

AFTER RECORDING RETURN TO:

Woodside Castleton, LLC  
Attn: Nathan W. Pugsley  
39 East Eagleridge Drive, Suite 102  
North Salt Lake, UT 84054

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RICHARD T. MAUGHAN  
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**Declaration of Condominium for Foxboro North Castleton,  
an expandable Utah condominium project**

This Declaration of Condominium is made and executed by Woodside Castleton, LLC, a Utah limited liability company, whose principal address is 39 East Eagleridge Drive, Suite 100, North Salt Lake, Utah 84054 (hereinafter referred to as the "Declarant").

**RECITALS:**

*In addition to the terms of this Declaration of Condominium, the Property is and shall be subject to the terms of that certain Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Foxboro North recorded on June 27, 2007 as Entry No. 2283375 in Book 4313, Pages 127-203, in the office of the County Recorder of Davis County, Utah as amended or supplemented from time to time (the "Master Declaration"). This Declaration is and shall be subordinate to the Master Declaration. This Declaration is, and shall for all purposes be considered to be, the "Castleton Supplemental Declaration," as that term is defined in the Master Declaration.*

A. This Declaration of Condominium affects that certain real property located in Davis County, Utah described with particularity in Article II below (hereinafter referred to as the "Land").

B. Declarant has developed, or is in the process of developing, or will develop upon the Land a residential condominium project which shall include certain Units, Limited Common Area, Common Area and other improvements. All of such construction has been, or is to be, performed in substantial accordance with the plans contained in the Condominium Plat to be recorded prior to or concurrently herewith.

C. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Land, together with an appurtenant undivided ownership interest in the Common Area and a corresponding membership interest in the Association, subject to the Condominium Plat, Combined Map and Master Map, and this Declaration.

D. Since the completion of the Project may be in phases, the completed Project will consist of the original phase and all subsequent phases.

E. Declarant desires, by filing this Declaration of Condominium and Condominium Plat, to submit Phase 1 of the Land and all improvements now or hereafter construct thereon to the provisions of the Utah Condominium Ownership Act (the "Act") as the same may be amended from time to time.

F. The Project is to be known as "Foxboro North Castleton."

NOW, THEREFORE, in consideration of the foregoing recitals and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

**1. DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

**1.1** "Additional Charges" shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

**1.2** "Additional Land" shall mean and refer to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference.

**1.3** "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Foxboro North Castleton Condominium Association, Inc. on file or to be filed with the State of Utah.

**1.4** "Assessment" shall mean and refer to any amount imposed upon, assessed or charged to the Owner of a Unit or Resident at the Project.

**1.5** "Association" shall mean and refer to the all of the Unit Owners at Foxboro North Castleton taken or acting as a group in accordance with the Declaration.

**1.6** "Building" shall mean and refer to any of the structures constructed in the Project.

**1.7** "Business Use and Trade" shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in full or part-time; b) such activity is intended to or does generate a profit; or c) a license is required therefor.

**1.8** "Bylaws" shall mean and refer to the Bylaws of the Foxboro North Castleton Condominium Association, Inc., a copy of which is attached to and incorporated in this Declaration by reference as **Exhibit B**.

**1.9** "Capital Improvement" shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

**1.10** "City" shall mean and refer to the City of North Salt Lake in Davis County, Utah.

**1.11** “Common Areas” or “Common Areas and Facilities” shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Land and all landscaping, sidewalks, walkways, stairways and landings, balconies, recreation or play areas, fencing, parking areas, private drives or roadways, entry monuments and gates, and exterior Building surfaces, including roofs, but excluding all Units as herein defined;

(b) Those Common Areas and Facilities and Limited Common Areas and Facilities specifically set forth and designated as such on the Map or in this Declaration;

(c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management, including any central services such as power, water, gas and light; and

(d) All Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Map.

**1.12** “Common Expense” shall mean and refer to:

- a. All sums lawfully assessed against the Owners;
- b. Expenses of administration of the Association and the maintenance, repair or replacement of the Common Areas and Facilities;
- c. Expenses allocated by the Association among the Owners;
- d. Expenses agreed upon as common expenses by the Association;
- e. Expenses declared common expenses by the Declaration;

**1.13** “Community” shall mean and refer collectively to the Foxboro North Castleton Properties.

**1.14** “Community Wide Standard” shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Management Committee from time to time.

**1.15** “Condominium Plat” or “Plat” shall mean and refer to the Condominium Plat or Plats of Castleton North at Foxboro North and subsequent phases recorded in the office of the County Recorder of Davis County, Utah as amended or supplemented from time to time by Declarant, together with any map which may, in the future, be Recorded with respect to the Additional Land.

**1.16** “Declaration” shall mean and refer to this Declaration of Condominium for Foxboro North Castleton, an expandable Utah condominium project.

**1.17** “Declarant Affiliate” means any Person that is owned or controlled by the Declarant or is otherwise affiliated with Declarant through direct or indirect common ownership or control.

**1.18** “Eligible Insurer” shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

**1.19** “Eligible Mortgagee” shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

**1.20** “Eligible Votes” shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

**1.21** “Emergency Assessment” shall have the meaning set for thin Section 3.22 below.

**1.22** “Family” and “Single Family” shall mean one individual, or two 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 four, but not more than four, non-related persons living 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.

**1.23** “Governing Documents” shall mean the Master Declaration, Declaration, Articles of Incorporation, Bylaws, Plat, and Rules and Regulations.

**1.24** “Guest” shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.

**1.25** “Improvement” shall mean and refer to any physical change or addition to the Land to make it more valuable.

**1.26** “Individual Assessment” shall have the meaning set forth in Section 3.21 below.

**1.27** “Initial Special Assessment” shall have the meaning set forth in Section 3.24.1.

**1.28** “Land” shall mean and refer to all of the real property subject to this Declaration.

**1.29** “Limited Common Areas” shall mean and refer to those Common Areas designated in this Declaration or in the Condominium Plat as reserved for the use of a certain Unit Owner to the exclusion of the other Unit Owners. Any doorsteps, landings, porches, balconies, decks, patios, garages, or other improvements intended to serve only a single Unit, shall constitute Limited Common Area appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a designation.

**1.30** "Majority" shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling fifty and 01/100ths (50.01%) percent or more of the total eligible number.

**1.31** "Management Committee" or "Committee" shall mean and refer to the committee of Owners elected or appointed to manage the affairs of the Association.

**1.32** "Manager" shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

**1.33** "Map" shall mean and refer to the Condominium Plat on file in the office of the County Recorder of Davis County, Utah.

**1.34** "Member" shall mean and refer to the Owner of a Unit.

**1.35** "Mortgage" shall mean and refer to both a first mortgage or first deed of trust on any Unit.

**1.36** "Mortgagee" shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit.

**1.37** "Neighborhood" shall mean and refer to this Project.

**1.38** "Owner" shall mean and refer to holder of a fee or an undivided fee interest in a Unit in this Project, excluding a mortgagee, or a beneficiary or trustee under a deed of trust, unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

**1.39** "Permanent Resident" shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than sixty (60) days in any twelve (12) month period.

**1.40** "Person" shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

**1.41** "Phase" shall mean and refer to a particular stage or area of development within the Project so designated by the Developer.

**1.42** "Plat" or "Plat Map" shall mean and refer to the Condominium Plat.

**1.43** "Project" shall mean and refer to Foxboro North Castleton.

**1.44** "Property" shall mean and refer to all of the land or real estate, improvements and appurtenances submitted hereby to the Act and this Declaration.

**1.45** "Recreational, Oversized or Commercial Vehicle" shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other

**1.46** “Repair” shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

**1.47** “Resident” shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

**1.48** “Single Family Residence” shall mean and refer to both (a) the architectural style of a Unit and (b) the nature of the residential use permitted.

**1.49** “Survey Map” shall mean and refer to the Condominium Plat on file in the office of the County Recorder of Davis County.

**1.50** “Transfer Fee” shall have the meaning set forth in Section 3.24.2.

**1.51** “Unit” shall mean and refer to one of the residential living units in the Project intended for independent use as defined in the Act, together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit, and shall include anything located within or without said Unit but designated and designed to serve only that Unit such as built-ins, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding the exterior walls and surfaces of Buildings and Units, interior common, bearing or party walls, floor joists, foundations and roofs. Fixtures and the like shall also be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim consisting of, among other things and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installation constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures and appliances within any Unit which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building within which the Unit is situated, shall be considered part of the Unit.

