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01-408-0111 through 01-408-0118;
01-408-0121 through 01-408-0128; and
01-408-0131 through 01-408-0138.

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

OF

BELLA VIDA AT EAGLEWOOD

(an Expandable Condominium Development)

AGE RESTRICTION – HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER.

**BELLA VIDA AT EAGLEWOOD IS INTENDED TO, AND SHALL BE
MANAGED TO, PROVIDE HOUSING FOR PERSONS 55 YEARS OF AGE OR
OLDER**

**THE BOARD SHALL ESTABLISH POLICIES AND PROCEDURES FROM
TIME TO TIME AS NECESSARY TO MAINTAIN THE PROPERTIES AS AN AGE
RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF
AGE OR OLDER UNDER STATE AND FEDERAL LAW.**

Upon recording, please return to:

BVE, LLC
C/O Sky Properties
585 West 500 South, #110
Bountiful, Utah 84010

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
BELLA VIDA AT EAGLEWOOD**
(an Expandable Condominium Development)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELLA VIDA AT EAGLEWOOD ("**Declaration**") is executed this 12th day of March, 2009, by BVE, LLC, a Utah limited liability company (the "**Declarant**").

STATEMENT OF AMENDMENT

A. The Declarant has previously recorded a **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELLA VIDA AT EAGLEWOOD**, dated April 19, 2007 and recorded June 8, 2007 as Entry No. 2278252 in Book 4300 Page 473-536, in the records of Davis County, Utah ("**Original Declaration**"); and

B. Pursuant to the rights reserved to Declarant by Article XV Section 3 of the Declaration, Declarant has obtained the requisite consent of the Association to amend and restate the Declaration and the undersigned officer of the Association acknowledges and certifies such vote for amendment has occurred as required by the Original Declaration and Bylaws of the Association.

CERTIFICATION:

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bella Vida at Eaglewood was approved by a vote of at least 75% of the Association pursuant to the requirements of the Original Declaration and Bylaws of the Association and with the consent of the Declarant.

Certified by:

BELLA VIDA AT EAGLEWOOD
HOMEOWNERS ASSOCIATION, INC.,
a Utah non-profit corporation

By: 

Steven Israelsen, Secretary

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. Declarant is the owner of a certain tract of land located in Davis County, Utah, which property is more particularly described as follows:

See attached Exhibit "A"

C. For purposes of development and marketing, the above-described property is intended to be known as "**Bella Vida**". The Property shall be developed in phases.

D. Declarant shall develop the property as a community for individuals fifty-five (55) and over. Said community shall be constructed, marketed, managed and maintained in accordance with the provisions of the Federal Fair Housing Act, and all regulations promulgated thereunder. The Project (as herein defined) will be advertised and promoted exclusively as an active adult community or the like; and that the housing community shall establish a reasonable means of verifying age and compliance with the Federal Fair Housing Act.

E. Declarant intends to improve the Property by construction thereon of certain residential improvements and facilities, and to establish thereon a Planned Unit Development subdivision, to be managed, operated, and maintained by an incorporated Association of Owners, for the benefit of the Property as a whole.

F. The development of the Property shall hereinafter be referred to as the "**Project**". The Owner of each of the Units shall receive fee title to their individual condominium unit, together with all rights associated with membership in the BELLA VIDA AT EAGLEWOOD HOMEOWNERS ASSOCIATION, a Utah non-profit corporation ("**Association**").

G. The Declarant, or an Affiliate of Declarant, intends to maintain ownership of and control over certain facilities, or the land underneath such facilities, which shall be leased to the Association.

H. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said Units and the Owners thereof.

I. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the

Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a planned unit development. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any Unit or any part of the Property or the Project.

J. The Declarant intends by recording this Declaration, the Bylaws and the Plat Map in the Office of the County Recorder of Davis, State of Utah, to submit the Property, the present and future Buildings, and all other present and future improvements situated in or upon the Property to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated, § 57-8-1, et seq., as a Condominium Project and to impose upon said Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Units with said Project and the Owners thereof.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I. DEFINITIONS

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

1. "Act" shall mean and refer to the Condominium Ownership Act (Utah Code Annotated, §57-8-1, et seq.), as the same may be amended from time to time.
2. "Affiliate of Declarant" shall mean an affiliated entity under ownership and/or control of Declarant and/or the persons or entities owning or controlling the Declarant and any successors thereof by operation of law or through a voluntary conveyance, transfer or assignment.
3. "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the State of Utah Department of Commerce, Division of Corporations and Commercial Code on September 29, 2006.
4. "Area of Common Responsibility" shall mean (i) all Common Areas, (ii) those areas, if any, which the Association does not own but which by the terms of Article VII or other provisions of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Association, (iii) any property and facilities owned by Declarant and made available for the primary use and enjoyment of the Association and its Members, including the Program Facilities (as defined below) and (iv) all real property, and the

improvements situated thereon, designated on a Plat signed or ratified by the Association and/or the Declarant as an area to be maintained, repaired or replaced by the Association.

5. **"Association"** shall mean and refer to BELLA VIDA AT EAGLEWOOD HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation.

6. **"Board of Trustees"** or **"Board"** shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.

7. **"Building"** shall mean and refer to the residential structure (including underground garage and other improvements), each of which is composed of twenty-four (24) Units. Each Unit located in a Building in the Project is designed and intended for use and occupancy as a residence by a single-family unit.

8. **"Building Exteriors"** shall mean and refer to those portions of the Buildings which are open to the elements such as roofs, soffit, facade, exterior walls, exterior doors, footings and foundations but excluding any window glass.

9. **"Bylaws"** shall mean the Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the incorporating members of the Board of Trustees.

10. **"Club House"** shall mean that certain building and outdoor facilities as more completely described in Article 6, Section 1(a).

11. **"City"** shall mean the City of North Salt Lake, a Utah municipal corporation, the City in which the Project is located. As such, the City has primary jurisdiction over the Project.

12. **"Common Areas"** shall mean all the real property and improvements, now or hereafter constructed or located within the Property, the Lots and Buildings, including without limitation, all landscaped areas, detention basins, private roadways, walkways, and trail systems, within the Project, all of which shall be managed by the Association for the common use and enjoyment of all Owners. The foregoing notwithstanding, Common Areas shall not include the Program Facilities described in Article VI. The individual Owners within the Project shall own the Common Areas as tenants in common, each with an equal undivided interest therein. The Common Areas are designated as such on the Plat Map(s), as defined below. Common Areas shall not include any portion of the Additional Land until such time and upon such conditions as set forth by Declarant for annexation of the Additional Land.

13. **"Common Expense Fund"** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and

maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

14. **"Common Expenses"** shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Area of Common Responsibility and of the exterior and structural components of the Buildings, expenses of operating and maintaining the private roadway through the Project, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; the costs of trash collection and removal; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security, employees and other services benefiting the Area of Common Responsibility; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the Area of Common Responsibility and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.

15. **"Declarant"** shall mean and refer to BVE, LLC, a Utah limited liability company and/or any successors thereof which, either by operation of law or through a voluntary conveyance, transfer or assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

16. **"Declaration"** shall mean and refer to this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELLA VIDA AT EAGLEWOOD, as the same may hereafter be modified, amended and supplemented.

17. **"Eligible Mortgagee"** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

18. **"Additional Land"** shall mean that real property identified on The Master Plan and known as Lots 3, 4 and 5, upon which Declarant may elect, in its sole discretion, to expand the Project pursuant to Article XIII.

19. **"First Mortgage"** shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

20. **"First Mortgagee"** shall mean any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

21. "**HOPA**" shall mean and refer to the Housing for Older Persons Act (41 USC § 3607(b)(2)(C)), as may be amended from time to time.

22. "**Initial Annual Assessment**" shall mean the Initial Monthly assessment multiplied by 12.

23. "**Initial Monthly Assessment**" shall mean the monthly dues initially charged to each unit according to Article V. The Initial Monthly Assessment of each Unit is listed in Exhibit "D".

24. "**Limited Common Areas**" shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project, and shall include patios and decks of individual Units, as well as any storage areas permanently assigned to a Unit. Any areas and facilities that are identified on the Plat Map(s) as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat Map(s) permanently designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant.

25. "**Lot**" shall mean and refer to the individual parcel of residential real property which identified on the Plat Map(s). The term "Lot" does not include any Area of Common Responsibility.

26. "**Manager**" shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

27. "**Master Plan**" shall mean the proposed site plan for all of the proposed Bella Vida residential community as depicted in Exhibit "C", which is attached hereto and incorporated herein by this reference. Declarant makes no representations, expressed or implied, regarding whether Declarant will undertake or complete any Phase other than Lot 1 and the Club House Parcel, as designated on the Plat Map(s). Declarant makes no further representations, expressed or implied, regarding the impact of any such future phases or any subsequent phases, or that any subsequent phases will be constructed substantially as shown on the proposed Master Plan.

28. "**Member**" shall mean and refer to every person who holds membership in the Association.

29. "**Membership Card(s)**" shall mean those certain cards or other access/identification device or system approved and implemented by the Board which are issued by the Association in accordance with the terms and conditions set forth in Article XV, Section 4 and which confer upon the holder rights of access to and use of Common Areas and Areas of Common Responsibility within the Property, including the Club House and related amenities as well as related activities and services, subject to payment of any applicable use fees established by the Board from time to time.

