1.19 "Upgraded Building Materials" shall mean upgraded exterior building materials of brick, stucco, stone, composite siding (Hardi-board or equal) or appropriate combinations.

## ARTICLE II

### 2. ASSOCIATION

2.1 Establishment of Association. The Declarant hereby establishes an association of Owners ("Association") which shall consist of the Declarant and each of the Owners of the Lots in the Properties. Each owner shall be entitled and required to be a member of the Association.

2.2 Membership. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a residence is held by more than one person, the membership appurtenant to that residence shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the residence is held. An Owner shall be entitled to one membership for each residence owned by such Owner.

2.3 Association Fees. There shall be an initial fee of \$150.00 to gain membership to the Association. This fee shall be due upon closing on a residence within the Properties. For the first year, membership fees will be assessed at \$65.00 per month. Until the establishment of the Community Council, all fees are payable to the Declarant. Fee's are to be paid by each owner by the 15<sup>th</sup> of each month or a 10% late fee may apply. At the end of the first year of existence, the Community Council will re-evaluate fees and expenses.

## ARTICLE III

### 3. USE RESTRICTIONS

3.1 General Use Restrictions. The Properties shall be held, used and enjoyed subject to the following restrictions and exemptions of Declarant set forth herein. The APRA or the Architectural Review Committee shall have no responsibility or authority to enforce the terms of this Article III except as they specifically apply to construction, improvements and approval requirements for the Lots.

3.1.1 Business or Commercial Activity. Except for day cares and preschools as permitted by state and City ordinances, no part of the Properties may ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This paragraph does not preclude any of the above-described activities without external evidence thereof (except for signs as permitted by City ordinance), provided that: (a) such activities are conducted in conformance with all applicable governmental ordinances; (b) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles within the Properties; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the Lot; and (d) such activities are consistent with the residential character of the Properties and conform with the applicable provisions of this Declaration. Nothing in this section shall preclude Declarant or others specifically authorized in writing by Declarant from maintaining one or more model homes and sales offices in such homes, conducting sales/marketing activities and providing signage on the Properties in accordance with City Sign Regulations. Any other Person or entity (other than the Declarant) in the business of building and/or selling homes may only conduct sales activities in the Properties related to specific homes and lots in the Properties that the Person currently owns.

3.1.2 Fencing. All fencing is subject to the City ordinances for visibility standards. No chain link fences are permitted. No fences within the front yard setback are permitted. No fence or other similar structure shall be erected in any side or rear yard to a height in excess of six feet. The use of semi-private, lattice or decorative type fencing is encouraged. The front yard setback includes any lot area in front of the Residence structure facing the street. On corner Lots, fencing of side yards that face the street may not obstruct a view of the Residence structure. Typical fencing may be five feet (5') of solid fencing and one foot (1') of lattice work on top.

3.1.3 Storage of Building Materials. No building material of any kind or character shall be placed or stored upon any Lot until the Owner thereof is ready to commence improvements and then the material shall be placed within the property boundaries of the Lot upon which the improvements are to be erected, and shall not be placed in the streets or between the curb and the property line. Any builders or developers shall comply with the applicable sections of any Annexation and

Development Agreement for the Properties, and the currently adopted City standards for site construction.

3.1.4 Animal Restrictions. No animals, reptiles, poultry, fish, fowl or insects of any kind (“animals”) may be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats, birds, rabbits, or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable City or County ordinance or any other provision of the Declaration. As used in this Declaration, “unreasonable quantities” shall ordinarily mean more than three (3) pets per household or as defined by the City whichever is more restrictive.

3.1.5 Nuisances. No noxious or offensive activities may be engaged in upon the Properties or on any public street abutting or visible from the Properties. Furthermore, anything engaged in thereon which may become an annoyance or nuisance to the neighborhood is strictly prohibited.

3.1.6 Signs. With the exception of signs advertising building, contracting or other improvements to the Lot or building thereon as permitted by City ordinance, signs, billboards, and advertising structures on any Lot are prohibited. Subject to this restriction, a single sign, not more than 3 feet by 3 feet in size, advertising a specific unit for sale, house for rent or construction sign, may be displayed on the premises affected. Furthermore, Declarant is expressly exempted from this restriction and may erect such signs as are deemed necessary by Declarant for its construction and marketing activities so long as it owns any lots in the subdivision that may be subject to such activities, pursuant to City Sign Regulations.

3.1.7 Antennae, Satellite Dishes and Solar Collectors. No owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected or maintained in such a way that is screened from public view. In no instance shall any such apparatus be placed in the front yard or areas visible from the roadway. Any roof-mounted antenna or equipment is to be placed behind the roof ridgeline so as not to be visible from the roadway.

3.1.8 Trash Disposal. No trash, ashes, rubbish or any other refuse may be dumped or thrown on any Lot or any part or portion thereof. All Residences must subscribe to a city garbage disposal service and all trash containers shall be placed as to not be visible from any roadway except during designated pickup times.

3.1.9 Temporary-type Structures. Except as set forth herein, no structure of a temporary character, including, but not limited to, trailers, tents, shacks, sheds or other temporary buildings shall be used on any Lot at any time as a Residence, whether temporarily or permanently (this includes recreation vehicles).

3.1.10 Detached Buildings. Owners shall not erect any garage, shed or other detached accessory building on any Lot unless such building is first approved by

the APRA. Any detached building shall conform in design and materials with the Residence on the Lot, and in accordance with the guidelines found in this Declaration, unless a variance is approved in writing by the Architectural Review Committee. Detached buildings shall comply with all requirements for Residences.