**1.52** “Unit Number” shall mean and refer to the number, letter or combination thereof designating a particular Unit.

**1.53** “Foxboro North Castleton Properties” shall mean and refer to the property and improvements described on the Plat.

## **2. SUBMISSION**

The Land described with particularity on **Exhibit C** attached hereto and incorporated herein by this reference is hereby submitted to the Act.

The Land is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein.

The Land is SUBJECT TO the described easements and rights of way.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Land; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### 3. COVENANTS, CONDITIONS, AND RESTRICTIONS

As stated above, in addition to the terms of this Declaration of Condominium, the Property is and shall be subject to the terms of that certain Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Foxboro North recorded on June 27, 2007 as Entry No. 2283375 in Book 4313 of Plats, Pages 127 - 203 and any amendments thereto in the office of the County Recorder of Davis County, Utah as amended or supplemented from time to time (the "Master Declaration"). This Declaration is and shall be subordinate to the Master Declaration unless a restriction or covenant herein is more burdensome than in the Master Declaration. In such cases, these provisions shall apply. This Declaration is, and shall for all purposes be considered to be, the "Castleton Supplemental Declaration," as that term is defined in the Master Declaration.

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

**3.1 Description of Improvements.** The significant improvements contained or to be contained in the Project will include Buildings, Units, and Common Areas and Facilities. The Buildings will be constructed principally of concrete foundations with exterior walls of stone, stucco veneer, vinyl or wood composition siding, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. Each Unit will be assigned a garage or parking space. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Condominium Plat.

**3.2 Description and Legal Status of the Property.** The Map shows the Unit Number of each Unit, its location, those Limited Common Areas which are reserved for its use, and the

Common Areas to which it has immediate access. All Units shall be capable of being independently owned, encumbered and conveyed.

**3.3 Incorporation of the Association.** The Association shall be in the form of a corporation or limited liability company. If for any reason the Association loses such status, the Management Committee may re-incorporate or re-institute the corporation or limited liability company without any additional approval required.

**3.4 Membership in the Association.** Membership in the Association is mandatory and may not be partitioned from the ownership of a Unit. Each Unit Owner by virtue of his accepting a deed or other document of conveyance to a Unit is deemed to be a member of the Association.

**3.5 Limited Common Areas.** Limited Common Area may not be partitioned from the Unit to which it is appurtenant. The exclusive use of Limited Common Area is reserved to the Unit to which it is assigned on the Plat Map.

**3.6 Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of UNIT NO. \_\_\_\_ in BUILDING NO. \_\_\_\_ contained within PHASE \_\_\_\_, Foxboro North Castleton, an expandable Utah condominium project, as the same is identified in the Condominium Plat recorded in Davis County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Davis County, Utah (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium of Foxboro North Castleton, an expandable Utah condominium project recorded in Davis County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Davis County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such rights of use shall automatically accompany the transfer of the Unit to which they relate.

**3.7 Ownership and Use.** Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his Unit, to an undivided percentage of ownership interest in the Common Areas and to membership in the Association as set forth herein and subject to the following:



3.7.1 Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

3.7.2 Title to the Common Area. Each Unit Owner shall be entitled to a percentage of undivided ownership interest (as further described in Section 3.47 of this Declaration) in and to the Common Areas and Facilities free and clear of all liens (other than the current years taxes, if any), prior to the Declarant's first conveyance of a Unit.

3.7.3 Mandatory Membership in the Association. Each owner of a Unit by virtue of his acceptance of a deed or other document of conveyance shall automatically become a member of the Association.

3.7.4 Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

3.7.2.1 The right of the Association to limit the number of guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Area;

3.7.2.2 The right of the Association to suspend the voting rights of and/or the privilege to use the recreational amenities by a member for a period not to exceed ninety (90) days for: (a) a material violation of the Declaration or Rules and/or (b) not paying his share of the Common Expenses;

3.7.2.3 Subject to the prior written consent of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies (where appropriate), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant; and

3.7.2.4 The right of the Association to charge a reasonable admission or other fee for the use of any recreational facility situated upon the Common Area.

3.7.5 Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative rules and regulations including fines for the violations thereof and, in its sole discretion, to impose

reasonable user fees for the amenities. Such rules, regulations and use restrictions shall be binding upon all Owners and Residents, their guests and invitees.

3.7.6 Initial Use Restrictions. Use of the Units is subject to the following limitations and restrictions:

3.7.2.1 Parties Bound. All provisions of the Declaration, Bylaws, Rules and Regulations shall be binding upon all Owners and Residents, and their families, guests and invitees.

3.7.2.2 Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

3.7.11.2(a) The development of any unclean, unhealthy, unsightly, or unkempt condition;

3.7.11.2(b) The storage of any item, property or thing that causes any Unit or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

3.7.11.2(c) The storage of any substance, thing or material upon any Unit or in the Common Areas that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

3.7.11.2(d) The creation or maintenance of any noxious or offensive condition or activity in or about said property;

3.7.11.2(e) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

3.7.11.2(f) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

3.7.11.2(g) Creating or maintaining an unreasonable amount of noise or traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m. on weekdays and after Midnight and 8:00 a.m. on weekends and holidays; and

3.7.11.2(h) Violation of U.C.A., Section 78-38-9 (1999) (i.e., drug houses and drug dealing; gambling; group criminal activity;

prostitution; weapons; parties), as it may be amended or supplemented from time to time.

3.7.2.3 Signs; Unsightly Work and Unkempt Conditions. No "For Sale" or "For Rent" or other signs or banners are permitted in the Common Area or so as to be visible from the street, unless approved in writing by the Committee. Activities (e.g., assembly/disassembly of motor vehicles and other mechanical devices) which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

3.7.2.4 Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon.

3.7.2.5 Subdivision of a Unit. No Unit shall be subdivided or partitioned.

3.7.2.6 Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, paint ball guns, blow-dart guns, and other firearms of all types, regardless of size.

3.7.2.7 Temporary Structures. No Owner or occupant shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee.

3.7.2.8 Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.

3.7.2.9 Energy Conservation Equipment. Except in compliance with U.C.A. Section 17-27-901, as it may be amended from time to time, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project, and such installations must be approved by the Management Committee in advance.

3.7.2.10 Business Use. No commercial trade or business may be conducted in or from any Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning

requirements for the Project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee and (e) the business activity complies with the requirements of the Master Declaration.

Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

**3.7.2.11 Storage and Parking of Vehicles.** The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to rules and regulations adopted by the Committee from time to time. Motor vehicles parked in violation of the parking rules and regulations may be impounded, towed and stored, at the Owner's sole expense, without further notice. No mechanical work or repairs are to be conducted in streets or front yards. No inoperative automobile or vehicle shall be placed or stored on the property. Recreational vehicles, commercial-type vehicles, and trucks shall not be parked or stored on the property. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall not be parked or stored on the property. The Association, Committee and members of the Committee shall be indemnified and held harmless from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a motor vehicle pursuant hereto.

**3.7.2.12 Bicycles.** Bicycles in the Common Areas must be parked or stored in the bicycle racks or storage areas designated by the Management Committee.

**3.7.2.13 Aerials, Antennas, and Satellite Systems.** Antennas and Satellite Dishes: Antennas and satellite dishes shall be prohibited within the Property, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is:

3.7.11.2(a) located in the attic, crawl space, garage, or other interior spaces of the dwelling or another approved structure on the Unit, so as not to be visible from outside the dwelling or other structure

3.7.11.2(b) attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the dwelling directly in front of such antenna;

Notwithstanding the foregoing, should an Owner determine that a Permitted Device cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, then the Owner may install the device in the least conspicuous alternative location on the Unit where an acceptable quality signal can be obtained. The Board may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device.

3.7.2.14 Window Coverings. No aluminum foil, newspapers, cardboard, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Unit.

3.7.2.15 Windows and Doors. All exterior doors, windows, and window units in the Project shall be harmonious, and comparable in size, design, construction materials, and quality so as not to detract from uniformity in appearance and quality of construction.

3.7.2.16 Pets. No pets, animals, livestock or poultry of any kind shall be commercially bred in, on or about the Project. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied or tethered in the Common Area. The Management Committee may establish Pet Rules, including rules limiting the number of pets per unit, and charge a pet deposit and/or a registration fee. Two small pets (30 lbs and under) per unit will be allowed.