30. "**Mortgage**" shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

31. "**Mortgagee**" shall mean a beneficiary of a Mortgage as well as named Mortgagee.

32. "**Option to Expand**" shall mean Declarant's right to expand the Project as more fully set forth in Article XIII.

33. "**Owner**" shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County Recorder of Davis County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

34. "**Person**" shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

35. "**Phase**" shall mean a particular parcel of property which is or shall become part of the Project pursuant to the recordation of an appropriate amendment to the Declaration.

36. "**Plat Map(s)**" shall mean the map or maps previously recorded in the office of the County Recorder for Davis County, Utah, identified in Exhibit "A" attached hereto, as they may be amended from time to time by one or more Supplemental Plat Map(s) pursuant to this Declaration and the Act.

37. "**Program**" shall mean the services provided by Declarant or an affiliated entity or agent for the benefit and comfort of Owners and may include, but shall not be limited to, services provided at Program Facilities. The Program will be governed by an agreement ("Management Agreement") between the Association and the Declarant or an affiliated entity or agent who will be the initial Program Manager.

38. "**Program Expenses**" shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Program Facilities, including, but not limited to, the exterior and structural components of the Club House, expenses of administration of the Program, and any reasonable reserve for such purposes as determined by Declarant. Without limiting the generality of the foregoing, Program Expenses shall also include: all utility charges for the Program Facilities; the costs of trash collection and removal; compensation paid to Program Managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security, employees and other services benefiting the Program Facilities; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Program Facilities; the costs for concierge and transportation services, and any other costs incurred by Declarant or the Program Manager.

39. **“Program Facilities”** shall mean certain real property and any improvements and facilities thereon as may be developed adjacent to or in the vicinity of the Property as described in Article VI, which are either: (i) privately owned and operated by Declarant, or an affiliated entity or agent, or Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and for which Unit Owners shall be assessed as Members of the Association; or (ii) Association or privately owned facilities used for carrying out the Program. The facilities may include a Club House, a swimming pool, a gymnasium and/or related and supporting facilities, structures, and improvements operated and/or maintained in connection therewith, and the employees and supporting personnel of such facilities. Such facilities may also include storage facilities as described in Article VI.

40. **“Program Manager”** shall mean the entity operating the Program under contract with the Association. The Declarant or an affiliated entity or agent shall be the initial Program Manager.

41. **“Project”** shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

42. **“Project Documents”** shall mean, collectively, this Declaration, the Plat Map(s), and the Articles and Bylaws of the Association, as each may be amended from time to time.

43. **“Property”** shall mean and refer to the entire tract of real property now or hereafter covered by the Plat Map(s). A description of the real property covered by the Plat Map(s) on the effective date of this Declaration is set forth in Article II of this Declaration.

44. **“Supplemental Plat Map(s)”** shall mean any amendment to the Condominium Plat made in accordance with this Declaration and the Act.

45. **“Technology Package”** shall mean the telephone, internet, cable, satellite and security services, provided to each Unit as set forth in Article VI of this Declaration.

46. **“Transfer Fee”** shall mean the one and one-half percent fee paid to the Program Manager upon transfer of a Unit as set forth in Article XI of this Declaration.

47. **“Unit”** shall mean and refer to the portion of a Building attributable to each Unit as shown on the Plat Map(s).

ARTICLE II. PROPERTY DESCRIPTION

1. The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of the Act, the easements and restrictions of this Declaration and the Plat Map(s) consists of the following described real property situated in Davis County, State of Utah:

See Exhibit "A"

2. The Declarant hereby submits Phase I of the Property as shown on the Plat Map and all other improvements now or hereafter made thereon to the provisions of the Act pursuant to Utah Code Ann. § 57-8-34.

3. The Declarant hereby submits the Club House Parcel, as shown on the Plat Map and all other improvements now or hereafter made thereon to the provisions of the Act pursuant to Utah Code Ann. § 57-8-2; provided, however, that the Club House and Club House Parcel shall not be deemed to be a Unit for purposes of this Declaration or as defined by the Act.

4. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a Condominium Project. All of said Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth, herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan of improvement of said property and division thereof into Condominium Units; further, each and all of the provisions hereof shall be deemed to run with the Property and shall be a burden and a benefit on the Property and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising of the Project and to their respective personal representatives, heirs, successors, and assigns.

ARTICLE III. THE ASSOCIATION

1. Organization of Association. The Association is or shall be incorporated under the name of BELLA VIDA AT EAGLEWOOD HOMEOWNERS ASSOCIATION, INC. in accordance with the requirements of the Utah Non-Profit Corporation and Co-operative Association Act.

2. Duties and Powers. The duties and powers of the Association are those set forth in the Act, this Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Act, this Declaration, the Articles and Bylaws. It is expressly noted that duties and powers granted in the Act, this Declaration, the Articles and Bylaws in no way convey any duties or powers over Program employees.

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

such Owner. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association and membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section 3 shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

4. Board of Trustees. Until such time as the responsibility for electing the Board of Trustees of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate upon the first to occur of the following:

(a) Six (6) years from the date on which the first Unit in the Project is conveyed; or

(b) One Hundred Twenty (120) days after 75% of the Units comprising the entire Project including the Additional Land have been conveyed by Declarant.

5. Votes. Each Member shall be entitled to the number of votes appurtenant to his or her Unit, as set forth on Exhibit "D", which is attached hereto and incorporated herein by this reference. The number of votes appurtenant to each Unit shall be permanent, and shall not change in the event an Owner modifies a Unit to increase or decrease the size of his Unit relative to other Units but may be changed as otherwise provided in this Declaration. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as the Owners may determine among themselves. No Unit shall have more than the number of votes shown on Exhibit "D", regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. The Declarant shall have full voting rights with respect to each Unit which it owns. Notwithstanding any of the foregoing, so long as the Declarant controls appointment of the Board of Trustees as set forth in Article III, Section 2, above the Declarant shall have ten (10) votes for each vote set forth on Exhibit "D" appurtenant to any Unit held by Declarant.

6. Maintenance of Building Exteriors and Area of Common Responsibility. It is intended by the Declaration that the Buildings and Area of Common Responsibility shall present

a uniform, neat and well-cared-for appearance. To achieve this stated purpose, the Association shall maintain all Building Exteriors and the Area of Common Responsibility as follows: paint, stain, repair, replacement and care of roofs, gutters, downspouts, fences, exterior building surfaces, exterior doors and other exterior fixtures and improvements. Such maintenance shall not include repair or replacement of window glass on any Building or the repair or replacement of utility lines from the point that they begin to serve exclusively any one Unit. The Association shall also prepare, improve, install and shall maintain all landscaping, trees, shrubs, grass, walks and steps located within the Project. The Association shall have the right of entry to any Unit to perform emergency repairs or do other work necessary for maintenance of the Building Exteriors and the Area of Common Responsibility.

In the event that the need for maintenance or repair of the Building Exteriors, or Area of Common Responsibility is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the guests, tenants or invitees of the Owner(s) of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be immediately due and payable from such Owner and added to and become a part of the assessment to which such Unit is subject.

7. Professional Management. The Association may carry out, through a Manager, those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant's control of the appointment of the Board of Trustees as described in Section 2 of Article III may be terminated by the Association without cause at any time after termination of Declarant's control. The above term and termination provisions shall not apply to any other types of service contracts.

8. Assumption of Risk. The Association may, but shall not be obligated to, sponsor certain activities or provide facilities designed to promote the health, safety and welfare of Owners and occupants. Notwithstanding anything contained herein or in Act, the Articles or Bylaws, neither the Association, the members of the Board, the officers of the Association, the management of the Association, nor the Declarant or its affiliates and agents shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or Unit or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot or Unit and each tenant, guest, and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including all Common Areas and Area of Common Responsibility.

Neither the Association, the members of the Board, the officers of the Association, the Associations' management company nor the Declarant shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of

utility lines or utility sub-stations adjacent to, near, over or on the Property. Each Owner and occupant of a Lot or Unit and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company nor the Declarant have made any representations or warranties, nor has any Owner or occupant, or any tenant, guest or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision of the Act, this Declaration, the Articles or Bylaws shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the Associations' management company or the Declarant to protect or further the health, safety or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot or Unit) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the members of the Board, the Association's management company and the Declarant, their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or in connection with any matter for which the liability has been disclaimed.

9. Limited Access and Privacy. The Association may maintain or support certain activities and improvements with the Property designed to afford the Property limited access and greater privacy than they otherwise might enjoy; provided, however, unless otherwise specifically indicated in this Declaration, the Association shall not be obligated to maintain or support such activities or improvements.

Declarant makes no representations or warranties that any activities within the Property designed to afford such Property limited access and greater privacy will provide security and safety to Owners, lessees, occupants and their families, invitees and licensees. In particular, gated entrances and automatically locking doors, if any, may restrict or delay entry into the Property by police, fire department, ambulances and other emergency vehicles or personnel.