3.1.11 **Parking and Storage.** The placement of any inoperative vehicle on any Lot or adjacent street for more than 48 hours is prohibited. No vehicles of any kind shall be parked or stored on the front yard setback of any Lot, or within the side yard on the street side of a corner Lot. Semi-trucks and trailers may not be parked on the street except while loading or unloading. Trailers, mobile homes, trucks over one-ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors and maintenance or commercial equipment of any kind shall be parked or stored behind the front yard setback in an enclosed area screened from street view. Sufficient side yard gate access should be planned and provided for in the design of the Residence to permit ingress, egress and storage of trailers and recreational vehicles on the side and rear yards. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited. No pads used for the storage of vehicles or other material either temporarily or permanently shall be constructed in the front yard of a given lot. The front yard shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface. In the event of any conflict between the provisions of this section and any City or County requirements, the more restrictive provision shall control. Maximum driveway width is 24 feet. No campers, vans, trucks over one ton, trailers, vehicles with advertising signage, recreational vehicles, motor home, travel trailer and other type of non-passenger vehicles, campers, camper shells/body, wagons, buses aircraft motorcycles, motor scooters inoperative automobiles, and garden maintenance equipment, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such lot and/or said vehicles and accessories are parked on pavement and are totally screened from view from other Lots and common areas by a screening structure or fencing and said vehicles and accessories are in operable condition. Boats and other watercraft may be stored in the rear or side yard of such Lot provided a concrete pad and adequate screening or fencing is constructed to conceal the vehicle from view from adjacent streets (expressly excluding, however, the alley-ways adjacent to such lot). Any such fencing or screening material must be in accordance with the terms of this Declaration. This Section shall not apply to: (i) non-commercial vans and pickups, (ii) service and delivery vehicles temporarily parked on the property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot, or (iii) vehicles and equipment temporarily parked on a Lot in connection with the construction or maintenance of a lot. No junk or junk yards of any kind or character shall be permitted, nor shall accumulation of scrap, used materials inoperative automobiles, or machinery, or other unsightly storage of personal property be permitted.

3.1.12 **Maintenance.** Every Lot, including the improvements thereon, shall be kept in good repair and maintained by the Owner thereof in a clean, safe and attractive condition.

3.1.13 Fuel Storage Tanks. No tank for storage of fuel may be installed or maintained in or on any Lot.

3.1.14 Exterior Building Elevations. Dwelling elevations shall vary from Lot to Lot and no elevation (including mirrored elevations) shall be duplicated on adjacent Lots having common side lot lines, or Lots on opposite sides of the road which have common frontage.

3.1.15 Ingress/Egress: No Lot within the Property shall be used for the temporary or permanent purpose of ingress and/or egress to another property inside or outside of this Property.

3.1.16 Building. No residence, detached building, structure, or fencing of any kind shall be constructed until a required building permit is issued by the City and all necessary approvals have been granted.

3.1.17 Weeds and Debris. Prior to construction on a Lot, the Lot Owner shall be responsible for clearing weeds and debris from such Lot. Upon completion of construction, Yards shall be kept in presentable and orderly state. Flower beds shall be cleaned of all weeds. Grass shall be maintained below 6 inches. Yards are to be made up of typically available and accepted grass types. Edges between grass and other medium shall be trimmed and/or edged. Regular seasonal lawn care shall be maintained. i.e.: fertilized, waters, weeded, mowed, and trimmed. Other vegetation shall be properly trimmed and maintained. Upon failure to maintain any lot, the Community Council may, at its option, have the grass, weeds and vegetation cut as often as necessary in its judgment, and the owner of such property shall be obligated, when presented with an itemized statement to reimburse the Community Council for the cost of such work.

3.1.18 Storage Tanks. No tank for the storage of fluid is permitted.

3.1.19 Roof-Mounted Mechanical: Any roof-mounted equipment such as condensing units, swamp coolers, etc. shall be placed behind the roof ridgeline so as not to be visible from the roadway.

3.1.20 Clothes Hanging Devices. Exterior clothes hanging devices shall not be permitted.

3.1.21 Window Treatments. No aluminum foil, reflective film or similar treatment shall be placed on window or glass doors.

3.2 Planned Unit Development PLAT A. In addition to the General Use Restrictions set forth above, Planned Unit Developments represented in Plat A shall be held, used and enjoyed subject to the following restrictions and exemptions of Declarant set forth herein. The Architectural Review Committee shall have no responsibility or authority to enforce the terms of this Article III except as they specifically apply to construction, improvements and approval requirements for the Lots. The APRA shall have no responsibility or authority to enforce the terms of this Article III or Article IV. Enforcement of Articles III and IV shall be the responsibility of the Community Council.

3.2.1 Single Family Residence. Each Lot shall be used as a residence for a single Family and for no other purpose, except that mother-in-law apartments may be permitted consistent with City ordinances. Visitors are permitted to stay at the residence upon permission of the Owner for a duration of no longer than 30 consecutive days. An Owner may rent his or her Lot to a single Family provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration. All homes built upon the Lots shall be built in accordance with the provisions of this Section II and Section III and shall incorporate traditional styles such as Craftsman, Colonial, Tudor, Foursquare in accordance with the styles set forth in Exhibit "C".

3.2.2 Landscaping. All front yard landscaping for each Lot shall be installed by the builder of the Residence prior to occupancy of the Residence on the Lot. However, if seasonal temperatures do not permit installation of the landscaping at that time, the landscaping shall be installed within six (6) months thereafter. Where landscaping is not installed prior to occupancy, the builder shall post a cash bond of \$2,000.00 with the city to ensure timely completion. If the landscaping is not installed within six (6) months of occupancy, the City may use the bond to complete the landscaping. "Front yard landscaping" for purposes of this section is defined as landscaping in the front yards between the front of the house and the curb on the entire width of the lot excluding the driveway and sidewalk. This also includes the unfenced area between the home and street side curb on corner lots. Consistent with City ordinances, Owners shall landscape and maintain park strip areas in front of their Lots. Front yard landscaping shall include: final grading of the lot, two (2) 1-1/2" caliper trees or two (2) 4' tall evergreen or deciduous trees, four (4) one gallon shrubs, automatic sprinkling system, and grass sod. In order to assure uniformity of street appearance, no trees are to be planted upon property on the street side of any sidewalks without specific approval of the City. Any plants or trees installed by any builder or developer of a Lot shall be maintained by the Owner of the Lot and shall be replaced with the same kind and caliber of plant or tree at the sole expense of the Owner of the Lot. Landscaping shall not be installed until the APRA has given approval following a plan review as set forth in Article IV.

3.2.3 Garages. Each single family dwelling is to be provided with a two (2) car enclosed garage as a minimum.

3.2.4 Roof Pitch. Rooflines shall have a minimum roof pitch of 6:12 for single story homes and 5:12 for two story homes.

3.2.5 Upgraded Building Materials. Residences shall be built with Upgraded Building Materials, with 20% of front of residence consisting of brick or stone. No metal or vinyl siding is allowed. Brick or stone materials must wrap a minimum of two feet around the outer most side corner of Residences.

3.2.6 Front Porches. All dwellings shall have usable front porches.



3.2.7 Shingles. All roofs shall be built with 30 year architectural grade shingles.

3.2.8 Minimum Size of Residence. Residences built on any Lot shall be at least 1,200 square feet in size. Square footage of any style shall be measured excluding garages, basements, porches, verandas, patios, porches and steps.

3.2.9 Building Location. No building or structure shall be located on any Lot nearer to the front and side street line, if any, than the minimum building set back lines as required by the City and illustrated on the recorded subdivision plats affected by these CC&Rs.

In addition, the following shall apply:

For front setback, all primary buildings and other main buildings shall be set back at least twenty (20) feet and no greater than seventy-five (75) feet from the front lot line, and for corner lots from any street.

For side setback, all primary buildings and other main buildings shall be set back from the property line a distance of at least seven and one half (7-1/2) feet.

For rear setback, all primary buildings and other main buildings shall be set back from the rear property line a distance of at least twenty-five (25) feet.

3.3 Declarant's Exemption. Lots owned by Declarant (and by merchant-builders granted exemptions in writing by Declarant, (each being an "Exempt Builder")) are exempt from the provisions of this Article III, until such time as Declarant or Exempt Builder convey title to the Lot to a third-party. All activities of Declarant or such Exempt Builder reasonably related to their respective development, construction, sales, and marketing efforts, shall be exempt from the provisions of this Article III. This Article III and its subsections may not be amended without Declarant's prior written consent.

3.4 Variance. Any exceptions to the provisions of Sections 3.1 to 3.3 must be obtained by the written permission of the Owners of at least two-thirds (2/3) of the Lots within the Properties, or by approval of the ARC only as set forth in Article IV. Any variance as to items in Article III or Article IV must also be in accordance with City and other governmental requirements.

## ARTICLE IV

### 4. ARCHITECTURAL CONTROL

4.1 Architectural Control. Except as to construction by Declarant, no development, erection, construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of the visible exterior of any improvement, including without limitation any Residence, garage or outbuilding, or any other activity within the

jurisdiction of this Declaration ("Construction Activity") shall take place on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the APRA, or its successor, as to quality of workmanship, materials, harmony of external design with existing structures, and location with respect to topography and finish grade elevations ("Plan Approval"). No landscaping on any Lot shall take place until landscape plans have been approved by the APRA, or its successor, as to compliance with this Declaration ("Landscape Plan Approval"). No building, including, without limitation, garages and other out-buildings, shall be painted or repainted in other than its original colors until the color has been approved by the ARC.

**4.2 Basic Architectural Requirements.** In addition to those set forth in Article III, the following are the Basic Architectural Requirements. Excluding multi-family structures, no Single Family Residences shall be erected, altered, placed or permitted to exceed two (2) stories in height (split-level homes not included). Power and telephone lines must be run underground. Any variances from these requirements, or those in Article III must be approved in writing by the ARC, which approval may be withheld in the ARC's sole discretion. The height of all Residences must be consistent with all applicable zoning and building codes.

**4.3 Submittals to APRA.** Submittals to the APRA must comply with the provisions herein. Persons submitting proposals or plans and specifications to the APRA (any such Person is referred to in this Article IV as the "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the APRA with the address to which further communications from the APRA to the Applicant are to be directed. The address of the APRA for submission of plans and specifications shall be at the business address set forth in the definitions section herein unless or until changed by the APRA or as a successor is determined as set forth herein.

**4.3.1 Plan Approval.** The following are the requirements for submission to the APRA for Plan Approval. With each submission, the Applicant shall submit a one-time review fee of \$250 which will compensate the APRA for undertaking the review.

**4.3.1.1 Preliminary Drawings.** The following information shall be the minimum to be initially submitted to the APRA for approval:

- (a) A plot plan to scale of the entire proposed site with buildings located and elevation of floors shown above or below a designated point on the street.
- (b) Floor plans of each floor level to scale.
- (c) Elevations to scale of all sides of the Residence.
- (d) One major section through the Residence.
- (e) Specifications of all outside materials to be used on the exterior of the Residence.
- (f) The color scheme for the Residence.

4.3.1.2 Working Drawings. "Working drawings" shall be submitted to the APRA for approval. APRA acceptance is required before construction is commenced. The Working Drawings shall include the following as a minimum:

(a) Plot plans to scale showing the entire site, building, garages, walks, drives, fences, carriage lights, retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

(b) One-eighth scale detailed floor plans on 11"x17" paper.

(c) One-eighth scale detailed elevations, indicating all materials and showing existing and finished grades on 11"x17" paper.

(d) Detailed sections, cross and longitudinal.

(e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

(f) Specifications shall give complete descriptions of materials to be used, and shall be supplemented with a notation of the colors of all materials to be used on the exterior of the Residence.

4.3.2 Landscape Approval. The following are the requirements for submission to the APRA for Plan Approval. With each submission, the Applicant shall submit a one-time review fee of \$50 which will compensate the APRA for undertaking the review. Landscape plans must be 11x17 and be based on the plot plan submitted with the working drawings, and must indicate compliance with the landscape requirements set forth in Article II.

4.4 Approval and Disapproval. The APRA shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, addition, landscaping, or other Construction Activity on the basis of satisfaction of the APRA with the grading plan; the location of the improvements on the Lot; the finished ground elevation; the color scheme, finish, design, proportions, architecture, shape, height, style, and appropriateness of proposed improvements; the effect on adjoining Lots; the materials to be used; the kinds, pitch or type of roof proposed; the planting, landscaping, size, height, or location of vegetation on the front yard of the Lot; and on the basis of aesthetic considerations and the overall benefit or detriment to the Properties generally which would result from such improvement, alteration, addition or other Construction Activity. The APRA shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. **Each Owner**

**shall be responsible for obtaining all necessary permits and for complying with all governmental requirements.**

**4.5 Submittals to ARC.** Submittals to the ARC must comply with the provisions herein. Persons submitting proposals or plans and specifications to the ARC (any such Person is also referred to in this Article III as the "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the ARC with the address to which further communications from the ARC to the Applicant are to be directed. The address of the ARC for submission of plans and specifications shall be Declarant's business address, c/o the Architectural Review Committee unless or until changed by the ARC or until the automatic resignation of Declarant's representatives pursuant to Article III, whichever occurs first. Unless the ARC is acting in place of the APRA, there is no submittal fee.

**4.6 No Waiver of Future Approvals.** APRA approval of any proposals, plans and specifications or drawings ("Plans") requiring its approval or consent does not constitute a waiver of the right to withhold approval or consent for any subsequently submitted similar or additional plans.

**4.7 Time Requirements.** Until the APRA receives Plans or other materials deemed necessary by the APRA and the review fee (if any), the APRA may postpone review of any plans submitted for approval. Any application submitted pursuant to this Article III shall be deemed approved, unless the APRA's written disapproval or a request for additional information or materials is transmitted to the Applicant within forty-five (45) days after the date of receipt by the APRA of all required materials. APRA approval for any particular Construction Activity shall expire in one (1) year from the date of APRA approval. If substantial work pursuant to the approved Plans is not commenced within one (1) year of APRA approval, the Applicant will be required to resubmit its Plans to the APRA for approval pursuant to this Article III, and pay the applicable fees anew. All Construction Activities shall be performed as promptly and as diligently as possible and shall be completed within such reasonable time period as is specified by the APRA.

**4.8 Pre-Approvals.** The APRA may provide pre-approval of certain specified types or categories of Construction Activities. Applicants for pre-approval shall submit a review fee of \$300 to the APRA which will compensate the APRA for undertaking the review. Provided that the affected Owner implements his or her Construction Activities in compliance with the standards for design, materials and other criteria established for such pre-approved Construction Activities no additional review by the APRA will be required. The ARC may from time to time adopt, supplement or amend the Architectural Rules to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved Construction Activities. Therefore, it is the duty of the Owner to review the specifications for pre-approved Construction Activity before beginning any construction project.

**4.9 Variance.** The ARC may grant variances from the architectural provisions of this Declaration or the architectural rules it has adopted when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations may require. Such variances may include, without limitation, restrictions on height, size, floor area, placement of structures or similar restrictions. Such variances must be in writing and must be signed and

acknowledged by a majority of the members of the ARC. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Lot, including, but not limited to, zoning and building requirements of any governmental agency or entity having jurisdiction over the Properties.

4.10 Compensation of ARC Members. The individual members of the ARC shall receive no compensation for services rendered.

4.11 Non-liability of APRA. Neither the APRA, nor any members, employees, members, managers, owners, shareholders, agents, officers, directors, attorneys or agents thereof, nor its duly authorized representatives, shall be liable to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the APRA's duties hereunder, unless due to willful misconduct. Plans and specifications approved by the APRA are not approved for: (a) engineering or safety design; (b) compliance with zoning, building and safety ordinances, codes and other applicable statutes, ordinances or governmental rules and regulations; or (c) compliance with the requirements or any public utility or compliance with any easements or other agreements. By approving any such plans and specifications, neither the APRA nor the members thereof, nor its agents, employee, managers, owners, officers, directors, attorneys or consultants assume any liability or responsibility for any improvement constructed or any defect therein as a result of such plans and specifications.

4.12 Non-liability of ARC Members. Neither Declarants, the ARC, nor any members thereof, nor their duly authorized representatives shall be liable to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to willful misconduct.

4.13 Removal or resignation of the APRA. On 30 days written notice, the APRA may be removed and a successor elected by a vote of three-fourths majority of all Owners, consistent with the election and voting requirements and rules set forth in 3.15 below. The APRA may resign at any time on 30 days written notice to the ARC. In the event of notice of resignation, the ARC shall hold an election (consistent with the rules set forth in 3.15 below) to elect a successor APRA. Following the 30 day notice period, the ARC shall assume all duties and responsibilities of the APRA until a successor is elected. Upon removal or resignation, the APRA shall transfer collected fees to the successor APRA for any plans not approved at the time of the expiration of the 30 days notice.

4.14 Members of ARC. The ARC shall consist of three (3) members. The initial members shall be representatives of Declarant. Declarant reserves the right to appoint and remove any or all the members the ARC and to fill any vacancies on the ARC until the "Turnover Date." The Turnover Date shall be the first of either (a) the date on which a certificate of occupancy has been issued by the relevant governmental authority for all the Lots in the Properties, or (b) the date on which Declarant delivers written notice of withdrawal from the ARC to a majority of the Owners. Declarant may at any time assign in writing the powers of removal and appointment of the members of the ARC to the other Owners, in whole or in part,

subject to such terms and conditions as Declarant may impose. After the Turnover Date, the other Owners shall have the power to appoint and remove all of the members of the ARC pursuant to Section 4.14 below. With the exception of ARC members appointed by Declarant, ARC members must be Owners. As of the Turnover Date, any representatives of Declarant remaining on the ARC shall be deemed to have automatically resigned and Declarant shall have no further right or obligation to participate on the ARC or enforce any of the covenants, conditions or restrictions of this Declaration.

4.15 Election of ARC Members. After the Turnover Date, appointment of any member of the ARC by the Owners shall be by election conducted as follows:

4.15.1 Voting Rights. Each Owner of a Lot shall be entitled to cast one (1) vote for every Lot owned. Votes may be cast in person or by written proxy. Proxies shall be revocable and shall automatically terminate after completion of the meeting for which the proxy was filed. In the event that more than one Person holds fee title to a Lot ("co-owners"), only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes are prohibited. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. No vote shall be cast for any Lot where the co-owners present in person or by proxy owning the majority interests in such Lot cannot agree to said vote or other action. The nonvoting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership.

4.15.2 Notice of Election. After the Turnover Date, any Owner (or the Declarant merely as a courtesy to the Owners), may call for an election meeting by (i) mailing to all Owners or (ii) posting at each entrance to the Properties which are conspicuous and readily accessible to all Owners, a written notice specifying the date, time, location and purpose of the meeting. Such notice shall be mailed or posted not less than (10) and not more than thirty (30) days before the meeting is to be held.

4.15.3 Quorum. A quorum for any such meeting shall be the presence in person or by proxy of no fewer than twenty-five percent (25%) of all Owners entitled to cast a vote ("Qualified Owners"). Absent a quorum, the Qualified Owners who are present at the noticed meeting may adjourn the meeting to a date, time and place specified prior to adjournment which is no less than five (5) and no more than thirty (30) days after the time of the noticed meeting. A quorum at such later "adjourned meeting" shall be the presence in person or by proxy of no fewer than ten percent (10%) of all Qualified Owners.

4.15.4 Conduct of Meeting. If a quorum is present at any meeting or adjourned meeting, the first item of business shall be the selection of a Director of Election who shall preside over the conduct of the meeting. The Qualified Owners shall act by majority vote of a quorum, except that members of the ARC shall be elected by plurality such that the individual receiving the highest number of votes shall be elected to

fill first vacancy, the individual receiving the next highest number of votes shall be elected to fill a second vacancy (if any), and so on.

4.15.5 Term of Office. The term of office of each ARC member elected pursuant to this Section 4.15 shall be two (2) years, commencing on the date of election and extending until a successor is elected as provided above. Any such ARC member may succeed himself/herself, and there shall be no limit to the number of terms of any such member.

4.15.6 Removal. An ARC member may be removed from office at any time and for any reason by an election conducted and noticed pursuant to this Section 4.15. However, the ARC member to be removed must be given personal notice by mail or personal services within the time period provided for notice under Section 4.15.2, and have an opportunity to be heard at the election. Said member may only be removed by a majority of a quorum of Qualified Owners.

## ARTICLE V

### 5. Community Council

5.1 Establishment of Community Council The Declarant may establish a Community Council for the purposes of enforcing the provisions of this Declaration other than those provisions set forth in Articles III and IV, the enforcement of which shall be by the ARC.

5.2 Members. The initial members of the Community Council shall consist of three individuals. Each member shall have one equal vote, which shall consist of one member appointed by the Declarant and the remaining members elected by the Owners. A member may serve any number of consecutive terms.\

5.3 Removal & Recognition of Community Council Members.. A member may resign at any time by giving written notice to the other directors or secretary. Any member may be removed, with or without cause. Any vacancy may be filled for the unexpired term of a member who has been removed or vacated such, upon a majority of the other members or by the Declarant, so long as it falls within the Declarants control period.

5.4 Meetings. Regular Community Council meetings may be held at such time and places as a majority of the members determine from time to time; however, at least four meetings shall be held during each fiscal year with at least one meeting each fiscal quarter. Special meetings may be held at any time upon notice by any member.

5.5 Powers. The Community Council shall have such enforcement rights set forth in this Declaration and all other powers that Utah law provides for nonprofit corporations and those necessary to administer the Community Council's affairs and to perform the Community Council's responsibilities and to exercise its rights.

5.6 Duties. The Community Council, for the benefit of the Owners and Declarant shall have the following general powers and duties, in addition to the specific powers and duties provided for herein:

5.6.1 To execute all declarations of ownership for tax assessment purposes with regard to the common areas if any on behalf of all owners.

5.6.2 To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent owners if the Community Council sees fit.

5.6.3 To enter into contracts, maintain one or more bank accounts, and generally have all the power necessary or incidental to the operation and management of the Association.

5.6.4 To protect or defend the common areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

5.6.5 To make reasonable rules and regulations for the operation of the common maintenance areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by the owners constituting a majority of the votes of the Community Council, or with respect to a rule applicable to less than all of the common areas, by a majority of the votes of the owners in the portions affected.

5.6.6 To make available for inspection by owners within sixty days after the end of each year an annual report and to make all books and records of the Community Council available for the inspection by owners at reasonable times and intervals.

5.6.7 To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the owners in proportionate amounts to cover the deficiency.

5.6.8 To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any owner for violation of such provisions or rules.

5.6.9 To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

5.6.10 The Community Council shall have the exclusive rights to contract for all goods, services and insurance, payment of which is to be made from the operation account and the exclusive right and obligation to perform the functions of the Community Council except as otherwise provided herein.

5.6.11 The Community Council, shall have full power and authority to contract with any owner or other person or entity for the performance by the Community Council of services which the Community Council is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Community Council may deem proper advisable and in the best interest of the Community Council.



5.7 Right to Appoint Committees. The Community Council may appoint such committees, as they deem appropriate to perform such tasks as the Community Council may designate by resolution. Each committee shall operate in accordance with the terms of such resolution creating the committee; service on a committee shall be for a term of two years. The Community Council shall have the right to disapprove or veto any committee decision or action. Committees shall not have the authority contractually to bind the Community Council or to commit the Community Council financially or otherwise.

5.8 Accounting. The Community Council shall keep such books and records with detailed accounts of the receipts and expenditures affecting the Properties and the administration of the "Properties", specifying the maintenance and repair expenses of the common areas and other expenses incurred. Said documents, books, financial statements and vouchers accrediting the entries thereupon shall be available for examination by the Declarants, homeowners and their duly authorized agents or attorney's, and general business owners. All records and books shall be kept in accordance with generally accepted accounting practices. Each year the directors shall obtain either a reviewed financial statement of audited financial statement if requested in writing by a majority of the members of the Association.

5.9 Snow Removal. When snow fall is between 2"-3", the contracted snow removal company will remove snow in the following areas:

1. Apple Seed Lane
2. Newton Way
3. 90 West
4. 40 West
5. 930 North
6. 20 East

Private driveway approaches to the following lots will also be plowed:

Plat A

1-7, 63-70, 71&72, 81&82, 83-86, 87-90, 91-94, 95-98, 99-102, 103-106, 113-116, 117-120.

The Community Council will also be responsible for snow removal all common area walk ways around community mail boxes.

Each Owner is responsible for clearing snow and ice from their property in a reasonable time (48 hours) after a snow or ice storm. This is applicable to driveways and sidewalks, including sidewalks that run parallel to the street in front of the home.

## ARTICLE VI

## 6. ENFORCEMENT.

6.1 Enforcement. In the event of any claim, dispute or other matter arising under or relating to this Declaration, the Declarant or any aggrieved Owner may present such claim or dispute to the Community Council or may initiate any appropriate legal or equitable proceeding to enjoin, abate, restrain or otherwise remedy any violation of the Restrictions. Prior to any aggrieved Owner initiating any such proceedings, the aggrieved Owner shall provide written notice of the grievance to the party allegedly responsible for the grievance and the Community Council, and if Declarant owns any Lot in the Properties, the aggrieved Owner shall provide a copy of the written notice to Declarant. The Community Council may take such action as permitted and necessary to enforce such claim, or may allow the Declarant or the Owner to bring such legal action as necessary to enforce the claim. The covenants, conditions, and restrictions contained in this Declaration shall bind and inure to the benefit of and shall be enforceable by each Owner; said enforcement rights shall also be held by the Declarant until the date of close of escrow for the sale of all the Lots owned by Declarant in the Properties. Once close of escrow has occurred as to each of the Lots owned by Declarant in the Properties, Declarant shall have neither right nor obligation to enforce any of the terms of the Declaration. Notwithstanding any provision of this Declaration, Declarant shall have no obligation to enforce the provisions of Article III or to initiate litigation to enforce any of the terms of this Declaration.

## ARTICLE VII

### 7. DISPUTES.

7.1 MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT. To the fullest extent permitted by law, all claims and disputes of any kind that an Owner may have involving the Declarant or any affiliate, partner, joint venture partner, consultant, entitler, general contractor, agent, employee, executing officer, manager, Owner of Declarant, the APRA, or any affiliate, partner, joint venture partner, consultant, entitler, general contractor, agent, employee, executing officer, manager, Owner of the APRA, or any predecessor in interest of Declarant, or any consultant, entitler, agent, employee, attorney, officer, manager or owner of such predecessor in interest or agent thereof (a "Dispute") shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving disputes between such covered Persons and any Owner. Disputes subject to binding arbitration include, but are not limited to:

1. Any alleged violations of consumer protection, unfair trade practice, or other statutes;
2. Any allegation of negligence, strict liability, fraud, breach of contract, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
3. Any disputes concerning the issues that should be submitted to binding arbitration;
4. Any dispute as to the payment or reimbursement of the arbitration filing fee; and

5. Any dispute as to any of the responding party's duties and/or responsibilities set forth in this Declaration.

The arbitration shall be conducted by a reputable arbitration service or arbitrator that party responding to the arbitration request shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed.

The arbitration shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1-16) to the exclusion of any inconsistent state law, regulation, or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. This filing fee shall be no more than the amount charged by the arbitration service or arbitrator for arbitration of a Dispute. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

If any Owner or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Dispute be arbitrated in accordance herewith.

**7.2 Amendment Requires Consent of Declarant.** Notwithstanding any other provision of this Declaration, this Article VII and its subsections may not be amended except with the written consent of the Declarant.

## ARTICLE VIII

### 8. RESERVATION OF EASEMENTS

**8.1 Easements on Plat.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Recorded Plat.

**8.2 Reservation of Easements.** Declarant hereby reserves for the benefit of each Owner and such Owner's Lot reciprocal nonexclusive easements over the adjoining Lot or Lots for the control, maintenance and repair of the utilities serving such Owner's Lot. Declarant expressly reserves for the benefit of all the real property in the Property, and for the benefit of all the Lots and of the Owners, reciprocal nonexclusive easements over all Lots, for maintenance and repair of utility services, drainage and flow of water from the Lots resulting from the normal use of adjoining Lots, and maintenance and repair of any Residence. Declarant and the Owners of Lots on which there is constructed a Residence along or adjacent to a Lot line shall have an easement appurtenant to such Owner's Lot over the Lot line of the adjacent Lot for the purposes of accommodating any natural movement or settling of such Residence, any encroachment of

such Residence due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features comprising parts of the original construction of such Residence located on such Lot.

8.3 No Limitation. This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposition of each Lot within the Properties.

## ARTICLE IX

### 9. ANNEXATION

9.1 Right of Annexation. Declarant hereby expressly reserves the right to expand the Property without the consent of any Owner, Mortgagee or any other party with an interest in the Property until fifteen (15) years from the date of recording of this Declaration by annexing all or any portion of the Annexable Property. The annexation of any or all of the Annexable Property shall be accomplished by the Declarant recording with the County Recorder a Declaration of Annexation. However, Declarant shall not be obligated to annex all or any portion of the Annexable Property, and may annex non-contiguous portions of the Annexable Property at its sole discretion. A Declaration of Annexation annexing property as permitted hereunder may contain such complementary additions and modifications of the Covenants, Conditions and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the general plan of this Declaration, including without limitation to allow for multi-family, high density housing as permitted by City. In no event, however, shall any such document revoke, modify or add to the covenants established by this Declaration and applicable to the Original Property or to any property previously covered by a recorded Declaration of Annexation. Declarant hereby expressly reserves the right from time to time to unilaterally supplement or modify by recorded instrument the description of the Annexable Property described in Exhibit "B" of this Declaration.

9.2 Effect of Annexation. Upon the effective date of an annexation pursuant to this Article IX: (a) the property so annexed shall immediately be and become a part of the Property and be subject to all of the provisions hereof; (b) any Lot then or thereafter constituting a part of the annexed property, and the Owner of such Lot, shall thereupon be subject to all of the provisions of this Declaration; and (c) improvements then or thereafter situated upon the annexed property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon other portions of the Property prior to such annexation.

9.3 Withdrawal. Notwithstanding any other provisions of this Declaration, Declarant reserves the right to amend this Declaration so long as it has the right to annex additional property pursuant to this Article VI, for the purpose of removing property then owned by the Declarant or its assignees from coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property, provided

such withdrawal is not unequivocally contrary to the overall scheme of development for the Property.

9.4 No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, their successors or assigns, or any other Person will subject any additional property to the provisions of this Declaration, nor shall Declarant, its successors or assigns, or any other Person be obligated so to do, and Declarant may, by recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time or from time to time.

9.5 FHA/VA Approval. In the event that, and for so long as, the FHA or the VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Annexable Property with respect to the initial sale by Declarant or builder to the initial purchaser of any Residence, a condition precedent to any annexation of any property other than the Annexable Property shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

## ARTICLE X

### 10. Miscellaneous

10.1 Severability. The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

10.2 Interpretation. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community, and any violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise.

10.3 Amendment Prior to First Close of Escrow. Notwithstanding any other provisions of this Declaration, at any time prior to the first Close of Escrow in the Properties, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

10.4 Amendment for Conformance. Notwithstanding any other provisions of this Declaration, for so long as any Declarant owns any portion of the Properties, such Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of Veterans Administration, Federal Housing Administration, Department of Real Estate, Federal National Mortgage Association, Government National Mortgage Association or Federal Home Loan Mortgage Corporation.

10.5 Amendment or Termination by Owners. This Declaration may be terminated or any term herein may be amended by Recording a written instrument which effects the amendment or termination, and which has been executed by the then-Owners of at least three-fourths (3/4) of all of the Lots in the Properties. However, as long as any Declarant owns a Lot, the Declaration may not be amended or terminated without the written consent of such Declarant.

10.6 No Public Right or Dedication. Nothing contained in this Declaration constitutes a gift or dedication of all or any part of the Properties to the public, or for any public use.

10.7 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties or any portion thereof.

10.8 Additional Disclosures, Disclaimers and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Lot or possession of a Lot, each Owner (for purposes of this Section 9.8, the term "Owner" shall include the Owner, resident, and their respective families, guests and tenants), shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "disturbances." Each Owner acknowledges and agrees that it is purchasing a Lot and/or Residence which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "disturbances" until the subdivision, and any neighboring or nearby land, have been completed and sold, and that such construction-related "disturbances" are not a violation of any restriction herein;

(b) The Property is or may be located adjacent to or nearby a religious center and subject to levels of traffic, sound, noise and other disturbances resulting from proximity to such religious center;

(c) The Property is or may be located adjacent to or nearby neighboring agricultural, commercial and/or industrial uses and subject to levels of traffic, smells, sound, noise, use of pesticides and other disturbances resulting from proximity to such agricultural, commercial and industrial uses;

(d) Declarant hereby specifically disclaim any and all representations or warranties, express or implied, with regard to or pertaining to roads and/or noise, dust, and other disturbances therefrom;

(e) Canals currently located near the Property may subject the Property to the presence of wildlife, disturbances, and dangers inherent in such a feature, as well as possible high water flow or flooding from time to time. Declarant has no control over water flow through the canals or the existence or nonexistence of the canals in the future;

(f) The Property is or may be located adjacent to or nearby a school, and subject to levels of noise, dust, and other disturbances resulting from proximity to such school or otherwise related to such school;

(g) The Lot and other portions of the Property are or from time to time may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise;

(h) The Property is located adjacent to railroad tracks and railroad crossings, and subject to levels of noise, dust, smells, dangers, and other disturbances resulting from proximity to such railroad tracks and railroad crossings;

(i) The Property is or may be located adjacent to or nearby a storm drain detention basin(s), channel(s), sewer treatment plants, and lift stations, and may be subject to certain disturbances resulting from proximity to such detention basin(s), channel(s) and lift stations; and

(j) Certain Lots on the Property are or may be subject to certain sewer, secondary water, and natural gas pipeline easements, and may be subject to disturbances associated with the use and maintenance of these facilities.

10.9 Releases. By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied with regard to any of the foregoing disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant (or any affiliate, consultant, entitler, partner, joint venture partner, general contractor, agent, employee, executing officer, manager, Owner of Declarant, or any predecessor in interest of Declarant, or any agent, consultant, entitler, partner, joint venture partner, employee, attorney, officer, manager or owner of such predecessor in interest or agent

thereof), the APRA (or any affiliate, consultant, entitler, general contractor, agent, employee, executing officer, manager, Owner of the APRA), and the ARC, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration.

10.10 Duration. This Declaration shall have perpetual duration. If Utah law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive 20-year periods unless terminated as provided above.

10.11 Business of Declarant. Except to the extent expressly provided herein, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or their respective agents or representatives in connection with or incidental to their improvement, development, or sales and marketing activities regarding the Properties, so long as any Lot therein is owned by any Declarant.

IN WITNESS WHEREOF, Declarant have executed the instrument this 20<sup>th</sup> day of May, 2010.

DECLARANT  
Santaquin Orchards Group, LLC  
a Utah limited liability companies, BY PORTFOLIO  
INVESTMENTS, LLC, ITS: MEMBER/MANAGER

By: [Signature]  
Scott Brand  
Its: Manager

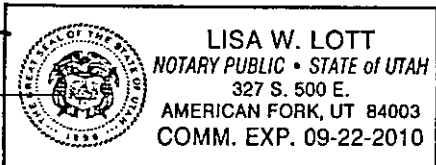
STATE OF UTAH

County of Utah

On the 20<sup>th</sup> day of May 2010, personally appeared before me SCOTT BRAND who being by me duly sworn did say that he, SCOTT BRAND is the Manager of ~~PORTFOLIO INVESTMENT~~ LLC, that executed this instrument.

MANAGER OF SANTAQUIN ORCHARDS GROUP, LLC

[Signature]  
Notary Public  
Residing at: AMERICAN FORK  
My Commission Expires: 9-22-10







**EXHIBIT "A"****ORIGINAL PROPERTY**

The Original Property is described as follows:

Beginning at a point located North 476.28 feet and West 63.94 feet from the West 1/4 Corner of Section 36, Township 9 South, Range 1 East, Salt Lake Base & Meridian; thence S80°36'00"W 433.91 feet; thence along the arc of a 15.00 foot radius curve to the right 23.16 feet through a central angle of 88°27'00" (chord: N55°10'00"W 20.92 feet); thence N10°57'00"W 462.57 feet; thence along the arc of a 422.50 foot radius curve to the right 80.75 feet through a central angle of 10°57'00" (chord: N5°28'30"W 80.62 feet); thence North 85.01 feet; thence along the arc of a 477.50 foot radius curve to the left 229.18 feet through a central angle of 27°30'00" (chord: N13°45'00"W 226.99 feet); thence N27°30'00"W 96.57 feet; thence along the arc of a 15.00 foot radius curve to the right 23.68 feet through a central angle of 90°26'52" (chord: N17°43'26"E 21.30 feet); thence along the arc of a 4,799.00 foot radius curve to the right 197.46 feet through a central angle of 2°21'27" (chord: N64°07'36"E 197.45 feet); thence along the arc of a 769.00 foot radius curve to the right 331.44 feet through a central angle of 24°41'41" (chord: N77°39'10"E 328.88 feet); thence East 118.13 feet thence along the arc of a 15.00 foot radius curve to the right 23.56 feet through a central angle of 90°00'00" (chord: S45°00'00"E 21.21 feet); thence South 845.81 feet; thence along the arc of a 1045.00 foot radius curve to the left 166.14 feet through a central angle of 9°06'32" (chord: S4°33'16"E 165.96 feet); thence along the arc of a 15.00 foot radius curve to the right 23.49 feet through a central angle of 89°42'32" (chord: S35°44'44"W 21.16 feet) to the point of beginning.

Contains: +/-12.90 Acres

**EXHIBIT "B"****ANNEXABLE PROPERTY**

The Annexable Property is described as follows:

Beginning at a point located North 1,231.44 feet and West 316.56 feet from the West 1/4 Corner of Section 36, Township 9 South, Range 1 East, Salt Lake Base & Meridian; thence S86°10'00"W 55.84 feet; thence N20°38'36"W 148.05 feet; thence along the arc of a 656.00 foot radius non-tangent curve (radius bears: S20°06'56"E) to the right 11.41 feet through a central angle of 0°59'46" (chord: N70°22'57"E 11.41 feet); thence N3°54'25"E 41.09 feet; thence along the arc of a 694.00 foot radius non-tangent curve (radius bears: S17°47'33"E) to the left 83.27 feet through a central angle of 6°52'27" (chord: S68°46'14"W 83.22 feet); thence S65°20'00"W 15.60 feet; thence along the arc of a 10.00 foot radius curve to right 15.21 feet through a central angle of 87°00'00" (chord: N71°05'00"W 13.79 feet); thence N27°30'00"W 55.02 feet; thence along the arc of a 10.00 foot radius curve to the right 16.16 feet though a central angle of 92°34'40" (chord: N18°47'20"E 14.46 feet); thence along the arc of a 4799.00 foot radius curve to the right 19.06 feet through a central angle of 0°13'39" (chord: N65°11'30"E 19.06 feet); thence along the arc of a 769.00 foot radius curve to the right 283.80 feet through a central angle of 21°08'43" (chord: N75°52'41"E 282.19 feet); thence S5°00'00"E 113.11 feet; thence S85°00'00"W 20.48 feet; thence along the arc of a 656.00 foot radius curve to the left 35.51 feet through a central angle of 3°06'04" (chord: S83°26'58"W 35.50 feet); thence S8°48'10"E 21.70 feet; thence along the arc of a 634.00 foot radius non-tangent curve (radius bears: S8°10'12"E) to the left 58.92 feet through a central angle of 5°19'30" (chord: S79°10'03"W 58.90 feet); thence S13°29'28"E 120.04 feet; thence S3°50'00"E 19.08 feet to the point of beginning.

Contains: +/-0.94 Acres

**EXHIBIT "C"**

Building Styles