3.7.2.17 Insurance. Nothing shall be done or kept in, on or about any Unit or in the Common Areas or Limited Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Management Committee, but for such activity, would pay.

3.7.2.18 Laws. Nothing shall be done or kept in, on or about any Unit or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

3.7.2.19 Damage or Waste. No damage to, or waste of, the Common Areas or Limited common Areas shall be committed by any Owner or Resident, their guests or invitees; and each Owner and Resident shall indemnify and hold the Management Committee and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, their guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

3.7.2.20 Structural Alterations. Except in the case of an emergency repair, no structural alterations of any kind to the Common Areas or Limited Common Areas shall be done or permitted by any Owner without the prior written consent of the Management Committee.

**3.8** Leases. All Owners and Units must comply with the leasing requirements set forth in the Master Declaration. Any notices or lease copies required to be delivered pursuant to the Master Declaration shall also be delivered to the Management Committee. Notwithstanding the above provision, no Owner shall rent or lease a Unit with an initial lease term of less than thirty (30) days.

**3.9** Easement -- Support, Maintenance and Repair. There is hereby RESERVED and the Association is hereby GRANTED a non-exclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance and regulation of the Common Area and Facilities.

**3.10** Liability of Owners and Residents for Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his negligence.

**3.11** Encroachments. If any portion of Common Area, Limited Common Area, or a Unit encroaches or comes to encroach upon other Common Area, Limited Common Area, or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

**3.12** Management Committee. The Association shall be managed by a Management Committee subject to the following:

3.12.1 Composition of the Committee. The Management Committee shall be comprised of three (3) Members of the Association who shall be duly qualified and elected or appointed.

3.12.2 Appointment and Election of Members. At the annual meeting of the Association, the Members of the Association shall elect the members of the Management Committee. Cumulative voting is not allowed. Anything to the contrary notwithstanding, Declarant alone shall be entitled to select all of the Members of the Management Committee until the occurrence of the earlier of the following events (the

"Events") at which time control of the Management Committee shall be transferred by Declarant to the Association no later than 120 days after:

3.12.2.1 The date by which seventy five percent (75%) of the Units in the Project have been conveyed to a Unit purchaser; or

3.12.2.2 Ten (10) years after the first Unit in the Project is conveyed by Declarant; or

3.12.2.3 The date that Declarant abandons Phasing of the Additional Land by recording of a waiver as set forth below; or

3.12.2.4 Declarant expressly waives the right.

3.12.3 Voting Restrictions. Each Unit shall have one (1) vote. The following additional restrictions apply to voting on Association issues, including but not limited to the election of Committee Members:

3.12.2.1 Subject To Assessment. No vote shall be cast or counted for any Unit not subject to assessment.

3.12.2.2 Multiple Owners. When more than one person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one person or entity seeks to exercise it.

3.12.2.3 Leased Unit. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

3.12.4 Terms. Terms of membership on the Management Committee shall be two (2) years; provided, however, at the first Annual meeting of the Association at which the Members of the Association elect the Members on the Management Committee, two (2) of the Members of the Management Committee shall be elected for two (2) year terms and one (1) Member of the Management Committee shall be elected for a one (1) year term. Thereafter, all Members shall be elected to serve a two (2) year term.

3.12.5 Qualify. To qualify, a Member of the Committee must be an individual Unit Owner, or the legal representative of an entity or institutional Owner in good standing.

3.13 Status and General Authority of Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs 3.13.1 through 3.13.12 below,

constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

3.13.1 Access. To enter into or upon any Unit to (1) make repairs and to do other work necessary for the proper maintenance and operation of the Common Areas and Facilities from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry.

3.13.2 Grant Easements. With or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

3.13.3 Execute Documents. To execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.

3.13.4 Enter Into Contracts. To enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

3.13.5 Purchase. To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

3.13.6 Add Property. To add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least seventy five (75%) of the Association Members.

3.13.7 Promulgate Rules. To promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the Act and this Declaration.

3.13.8 Meetings. To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

3.13.9 Delegation of Authority. To delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a



professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

**3.13.10 Standing.** The Association, acting through the Management Committee, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Owners Association and any aggrieved Unit Owner shall be granted a right of action against Unit Owners for failure to comply with the provisions of the Declaration, By-laws, or equivalent documents, or with decisions of the Owners Association which are made pursuant to authority granted the owners association in such documents. Unit Owners shall have similar rights of action against the owners association. The Association, acting through the Management Committee, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Areas and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

**3.13.10.1** Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding." The Management Committee from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

**3.13.10.2** Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Management Committee and individual members of the Management Committee or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 3.13.11.2 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Management Committee:

3.13.10.2(a) The Management Committee shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Management Committee shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Management Committee shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Management Committee shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Management Committee shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Management Committee has fully complied with the following procedures:

3.13.10.2(a)(i) The Management Committee shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Utah attorney regularly residing in Davis or Salt Lake County, Utah, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Management Committee shall be authorized to spend up to an aggregate of Five Thousand Dollars (\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefore, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Management Committee may increase said \$5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose.

3.13.10.2(a)(ii) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and

transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Management Committee shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

3.13.10.2(a)(iii) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Management Committee affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Management Committee thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Management Committee: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Management Committee shall call for a vote of the Members, whereupon: (x) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Management Committee shall be authorized to proceed to institute,

prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Management Committee shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Management Committee shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

3.13.10.2(a)(iv) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Management Committee that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Management Committee shall have the authority to accept such settlement offer. In all other cases, the Management Committee shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

3.13.10.3 In no event shall any Association working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy).

3.13.10.4 Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 3.13.11, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Management Committee without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 3.13.11, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Management Committee who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 3.13.11 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and

(iii) this Section 3.13.11 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Management Committee; and any purported amendment or deletion of this Section 3.13.11, or any portion hereof, without both of such express prior written approvals shall be void.

**3.13.11 All other Acts.** To perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

Anything to the contrary notwithstanding, while Declarant controls the Association and before the occurrence of the Events described herein, any amendments to the Declaration or mergers must be approved in writing and in advance by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

**3.14 Delegation of Management Responsibilities.** The Project may be managed by a professional manager, selected by the Management Committee. The termination provision of any such contract must not require a termination penalty or early termination charge, or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. Any such contracts may be terminated for cause in accordance with Title 38, Code of Federal Regulations, Section 36.4360a (f), as it may be amended from time to time. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities.

**3.15 Meeting of the Association.** The Association shall meet as a group at least annually.

**3.16 Capital Improvements.** All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

**3.16.1 Committee Discretion/Expenditure Limit.** Any capital improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Management Committee alone (the "Capital Improvement Ceiling").

**3.16.2 Unit Owner Approval/Expenditure Limit.** Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area.

3.16.3 Unit Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas.

3.17 Maintenance. Each Unit, the Limited Common Area and the Common Area shall be maintained, repaired and replaced in accordance with the following covenants, conditions and restrictions:

3.17.1 Clean and Attractive Condition. Each Owner shall maintain their respective Units and the appurtenant Limited Common Areas in a usable, clean, functional, attractive and good condition, consistent with Community Standards. Likewise, the Association shall maintain the Common Areas in a usable, clean, functional, attractive and good condition, consistent with Community Standards.

3.17.2 Neglect. If the Committee determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

3.17.2.1 Assessment/Lien. Such costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against his Unit, as provided below.

3.17.2.2 Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

3.17.2.3 Emergency Situation. If the Committee determines that an emergency exists, then notice and the opportunity to cure the default is not necessary.

3.17.2.4 Optional Repairs. The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

3.17.2.5 Right of Entry. The Association or its agents or employees shall have a right to entry upon or into any Unit or Limited Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

**3.17.3 Alterations to the Common Area.** The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without the consent of the Committee or Members of the Association. Provided, however, no Owner or Resident may make any structural alterations to the Common Area (including the Limited Common Area) without the prior written consent of the Committee.

**3.17.4 Landscaping.** All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with Community Wide Standards. Specific written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project.

**3.17.5 Area of Common Responsibility.** The Association shall maintain, repair and replace all of the Common Area and Facilities, including, but not limited to, the roofs, exterior surfaces, foundations, columns, girders, beams, supports, main walls, and all other structural components of the Buildings (the "Common Responsibility").