Each Owner, lessee or occupant, for itself and its family, invitees and licensees, assumes the risk that any such activities or improvements with the Property designed to afford such Property limited access and greater privacy may not provide security and safety and may restrict or delay entry into the Property by police, fire department, ambulances and other emergency vehicles and personnel. Neither the Declarant, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Owner, lessee or occupant, or their families, invitees or licensees for any claims or damages resulting, directly or indirectly from the construction, operation, existence or maintenance of any such activities or improvements with the Property designed to afford such Property limited access and greater privacy.

Neither the Association, its officers, the members of the Board, the Association's management company, nor the Declarant shall in any way be considered insurers or guarantors of security within the Property. Neither the Association, its officers, the members of the Board, the Association's management company nor the Declarant shall be held liable for any loss or damage for failure to provide any security or for the ineffectiveness of any activities undertaken or improvements constructed within the Property for the purpose of providing to the Property limited access and greater privacy.

All Owners and occupants of any Lot or Unit, and all tenants, guest and invitees of any Owner, acknowledge that neither the Association, its officers, the members of the Board, the Association's management company nor the Declarant represent or warrant that any patrolling of the Property, neighborhood watch group, volunteer security patrol, fire protection system, burglar alarm system, entry gates or other security system designed by or installed according to guidelines established by Declarant (i) may not be compromised or circumvented; (ii) will prevent loss by burglary, theft, hold-up or otherwise; nor (iii) will in all cases provide the detection or protection for which the system is designed or intended.

All Owners and occupants of any Lot or Unit and all tenants, guests and invitees of any Owner assume all risks for loss or damage to Persons, to Lots or Units, and to the contents of Lots or Units and further acknowledge that the Association, its officers, the members of the Board and committees, the Association's management company and the Declarant have made no representations or warranties, nor has any Owner, occupant or any tenant, guest or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any patrolling of the Property, neighborhood watch groups, volunteer security patrol, fire protection system, burglar alarm system, entry gates or other security systems recommended or installed or any security measures undertaken with the Property.

10. Amplification. The provisions of Section 5 may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration or shall be in contravention of the Act.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS AND UNITS

1. Description of Buildings and Units. Each Building shall be a detached, multi story residence of wood frame with stucco and/or stone exterior construction, erected on concrete slab with composition roof and underground parking garage. Each Unit shall be separately metered and wired for electricity. Water, both culinary and secondary for irrigation, may be metered in common with all other Units in the Projects. Each Unit shall be connected to a public sewage disposal system. Each Unit shall include one underground parking space and one surface parking space, and may be provided the option to rent additional parking spaces as provided in Article VI. A more detailed description of the Units may be found on the Plat Map(s). Revised Unit descriptions may be contained in subsequent plats or amendments.

2. Easement of Enjoyment. Each Member shall have an undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated on the Plat Map(s) for exclusive use by such Owner subject to this Declaration or as may be designated by the Association. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate, subject to the age restrictions set forth in Recital D, the right and easement of use and enjoyment described herein to any guest, invitee, tenant, lessee, contract purchaser, or other person who occupies or utilizes such Member's Unit.

3. Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Unit built in substantial accord with the boundaries for such Unit as depicted on the Plat Map(s) to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. There is also hereby created an easement for any encroachment by any footing, foundations, roof overhang or other architectural appurtenances upon an adjoining Unit or any part of the Common Areas.

4. Limitation on Easement. A Member's equal, undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's voting right in the Association upon notice and a chance for hearing for any period during which (i) an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Association to (i) impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas; and (ii) allocate and/or assign or limit parking to each Owner;

(c) The right of the City, Davis County, the State of Utah or any other governmental or quasi-governmental body having jurisdiction over the Property, to ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection and providing other governmental or municipal service;

(d) The right of the Association to dedicate or transfer (subject to any rights of third parties) all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument

signed by Members holding sixty-seven percent (67%) or more of the total votes of the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities, permits, licenses, easements and rights-of-way which are intended to benefit and which do not have any substantial adverse effect on the use or enjoyment of the Common Areas by the Members;

(e) The right of the Association to grant long-term leases of portions of the Common Area, such as parking areas, to third party operators; and

(f) The right of Declarant to the use of all Common Areas.

5. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit No. _____ of BELLA VIDA AT EAGLEWOOD, a Planned Unit Development, according to the Record of Survey Map filed for record as Entry No. _____ in Book _____ of Plats at Page _____, together with the appurtenant undivided ownership interest in the "Common Areas", all of which are defined and described in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bella Vida at Eaglewood, and the Exhibits attached thereto, filed for record as Entry No. _____ in Book _____ at Pages _____ through _____, of Official Records, as amended.

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

6. Transfer of Title. The Declarant agrees to cause the conveyance of the Common Areas to the Members of Association as tenants in common with an equal undivided interest therein. No Owner shall bring any action for partition or division of any part of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Areas.

7. Age Restriction – Housing for Persons 55 Years of Age or Older. The purpose of this Declaration is to establish a community for persons 55 or older and to qualify for the age restriction exemption under the Fair Housing Act (Title VIII of the Civil Rights Act, 42 USC § 3601, *et seq.*) that allows communities to be operated for occupancy by persons 55 years of age or older, to satisfy those certain criteria set forth in HOPA and to adopt certain age restriction rules and regulations and age verification procedures to be enforced by the Association.

After Declarant's conveyance of all Units in the Project, at least eighty percent (80%) of the occupied Units within the Project shall be occupied by at least one (1) person not less than

fifty-five (55) years of age. Each Owner hereby agrees and acknowledges that in the event he or she purchased a Qualifying Unit, he or she shall be bound by the Age 55 Criteria and the Owner's rental and sale of such Qualifying Unit shall be restricted by the Age 55 Criteria. To the extent required by any applicable Federal or State law, at no time shall less than eighty (80%) percent of the Units subject to this Declaration be occupied by single families where at least one member of the single family is fifty (55) years of age or older. For the purposes of this Section 7, a Unit is "occupied" when an Owner or Occupant has possession of the Unit and has the right to actually use or control such Unit. In compliance with HOPA, during the period that Declarant controls appointment of the Board, and thereafter the Association, shall (i) publish and adhere to Age 55 Criteria policies and procedures that demonstrate the intent to operate this Project as a community for persons who are 55 years of age or older as such intent is set forth in this Section 8.5; and (ii) shall establish policies for age verification of each Owner or Occupant by reliable surveys and affidavits, which surveys and affidavits shall be of the type that may be admissible in administrative and judicial proceedings for the purposes of such verification, such as a driver's license, birth certificate, passport, immigration card or military identification. The only exception to the Age 55 Criteria as applied to the eighty percent (80%) of Units occupied by persons age 55 or older is for the non-age qualified surviving spouse of an age-qualified decedent Owner who had occupied the Qualified Unit, until such time as the non-age qualified surviving spouse remarries at which time the exception expires.

ARTICLE V. ASSESSMENTS

1. Agreement to Pay Assessments. Each Owner of any Unit, by the acceptance of instruments of conveyance and transfer therefor, whether or not it is expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all Units shall be allocated the then applicable assessments upon conveyance of the first Unit.

(a) Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be not greater than Four Hundred Dollars (\$400.00) per month.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year above the maximum annual assessment for the previous year without a vote of the membership by the greater of: (i) up to fifteen percent (15%); or (ii) by a percentage equal to the increase in the Consumer Price Index (CPI) over the prior year. In addition to this Section, the maximum annual assessment may increase based upon the increase in Program Expenses as set forth in Article V(2)(b).

(c) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, a vote of at least sixty-seven percent (67%) of the votes (determined in accordance with Section 5 of Article III) of Members who are

voting in person or by proxy, at a meeting duly called for this purpose shall be required to increase the annual assessment to more than the greater of (i) fifteen percent (15%) above the previous year's maximum annual assessment; or (ii) a percentage equal to the increase in the Consumer Price Index (CPI), above the prior year's maximum annual assessment.

(d) The Board may fix the annual assessment at an amount not in excess of the maximum annual assessment set forth in Section 1(c), above, without a vote of the Members.

2. Annual Assessments. Annual assessments shall be computed and assessed against all Units in the Project as follows:

(a) Common Expenses. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Area of Common Responsibility, the Building Exteriors, and furnishing common utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: furniture, fixtures and equipment associated with the Area of Common Responsibility; real property taxes and special assessments on the Area of Common Responsibility (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance and cleaning of the Area of Common Responsibility and Building Exteriors; landscaping of Area of Common Responsibility; snow removal, wages of Association employees, fees for an outside Manager if contracted by the Association; trash removal from Area of Common Responsibility; utility charges, including charges for utility and telecommunication services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement for areas of Area of Common Responsibility and Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Section 2(a) shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

(b) Program Expenses. Annual assessments shall be based upon advance estimates of the cash requirements needed to provide for payment of all estimated expenses arising out of or connected with the Program Facilities. Such estimated expenses may include, without limitation, the following: expenses of concierge, management, any support personnel, maintenance, improvement, repair, operation, insurance, and management of the Program Facilities, including, but not limited to, the

exterior and structural components of the Club House, expenses of administration of the Program, including an administrative fee initially equal to Ten Percent (10%) of Program Expenses (which fee shall be paid to Bella Vida Management, LLC, the initial Program Manager, or to its successors or assignees) and any reasonable reserve for such purposes as determined by Declarant; all utility charges for the Program Facilities; the costs of maintaining a car or van for transportation services including a driver; the costs of trash collection and removal; compensation paid to the Program Manager, accountants, attorneys and other employees; the costs of all maintenance, gardening, security, employees and other services benefiting the Program Facilities; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Program Facilities; and any other costs incurred by Declarant or the Program Manager. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Program Expense fund. Beginning the year after 75% of the Units have been conveyed by the Declarant, Program expenses may be increased each year by the greater of (i) up to fifteen percent (15%) over prior year expenses; or (ii) by a percentage equal to the increase in the Consumer Price Index (CPI) over the prior year. Prior to the year after 75% of the Units have been conveyed by the Declarant, Program expenses may be increased at the discretion of the Program Manager. The Program Manager will select the actual CPI classification for determination of any increase.

(c) Apportionment. Common Expenses and Program Expenses shall be apportioned among and assessed to all Units and their Owners, as set forth on Exhibit "D", which is attached hereto and incorporated herein by this reference. The Declarant shall be liable for the amount of any assessments against Units owned by it as provided herein, and as limited in subsections 3 and 4 below.

(d) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1st and ending on the following December 31st, provided the first fiscal year shall begin on the date of the conveyance of the first Unit by Declarant. On or before December 1st of each year thereafter, the Board of Trustees shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(e) Notice and Payment. Except with respect to the first fiscal year, the Board of Trustees shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 15th each year for the fiscal year beginning on the following January 1st. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year

shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. The Board of Trustees shall also have the right to assess a late fee of up to ten percent (10%) of any assessment installment not paid within ten (10) days following the due date thereof. In addition, in the event any installment of the annual assessment is not paid within fifteen (15) days of the date such an installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Trustees to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of Owner from the obligation to pay such assessment or any other assessment.

(f) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Trustees may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article V Section 3 below, except that the required vote set forth therein shall be by at least fifty percent (50%) of the voting power of the Association in person or by proxy at a meeting called for such purpose. Notwithstanding the foregoing, the Association may levy an additional assessment without a vote of the Owners so long as such additional assessment is only to cover the cost of utility rate increases which take effect after the annual budget is prepared.

3. Special Assessments. In addition to the annual assessments authorized by this Article, the Board of Trustees may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with the assessment percentages allocated to each Unit as set forth on Exhibit "D". Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent

(18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. In connection with any such special assessment, if the Declarant is only obligated to pay twenty-five percent (25%) of the annual assessment attributable to Units it owns pursuant to Section 4 below, it shall only be required to pay twenty-five (25%) of the special assessment otherwise attributable to each such Unit. The provisions of this Section are not intended to preclude the assessment, collection or use of annual assessment for the aforesaid purposes.

4. Uniform Rate of Assessment. The amount of any annual or special assessment against each Unit shall be fixed at a uniform rate based on the size of the Unit. The percentage allocation of each unit is set forth on Exhibit "D". Exhibit "F" also sets forth the Initial Monthly Assessment of each Unit. Until 60 Units have been conveyed by the Declarant the annual assessment shall be calculated as follows: (a) if the annual assessment for a Unit as calculated in Section 2 is equal to or lesser than the Initial Annual Assessment of the Unit the annual assessment shall be the Initial Annual Assessment; or (b) if the annual assessment for a Unit as calculated in Section 2 is greater than the Initial Annual Assessment of the Unit, the annual assessment shall be equal to the Initial Annual Assessment of the Unit plus the adjusted increase, with the adjusted increase being calculated by subtracting the Initial Annual Assessment from the calculated amount, multiplying by the number of Units conveyed by the Declarant, and dividing by the number 60. Declarant shall pay any shortage by loan as provided for in section 10(a) until 60 Units have been conveyed. Notwithstanding the foregoing, until the termination of Declarant's control of the appointment of the Board of Trustees as described in Section 2 of Article III, Declarant shall pay only twenty-five percent (25%) of the annual assessment attributable to each fully completed Unit which it owns until the conveyance by Declarant of such Unit to a third-party purchaser. For the purposes of this Article, a Unit shall be considered owned by the Declarant if a Unit is transferred to a related or affiliated entity to be used as a sales model. At such time as Declarant ceases to qualify for the reduced twenty-five percent (25%) rate during any period to which an annual assessment is attributable, the assessment attributable to the membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Declarant qualified for each rate. Declarant shall not be obligated to pay assessments on its unsold Units. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the special assessment.

5. Notice and Quorum for Any Action Authorized Under Sections 1 and 3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 3 of this Article shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast seventy five percent (75%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and the notice requirement of this Section shall not apply. The required quorum at the subsequent meeting shall be seventy five percent (75%) of the required quorum at the preceding meeting. No such adjourned meeting shall be held more than sixty (60) days following the preceding meeting.

6. Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant to the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Trustees may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or agent and may be recorded in the office of the County Recorder of Davis County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Trustees shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

7. Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Area of Common Responsibility or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

8. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments levied against his Unit as described in Section 7 of this Article V shall not pass to successors in title but shall remain the personal obligation of the Owner. A lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit except for foreclosure by a First Mortgagee, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9. Reserves and Working Capital. In addition to its day-to-day operating funds, the Association shall establish the following funds:

(a) Reserve Fund. The Association may in its sole discretion establish and maintain an adequate "**Reserve Fund**" for the periodic maintenance, repair and replacement of improvements to the Area of Common Responsibility and Building

Exteriors the Association is obligated to maintain, repair or replace. The Reserve Fund shall be maintained out of regular assessments for Common Expenses.

(b) Working Capital Fund. The Declarant shall establish and maintain for the Project, a "**Working Capital Fund**" equal to at least two monthly installments of the annual assessment of each Unit. Each Unit's share of the Working Capital Fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. Notwithstanding the foregoing, the contribution to the Working Capital Fund for each unsold Unit shall be paid by the Declarant to the Association within one hundred twenty (120) days after the latter of the date of the conveyance of the first Unit in the Project or completion of the construction of the Unit. With respect to each Unit for which the Declarant pays the contribution to the Working Capital Fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Unit at the time of the closing of the sale to such purchaser or by the Association upon termination of the Declarant's control of the Association as described in Section 2 of Article III hereof, whichever is earlier. The Working Capital Fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the Working Capital Fund is to ensure that the Association will have cash available to meet initial operating expenses and unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the Working Capital Fund are not to be considered advance payments of any regular assessment. The Working Capital Fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the Working Capital Fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

(c) Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 2 above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Unit in question.

10. Declarant's Obligation for Assessments.

(a) Payment of the "Shortage". Until fifty percent (50%) of the Units have been conveyed to Owners, the allocation of assessments shall be according to the

formula detailed in Section 4. The Declarant shall pay any shortage, if any, until 60 units have been conveyed. For any shortage paid by Declarant, such amount shall be treated as a short-term loan to be repaid by the Association to the Declarant with interest at the prime rate plus two percent (2%). Declarant shall not be obligated to pay assessments on its unsold Units. A "shortage" shall exist if Income and Revenues, as described below, for a particular fiscal year are less than Expenditures, as defined below, incurred for the same fiscal year. Income and Revenues and Expenditures are to be calculated using the accrual basis of accounting.

(i) **"Income and Revenues"** are: the amount of all income and revenue of any kind earned by the Association during the subject fiscal year, including, but not limited to, assessments, use fees, subsidies (if any) provided by Declarant and income from all other sources. For purposes of this Section 10, assessments for each Unit are deemed earned on the annual anniversary date of the commencement of assessments with respect to such Unit.

(ii) **"Expenditures"** are: the amount of all actual operating expenses incurred, or obligated for, by the Association during the subject fiscal year, including without limitation (A) any contribution to the Reserve Fund, defined in Section 9(a) above, for such year, (B) any contribution to the Program or Program Expenses and (C) expenditures for any budgeted or approved non-budgeted capital assets acquired during the fiscal year, but excluding (1) all non-cash expenses such as depreciation or amortization, (2) expenditures for or purchase of non-budgeted, non-approved items, and (3) all expenditures made from the Reserve Funds. For purposes of this subparagraph (ii), "approved" shall mean prior written approval of the Declarant.

(b) Subsidies and/or In-Kind Contribution. The Association is specifically authorized to enter into subsidy contracts or contracts for "in-kind" contribution of services, materials or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. The Declarant's payment of assessments may be reduced or abated by the agreed value of any such services or materials provided by Declarant, in accordance with any such contract or agreement with the Association.

ARTICLE VI. PROGRAM FACILITIES AND SERVICES

1. Program Facilities. Declarant, an Affiliate of Declarant and/or other Persons may build and retain ownership over properties and certain facilities adjacent to or in the vicinity of the Property as shown on the Plat Map which shall be leased to the Association or otherwise made available for use by Association Members, and which shall be part of the Area of Common Responsibility, but not part of the Common Areas. Declarant or an Affiliate of Declarant may also provide certain services on a pay-per-service basis. Such facilities and/or services may include the following:

(a) Club House. Declarant may, at Declarant's option, build and retain ownership over a Club House which shall consist of a building and outdoor facilities, as shown on the Plat Map, which may include a swimming pool, a gymnasium and other recreational facilities, and the property on which it is located. The Club House and the underlying property may be owned by the Declarant or an Affiliate of Declarant. Alternatively, the Association may build or acquire ownership over such Club House, provided, however, that the land on which the Club House is located shall be owned by Declarant (or an Affiliate of Declarant) and shall be leased to Association. The Association shall lease the Club House and other Program Facilities to the initial Program Manager. The Association's obligations under any lease for the Club House or the land on which the Club House is located shall survive the termination of the initial Program Manager or the termination of the Association under Article X. Such Club House shall be a membership facility available to all Unit Owners and shall be maintained as part of the Area of Common Responsibility. The employees, furniture, fixtures, equipment and insurance of the Club House and related amenities shall also be part of the Area of Common Responsibility. In the event of the event of termination of the initial Program Manager, Declarant shall have the right, but not the obligation, to require the Association to purchase the land or Program Facilities owned by Declarant or its affiliates for the Fair Market Value of such Program Facilities. As used herein "**Fair Market Value**" shall mean the value determined by an MAI certified appraiser retained by Declarant.

(b) Storage Areas. Declarant may build storage areas to be located under each Building. Unit Owners shall have the right to use one (1) section of the storage area per Unit owned. The determination of specific storage areas to be utilized by Owners shall be made by the Association and such storage areas permanently assigned to individual Units shall be Limited Common Areas. Pursuant to an agreement with the Association, any excess storage areas shall be controlled by the Declarant or its assignee, which may lease such storage areas on an individual basis in the sole determination of and for a fee to be determined by Declarant or its assignee. All storage areas shall be part of the Area of Common Responsibility.

(c) Transportation, Concierge, Activities. Declarant may provide certain transportation and concierge services and planned activities for Unit Owners on a pay-per-service basis. Such concierge services may include facilitating contractual agreements between third party service providers and Members. Neither the Declarant, the Association, nor any director, officer, agent or employee of any of the foregoing, shall be liable to any Owner, lessee or occupant, or their families, invitees or licensees for any claims or damages resulting, directly or indirectly from the actions of third party service providers.

(d) Parking. Declarant shall build underground parking areas. Unit Owners shall be entitled to use one (1) underground parking space and one (1) surface parking space per Unit owned. The determination of specific underground parking spaces and surface parking spaces to be utilized by Owners shall be made by the Association.

Pursuant to an agreement with the Association, any excess parking areas shall be controlled by the Declarant or its assignee, which may lease such parking areas on an individual basis in the sole determination of and for a fee to be determined by Declarant or its assignee. All parking areas shall be part of the Area of Common Responsibility.

2. Technology Package. In order to allow Declarant to provide a Technology Package to Unit Owners at a reduced or competitive rate, Declarant intends to bulk purchase and provide the Technology Package to each Unit. The Technology Package shall include all telecommunication services including telephone, internet, cable, satellite and security services. Declarant or an Affiliate of Declarant entity may retain ownership over the equipment necessary to provide the Technology Package and lease them to the Association. Such lease shall be a net lease with the Association taking full responsibility for the maintenance, repair and upkeep of the equipment. Declarant or an Affiliate of Declarant, as applicable, shall retain all easement rights over Common Areas and the interior walls, hallways, ceiling and attic space of each Building and Unit for telecommunications facilities. Declarant or an Affiliate of Declarant, as applicable, shall control the right to supply the services included in the Technology Package to all Buildings and Units in the Project, and the Technology Package shall be purchased by each of the Unit Owners for a fee. Certain optional upgraded services shall be made available at an increased rate. Fees associated with telecommunication services as provided herein, shall be separate from the Assessments.

3. Easement. Declarant and its affiliates, agents or employees shall retain on-going easement rights over Common Areas for events, activities and services associated with the Program and the Program Facilities.

ARTICLE VII. OPERATION AND MAINTENANCE

1. Maintenance of Units. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit. The Association shall have no obligation regarding maintenance or care of any Unit except as expressly set forth in Section 2 of this Article VII or elsewhere in this Declaration.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Area of Common Responsibility, and any property and facilities owned by Declarant and made available for the primary use and enjoyment of the Association and its Members, as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the maintenance of all Building Exteriors and shall install and maintain all landscaping, trees, shrubs, grass, walks and steps located in the Area of Common Responsibility. Each Owner will be responsible for all maintenance of its Limited Common Areas. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund.

Any fencing within the Project shall initially be installed by Declarant. Irrigation water shall be provided through an irrigation system to be installed by Declarant. The Association shall be responsible for the continual upkeep, repair, maintenance, and eventual replacement of the irrigation system, except in the Limited Common Areas.

Except as otherwise specifically provided herein, all costs for maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Owners as part of the assessments described in Article V, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

If, in the discretion of the Declarant, and as long as Declarant owns any property described in Exhibits "A" and "B", the Association fails to perform its maintenance responsibilities or enforce the maintenance responsibilities of Owners in the manner required by the Declaration, Declarant may cause such maintenance to be performed and, in such event, the Association shall reimburse Declarant for all costs incurred. Declarant shall not take such action without first providing the Association written notice and a reasonable opportunity to perform the required maintenance.

3. Utilities. Each Owner shall pay for all utility services furnished to such Owner's Unit including a pro-rata share of all utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered (either directly or through membership in an association created for the purpose of administering such common utilities for one or more related developments) and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

The Association may, in its discretion, undertake to meter each Unit individually for any common utilities, whether privately or through a municipal utility. In such event, the Unit Owner shall pay the actual costs of such utility services attributable to such Owner's Unit.

4. Insurance. The Association shall at all times maintain in force insurance meeting the following requirements:

(a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering all insurable improvements on the Common Areas and other portions of the Area of Common Responsibility of the Project; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such

“master” or “blanket” policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Area of Common Responsibility covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance; or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property’s insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Area of Common Responsibility shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

(b) Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a “master” or “blanket” policy of flood insurance shall be maintained covering the Area of Common Responsibility (hereinafter “**Insurable Property**”) in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Area of Common Responsibility located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(c) Fidelity Bonds. The Association may at all times maintain in force and pay the premiums for “blanket” fidelity bonds for all officers, members, and employees of the Association, including employees employed in connection with the Club House and other Areas of Common Responsibility, and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide “blanket” fidelity bonds, with coverage identical to such bonds required of the Association, for the Manager’s officers, agents, employees, including employees employed in connection with the Club House and other Areas of Common Responsibility and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association’s best business judgment and shall not be less than the estimated maximum of funds, including Reserve Funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the Working Capital Fund and the Reserve Funds, each with appropriate access controls, and the bank in

which funds are deposited sends copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's Reserve Funds; or (3) two members of the Board must sign any checks written on the Reserve Fund. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three months' aggregate assessments on all Units. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to any Insurance Trustee. The requirements of this Section (c) may be satisfied by naming the Association and its officers, members and employees as "also insureds" under the Managers Fidelity Bond and otherwise meeting the foregoing requirements.

(d) Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. Such insurance shall cover all of the Program Facilities and other portions of the Area of Common Responsibility, including all employees, agents or contractors associated therewith while acting on Declarant's (or its successor's) behalf, Building Exteriors, public ways in the Project, including any dedicated trail system(s), all other areas of the Project that are under the Association's supervision, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Area of Common Responsibility, and/or Building Exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive liability insurance for owned and non-owned automobile liability. If such policy does not include "severability of interest" in the terms, the policy shall

include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

(e) Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance relating to the property owned by the Association or Unit. The Insurance Trustee will have no authority to negotiate any losses or other matters relating to Program Facilities. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections, (a), (b), (c) and (d) shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of Trustees, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, or an Owner) from collecting insurance proceeds. The provisions of this Section (e) and of the foregoing sections (a), (b), (c) and (d) shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

Premiums for all insurance specified herein shall be a Common Expense and shall be included in the assessments described in Article V.

(f) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

(g) Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide hazard, fire, general liability and all other insurance on its Unit and all personal property and upon all other property and improvements on or within its Unit. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

ARTICLE VIII. DAMAGE OR DESTRUCTION

1. Damage to Common Areas. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas and Area of Common Responsibility, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article VII hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practicable. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy a Special Assessment for the deficiency and proceed with such restoration and repair.

2. Damage to Buildings. Except as otherwise provided in this Declaration, in the event of any destruction of any Building(s), it shall be the duty of the Owner(s) of the Building(s) to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained pursuant to Article VII hereof for reconstruction or repair of the Property shall be made available for such purpose, unless otherwise provided herein. The Building(s) shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Building(s) shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event more than one Building is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Building.

3. Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Sections 1 and 2 above, the Association shall have the right, by a vote of seventy-five percent (75%) of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Building has been physically damaged, to the extent the proposed plan affects the reconstruction of such Building.

4. Appraisal of Damages. In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article VIII, the Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Davis County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within forty-five (45) days after the selection of the appraisers, a

majority of the appraisers shall set the estimated cost of repairs and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

5. Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Article VII of this Declaration, restoration and repair of any other damage to the exterior or interior of any individual Building, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, and personal property shall be made by and at the individual expense of the Owner of the Building so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Declaration, such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

6. Damage by Member(s). Each Member shall be liable to the Association for any damage to the Common Areas, Area of Common Responsibility or the Buildings if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Areas, Area of Common Responsibility or the Building from the Member, or his or their respective family and guests, both minor and adult. The Association shall first look to the Member for compensation for such damage, and next to any insurance carried by the Member. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance or paid to the Association by the Member shall be a Special Assessment against the Unit of the Member liable for the damage and may be enforced as provided hereby for the enforcement of any other Assessment.

ARTICLE IX. CONDEMNATION

1. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Trustees shall give prompt

written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

2. Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board of Trustees, on behalf of the Association as herein provided.

3. Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

4. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board of Trustees shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

i. The total amount apportioned to the taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken).

ii. The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken.

iii. The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit.

iv. The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

v. If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

vi. Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

vii. No provision of this Article IX or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

i. If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

ii. If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.

iii. If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Trustees, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

iv. The Board of Trustees, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Article IX, Section 4(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Trustees shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VIII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE X. TERMINATION

1. Required Vote. Except as otherwise expressly provided in this Declaration, the Project may be terminated only by agreement of all Owners of the Units.

2. Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by all of the Owners. Such an agreement to terminate must also be approved by the holders of all liens affecting any of the Units. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Davis County, Utah and is effective only on recordation.

3. Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

4. Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 1 and 2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

5. Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

6. Property Owned by Declarant. In the event of any termination of this Declaration by the Association which, in the reasonable opinion of Declarant, has a material negative effect on the Program or the Program Facilities, Declarant shall have the right, but not the obligation, to require the Association to purchase the land or Program Facilities owned by Declarant or its affiliates for the Fair Market Value of such land or Program Facilities. As used

herein "**Fair Market Value**" shall mean the value determined by an MAI certified appraiser retained by Declarant.

ARTICLE XI. GENERAL USE RESTRICTIONS

1. Rules and Regulations. Declarant has established a general plan of development for the Property in order to protect all Owner's quality of life and collective interests, the aesthetics and environment within the Property and the vitality of and sense of community within the Property, all subject to the Board's and the Member's ability to respond to changes in circumstances, conditions, needs and desires. The Property is subject to land development, architectural, design and other provisions contained in this Declaration governing individual conduct and uses of or actions upon the Property, and the guidelines, rules and restrictions promulgated pursuant to this Articles XI, including the Use Restrictions as such may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Property.

Except as otherwise expressly provided herein, all provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease of any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Articles and the Bylaws.

The Association shall have the authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

The Declarant shall have the authority to promulgate and enforce reasonable rules, regulations and procedures applicable to the Club House and other Areas of Common Responsibility owned or leased by Declarant.

2. Use of Common Areas. The Common Areas and Area of Common Responsibility shall be used only in a manner consistent with their nature and with the rules, regulations and use restrictions applicable to Units. Except as otherwise set forth herein, no admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas; provided, however, certain portions of the Common Areas, such as excess parking spaces and storage facilities, may be leased by Declarant on a long-term basis as provided herein.

3. Use of Units. The Units within the Project may be used and shall be limited in their uses ("**Use Restrictions**") as follows:

(a) Use of Buildings. An Owner of a Unit may use such Unit only as a permanent or vacation single-family residence (as family is defined from time to time in the zoning ordinances of the City of North Salt Lake, Utah) for itself and its guests or lessees. No guest, except caregivers of Owners or occupants, shall be allowed to stay in

a Unit for more than ninety (90) consecutive days or more than a cumulative one hundred eighty (180) days in any calendar year. No short term rentals of Units shall be allowed. The minimum lease term for any Unit shall be six (6) months. No Owner may rent individual rooms in a Unit. The Site Plan for the Project was approved by the City of North Salt Lake as a Planned Unit Development for Adult Persons age 55 and over. In accordance with such approval, eighty percent (80%) of the Units shall be occupied by at least one person at least fifty-five (55) years of age. No Owner of a Unit shall conduct any business, profession, occupation, or trade from its Unit; provided that this Declaration does not prohibit the Declarant from operating facilities in the manner set forth in Article VI, nor prohibit an Owner from leasing or renting such Owner's Unit to others so long as the Use of such Unit complies with the provisions of this Declaration, the Act, and other applicable laws and ordinances. Any lease of a Unit shall be in writing and shall be subject to this Declaration and the Bylaws. Notwithstanding the restrictions set forth in this paragraph:

i. an Owner may use its Unit as its private office, on the condition that the Owner does not invite others to its Unit to conduct business and such use complies with all applicable federal, state and local laws, ordinances, regulations and rules; and

ii. the Association and Declarant may each use one Unit owned or leased by it as a management office, or a combined management office and residence for a resident manager, for the Condominium Project

(b) No Smoking. Bella Vida shall be a non-smoking Project. Smoking is strictly prohibited in any Unit or Building. In accordance with the Utah Clean Air Act, smoking is prohibited within twenty-five (25) feet of the Buildings.

Subject to the terms of this Article XI and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may amend the Use Restrictions and may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. Notice of any such proposed action shall be posted in a prominent place within the Property or published in the Association's newsletter, if any, at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any such action shall become effective after compliance with the procedure described below unless disapproved at a meeting by at least sixty-seven percent (67%) of the total Members and by the Declarant, so long as the Declarant owns any Unit, Lot or portion of the Property. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the Bylaws. If a meeting to consider disapproval is requested by the Members prior to the effective date of such action, the action may not become effective until after such meeting is held.

Alternatively, the Members, at a meeting duly called for such purpose, may amend the Use Restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and previously adopted rules by a vote of at least sixty-seven percent (67%) of the total Members and the approval of the Declarant, so long as the Declarant owns any Unit, Lot or portion of the Property.

At least thirty (30) days prior to the effective date of any action under this Article XI, Section 3, a copy of the amendment or rule, specifying the effective date, shall be posted in a prominent place within the Property or published in the Association's newsletter, if any. The Association shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee. In addition to posting or publishing the amendment or rule, if such amendment or rule modifies, cancels, limits, creates exceptions to, or expands the Use Restrictions, the Association may record upon such effective date, in the Office of the Davis County Recorder, an amendment to this Declaration setting forth the amendment or rule.

Nothing in this Article XI shall authorize the Board of the Members to modify, repeal, or expand the Declaration, the Articles or the Bylaws. Such documents may be amended only as provided therein.

(c) Rights of Owners. Except as may be specifically set forth in the Use Restrictions, neither the Board nor the Member may adopt any rule in violation of the following provisions:

(i) Similar Treatment. Similarly situated Owners and occupants shall be treated similarly.

(ii) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their household, within the limitations imposed by this Declaration and the zoning ordinances of the City of North Salt Lake, Utah, except that the Association shall have the power to limit the total number of occupants permitted in each Unit on the basis of size and facilities of the Unit and its fair share use of the Common Area .

(iii) Activities Within Units. No rule shall interfere with the activities carried on with the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Unit, of that create an unreasonable source of annoyance.

(iv) Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of financial burdens among various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the use of the Common Area, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who abuse the Common Area, violate the rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article V.

(v) Alienation. No rule shall prohibit the leasing or transferring of any Unit, or require the consent of the Association or Board for leasing or transferring of any Unit; provided, however, the Association or Board may require a minimum lease term of up to twelve (12) months and, further provided, the Association or Board may adopt such rules and regulations necessary to maintain the status of the Property as an age-restricted community under state and federal law. The Association may also require that Owners use lease forms approved by the Association (or include specific terms in their leases), and shall impose a review or administration fee on the transfer of any Unit as determined by the Board. In addition, there shall be a Transfer Fee equal to one and a half percent (1.5%) of the value of any Unit for which ownership is transferred, which shall be paid to the Program Manager. Such fee shall be waived if the Unit transferred is owned by the Declarant, the Program Manager or any affiliates of the Declarant or Program Manager.

(vi) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop in accordance with the Master Plan, including, but not limited to, the rights of the Declarant set forth herein.

(vii) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

(d) Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Building, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

(e) Signs. No Signs advertising any business shall be displayed on any portion of the Property except the Club House and Declarant's office. No signs advertising Units for sale or rent may be displayed on the Property or on any portion of the Property, unless first approved by the Board, and unless such signs comply with any and all local ordinances. Notwithstanding the preceding sentence, until all Units in all phases of the Project have been sold, the Declarant shall have the right to advertise Units for sale, provided Declarant complies with the requirements of the City with respect to such advertising.

(f) Animals. No animals or birds of any kind shall be raised, bred, or kept in any Building, or on any portion of the Property; except that no more than two (2) usual and ordinary indoor household pets such as dogs, cats, or birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes, that they are kept under reasonable control at all times and that they make no objectionable noises, as determined by the Association. A special monthly pet fee ("Pet Fee") shall be assessed to each Owner possessing a pet. Dogs shall be kept on a leash at all times when in the Common Areas or Area of Common Responsibility. Owners shall prevent their pets from soiling any portions of the Common Areas, including interior Common Areas and entryways to all Buildings, and in the event a pet does soil such areas, the Owner or person in control of such pet shall immediately clean up after the pet. In the event the Owner fails to immediately clean up after the pet, the Association may assess a special fee, in addition to the Pet Fee, as determined by the Association against the Owner. The Board may enact reasonable rules respecting the keeping of animals within the Project, including animal size or noise restrictions, and may designate certain areas in which animals may not be taken or kept, or they may require that specific animals not be allowed on any part of the Property. It is intended that all permitted pets shall be kept indoors and not left outdoors overnight and such shall, at no time, become a nuisance to the other Owners within the Project. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(g) Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All garbage or trash receptacles, including recyclable containers, shall be stored in the garage except on trash collection days. Trash, garbage and other waste shall be kept in sanitary containers and shall be kept in the garage. No equipment, garbage cans, or storage piles may be kept outside of the Building.

(h) Rooftop Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Unit or elsewhere without prior written approval of the Board. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the appearance, peace and quiet

enjoyment of any neighboring Unit, Owner's premises or equipment. Provided, however, Declarant reserves the right and option to install satellite or cable service lines and antennas as needed throughout the Project in connection with its development.

(i) Clothes Line. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

(j) Power Equipment and Car Maintenance. No power equipment or car maintenance of any nature shall be permitted on the Property. Provided, however, car washing or polishing may be done by an Owner, but only in the driveway appurtenant to that Owner's Unit.

(k) Recreational Vehicles. No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas, Areas of Common Responsibility or the driveways of any Unit except in a location, if any, designated by the Association.

(l) Parking Restriction. No permanent or temporary parking shall be allowed on streets or driveways in the Project. Only temporary guest parking shall be allowed in areas designated "Guest Parking". Guest Parking in excess of twenty-four (24) hours must be authorized by the Association through a registration process to be established by the Association. No parking shall be permitted on streets, Common Areas or Areas of Common Responsibility of the Project except in specifically designated parking lots. Said parking regulation shall be strictly enforced.

(m) Window Covers. Curtains and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material. No window tinting or mullions shall be allowed without the prior written approval of the Architectural Committee.

(n) Flooring. The flooring of each Unit shall be carpet installation with padding, with the exception of the kitchen, bathrooms and entry area, which may have hard surface flooring such as tile or slate. No hardwood flooring will be allowed in a Unit without the prior written approval of the Architectural Committee, and if such approval is given, a sound softening material must be installed under any hardwood area in order to minimize noise that may affect other Units.

(o) Sculptures/Flags. No outdoor sculptures, flag poles and/or flags shall be permitted except by written approval of the Board.

(p) Fences. The original fencing established and installed by Declarant as part of the original Project design shall be preserved and maintained by the Owners and by the Association, as the case may be according to the location of such fencing.

Thereafter, all new and/or additional fencing must be approved by an architectural committee as provided herein.

(q) No Patio/Deck Storage. No observable outdoor storage of any kind shall be permitted on Common Areas or Limited Common Areas including patios, decks, etc, except for patio furniture in good condition, which may be maintained only on the patios or decks.

(r) No Hazardous Materials. No Owner shall cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in such Owner's Unit, Limited Common Area, or Storage Facility in violation of any Environmental Law. If any Hazardous Substance is used, stored, generated or disposed of on or in any Owner's Unit, or if an Owner's Unit becomes contaminated in any manner by such Owner (or its lessee), such Owner shall indemnify and hold harmless all other Owners from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses including, without limitation, a decrease in the value of the non-contaminated Units, damages caused by loss or restriction of usable space, or any damages caused by adverse impact on the marketing of the non-contaminated Units, and any and all sums paid for settlement of claims, attorney's fees, consultant and expert fees.

As used herein, the term "**Hazardous Substance**" shall mean any pollutants, contaminants, chemicals, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or hazardous substance, material or waste, whether solid, liquid or gas, including any quantity of asbestos in any form, urea formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or byproducts or derivatives, radio-active substance, waste waters, sludges, slag and any other substance, material or waste that is subject to regulation, control or remediation under any Environmental Laws.

As used herein, "**Environmental Laws**" shall mean all local, state and federal laws and regulations which regulate or relate to the protection, clean-up and restoration of the environment; the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal of, or emission, discharge or other release or threatened release of Hazardous Substance or otherwise dangerous substances, wastes, pollution or materials and shall include the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Oil Pollution Act of 1990, Comprehensive Environmental Response Compensation and Liability Act and the Hazardous Materials Transportation Act.

(s) Sheds. No individual Unit may have a storage shed.

4. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article XI or elsewhere in this Declaration are

or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

5. Exception for Declarant. Notwithstanding the restrictions contained in this Article XI, for the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah, Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement, sale or lease of all Units owned by Declarant. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its signs, banners or similar devices.

6. Utility Easements. Easements for installation and maintenance of utilities are reserved as shown on the Plat Map(s). Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation, repair and maintenance of utilities are also reserved within each Unit. It is contemplated that telephone, gas, water, fire sprinkling systems, electricity and other utilities may originate in one Unit and terminate in another Unit. A right of access to all such utilities is reserved to the Association and Owners and to all utility suppliers.

7. No Further Subdividing. No Building, Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit to more than one person to be held by them as tenants in common, joint tenants, or otherwise; and provided further, that nothing herein shall be deemed to prevent expansion of the Project on the Additional Land pursuant to Article XIII.

8. Repair of Buildings. No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

9. Insurance. If any activity or materials stored or used on the Property result in an increase in the insurance premium for the Property, the Owner responsible for such increase shall pay the increase in the premium, due at the time the premium is due. The cost of such increase shall be assessed against the Owner responsible therefor and such assessment shall be secured by a lien on such Owner's Unit in favor of the Association in accordance with Article V, Section 6.

10. Improvements and Alterations. There shall be no excavation, construction or alteration which in any way alters the exterior appearance or structural integrity of any Building, Lot or improvement within the Property nor removal of any Building, Unit or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Board.

11. General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

ARTICLE XII. DECLARANT'S RIGHTS

1. General. In the event of a conflict between any special right given to Declarant under this Declaration and any other provision of this Declaration, the provision granting such right to Declarant shall control. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in the Act, this Declaration or the Bylaws. In addition, any or all of the special rights of Declarant set forth in this Declaration or the Bylaws, including but not limited to the right to withhold consent to any action of the Association or the Members, may be voluntarily relinquished at any time. No such transfer or voluntary relinquishment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Office of the Davis County Recorder. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the Additional Land in any manner whatsoever.

2. Master Planned Development. Any Person that acquires any interest in the Property acknowledges awareness that Bella Vida is a master planned development, the development of which is likely to extend over many years and recognizes that protesting or otherwise objecting to (a) lawful zoning or changes in zoning or to uses of, or changes in density of, the Property that are consistent with the Declaration, or (b) changes in any conceptual or master plan for the Property, including but not limited to, the Master Plan is not in the collective best interest of the Owners.

3. Construction of Improvements. Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Areas and Areas of Common Responsibility for the purpose of making, constructing, installing, modifying, expanding, replacing and removing such improvements to the Common Areas and Areas of Common Responsibility as it deems appropriate in its sole discretion as long as Declarant owns any Unit, Lot or portion of the Property.

4. Models and Sales Offices. So long as construction or sales of Lots and Units by Declarant shall continue, Declarant may maintain and carry on upon the Common Areas or Areas of Common Responsibility and any Property owned by Declarant, such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or

incidental to the construction or sales of Lots or Units, including, but not limited to, business offices, signs, model units, marketing trails, sales offices, parking and storage of building materials and equipment. So long as Declarant is engaged in the marketing and sales of Lots or Units, it shall have the right to reserve parking spaces on the Common Area or Areas of Common Responsibility for the benefit and use of prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance or management activities. Declarant shall have easements for access to and use of such facilities and for performing such activities. Declarant's right to use the Common Areas or Areas of Common Responsibility for purposes stated in this Section 4 shall not be exclusive and shall not unreasonably interfere with the use of such Common Areas or Areas of Common Responsibility by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent. In addition to all other rights reserved in this Section 4, Declarant also reserves the right to allow the gated entrances to remain open during business and construction hours for the period of time necessary to sell and construct all Units and other improvements on the Property.

5. Equal Treatment. So long as Declarant owns any Unit, Lot or portion of the Property, neither the Association nor any Owner shall, without the prior written consent of Declarant, adopt any policy, rule or procedure that:

(a) limits the access of Declarant, its affiliates or their personnel, and/or guests, including visitors, to the Common Areas or Areas of Common Responsibility or to any Property owned by any of them;

(b) limits or prevents Declarant, its affiliates or their personnel from advertising, marketing, or using the Association, Common Areas or Areas of Common Responsibility or any Property owned by any of them in promotional materials;

(c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns and/or affiliates in the Project from becoming members of the Association or enjoying full use of the Common Areas and Areas of Common Responsibility, subject to the membership provisions of this Declaration and the Bylaws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant. This provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, special assessments and other mandatory fees or charges) that discriminates or singles out any group of Members or Declarant;

(e) impacts the ability of Declarant or its affiliates to carry out to completion its development plans and related construction activities for the Project as such plans are expressed in the Master Plans, as such may be amended and updated from time to time. Policies, rules or procedures affecting existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Project shall be expressly included in this provision. Easements that may be established by Declarant shall include, but shall not be limited to, easements for development, construction and landscaping activities and utilities; or

(f) impacts the ability of Declarant or its affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

The Association shall not exercise its authority over the Common Areas or Areas of Common Responsibility, including, but not limited to, any gated entrances or other means of access to the Property, to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property or Additional Land over the streets and other Common Areas or Areas of Common Responsibility within the Property.

6. Right to Use Common Areas and Areas of Common Responsibility for Special Events. As long as Declarant owns any Unit, Lot or portion of the Property, Declarant shall have the right to use all or any portion of the Common Areas or Areas of Common Responsibility, to sponsor special events for charitable, philanthropic, political or marketing purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities at the time a request is submitted to the Association;

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special event.

Declarant shall have the right to assign the rights contained in this Section 7 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Areas or Areas of Common Responsibility for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

7. Use of Common Areas and Areas of Common Responsibility by Declarant's Employees. Declarant reserves the right to allow its employees to use any of the Common Areas or Areas of Common Responsibility in the normal course of such facilities' operations.

ARTICLE XIII. MORTGAGEE PROTECTION

1. Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Unit, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

(b) Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

2. Matters Requiring Prior Eligible Mortgagee Approval. Except as expressly required by the Act, or as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

(b) Add or amend any material provision of the Declaration, Articles, Bylaws or Plat Map(s), which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

(i) voting rights;

(ii) increases in assessments that raise the previously assessed amount by more than 15%, assessment liens, or the priority of assessment liens;

(iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;

(iv) responsibility for maintenance and repairs;

(v) reallocation of interests in the Common Areas, or rights to their use;

- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the Project (except as allowed herein), or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit;
- (xii) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.
- (xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (xiv) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

3. Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

Each year the Association shall make an un-audited financial statement for the preceding fiscal year. The Association shall make available to the holder, insurer, or guarantor of any First Mortgage, the most recent unaudited financial statements.

4. Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent

assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

5. Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Article VII, Section 4(a) lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

6. Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

ARTICLE XIV. OPTION TO EXPAND

1. Option To Expand. It is anticipated that additions to the Project will be developed in a series of phases. Accordingly, Declarant (or its assigns) hereby reserves, pursuant to Section 57-8-13.6 of the Act, the option to expand the Project (the "**Option to Expand**") with respect to each Phase of the Additional Land upon the terms and provisions set forth in this Section XIV without the prior consent of the Owners or the Association. The Option to Expand must be exercised by Declarant (or its assigns) within seven (7) years after recordation of this Declaration. The terms and conditions of the Option to Expand shall be as follows:

(a) Legal Description. Subject to the power granted Declarant in Section 2(c) below, the real property subject to the Option to Expand consists of the real property sometimes hereinafter referred to as the "**Additional Land**", being more particularly described in Exhibit "E", attached hereto.

(b) Order of Exercise. Subject to the provisions of Section 2(c) below, the Option to Expand may be exercised at different times as to the Additional Land described in Section 2(a) and in any order elected by the Declarant. No assurance is made with regard to which phases of the Additional Land, if any, will be added to the Project or the order in which such phases will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the Additional Land, the Option to

Expand may subsequently be exercised with respect to any other portion of the Additional Land.

(c) Limitations of Expansion. Declarant shall not be restricted in the location of improvements on the Additional Land that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations. The maximum number of Units that may be created on the phases described above (a lesser number of Units may be developed on the Additional Land) is as set forth on Exhibit "E".

The foregoing limitations on the number of Units to be constructed in any addition or expansion of the Project are set forth herein for the purpose of satisfying Utah Code Ann. § 57-8-10(4)(a)(vii).

(d) Use Restrictions. The Units to be located on the Additional Land shall be subject to the same uses as provided in this Declaration.

(e) Use of Common Areas. Each Owner of a Unit constructed on any phase of the Additional Land shall have an unrestricted right of ingress and egress to and from its Unit over and across all Common Areas of the Property. Each Owner of a Unit constructed on any phase of the Additional Land shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner.

(f) Nature of Improvements. Structures other than Buildings may be erected on the Additional Land. Further improvements may be made to the Additional Land including recreational facilities, parking areas, walkways and landscaping of the Common Areas contained therein. All Units and improvements shall be generally consistent with the existing Units and improvements within the Project. The maximum number of units to be constructed on the Additional Land is ninety-six (96). Declarant reserves the right to add additional Limited Common Areas to the Additional Land without limitation.

(g) Substantial Completion. All Units and other improvements constructed on and made to the Additional Land shall be substantially completed prior to adding such Units and improvements to the Project.

(h) Documentation to Convert. In order to add all or any portion of the Additional Land to the Project, the Declarant (or its assigns) shall:

(i) Record, with regard to the Additional Land or any portion thereof that is being added to the Project as Units, Common Areas or Limited Common Areas, a Supplemental Plat ("**Supplemental Plat**") showing the location and dimensions of the vertical and horizontal boundaries of each Unit, Common Areas or Limited Common Areas, if any, formed out of the Additional Land or a

portion thereof, and assigning any Limited Common Areas which are to be appurtenant to any such Unit. Each such Supplemental Plan shall be certified as to its accuracy and compliance with the requirements of the Act by the engineer or land surveyor who prepared or supervised the preparation of it; and

(ii) Record simultaneously with each Supplemental Plan an amendment to this Declaration ("**Amendment**") describing the addition. Each such Amendment shall assign a Unit number to each Unit, if any, formed out of the Additional Land or a portion thereof and shall reallocate to each Unit, on the basis provided for in this Declaration, votes appurtenant to each Unit, the apportionment of Common Expenses and the percentage of undivided interest in the Common Areas appertaining to all Units following such addition. Except as otherwise provided by the Act, each such Amendment or Supplemental Plan shall also describe the Limited Common Areas, if any, formed out of the Additional Land or a portion thereof, showing or designating the Unit or Units to which each is assigned.

The ownership interest in the Common Areas for all Units in the Project and the apportionment of Common Expenses and Program Expenses shall change at the time Declarant records an Amendment and a Supplemental Condominium Plan reflecting Declarant's exercise of the Option to Expand. It is contemplated that there may be multiple amendments filed by Declarant and such amendments and supplements are hereby expressly authorized. Declarant shall have the right to adjust the resulting ownership interests of all Units in the Common Areas of the Project as may be necessary to assure that the total ownership interest equals 100% as required by the Act.

(i) Title to Units. Each Owner, by execution of a contract or deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this Article XIV, including the procedure for adjustment of Unit ownership interests. After the filing for record of any Amendment to Exhibit "D" to this Declaration and the Supplemental Plan reflecting Declarant's exercise of the Option to Expand, or any part thereof, legal and equitable title to each Unit thereby created within the Additional Land including its appurtenant ownership interest in the Common Areas shall be vested in and held by Declarant (or its assigns) and none of the other Owners shall have any claim or title to or interest in such Unit or the appurtenant ownership interest in the Common Areas.

(j) Conveyance of Additional Land. Declarant shall have the right to convey or otherwise transfer its interest in the Additional Land or any portion thereof, and such conveyance or transfer shall not terminate this Option to Expand with respect to any portion of the Additional Land and the grantee of any portion of the Additional Land shall have the same option and rights as Declarant hereunder.

(k) Amendment. No provision of this Article XIV shall be amended without the prior written consent of Declarant or its successor in interest, so long as Declarant or

its successor in interest either owns or has the right to acquire or construct any Units in the Project.

ARTICLE XV. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

2. Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. In the event of any termination of this Declaration by the Association which, in the reasonable opinion of Declarant, has a material negative effect on the Program or the Program Facilities, Declarant shall have the right, but not the obligation, to require the Association to purchase the land or Program Facilities owned by Declarant or its affiliates for the Fair Market Value of such Program Facilities. As used herein "**Fair Market Value**" shall mean the value determined by an MAI certified appraiser retained by Declarant.

3. Amendment. Except as otherwise provided in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least seventy-five percent (75%) of the total votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Davis County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by any federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this

Section 3 deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within six (6) years from the date of recording the Declaration, and so long as the Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Unit. In the event of any amendment of this Declaration by the Association which, in the reasonable opinion of Declarant, has a material negative effect on the Program or the Program Facilities, Declarant shall have the right, but not the obligation, to require the Association to purchase the Program Facilities owned by Declarant for the Fair Market Value of such Program Facilities. As used herein "**Fair Market Value**" shall mean the value determined by an MAI certified appraiser retained by Declarant.

4. Membership Cards.

(a) Issuance by the Board. One Membership Card shall be allocated to each occupant of a Unit, up to a maximum of two Membership Cards per Unit and shall be issued by the Program Manager. No Membership Cards shall be allocated to any Unit which is not occupied. The Board shall determine entitlement to Membership Cards on an annual basis and after receipt of notice of a transfer for title to a Unit to a new Owner. If the Unit continues to be occupied and all applicable assessments and other charges pertaining to the Unit have been paid, the Membership Card(s) allocated to such Unit shall be renewed annually without charge. The Board may establish policies, limits and charges with regard to the issuance of replacement cards, additional cards and guest privilege cards.

Membership Cards may be issued to Persons who have signed binding contracts to purchase a Unit, subject to such policies as the Board may determine from time to time, and to Persons entitled to receive Membership Cards pursuant to a covenant to share costs.

(b) Assignment of Rights. Except as may be expressly provided in a covenant to share costs, the right to a Membership Card is based upon occupancy of a Unit. If, and so long as a Unit is occupied solely by Persons other than Owner, pursuant to a lease or otherwise, then (i) the Owner shall not be entitled to receive a Membership Card, and (ii) the right of any occupant to receive a Membership Card shall depend on his or her status as an occupant. Any Owner who leases or otherwise transfers occupancy of his or her Unit shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Membership Card(s). