

2153651  
BK 3995 PG 787

E 2153651 B 3995 P 787-823 <sup>4/05/37</sup>  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
03/21/2006 02:56 PM  
FEE \$105.00 Pgs: 37  
DEP RTT REC'D FOR KAYSVILLE CITY

SW 32 1/2 SE 31 4N-16W  
11-093-0040-PT  
11-605 +  
Ashwood Estates Cluster Ph-1  
1 thru 6, 22 thru 36 46 1/2, 47  
CA

1

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
ASHWOOD ESTATES CLUSTER SUBDIVISION PHASE I

## TABLE OF CONTENTS

ARTICLE I - DEFINITIONS .....	1
Association .....	1
Board .....	2
Common Areas .....	2
Limited Common Areas .....	2
Declaration .....	2
Design Committee .....	2
Living Unit .....	2
Managing Agent .....	2
Mortgage .....	2
Owner .....	2
Property .....	2
Residential Lot .....	3
Plat .....	3
Member .....	3
Declarant .....	3
Roadways .....	3
Undeveloped Land .....	3
Master Declaration .....	3
ARTICLE II - SUBMISSION AND DIVISION OF PROJECT .....	3
Submission .....	3
Annexation by Declarant .....	4
Limitation on Annexation .....	4
Annexation by the Association .....	4
No Obligation to Annex or Develop .....	4
Division into Lots and Common Areas .....	5
ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION .....	5
Membership .....	5
Voting Rights .....	5
Multiple Ownership Interests .....	5
Record of Ownership .....	6
ARTICLE IV - OPERATION AND MAINTENANCE .....	6
Duties of the Association .....	6
Powers and Authority of the Association .....	7
Association Rules .....	9
Limitation of Liability .....	9
Maintenance by Owners .....	9

ARTICLE V - ASSESSMENTS .....	9
Personal Obligation and Lien .....	9
Purpose of Assessments .....	10
Monthly Assessments .....	10
Special Assessments .....	10
Quorum Requirements .....	10
Special Assessment on Specific Residential Lots .....	11
Uniform Rate of Assessment .....	11
Monthly Assessment Due Dates .....	11
Certificate Regarding Payment .....	11
Effect of Nonpayment - Remedies .....	12
Subordination of Lien to Mortgages .....	12
ARTICLE VI - PROPERTY RIGHTS AND CONVEYANCES .....	12
Easement Concerning Common Areas .....	12
Easement Concerning Limited Common Areas .....	12
Form of Conveyancing; Leases .....	13
Transfer of Title to Common Areas and Limited Common Areas .....	13
Limitation on Easement .....	13
Reservation of Access and Utility Easements .....	14
Easements for Encroachments .....	14
Easements for Construction and Development Activities .....	15
Grant of Easement to Kaysville City .....	15
ARTICLE VII - LAND USE RESTRICTIONS AND OBLIGATIONS .....	15
General Restrictions and Requirements .....	15
Exemption of Declarant .....	20
Use of Limited Common Areas .....	20
Enforcement of Land Use Restrictions .....	20
Conditional Notes on Plat .....	21
ARTICLE VIII - ARCHITECTURAL CONTROL .....	21
Organization of the Design Committee .....	21
Actions Requiring Approval .....	21
Standard of Design Review .....	21
Design Committee Rules and Architectural Standards .....	21
Approval Procedure .....	22
Variance Procedure .....	22
Nonwaiver .....	22
Completion of Construction .....	22
Exemption of Declarant .....	22
Estoppel Certificate .....	22

Disclaimer of Liability .....	23
ARTICLE IX - INSURANCE .....	23
Liability Insurance .....	23
Additional Insurance; Further General Requirements .....	23
Review of Insurance .....	24
Residential Lots Not Insured by Association .....	24
Owners Insurance .....	24
ARTICLE X - CONDEMNATION .....	25
ARTICLE XI - RIGHTS OF FIRST MORTGAGEES .....	25
Preservation of Regulatory Structure and Insurance .....	25
Preservation of Common and Limited Common Area; Change in Method of Assessment .....	25
Written Consent Deemed Approved .....	26
Notice of Matters Affecting Security .....	26
Notice of Meetings .....	27
Right to Examine Association Records .....	27
Right to Pay Taxes and Charges .....	27
Exemption from Any First Right of Refusal .....	27
ARTICLE XII - MISCELLANEOUS .....	27
Notices .....	27
Amendment .....	27
Consent in Lieu of Vote .....	28
Declarant's Rights Assignable .....	28
Interpretation .....	28
Covenants to Run With Land .....	29
Duration .....	29
Effective Date .....	29
EXHIBIT "A" .....	31
EXHIBIT "B" .....	32
EXHIBIT "C" .....	33

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
ASHWOOD ESTATES CLUSTER SUBDIVISION PHASE I**

THIS DECLARATION is made and executed this 16<sup>th</sup> day of March, 2006  
by Windruff Construction Company, a Utah Corporation, (the "Declarant").

**R E C I T A L S:**

A. Declarant is the record owner of that certain tract of land (the "Property") in the city of Kaysville, county of Davis, state of Utah, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. Declarant desires to create on said Property a residential development with Common Areas.

B. The Property is part of a larger development known as the Schick Farm Development and shall, in addition being subject to the provisions of this Declaration, also be subject to the provisions of the Master Declaration to be recorded against the Property.

C. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas and Limited Common Areas in the official records of Davis county, state of Utah.

D. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, Declarant has caused to be incorporated under the laws of the State of Utah, as a limited liability company, the Ashwood Estates Homeowners Association (the "Association").

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property shall be subject to this Declaration and that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth

**ARTICLE I - DEFINITIONS**

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

1.1 Association shall mean the Ashwood Estates Homeowners Association, a Utah limited liability company.

1.2 Board shall mean the Board of Trustees of the Association

1.3 Common Areas shall mean all property, including streets, roadways, rights-of-way and utilities, owned or designated on the recorded plat as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. The Common Areas shall not include the Limited Common Areas

1.4 Limited Common Areas shall mean or refer to those common areas designated on the recorded subdivision Plats as reserved for the use and benefit of each Residential Lot to the exclusion of all other Owners. The Limited Common Areas appurtenant to each Residential Lot are delineated on Exhibit D attached hereto.

1.5 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Ashwood Estates Cluster Subdivision Phase I.

1.6 Design Committee shall mean the Design Committee established by and referred to in Article 7.4 of this Declaration.

1.7 Living Unit shall mean a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Residential Lot and used in conjunction with such residence.

1.8 Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.1 of Article IV of this Declaration.

1.9 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgagee shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.10 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Davis County, Utah) of a fee or undivided fee interest in any Residential Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Residential Lot owned by it.

1.11 Property shall mean the Property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration, including Common Areas and Limited Common Areas

1.12 Residential Lot shall mean and refer to any one of the twenty-three (23) lots (Lots 1 through 6, 22 through 36, 46 and 47) of land within the boundaries of the private ownership areas as shown upon and designated on the Plat.

1.13 Plat shall mean and refer to the Plat of Ashwood Estates Cluster Subdivision Phase I, prepared Reeve & Associates, Inc. licensed professional engineers, executed and acknowledged by Declarant on \_\_\_\_\_, 2006, which is being recorded in the official records of Davis County, Utah, shortly before the recording of this Declaration.

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

1.15 Declarant shall mean Windruff Construction Company, and its successors and assigns.

1.16 Roadways shall mean that portion of the Common Areas consisting of the streets and roads within the Property for the use and benefit of the Owners as such are identified and depicted on the Plat.

1.17 Undeveloped Land shall, at any point in time, mean all of the land more particularly described in Exhibit "C" attached hereto and made a part hereof, excluding any portion or portions of such land comprising the Property and any other portion or portions of such land improved with the completed above-ground residential structures and related on-site and off-site improvements ordinarily in existence when a tract of land is considered to be fully developed. So long as it is not arbitrary, Declarant's determination as to when any of the land described in Exhibit "C" ceases to be Undeveloped Land shall be conclusive.

1.18 Master Declaration shall mean the Declaration of Covenants, Conditions and Restrictions for Schick Farm Development, which is recorded or which will be recorded against the Property, making the Property a part of a larger multi-neighborhood development. The Master Declaration is incorporated herein by reference and made a part of this Declaration. Should any conflicts arise between the provisions of this Declaration and the provisions of the Master Declaration, the provisions of the Master Declaration will govern

## ARTICLE II - SUBMISSION AND DIVISION OF PROJECT

2.1 Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in Davis county, state of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Property is being subdivided into twenty-three (23) lots (Lots 1 through 6, 22 through 36, 46 and 47) Ashwood Estates Cluster Subdivision Phase I, as identified in the Plat.

2.2 Annexation by Declarant. Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of the lands initially constituting the Undeveloped Land. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Davis County, Utah, of (a) a subdivision plat or map covering the land to be annexed and (b) a supplemental declaration which (i) describes the land to be annexed or incorporated by reference to the description contained in the subdivision plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, (iv) states which portions of the annexed land are Common Areas and Limited Common Areas, if any, and which portions are Residential Lots and which portions are within any new land classification, provided that the nature and incidents of any such new land classification shall be fully set forth in such supplemental declaration or in another supplemental declaration previously filed with respect to some portion of the Property, and (v) describes generally any improvements situated on the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property.

2.3 Limitation on Annexation. Declarant's right to annex land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the land which is Undeveloped Land as of the date of this Declaration.

(b) Declarant's right to annex land to the Property shall expire twenty (20) years after this Declaration was first filed for record in the office of the county recorder of Davis County, Utah.

2.4 Annexation by the Association. Notwithstanding the limitations on annexation set forth in Section 2.03 of this Article, the Association may annex land to the Property by satisfying the requirements set forth in Section 2.02 of this Article and by obtaining approval of such annexation from (a) the owner or owners of the land to be annexed and (b) 2/3 of the Members of each class of the Association's voting membership. Nothing in this paragraph shall be construed to require any prior approval for, or to limit or present, any annexation performed by Declarant pursuant to Section 2.02 of this Article so long as such annexation satisfies the limitations set forth in Section 2.03 of this Article.

2.5 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any additional land to the Property or to develop or preserve any portion of the Undeveloped Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant.



2.6 Division into Lots and Common Areas. The Property is hereby divided into twenty-three (23) lots (Lots 1 through 6, 22 through 36, 46 and 47), each consisting of a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Lots shall constitute the Common Area, which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration, or Limited Common Areas, which shall be owned by the Association for the benefit of the Owner(s) of the Lot(s) appurtenant to such Limited Common Area in accordance with the provisions of this Declaration and as illustrated in Exhibit D attached hereto

### ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership. Every Owner upon acquiring title to a Residential Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Residential Lot ceases for any reason, at which time his/her membership in the Association with respect to such Residential Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Residential Lot.

3.2 Voting Rights. The Association shall have the following described two classes of Voting membership:

Class A. Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Residential Lot in which the interest required for membership in the Association is held

Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to five votes for each Residential Lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

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

(b) December 31, 2015.

3.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Residential Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Residential Lot

concerned unless an objection is made at the meeting by another Owner of the same Residential Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

3.4 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Residential Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Residential Lots. Any Owner who mortgages his Residential lot or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

#### ARTICLE IV - OPERATION AND MAINTENANCE

4.1 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The association shall accept all owners as Members of the Association.
- (b) The Association shall accept title to all Common Areas and Limited Common Areas conveyed to it by the Declarant.
- (c) The Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement, and upkeep of the Common Areas, including snow removal, and shall keep the same in good, clean, attractive, safe and sanitary condition, unless, until and except to the extent that such responsibility is transferred to and accepted by some other authority, public agency, or utility, and such transfer is agreed to by Members holding at least two-thirds (2/3) of the votes of each class of membership of the Association.
- (d) Upon written request by a sufficient number of Owners to feasibly provide extra services, the Association shall provide to all such Owners snow removal, yard maintenance, and other similar services (hereinafter collectively referred to as "Extra Services"), as approved by the Board. All such Extra Services shall be paid for by the Owners receiving the same, the cost of which may be included in the Owner's monthly assessments.
- (e) The Association shall obtain and maintain in force the policies of insurance required by Article IX of this Declaration.

(f) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas and Limited Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by the Board with cause upon thirty (30) days written notice thereof and at any time without cause or payment of a termination fee upon ninety (90) days written notice thereof, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent shall be an independent contractor and not an agent or employee of the Association.

4.2 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation or Organization, together with its general powers as a nonprofit corporation or limited liability company, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Residential Lot for the purpose of maintaining and repairing such Residential Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Residential Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Residential Lot in violation of Articles VII or VIII of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas, Limited Common Areas, and Residential Lots (to the extent required herein or necessitated by the failure of the Owners of such Residential Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas and Limited Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i)

to pay and discharge any and all liens placed upon any Common Areas and Limited Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration, (ii) to pay and discharge any and all assessments made against the Property under the Master Declaration, and (iii) to obtain, contract and pay for, or otherwise provide for:

- (1) Maintenance, repair and replacement of all Roadways and appurtenant improvements, including the removal of snow thereon, on such terms and conditions as the Board shall deem appropriate;
  - (2) Construction, maintenance, repair and landscaping of the Common Areas, including all surface run-off, drainage and detention facilities, on such terms and conditions as the Board shall deem appropriate;
  - (3) Construction, maintenance, repair and replacement of landscaping and improvements upon the Limited Common Areas not being maintained by the Owners, including snow removal from driveways and sidewalks within the Limited Common Areas, on such terms and conditions as the Board shall deem appropriate;
  - (4) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Design Committee and the Owners;
  - (5) Such utility services, including (without limitation) culinary water, secondary water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;
  - (6) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
  - (7) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property,
  - (8) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary; and
  - (9) Maintenance, repair and replacement of the roof or exterior walls of the Residential Units, on such terms and conditions as the Board shall deem appropriate.
- (c) The Board may delegate to a Managing Agent any of its powers under this

Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Areas.

(d) Upon thirty (30) days prior written notice to the Owner, the Association shall have the power and authority to hire a responsible corporation, partnership, firm, person or other entity, to maintain an Owner's Lots should the Owner thereof fail to properly maintain the same. The cost to maintain a Lot for an Owner shall be charged to the Owner and may be included in the next scheduled monthly assessment to the Owner

4.3 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use and maintenance the Common Areas and Limited Common Areas; (b) the use of any Roadways or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; and (e) other matters concerning the use and enjoyment of the Property and the conduct of residents.

4.4 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Design Committee or the Managing Agent.

4.5 Maintenance by Owners. Notwithstanding any provision(s) to the contrary in this Declaration, the Owner of each Residential Lot, at the cost and expense of each such Owner, shall be solely responsible for:

(a) snow removal from all driveways and maintenance of the lawns, trees, shrubbery, flowers and other landscaping features located on any portion of the Limited Common Area of Owner's Residential Lot.

(b) the exterior maintenance and upkeep of each of the Dwelling Units, including but not limited to the maintenance, repair and replacement of the roof and exterior siding of the Units, including the fascia and soffit, and the maintenance of the exterior of all garages within the Project.

## ARTICLE V - ASSESSMENTS

5.1 Personal Obligation and Lien. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Residential Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Residential Lot with respect to which such assessment

is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment fails due. No Owner may exempt himself or his Residential Lot from liability for payment of assessments by waiver of his rights in the Common or Limited Common Areas or by abandonment of his Residential Lot. In a voluntary conveyance of a Residential lot, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Residential Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5.2 Purpose of Assessments Assessments levied by the Association shall be used exclusively to pay any and all assessments made pursuant to the Master Declaration and for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas and Limited Common Areas; maintenance, repair, and improvements of the Common Areas, maintenance, repair, and improvements of the Limited Common Areas not maintained by the Owners; management and supervision of the Common Areas and Limited Common Areas, establishing and funding of a reserve to cover major repair or replacement of improvements within the Common Areas and Limited Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Areas and Limited Common Areas that must be maintained, repairs or replaced by the Association on a periodic basis.

5.3 Monthly Assessments. The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 5.7 below.

5.4 Special Assessments From and after the date set under Section 5.8 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments, including any assessments or special assessments levied against the Property pursuant to the Master Declaration; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas and Limited Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.5 Quorum Requirements. The quorum at any meeting required for any action authorized by Section 5.4 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall

constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 5.4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

5.6 Special Assessment on Specific Residential Lots. In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.4 above, the Board may levy at any time special assessments (a) on every Residential Lot especially benefitted by any improvement to adjacent Roadways, sidewalks, planting areas or other portions of the Common Areas or Limited Common Areas made on the written request of the Owner of the Residential Lot to be charged, (b) on every Residential Lot the Owner or occupant of which shall cause any damage to the Common Areas and/or Limited Common Areas necessitating repairs, and (c) on every Residential Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.2(a) of Article IV or other provisions of this Declaration, including any amounts incurred by the Association in performing any Owner's maintenance obligations set out in Section 4.5 of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Residential Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Residential Lots benefitted.

5.7 Uniform Rate of Assessment. All monthly and special assessments authorized by Section 5.3 or 5.4 above shall be fixed at a uniform rate for all Residential Lots; provided, however, that until a Residential Lot has been both fully improved with a Living Unit and occupied for the first time for residential purposes, the monthly assessment applicable to such Residential Lot shall be ten percent (10%) of the monthly assessment which would otherwise apply to such Residential Lot. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Residential Lots adversely affected.

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

5.9 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Residential Lot and upon the payment of a reasonable fee to the

Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Residential Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

5.10 Effect of Nonpayment - Remedies. Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Residential Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 ½%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Residential Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

5.11 Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Residential Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Residential Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Resident Lot from the lien of any assessment thereafter becoming due.

## ARTICLE VI - PROPERTY RIGHTS AND CONVEYANCES

6.1 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Residential Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such owner's Residential Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

6.2 Easement Concerning Limited Common Areas. The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the Limited Common Areas. With the exception of the rights and easements granted to the Association, the



Owner(s) of a Residential Lot shall have the exclusive use of all Limited Common Areas appurtenant to their Residential Lot. Particularly, the driveway in front of each Unit and any space enclosed by a properly installed fence shall be Limited Common Area to each such Unit.

6.3 Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Residential Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ of Ashwood Estates Cluster Subdivision Phase I, according to the Plat thereof recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of the Official Records of Davis County, which Lot is contained within Ashwood Estates Cluster Subdivision Phase I, identified in the "Declaration of Covenants, Conditions, and Restrictions of Ashwood Estates Cluster Subdivision Phase I" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_.  
SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Residential Lot. Any lease of a Residential Lot shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

6.4 Transfer of Title to Common Areas and Limited Common Areas. Declarant shall convey to the Association title to the various Common Areas and Limited Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any non delinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area and Limited Common Area is substantially completed.

6.5 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Residential Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such

Owner's Residential Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

(c) The right of Davis County and Kaysville City, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by (1) all holders of first mortgages secured by Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant). No such dedication or transfer, however, may take place without the Association first receiving written approval from Kaysville City pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

6.6 Reservation of Access and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to Kaysville City and Davis County, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

6.7 Easements for Encroachments. If any part of the Common Areas or Limited Common Areas as improved by Declarant now or hereafter encroaches upon any Residential Lot or if any structure constructed by Declarant on any Residential Lot now or hereafter encroaches upon any other Residential Lot or upon any portion of the Common Areas or Limited Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Residential Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other

Residential Lot or upon any portion of the Common Areas or Limited Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

6.8 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Living Units on Residential Lots, (b) improvement of the Common Areas and Limited Common Areas and construction, installation and maintenance thereon of Roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of Roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities. The reservations contained in this paragraph shall expire twenty (20) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Davis County, Utah.

6.9 Grant of Easement to Kaysville City. Declarant hereby dedicates, grants and conveys to Kaysville City a perpetual right-of-way and easement over, upon and under the lands designated on the Plat as Common Area, Roadways, and easements for public Utility and drainage purposes as indicated on the Plat, the same to be used for the installation, maintenance and operation of public utility service lines and storm drainage facilities, the same to be maintained and managed by the Association.

## ARTICLE VII - LAND USE RESTRICTIONS AND OBLIGATIONS

### 7.1 General Restrictions and Requirements.

(a) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Residential Lot from its natural or improved state existing on the date such Residential Lot is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VII and the provisions of Article VIII

(b) Residential Lots shall be used only for single-family residential purposes, and no more than one Living Unit shall be constructed on any Residential Lot. The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Common Areas shall be used only for natural recreational uses which do not injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Residential Lots and Living Units or the Common Areas.

(c) Businesses, professions or trades may be operated or maintained in a Residential Lot subject to the prior written approval of the Board, which approval shall not be unreasonably withheld, subject to the following limitations: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the project, (iii) may not be observable from outside the Residential Lot, and (iv) may only be carried on following approval from Kaysville City pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Residential Lot, subject to the foregoing limitations and all other limitations of this Declaration.

(d) No noxious or offensive activity shall be carried on upon any Residential Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Residential Lots and Living Units or the Common Areas and Limited Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Residential Lot and Living Unit thereon, shall be placed or used upon any Residential Lot without the prior written approval of the Design Committee.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Residential Lots, Roadways or Common Areas and Limited Common Areas.

(f) Each Residential Lot, and all improvements located thereon, shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense.

(g) All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible for neighboring Residential Lots, Roadways, Limited Common Areas, or Common Areas. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

(h) No Residential Lot shall be resubdivided.

(i) All improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(j) All structures constructed on any Residential Lot shall be constructed with new

materials unless otherwise permitted by the Design Committee; and no used structures shall be relocated or placed on any Residential Lot.

(k) No structure or improvement having a height of more than two (2) stories shall be constructed on any Residential Lot; provided, however, that the height of a structure or improvement may exceed two (2) stories if permitted by law and if the Design Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

(l) No dwelling shall be permitted on Residential Lots with the ground floor area of the main structure, exclusive of open porches and garages, of less than 1,200 square feet.

(m) Living Units on all Residential Lots shall have a minimum of a two (2) car attached garage.

(n) Roofing materials shall be asphalt grade shingles or other high quality roofing materials. All replacement of shingles shall be approved by the Association as to maintain uniformity throughout the project.

(o) Aluminum, vinyl and/or steel siding shall only be used in soffit and fascia areas of Living Units constructed upon Residential Lots.

(p) The exterior covering of all Living Units shall be comprised of at least fifty percent (50%) brick or native stone on the front of the Residential Unit the remainder thereof shall be stucco, as determined by the Declarant. Once a Residential Unit is constructed, no Owner shall change or alter the exterior covering of the Unit unless prior written approval is obtained from the Design Committee.

(q) No Living Unit shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays are approved by the Design Committee.

(r) No accessory building shall be constructed upon any Residential Lot unless specifically allowed by architectural standards prior approved by the Design Committee. In the absence of any architectural standards, no such accessory building shall be allowed.

(s) No exterior lighting of any sort shall be installed or maintained on a Residential Lot if the light source shines directly into a neighboring residence.

(t) No Living Unit shall be occupied until the same is substantially completed in

accordance with the plans of the Unit type.

(u) No Owner of any Residential Lot, except Declarant, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the Design Committee.

(v) No improvement which suffers partial or total destruction shall be allowed to remain on any Residential Lot in such a state for more than three (3) months after the date of such destruction.

(w) No outside toilet, other than self-contained portable toilet units used during construction, shall be placed or constructed on any Residential Lot or the Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system.

(x) No fuel tanks or similar storage facilities shall be constructed or used on any Residential Lot or in the Common Areas.

(y) No exterior antenna or satellite dish of any sort shall be installed or maintained on any Residential Lot except of a height, size and type approved by the Design Committee. No activity shall be conducted within the Property which interferes with television or radio reception.

(z) No Outside clotheslines and other outside clothes drying or airing facilities shall be maintained on any Residential Lot unless the same is maintained within a fenced enclosure and not visible from the Roadways.

(aa) No drilling (except for a water well expressly permitted), refining, quarrying or mining operations of any kind shall be permitted upon any Residential Lot or the Common or Limited Common Areas, and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Residential Lot or the Common Areas or Limited Common Areas. There shall be no water well developed on any Residential Lot by the Owner thereof unless (i) a permit is first obtained from the Board and (ii) the Board first approves the location and facilities used in connection with such well.

(bb) There shall be no blasting or discharge of explosives upon any Residential Lot or the Common and Limited Common Areas except as permitted by the Board; provided that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the development and sale of Residential Lots.

(cc) No signs whatsoever shall be erected or maintained upon any Residential Lot,

except:

(1) Such signs as may be required by legal proceedings,

(2) Such signs as Declarant may erect or maintain on a Residential Lot prior to sale and conveyance,

(3) One "For Sale" or "For Rent" sign having a maximum face area of fifteen (15) square feet and referring only to the premises on which it is situated.

(dd) Except to the extent used by Declarant in connection with and during the development and sale of Residential Lots, no mobile home or similar facility shall be placed upon any Residential Lot, the Common Areas, Limited Common Areas, or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained on any Residential Lot, Common Areas, Limited Common Areas, or Roadways. No large commercial vehicle, motor home, camping trailer, snowmobile trailer, or the like, shall be parked on any Residential Lot, Roadways, Common Areas, or Limited Common Areas except as prior approved by the Board.

(ee) Maintenance of any animals on any Residential Lot shall be subject to the following restrictions and limitations:

(1) No livestock of any kind, including, but not limited to, pigs, cows, goats, sheep, horses, etc. may be kept or maintained on any Residential Lot.

(2) No dangerous or nuisance animals, as defined by the Board, may be maintained or kept on any Residential Lot.

(3) The area of any Residential Lot occupied by an animal shall be properly maintained so as not to create any noxious or offensive odors or conditions which is or may become a nuisance or may cause disturbance or annoyance to other Owners in the Project.

(4) No animals shall be permitted on the Common Areas or Limited Common Areas except when accompanied by and under the control of the persons to whom they belong.

(5) The use and control of any animals shall be subject to further control by rules and regulations promulgated by the Board.

(ff) Subject to further control by rules and regulations promulgated by the Board, only a reasonable number of generally recognized house pets shall be kept on any Lot. House pets shall be permitted on the Common Areas when accompanied by and under the control of the person to whom they belong. No animals of any kind shall be raised for commercial purposes unless prior written approval is obtained from the Board.

(gg) There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles designed for such purposes. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(hh) There shall be no camping upon any Residential Lot or Common or Limited Common Areas except as permitted by the Board by written license.

(ii) No Owner or guest shall park any vehicle or cause any obstruction in front of a driveway

7.2 Exemption of Declarant. Notwithstanding the provisions of Section 7.01, the Declarant shall have the right to use any Residential Lot or Living Unit owned by it, and any part of the Common Areas and Limited Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas and Limited Common Areas or improvement and sale of all Residential Lots owned by Declarant.

7.3 Use of Limited Common Areas. An owner is entitled to the exclusive use of the limited common areas which are adjacent and appurtenant to his unit and shall be permitted to enclose the limited common area appurtenant to his unit so long as he maintains such enclosed limited common area at his sole cost and expense. If the limited common areas appurtenant to a unit are not enclosed to the exclusion of the other unit owners, the owner of the limited common area may delegate the obligation for maintenance of such limited common area to the association and shall be liable for the cost of such maintenance which shall be assessed in accordance with Article V above. Such delegation of authority shall be made in writing to the Association no less than sixty (60) days prior to the date which he intends such delegation to be effective. Upon receipt of such delegation the Association shall transmit the estimated monthly cost of maintenance and the date upon which the delegation is first effective.

7.4 Enforcement of Land Use Restrictions The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration.

(a) Declarant, so long as it has any interest in any of the Property or Residential Lots;



- (b) Any Owner, or
- (c) The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

7.5 Conditional Notes on Plat. Neither the Association nor any Owner of a Residential Lot shall have the authority to waive or alter the conditions or requirements set out as notes on the Plat

## ARTICLE VIII - ARCHITECTURAL CONTROL

8.1 Organization of the Design Committee. There shall be a Design Committee consisting of not fewer than three (3) members. The members of the Design Committee need not be Owners. Declarant shall have the right to appoint, remove and increase the number of members of the Design Committee; provided that such right shall vest in the Board upon the expiration of any continuous period of eighteen (18) months during which Declarant at all times owns less than ten percent (10%) of the Residential Lots then covered by this Declaration. Declarant may voluntarily relinquish control of the Design Committee to the Board at any time. Whenever the Design Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. Unless authorized by the Board, the members of the Design Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Design Committee function.

8.2 Actions Requiring Approval. No fence, wall, Living Unit, accessory or addition to a Living Unit, or landscaping or other improvement of a Residential Lot shall be constructed or performed, nor shall any alteration of any structure on any Residential Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Design Committee.

8.3 Standard of Design Review. Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.

8.4 Design Committee Rules and Architectural Standards The Board may, upon recommendation from the Design Committee, adopt and file as a matter of public record reasonable

rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50 00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.

8.5 Approval Procedure. The Design Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Design Committee. The vote or written consent of a majority of the Design Committee or any authorized subcommittee shall constitute the act of the Design Committee. Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.

8.6 Variance Procedure. If plans and specifications submitted to the Design Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Design Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Design Committee, such request shall be deemed to be denied.

8.7 Nonwaiver. The approval by the Design Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications.

8.8 Completion of Construction Once begun, any improvements, construction, landscaping or alterations approved by the Design Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Design Committee.

8.9 Exemption of Declarant. The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Residential Lot or portions of the Common Areas or Limited Common Areas at any time during the twenty-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

8.10 Estoppel Certificate Within thirty (30) days after written demand therefor is delivered to the Design Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Residential Lot of such Owner that as of the date thereof either (a) all improvements and other work made or done

upon or within such Residential Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

8.11 Disclaimer of Liability. neither the Design Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

## ARTICLE IX - INSURANCE

9.1 Liability Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the County of Davis nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

9.2 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and Limited Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against

the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (b) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect can be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

9.3 Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Residential Lot and to the holder of any mortgage on any Residential Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

9.4 Residential Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Residential Lot and Acts and events thereon.

9.5 Owners Insurance. Each Owner of a Lot, except the Declarant, shall be required at his own cost and expense to obtain and at all times maintain in full force and effect a policy or policies of fire and casualty insurance, with extended coverage endorsement, insuring the Living Unit and garage located on such Owner's Lot in an amount equal to its full insurable replacement value. Each Owner shall provide the Association with a copy of each policy of insurance or a certificate issued by the insurance company to evidence such insurance and each such policy shall provide that it will not be cancelled or terminated by the insurance company without giving the Association at least ten (10) days advance written notice of such cancellation or termination. Such policy or policies shall waive the insurance company's right of subrogation against the Association, the Owners, the Manager, if any, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for waiver of subrogation rights. Such policy may include a standard, non-contributory mortgagee clause or endorsement in favor of any Mortgagee who holds a Mortgage covering all or any part of the Lot. Except as otherwise required by an applicable Mortgage, the proceeds of any such insurance shall be applied to the extent necessary to repair or replace any damage or destruction by fire or other casualty. In the event that any Owner fails to obtain and maintain the insurance required by this Section, or to provide the Association with suitable evidence of such insurance, the Association shall have the right, but without any obligation, to obtain such insurance on behalf of such Owner, and the Owner shall be obligated to immediately reimburse the Association for the costs thereof. The Owner's obligation to reimburse the Association for the cost of any such insurance shall be secured by a lien upon the Owner's Lot as provide in this Declaration with respect to Monthly and Special Assessments.

## ARTICLE X - CONDEMNATION

10.1 If at any time or times the Common Areas or Limited Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas or Limited Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas or Limited Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Residential Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Residential Lot in the Association and the Common Areas and Limited Common Areas to such Owner and any first mortgagee of such Residential Lot, as their interests shall appear, after deducting the proportionate share of said Residential Lot in the cost of debris removal.

## ARTICLE XI - RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

11.1 Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property.

(b) to fail to maintain insurance as required by Article IX. This Section 11.01 may be amended as provided in Section 13.02 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

11.2 Preservation of Common and Limited Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) all first mortgagees of Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common or Limited Common Areas, except to grant easements for utilities and similar or related purposes, as reserved in Section 6.05 of Article XI hereof; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Residential Lot or the Owner thereof.

This Section 11.02 may be amended as provided in Section 13.02 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

11.3 Written Consent Deemed Approved. If an Owner or a mortgagee fails to approve or disapprove a request made pursuant to this Article XI, or any other Article in this Declaration, within sixty (60) days after such request is mailed, by certified mail, return receipt requested, the request shall be deemed to be approved from such Owner or mortgagee.

11.4 Notice of Matters Affecting Security. The Board shall give written notice to any first mortgagee of a Residential Lot requesting such notice whenever:

(a) there is any default by the Owner of the Residential Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00;  
or

(c) there is any condemnation or taking by eminent domain of the Residential Lot subject to the first mortgage or of the Common Areas; or

(d) any of the following matters come up for consideration or effectuation by the Association;

(1) abandonment or termination of the Planned Development established by this Declaration;

(2) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(3) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

11.5 Notice of Meetings. The Board shall give to any first mortgagee of a Residential Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

11.6 Right to Examine Association Records Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Residential Lot securing the mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

11.7 Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Area, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

11.8 Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Residential Lot subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Residential Lot.

## ARTICLE XII - MISCELLANEOUS

12.1 Notices Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted to be given to the Design Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Design Committee.

12.2 Amendment Except as provided in Section 5.07 of Article V and Article XI, this Declaration may be amended by:

- (a) the affirmative vote of a majority of the Owners, and

(b) the written consent of Declarant, if such amendment is adopted at a time when Declarant holds Class B membership in the Association, and

(c) the written consent of Kaysville City, and

(d) the filing of an instrument for record in the office of the County recorder of Davis County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners, has the written consent of Kaysville City, and, if required, has the written consent of Declarant.

12.3 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 13.03:

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

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

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

12.4 Declarant's Rights Assignable All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

12.5 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof,



which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

12.6 Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and all inure to the benefit of Declarant, the Owners, all parties who hereafter acquire any interest in a Residential Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Residential Lot or Living Unit shall comply with, and all interests in all Residential Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Residential Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

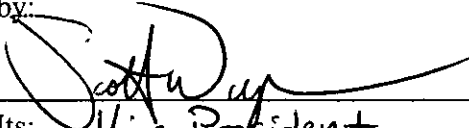
12.7 Duration. The covenants and restrictions of this Declaration shall remain in effect until twenty (20) years from the date this Declaration was first filed in the office of the County Recorder of Davis County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Residential Lots and their first mortgagees, if any, voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George W. Bush, the current President of the United States at the time this Declaration was recorded.

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

"Declarant"

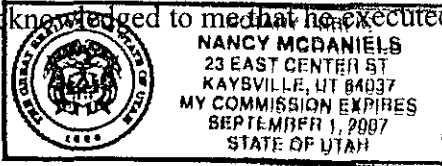
Windruff Construction Company

by:

  
 Its: Vice President

STATE OF UTAH                     )  
   : SS  
 COUNTY OF DAVIS                )

On the 16th day MARCH, 2006, personally appeared  
 before me SCOTT WYNN who being by me duly sworn did say that he is the  
Vice President of Windruff Construction Company, and that the within and foregoing  
 instrument was signed in behalf of said company and he  
 acknowledged to me that he executed the same.



Nancy McDaniels  
 NOTARY PUBLIC

EXHIBIT "A"

PROPERTY

THE FOLLOWING REAL PROPERTY LOCATED IN DAVIS COUNTY, STATE OF UTAH,  
TO WIT:

PART OF THE SOUTHWEST QUARTER OF SECTION 32 AND THE SOUTHEAST  
QUARTER OF SECTION 31, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE  
AND MERIDIAN, U S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE PROPOSED NORTHEASTERLY RIGHT OF WAY LINE  
SCHICK LANE, SAID POINT BEING NORTH 00°05'30" EAST ALONG THE SECTION LINE  
1721.86 FEET AND SOUTH 89°54'30" EAST 478.30 FEET FROM THE SOUTHWEST  
CORNER OF SAID SECTION 32; THENCE NORTH 39°33'15" WEST 384.04 FEET; THENCE  
NORTH 50°26'45" EAST 105.50 FEET; NORTH 78°12'16" EAST 42.94 FEET; THENCE  
NORTH 50°26'45" EAST 211.00 FEET; NORTH 08°36'40" EAST 51.00 FEET; THENCE  
NORTH 50°26'32" EAST 107.55 FEET TO AN EXISTING FENCE; THENCE ALONG SAID  
EXISTING FENCE THE FOLLOWING TWO (2) COURSES: (1) SOUTH 39°29'22" EAST 27.91  
FEET AND (2) SOUTH 39°45'47" EAST 370.12 FEET TO SAID NORTHEASTERLY RIGHT  
OF WAY LINE; THENCE SOUTH 50°26'32" WEST ALONG SAID NORTHEASTERLY LINE  
501.36 FEET TO THE POINT OF BEGINNING.

ALSO TO BE KNOWN AS, TO-WIT:

ALL OF LOTS \_\_\_\_ THROUGH \_\_\_\_, ASHWOOD ESTATES CLUSTER SUBDIVISION  
PHASE I, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK \_\_\_\_, PAGE  
\_\_\_\_, OF THE OFFICIAL RECORDS OF DAVIS COUNTY, WHICH LOT IS CONTAINED  
WITHIN ASHWOOD ESTATES CLUSTER SUBDIVISION PHASE I, IDENTIFIED IN THE  
"DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ASHWOOD  
ESTATES CLUSTER SUBDIVISION PHASE I" RECORDED IN BOOK \_\_\_\_ AT PAGE  
\_\_\_\_. SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,  
CHARGES AND LIENS PROVIDED FOR IN SAID DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS.

EXHIBIT "B"

**COMMON AREAS**

11 -

The Common Areas within Ashwood Estates Cluster Subdivision Phase I shall include all Roadways and other common areas as shown and described on the Plat

EXHIBIT "C"

UNDEVELOPED LAND

11-093-0040-pt

PART OF THE SOUTHWEST QUARTER OF SECTION 32 AND THE SOUTHEAST QUARTER OF SECTION 31, T.4N., R.1W, S.L.B.&M., U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF ASHWOOD ESTATES SUBDIVISION P.U.D. PHASE 1, SAID POINT BEING N00°05'30"E ALONG THE SECTION LINE 2017.61 FEET AND S89°54'30"E 233.27 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 32; THENCE N39°33'15"W 391.86 FEET; THENCE N50°39'27"E 500.47 FEET TO AN EXISTING FENCE; THENCE ALONG SAID FENCE S39°29'22"E 375.99 FEET TO THE NORTHEAST CORNER OF SAID PHASE 1; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PHASE 1 THE FOLLOWING FIVE (5) COURSES: (1) S50°26'32"W 107.55 FEET, (2) S8°36'40"W 51.00 FEET, (3) S50°26'45"W 211.00 FEET, (4) S78°12'16"W 42.94 FEET; (5) S50°26'45"W 105.50 FEET TO THE POINT OF BEGINNING.