**3.17.6 Area of Personal Responsibility.** Each Owner shall maintain, repair and replace his Unit and Limited Common Area, including by way of illustration but not limitation all individual services such as power, light, gas; hot and cold water; heating, refrigeration, and air conditioning; fixtures; glass, windows and window units; and doors and door units. Each Unit Owner shall be responsible for keeping his Unit and Limited Common Area clean, attractive, safe, sanitary and functional so as not to detract from the health, safety or uniform appearance or design of the Project and in a manner consistent with both Community Standards and rules and regulations adopted by the Management Committee.

**3.18 Common Expenses.** Each Owner shall pay his share of the Common Expenses, subject to and in accordance with the procedures set forth below.

**3.18.1 Declarant.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Unit owned by it until such time as the earlier of the following events occurs: (1) the Period of Declarant's Control ends; or (2) the physical structures are substantially completed, certificates of permanent occupancy are issued, and the Units are sold or rented; or (3) Declarant records a Waiver of right not to pay Assessments.

**3.18.2 Purpose of Assessments.** The Assessments provided for herein shall be used for the general purpose of paying the Common Expenses, and promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents.

3.18.3 Creation of Assessments. Each Owner, by acceptance of a deed or other document of conveyance to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed against him by the Management Committee, and his share of the Common Expenses.

3.18.4 Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

3.18.4.1 Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

3.18.4.2 Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, and each Unit Owner's share of the Common Expenses, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

3.18.5 Apportionment. The common profits, losses and voting rights of the Project and the Association's share of the Common Expenses shall be distributed among and be charged equally to the Unit Owners.

3.18.6 Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the annual meeting of the Association by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Common Area Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

3.18.7 Payment of Assessments. Payment of all Assessments shall be made to the Foxboro North Castleton Condominium Association.



3.18.8 Personal Obligation of Owner. Each Unit Owner is obligated to pay his share of the Common Expenses and any Additional Charges which may be assessed.

3.18.9 Equitable Changes. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Common Area Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

3.18.10 Reserve Account. The Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and major Repairs. Absent gross mismanagement or intentional or willful misconduct with respect to the Reserve Account, neither the Association nor the Committee members shall be liable for its good faith attempt at funding the Reserve Account. The Reserve Account funds shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary and appropriate, including for costs relating to the maintenance, repair, and replacement of Units.

3.18.11 Working Capital Fund. The Association shall establish a working capital fund for the initial months of the Project operations equal to at least a two months' estimated Common Area charge for each Unit.

3.18.12 Capital Asset Table. The Committee shall establish and update at least annually a Capital Asset Table which shall list each major asset and physical improvement in the Project, such as the roofs, building exteriors, driving lanes, parking areas, entry and entry monument; its expected useful life; the present cost of replacement; the estimated cost to replace the item at the end of its useful life; the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

3.18.13 Analysis Report. The Management Committee shall prepare and update at least annually a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association.

3.18.14 Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

3.18.15 Superiority of Assessments. Each Owner by accepting a deed or other document of conveyance to a Unit, agrees to waive or subordinate, and hereby waives and subordinates, his homestead exemption to his share of the Common Expenses.

3.18.16 Budget Deficits During Declarant Control Period. Prior to the occurrence of one of the Events (as defined in Section 3.12.2), Declarant or an affiliate of Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the Assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant or an affiliate of Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Declarant or a Declarant affiliate, in Declarant's sole discretion may guarantee repayment of such loan, if required by the lending institution, but no mortgage secured by the Common Area or any improvements maintained by the Association shall be given in connection with such loan.

3.19 Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

3.19.1 Committee Based Assessment. Other than the Initial Special Assessment, so long as the special assessment does not exceed the sum of Five Hundred Dollars (\$500.00) (the "Special Assessment Limit") per Unit in any one fiscal year, the Committee may impose the special assessment without any additional approval.

3.19.2 Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

3.20 Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

3.20.1 Benefit only To Specific Unit. If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

3.20.2 Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any

expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

**3.21 Individual Assessments.** Individual Assessments shall be levied by the Committee against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Committee in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible; (c) any other charge, fine, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration. Owners may be charged fines for material violations of the Project Documents in accordance with the Act.

**3.22 Emergency Assessments.** If the annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

Any Emergency Assessment in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the members other than the Declarant voting in person or by proxy, at a meeting duly called for such purpose and the written consent of Declarant.

**3.23 Master Association Assessments.** All Owners, except Declarant and the Declarant's Affiliates, shall be subject to any and all Assessments which the Master Association may levy pursuant to the Master Declaration.

**3.24 Initial Special Assessment & Transfer Fee.**

3.24.1 Upon the transfer of any Unit from Declarant or a Declarant Affiliate to a new Owner, the Association shall charge a one-time Special Assessment against the new Owner, and his or her Unit, in an amount equal to six (6) times the then-current monthly Assessment (the "Initial Special Assessment"), to cover the costs of capitalizing the Association, to fund working capital needs of the Association, to perpetuate the reserve funds of the Association and to reduce the Common Expenses of the Project. In the event the Initial Special Assessment is not paid in full upon transfer of a Unit to an Owner, then the Association shall have the same rights and remedies available to collect the Initial Special Assessment as it does for any other Assessment hereunder. Subject to the terms of this Declaration, the use of any funds generated by the Special Assessment described in this Section shall be at the sole discretion of the Association.

3.24.2 Upon any transfer, pledge, or alienation of a Unit, the Association shall charge a transfer fee against any new Owner, and his or her Unit, in an amount equal to two (2) times the then-current monthly Assessment ("Transfer Fee"), to cover the costs to the Association of effectuating any such transfer of membership upon the books of the

Association, to fund working capital needs of the Association, to perpetuate the reserve funds of the Association and or to reduce the Common Expenses of the Project. Subject to the terms of this Declaration, the use of any funds generated by the transfer fee shall be at the sole discretion of the Association.

**3.25 Collection of Assessments.** The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

**3.25.1 Delinquent Accounts.** Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Unit, regardless of whether a written notice is recorded. Each Assessment, together with interest, costs, and attorney's fees shall also be the personal obligation of the person who was the owner of such unit at the time the Assessment fell due. Personal obligations for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

**3.25.2 Late Fees and Default Interest.** A late fee of \$50.00 shall be assessed on all tardy payments. Default interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts.

**3.25.3 Lien.** If any Unit Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district and; (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

**3.25.4 Foreclosure of Lien and/or Collection Action.** If the Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

**3.25.5 Personal Obligation.** Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

**3.25.6 No Waiver.** No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Unit.

**3.25.7 Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or

performed by the Association or committee under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

**3.25.8 Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

**3.25.9 Appointment of Trustee.** If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

**3.25.10 Attorney-in-Fact.** Each Owner by accepting a deed to a Unit hereby irrevocably appoints the Association as his attorney-in-fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is delinquent in his Assessments. Upon written demand, sent both to the Owner and the renter, rent due shall be paid directly to the Association until such time as the Assessments due on the Unit are current; and the Owner agrees, by accepting a deed or other document of conveyance to a Unit, to credit the renter, against rent due, for the amount of money paid to the Association.

**3.25.11 Assignment of Rents.** Each Owner by virtue of his acceptance of a deed or other document of conveyance to a Unit hereby agrees to an assignments of rents as set forth in the Act.

**3.26 Liability of Management Committee.** The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith, and except for

any action that is taken that is beyond the contemplated scope of authority granted in this Declaration. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

**3.27 Insurance by Association.** The Association, Management Committee or Manager shall, in accordance with U.C.A., Section 57-8-29 (2000) as it may be amended from time to time, obtain insurance against loss or damage by fire and other hazards for all Common Areas and Facilities; and all Buildings that contain more than one Unit, including any improvement which is a permanent part of a building. Premiums on insurance required by this section shall be a Common Expense. These insurance provisions shall be without prejudice to the right of each Unit Owner and Resident to insure his own Unit and property for his benefit. Moreover, the Management Committee may adopt general insurance "house rules, policies and procedures" intended as a guide for Owners and residents in order to maintain the insurability of the project; keep insurance premiums reasonable; and enforce the maintenance responsibilities of the Owners. The Association shall obtain the following insurance coverages:

**3.27.1 Property Insurance.** Special form property, fire and extended hazard for all Buildings that contain more than one (1) Unit, including any improvement which is a permanent part of a Building such as cabinets, floor and wall coverings, built-in appliances and attached fixtures. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard "condominium" casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgement and in its sole discretion.

**3.27.2 Flood Insurance.** If any part of the Project's improvements are in a Special Flood Hazard Area, the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

**3.27.3 Public Liability Insurance.** A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum

property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

3.27.4 Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

3.27.5 Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

3.27.5.1 Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

3.27.5.2 Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgement, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

3.27.5.3 Quality of Coverage. The bonds required shall meet the following additional requirements: (a) they shall name the Committee, the Owners Association, and the Property Manager as obligee; (b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

3.27.6 Earthquake Insurance. shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.

3.28 Insurance by Owner(s). Each owner shall obtain and maintain the following types of insurance coverages and provide the Association with Certificates of Insurance upon request:

3.28.1 Public Liability Insurance. Each Owner will obtain public liability insurance for his Unit.

**3.28.2 Damages.** Each Unit Owner shall obtain and maintain homeowners insurance for the full replacement of her/his dwelling, as well as other coverages necessary for the Owners individual situation. Each Unit Owner is responsible for the maintenance of his Unit and for the repair of any damage he causes to another Unit or the Common Areas and facilities. In the event that a Unit Owner causes damage to the Common Areas, it is presumed that the Unit Owner is responsible to pay the Association's deductible; provided, however, the deductible on a claim made against the Association's Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair of the absence of insurance of (ii) from whose Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party(s) responsible bears to the total cost. If a loss to the Common Areas is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Unit Owner(s) shall be responsible for the deductible. Each Unit Owners is encouraged to purchase insurance to cover the cost of the deductible as referenced above, the amount of which shall be determined by the Founder/Board.

**3.28.3 Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

**3.28.4 Default.** If an Owner fails to maintain the required insurance or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to, without further notice, purchase the required insurance and treat the cost as an Individual Assessment.

**3.28.5 Contents.** The Association Master Policy DOES NOT cover the contents of the Unit or the personal property of the Unit or Unit Owner or renter such as automobiles, furniture, furnishings, appliances, paintings, pictures, wall hangings, clothing, personal belongings and effects, and other contents, or personal liability.

**3.29 Miscellaneous.** The following shall apply to all insurance:

**3.29.1 Loss of Rents.** The Association Master Policy DOES NOT cover loss of rents or rental income.

**3.29.2 Insurance of Contents and Lost Rents.** Providing insurance to cover contents and lost rents or rental income is the responsibility of the individual Unit Owner or renter.

**3.29.3 Validity of Document.** If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.



3.29.4 Right to Adjust Claims. The Association has the right, power and authority to adjust claims.

3.29.5 Use of Insurance Proceeds and Repairs. Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

3.29.6 Quality of Carrier. The Association shall use a reputable insurance company or companies duly qualified and licensed in the State of Utah.

3.29.7 The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners of Foxboro North Castleton, for the use and benefit of the individual Owners."

3.29.8 Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

3.29.9 Beneficiary. In any policy covering the entire Project, each owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

3.29.10 Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

3.29.11 Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

3.29.12 Waiver of Subrogation / No Prejudice. Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

3.29.13 Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

3.29.14 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

3.29.15 Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class

subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and,; or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

3.29.16 Restrictions on Policies. No insurance policy shall be maintained where:

3.29.16(a) Individual Assessments Prohibited. Under the term of the carrier's charter, Bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

3.29.16(b) Payments Contingent. By the terms of the Declaration, Bylaws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

3.29.16(c) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies) from collecting insurance proceeds.

3.29.16(d) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

3.30 Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

**3.31 Adjusting Claims.** The Management Committee has the authority to adjust claims.

**3.32 Destruction, Condemnation, and Obsolescence.** The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

**3.32.1 Definitions.** Each of the following terms shall have the meaning indicated:

3.32.1(a) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

3.32.1(b) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

3.32.1(c) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

3.32.1(d) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

3.32.1(e) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

3.32.1(f) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

3.32.1(g) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

3.32.1(h) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

3.32.1(i) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

3.32.2 Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

3.32.3 Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67.0%) percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51.0%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

3.32.4 Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

3.32.5 Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

3.32.6 Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Section 3.19 above to pay for the deficiency.

3.32.7 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

3.32.8 Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium Ownership under this Declaration and the Survey map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

3.32.9 Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

3.32.10 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

3.32.11 Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

3.32.12 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

3.32.13 Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Unit Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders. The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgage holder (except the Department of Veterans Affairs (VA) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) by such agencies) fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**3.33 Mortgagee Protection.** The lien or claim against a Unit for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

**3.33.1 Effects of Voluntary and Involuntary Sale.** The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.

**3.33.2 Books and Records Available for Inspection.** The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available. The Association shall also make available to prospective purchasers current copies of the Declaration, By-laws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared.

**3.33.3 Right to Financial Statement.** The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

Upon written request from any of the agencies or corporations which has an interest or prospective interest in the condominium, the owners association shall prepare and furnish within a reasonable time an audited financial statement of the owners association for the immediately preceding fiscal year.

**3.33.4 Management Contracts.** Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

3.33.4(a) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

3.33.4(b) No contract may be for an initial term greater than one (1) year.

3.33.5 Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

3.33.5(a) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

3.33.5(b) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

3.33.5(c) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

3.33.5(d) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

3.33.5(e) Amendment. Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners association appertaining to any unit or (iv) the purposes to which any unit or the common elements are restricted;

3.33.5(f) Termination. Any proposed termination of the condominium regime;

### 3.34 Other Provisions for First Lien Holders.

3.34.1 Restoration or Repair. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated, is obtained.

3.34.2 Termination. Any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the condominium

property must require the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

**3.34.3 Reallocation of Interests.** No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Condominium project may be effected without the approval of the eligible holders of first mortgages on units to which at least 51% of the votes of units subject to mortgages held by such eligible holders are allocated.

**3.34.4 "Eligible Holder" Definition.** As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a first mortgage on a unit in a condominium which has requested notice in accordance with the provisions above.

**3.35 Amendment.** Anything to the contrary notwithstanding, while the Declarant is in control of the Association and prior to the occurrence of the Event, the Declarant may not amend the Declaration or Survey Map without the written consent of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, § 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) by such agencies. After transition, the affirmative vote of at least sixty seven percent (67%) of the undivided ownership interest in the Common Areas shall be required and shall be sufficient to amend the Declaration or the Condominium Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

**3.35.1 Consent of Owners and Mortgagees for Termination.** The consent of Owners of Units to which at least 67 percent of the votes in the Owners Association are allocated and the approval of the eligible holders of first mortgages on units to which at least 67 percent of the votes of units subject to a mortgage appertain, shall be required to terminate the condominium regime.

**3.35.2 Consent of Owners and Mortgagees for Material Amendments.** The consent of Owners of Units to which at least 67 percent of the votes in the Association are allocated and the approval of eligible holders of first mortgages on units to which at least 51 percent of the votes of units subject to a mortgage appertain, shall, be required to materially amend any provisions of the Declaration, By-laws or equivalent documents of the Condominium, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

**3.35.2(a) Voting;**



- 3.35.2(b) Assessments, assessment liens or subordination of such liens;
- 3.35.2(c) Reserves for maintenance, repair and replacement of the common elements;
- 3.35.2(d) Insurance or Fidelity Bonds;
- 3.35.2(e) Rights to use of the common elements;
- 3.235.2(f) Responsibility for maintenance and repair of the several portions of the condominium;
- 3.35.2(g) Expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- 3.35.2(h) Boundaries of any unit;
- 3.35.2(i) The interests in the general or limited common elements;
- 3.35.2(j) Convertibility of units into common elements or of common elements into units;
- 3.35.2(k) Unreasonable Restrictions on the Leasing of units;
- 3.35.2(l) Imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her unit in the condominium;
- 3.35.2(m) Establishment of self-management by the Condominium association where professional management has been required by any of the agencies or corporations.

Any addition or amendment shall not be considered material for purposes of this Paragraph (b) if it is for the clarification only or to correct a clerical error.

3.35.3 Amendment of Provisions for the Benefit of Mortgage Holders. The consent of owners of units to which at least 67 percent of the votes in the owners association are allocated and the approval of Eligible Holders of first mortgages on units to which at least 51 percent of the votes of units subject to a mortgage appertain, shall be required to amend any provisions included in the Declaration, By-laws or equivalent documents of the condominium which are for the express benefit of holders or insurers of first mortgages on units in the condominium.

3.35.4 Notice. For first mortgagees to be "Eligible Holders" under this section, they must request notice in accordance with the provisions of Section 3.30.5.

Notice of any proposed amendment to any Eligible Holder to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed

postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

Any Eligible Holder who does not deliver to the Management Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Project as a condominium project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

**3.36 Due Process.** Before any fine or suspension of rights shall become final, the owner shall be given written notice (a) of the violation and penalty, (b) his reasonable opportunity to cure the default, and (c) his right to a hearing before the Management Committee.

**3.37 Declarant's Sales Program.** Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Units the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Common Area or other Assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration. Until such time as Declarant has sold all the Units owned by it in the Project or the expiration of a reasonable sales period following seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah, whichever first occurs (hereinafter referred to as the "Sale's Events"), neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

**3.37.1 Sales Office and Model Units.** Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any one time. Such office and/or models may be one or more of the Units owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing.

**3.37.2 Promotional.** Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

**3.37.3 Common Area Use.** Declarant shall have the right to use the Common Areas of the Project including but not limited to the Community Center to facilitate sales.

**3.37.4 Relocation and Removal.** Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Event, Declarant shall have the right to remove from

the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

**3.38 Limitation on Improvements by Association.** Until the occurrence of the Sale's Events described above, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

**3.39 Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

**3.40 Lender Approval.** Until the Events described above, the Declarant shall not annex additional properties or amend the Declaration without the prior written consent of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

**3.41 Transfer of Management.** Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Management Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the occurrence of the Sale's Events referred to above, or if the Declarant elects to transfer control sooner, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Committee.

**3.42 Working Capital Fund.** The purpose of the working capital fund established pursuant to Section 3.18.11 above is to insure that the Management Committee will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Project. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

**3.43 Limited Warranty.** Each Owner, and the Association, by taking title to a Unit and/or any portion of the Common Areas, acknowledges and agrees as follows:

**3.43.1 Limited Warranty by Declarant.** For Units on which Declarant or a Declarant Affiliate sells a completed Residence, Declarant may issue a "Home Builder's Limited Warranty" (the "Limited Warranty") regarding the Units to each initial third-party Owner upon the close of escrow, and regarding the Common Areas to the Association. The Limited Warranty is currently administered by Professional Warranty Service Corporation, or its successor ("PWC"). The actual terms of the Limited Warranty are defined by the Limited Warranty documents themselves. If issued, a copy of the Limited Warranty will be provided to each initial third-party Owner, and may be obtained from PWC at its current address of P.O. Box 800, Annandale, VA 22003-0800, or from Declarant or the Declarant Affiliate that sold the Unit. Each Owner whether they are an initial purchaser of a Unit or a subsequent purchaser, and the Association, as concerns the Common Areas, are hereby advised and agree that:

3.43.1(a) the Limited Warranty is the only warranty provided by the Declarant;

3.43.1(b) that all allegations of "Construction Defects," as that term is defined in the Limited Warranty documents provided to the initial third-party Owner and to the Association, will be resolved under and in accordance with, the Limited Warranty;

3.43.1(c) that final, binding arbitration is the sole remedy for resolving disputes involving alleged Construction Defects;

3.43.1(d) that by taking title to a Unit or the Common Areas, each Owner (whether an initial purchaser of a Unit or a subsequent purchaser) and the Association agree to be bound by the terms of the Limited Warranty;

3.43.1(e) the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

**3.43.2 Mandatory Binding Arbitration for Matters Involving Declarant.** To the fullest extent permitted by law, all claims and disputes of any kind that an Owner or the Association may have arising from or in any way related to a Unit or Units or the Common Areas involving the Declarant, any Declarant Affiliate or any affiliate, agent, employee, executing officer, manager, or owner of Declarant or the Declarant Affiliates (a "Dispute") shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving disputes between the Declarant and any Owner and/or the Association. Disputes subject to binding arbitration include but are not limited to:

3.43.2(a) Any disagreement that a condition in the Unit or in the Common Areas is a Construction Defect (as defined in the Limited Warranty) and is therefore covered by the Limited Warranty;

3.43.2(b) Any disagreement as to whether a Construction Defect has been corrected in compliance with the Limited Warranty;

3.43.2(c) Any alleged breach of the Limited Warranty;

3.43.2(d) Any alleged violations of consumer protection, unfair trade practice, or other statutes;

3.43.2(e) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

3.43.2(f) Any disputes concerning the issues that should be submitted to binding arbitration;

3.43.2(g) Any disputes concerning timeliness of performance and our Buyer's notifications under the Limited Warranty;

3.43.2(h) Any dispute as to the payment or reimbursement of the arbitration filing fee;

3.43.2(i) Any dispute as to whether the Limited Warranty, or any provision thereof, including, but not limited to any waiver under the Limited Warranty, is unenforceable; and

3.43.2(j) Any other claim arising out of or relating to the sale, design, or construction of the Unit or the Common Areas, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by the Limited Warranty.

3.43.2(k) The arbitration shall be conducted by DeMars and Associates, LTD. or such other reputable arbitration service that PWC 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.

3.43.2(l) The arbitration shall be governed by the Federal 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.

3.43.2(m) 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 to PWC for arbitration. Owners may contact PWC to determine the arbitration filing fee in effect at the time arbitration is being requested. 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.

3.43.2(n) If any Owner, the Association, 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 therewith.

3.43.2(o) The obligations to submit all disputes to final, binding arbitration is wholly independent and separate from the rights and obligations under the Limited Warranty provisions.. In the event any Unit is not issued a Home Builder's Limited Warranty, all Disputes shall be resolved by final, binding arbitration conducted by DeMars and Associates, LTD., or such other organization as the parties to the Dispute may agree upon, pursuant to the terms of Section 3.40.2.

3.43.3 Obligation of Owners to Provide Copies of Limited Warranty Documents to Subsequent Purchasers. Each Owner that transfers his or her interest in a Unit shall provide a copy of the Limited Warranty to the subsequent owner and shall thereby transfer to the subsequent owner all remaining coverage for the Unit under the Limited Warranty.

3.43.4 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Section may not be amended except with the written consent of the Declarant.

3.44 Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. 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 hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.

3.45 Severance. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. If any covenant, condition, restriction, part, term or provision of this Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision") any condominium approval guidelines of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, § 36.4357(b)(4) for the financing, insuring or the guaranty of the Property, or any part thereof (the "Required Provision"), then (a) the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such Inconsistent Provision, and (b) the Required Provision shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.

3.46 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 shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring

any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**3.47 Enforcement and Right to Recover Attorneys Fees.** Should the Association, Management Committee or aggrieved Owner be required to take action to enforce the Declaration, Bylaws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue. In addition, the Management Committee may impose the following sanctions after proper notice and the opportunity to be heard:

3.47.1 imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit;

3.47.2 suspending an Owner's right to vote;

3.47.3 suspending any Person's right to use any of the recreational facilities; provided, however, nothing herein contained shall authorize the Management Committee to limit ingress or egress to or from a Unit;

3.47.4 exercising self-help or taking action to abate any violation of the Project Documents in a non-emergency situation;

3.47.5 exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);

3.47.6 requiring an Owner at his sole expense to remove any structure or improvement in the Common Area, and upon the failure of the Owner to do so, the Management Committee or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;

3.47.7 without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and

3.47.8 levying Individual Assessments or Additional Charges to cover costs incurred by the Association to bring a Unit or Unit Owner into compliance.

**3.48 Agreement to Share Costs.** The Declarant or the Association may enter into a contract or agreement, which includes a covenant to share costs, for the use of facilities or the procurement of services for the benefit of the Association.

**3.49 Agent for Service of Process.** The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Nathan Pugsley and the initial office of the Registered Agent is 39 East Eagleridge Drive, Suite 100, North Salt Lake, UT 84054.

#### **4. Expansion of the Project.**

**4.1 Reservation of Option to Expand.** Declarant hereby reserves the option to expand the Project to include additional Units in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date following the first conveyance of a Unit in Phase I to a Unit purchaser unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be constructed on any or all portions of the Additional Property. The improvements on the property will be substantially completed before it is added.

**4.2 Supplemental Declarations and Supplemental Maps.** Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

**4.3 Expansion of Definitions.** In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Davis County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

**4.4 Declaration Operative on New Units.** The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Davis County Recorder.

**4.5 Right of Declarant to Adjust Ownership Interest in Common Areas.** Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Amended Declaration. The proportionate interest of each Unit Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or



Amended Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration. Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

**4.6 Other Provisions Concerning Expansion.** If the Project is expanded as hereinbefore contained, then it is further provided that:

4.6.1 All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Units created must be restricted to multi family residential housing limited to one family per Unit.

4.6.2 Portions of the Additional Land may be added to the Project at different times without any limitations.

4.6.3 Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

4.6.4 No assurances are made concerning:

4.6.4(a) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

4.6.4(b) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

4.6.4(c) Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase I.

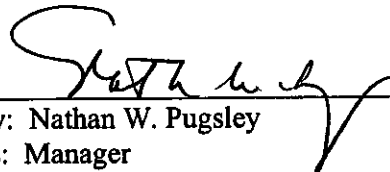
4.6.4(d) Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

4.6.4(e) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (ii) the creation, construction, or addition to the Project of any additional property; (iii) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (iv) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

4.7 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.


EXECUTED this 9 day of August, 2007.

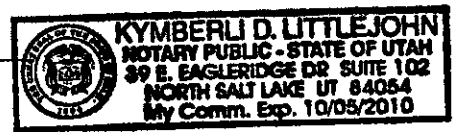
DECLARANT:  
WOODSIDE CASTLETON, LLC,  
a Utah limited liability company

  
By: Nathan W. Pugsley  
Its: Manager

STATE OF UTAH,            )  
                                  :ss  
COUNTY OF DAVIS.        )

On the 9<sup>th</sup> day of August, 2007, personally appeared before me Nathan W. Pugsley, who by me being duly sworn, did say that he is the Manager of WOODSIDE CASTLETON, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its Members or its Articles of Organization, and said Nate Pugsley, duly acknowledged to me that said Company executed the same.

  
NOTARY PUBLIC  
Residing at: Davis County



My Commission Expires: 10/5/2010

**EXHIBIT A**  
**LEGAL DESCRIPTION OF ADDITIONAL LAND**

A parcel of land located in the South Half of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah described as follows:

BEGINNING at the intersection of the north line of the platted Foxboro Subdivision and the west right-of-way line of Redwood Road, said point being South 89°50'51" West 82.20 feet along the south line of Section 34, from the Southeast Corner of said Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian; thence continuing along said section line South 89°50'51" West 2571.87 feet to the South Quarter Corner of said Section 34; thence continuing along said south line of Section 34 and said Foxboro Subdivision South 89°51'41" West 1,049.87 feet to the East right-of-way line of the Legacy Highway Project; thence along said east line of the Legacy Highway Project the following 4 courses: (1) North 03°14'05" West 345.72 feet, (2) North 03°14'48" West 130.19 feet, (3) North 03°14'17" West 1,230.89 feet to a point on the arc of a 1,892.05 foot radius curve to the right, the center of which bears North 86°45'43" East, (4) northeasterly 741.32 feet along the arc of said curve through a central angle of 22°26'56" (chord = North 07°59'11" East 736.59 feet); thence North 89°55'26" East 353.74 feet; thence South 00°04'34" East 0.27 feet; thence South 89°45'47" East 2,436.78 feet to the Northwest corner of the Fire Station parcel; thence along said parcel the following 3 courses: (1) South 00°37'35" East 460.87 feet, (2) South 90°00'00" East 205.01 feet, (3) North 00°37'35" West 21.06 feet; thence North 89°49'56" East 599.24 feet to the said west right-of-way line of Redwood Road; thence along said west line South 00°26'30" East 109.46 feet; thence South 89°49'56" West 365.96 feet; thence North 00°10'04" West 9.46 feet; thence South 89°49'56" West 154.91 feet; thence South 00°37'35" East 622.70 feet to the Southwest corner of the Paul Hunter parcel; thence along said parcel North 89°51'33" East 518.82 feet to said west line of Redwood Road; thence South 00°26'30" East 431.48 feet along said west line to the Northeast corner of the Leger Property; thence South 89°49'56" West 134.26 feet along said Leger Property; thence along said Leger Property South 00°09'09" East 192.50 feet to the north line of the Hampton remainder parcel; thence along the north and west lines of said parcel the following 2 courses: (1) South 89°49'56" West 90.81 feet, (2) South 00°09'09" East 194.04 feet to the north line of 900 North Street; thence along said north line North 89°51'46" East 227.02 feet to said west right-of-way line of Redwood Road; thence along said right-of-way South 00°26'30" East 435.19 feet to the POINT OF BEGINNING, **Less and Excepting the following parcels:**

All of the real property described on and subject to:

Castleton North at Foxboro North, Plat 1, Recorded on August \_\_\_\_\_, 2007 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, in the office of the County Recorder of Davis County, Utah.

AND

Castleton North at Foxboro North, Plat 10, Recorded on August \_\_\_\_\_, 2007 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, in the office of the County Recorder of Davis County, Utah.

**[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY SUPPLEMENT OR MODIFY OF RECORD ANY AND ALL OF THE FORGOING LEGAL DESCRIPTIONS]**

**EXHIBIT B  
BYLAWS**

**OF**

**FOXBORO NORTH CASTLETON CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I**

**PLAN OF UNIT OWNERSHIP AND INCORPORATION**

1. **Submission.** These are the Bylaws referred to in the foregoing Declaration of Condominium for Foxboro North Castleton (the "Declaration"), which is located in Davis County, State of Utah. These Bylaws shall govern the administration of the Project and the Association.

2. **Organizational Form.** If the Association is incorporated under the laws of the State of Utah, then these Bylaws shall also function and operate as the bylaws of the corporation.

3. **Office and Registered Agent.** The initial Registered Agent shall be Nathan W. Pugsley of 39 East Eagleridge Drive, Suite 100, North Salt Lake, Utah 84054. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

**ARTICLE II  
ASSOCIATION**

1. **Composition.** The association of unit owners is a mandatory association consisting of all Owners.

2. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Management Committee from time to time and stated in the notice of meeting.

3. **Notice of Meeting.** It shall be the duty of the Secretary to hand deliver or mail to each owner at his last known address, by regular U.S. mail postage prepaid, a notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he is in full compliance with all of the terms, covenants, and conditions of the Governing Documents (as defined in the Declaration of Condominium for Foxboro North Castleton Condominium), and shall have fully paid his share of the Common Expenses and all Assessments and/or Additional Charges due.

5. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Unit Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy.

Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. Fifty and 01/100ths (50.01%) percent of the members of the Association shall constitute a quorum for the adoption of decisions. If however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. Order of Business. The order of business at all meetings of the Association shall be as follows:

- a. roll call;
- b. proof of notice of meeting;
- c. reading of minutes of preceding meeting;
- d. reports of officers;
- e. report of special committees, if any;
- f. election of inspectors of election, if applicable;
- g. election of Committee Members, if applicable;
- h. unfinished business; and
- i. new business.

8. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

9. Open Meeting Policy. All Management Committee meetings shall be open to all voting members, but attendees other than members of the Management Committee may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

10. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Management Committee or any action that be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Management Committee. An explanation of the action taken shall be posted at a prominent place or places within the common areas with three (3) days after the written consents of all of the members of the Management Committee have been obtained.

11. Executive Session. The Management Committee, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

### ARTICLE III MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee consisting of three (3) Unit Owners. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- a) Preparation of an annual budget;
- b) Establishing the Assessment of each Owner;
- c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas and Facilities;
- d) Hiring, a professional manager and the personnel necessary to operate and maintain the Project;
- e) Collecting the Assessments;
- f) Enforcing the Project Documents;
- g) Establishing bank accounts;
- h) Obtaining insurance;
- i) Keeping books and records with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Project,



specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred. Said documents, books, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Committee for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices;

j) Providing, common utilities; and

k) Doing such other things and acts necessary to accomplish the foregoing and not inconsistent with the Declaration or Bylaws, or to do anything required by a proper resolution of the Management Committee or Association.

2. Composition of Management Committee. The Management Committee shall be composed of three (3) members, two (2) of whom shall be Delegates to the Board of Delegates for the Combined Association.

3. Election and Term of Office of the Committee. The term of office of membership on the Management Committee shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

4. First Meeting. The first meeting of the members of the Management Committee shall be immediately following the annual meeting of the Association or at such other time and place designated by the Committee.

5. Regular Meetings. Regular meetings of the Management Committee shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Committee, but no less often than monthly.

6. Special Meetings. Special meetings of the Management Committee may be called by the President, Vice President or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. Mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Committee shall be valid for any and all purposes.

7. Waiver of Notice. Before or at any meeting of the Management Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Committee shall constitute a waiver of notice. If all the members are present at any meeting of the Committee, no notice shall be required and any business may be transacted at such meeting.

8. Committee's Quorum. At all meetings of the Management Committee, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Committee members present at a meeting at which a quorum is present shall be

deemed to be the acts of the Committee. If, at any meeting of the Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. Vacancies. Vacancies in the Management Committee caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Committee at a special meeting of the Committee held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the committee; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

10. Removal of Committee Member. A member of the Management Committee may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Committee Member who misses twenty-five percent (25%) or more of the Committee Meetings, or who misses three (3) consecutive meetings in any calendar year, shall automatically be removed from the Committee.

11. Conduct of Meetings. The President shall preside over all meetings of the Committee and the Secretary shall keep a Minute Book of the Committee recording therein all resolutions adopted by the Committee and a record of all transactions and proceedings occurring at such meetings.

12. Report of Committee. The Committee shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### ARTICLE IV OFFICERS

1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Committee. The Committee may appoint assistant secretaries and such other officers as in its judgment may be necessary. The President, Secretary and Treasurer must be members of the Committee. Two or more offices may be held by the same person, except that the President shall not hold any other office.

2. Election of Officers. The officers of the Association shall be elected annually by the Committee at the first meeting of each Committee immediately following the annual meeting of the Association and shall hold office at the pleasure of the Committee. Any vacancy in an office shall be filled by the Committee at a regular meeting or special meeting called for such purpose.

3. Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Committee may be removed at any time by the affirmative vote of a majority of the Committee, and his successor may be elected at any regular meeting of the Committee, or at any special meeting of the Committee called for such purposes.

4. President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Committee shall be an ex officio member of all committees; he shall have general and active management of the business of the Committee and shall see that all orders and resolutions of the Committee are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a corporation organized under the laws of the State of Utah.

5. Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Committee or the President shall prescribe. If neither the President nor the Vice President is able to act, the Committee shall appoint a member of the Committee to do so on an interim basis.

6. Secretary. The secretary shall attend all meetings of the Committee and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Committee and shall perform such other duties as may be prescribed by the Committee. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Committee including resolutions.

7. Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Managing Agent, and with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Committee. He shall disburse funds as ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Committee, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

ARTICLE V  
FISCAL YEAR

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Committee should it be deemed advisable or in the best interests of the Association.

ARTICLE VI  
INVESTMENT OF COMMON FUNDS

Common funds may only be deposited into institutions which are federally insured.

ARTICLE VII  
AMENDMENT TO BYLAWS

1. Amendments. These Bylaws may be modified or amended either (a) by the affirmative vote of a majority of the members of the Association or (b) pursuant to a written instrument of consent duly executed by a majority of the members of the Association; provided, however, all of the written consents must be obtained within a ninety (90) day period and, so long as Declarant is in control of the owners association, must be approved in writing by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

2. Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the County Recorder of Davis County, Sate of Utah.

ARTICLE VIII  
NOTICE

1. Manner of Notice. All notices, demands, bills, statements, or other communications provided for or required under these Bylaws (except as to notices of Association meetings which were previously addressed in Article II of these Bylaws) shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage pre-paid, a) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Committee or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration, or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Declaration.

ARTICLE IX  
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Conflict. These Bylaws are subordinate and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the

same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provision of the Declaration shall control.

2. Waiver. No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

3. Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

4. Interpretation. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine; and the term "shall" is mandatory while the term "may" is permissive.

5. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this document should be invalid or should operate to render this document invalid, this document shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections, or section or sections had not been inserted.

6. Effective Date. The effective date for this document shall be the date it is recorded in the Office of the County Recorder of Davis County, Utah.

*[Remainder of this page intentionally left blank. Signature page immediately follows.]*

EXECUTED this 9<sup>th</sup> day of August, 2007.

DECLARANT:  
WOODSIDE CASTLETON, LLC,  
a Utah limited liability company

By: [Signature]  
Name: Nathan W. Pugsley  
Title: Manager

STATE OF UTAH,            )  
  :ss  
COUNTY OF DAVIS.        )

On this 9<sup>th</sup> day of August, 2007, personally appeared before me Nathan W. Pugsley, who by me being duly sworn, did say that he is the Manager of WOODSIDE CASTLETON, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its Members or its Articles of Organization, and said Nathan W. Pugsley duly acknowledged to me that said Company executed the same.

[Signature]  
KIMBERLI D. LITTLEJOHN NOTARY PUBLIC  
NOTARY PUBLIC - STATE OF UTAH  
39 E. EAGLERIDGE DR SUITE 102  
NORTH SALT LAKE UT 84054  
My Comm. Exp. 10/05/2010  
Residing at: Davis County  
My Commission Expires: 10/5/2010

**EXHIBIT C  
LEGAL DESCRIPTION**

The Land shall consist of all of the real property described on and subject to:

Castleton North at Foxboro North, Plat 1, Recorded on August \_\_\_\_\_, 2007 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, in the office of the County Recorder of Davis County, Utah.

AND

Castleton North at Foxboro North, Plat 10, Recorded on August \_\_\_\_\_, 2007 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_, Pages \_\_\_\_\_ through \_\_\_\_\_, in the office of the County Recorder of Davis County, Utah.

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY SUPPLEMENT OR MODIFY OF RECORD ANY AND ALL OF THE FORGOING LEGAL DESCRIPTIONS]

## BOUNDARY DESCRIPTION

A parcel of land located in the South Half of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah described as follows:

Beginning at the southwest corner of Lot 101 of Foxboro North Plat 1 as recorded in the office of the Davis County Recorder said point is South 89°50'51 West 2018.79 feet coincident with the south line of Section 34 and North 1953.84 feet from the Southeast Corner of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian; thence coincident with the north line of 1100 North Street West 311.02 feet to a point of non tangency of a 35.00 foot radius curve to the left of which the radius point bears North 83°42'24" West; thence northerly along said curve 3.84 feet through a central angle of 06°17'36"; thence North 82.27 feet to a point of tangency of a 15.00 foot radius curve to the left; thence northwesterly 23.56 feet along said curve through a central angle of 90°00'00"; thence West 186.85 feet to a point of tangency of a 15.00 foot radius curve to the left; thence southwesterly 23.56 feet along said curve through a central angle of 90°00'00"; thence South 86.11 feet to the north right-of-way line of said 1100 North Street; thence coincident with said line West 36.00 feet; thence North 86.11 feet to a point of tangency of a 15.00 foot radius curve to the left; thence northwesterly 23.56 feet along said curve through a central angle of 90°00'00"; thence West 131.05 feet to the east line of Foxboro North Plat 5 as recorded in the office of the Davis County Recorder; thence coincident with said line North 00°14'10" East 30.00 feet; thence East 709.59 feet to West line of Foxboro North Plat 1, Lot 101; thence coincident with said west line South 131.11 feet to the POINT OF BEGINNING. Said parcel contains 1.30 acres, 4 Building Lots and 3 private roadways.



## BOUNDARY DESCRIPTION

A parcel of land located in the Southeast Quarter of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah described as follows:

Beginning at a point on the north line of Foxboro North Plat 1 said point is also on the north right-of-way line of 1100 North Street said point being South 89°50'51 West 2564.45 feet coincident with the south line of Section 34 and North 1955.28 feet and East 18.00 feet from the Southeast Corner of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, and thence coincident with the east right-of-way line of Abbottsford Drive North 86.11 feet to a point of tangency of a 15.00 foot radius curve to the right said point falls on the south line of Foxboro North Plat 1; thence coincident with the arc of said curve 23.56 feet through a central angle of 90°00'00"; thence coincident with said south line the following 4 courses, (1) East 186.85 feet to the point of tangency of a 15.00 foot radius curve to the right, (2) coincident with curve 23.56 feet through a central angle of 90°00'00", (3) south 82.27 feet to the point of tangency of a 35.00 foot radius curve to the left; thence coincident with said curve 3.84 feet through a central angle of 06°17'36"; thence coincident with the north line of said Foxboro North Plat 1 West 216.64 feet to the POINT OF BEGINNING. Said parcel contains 0.50 acres, 3 building lots.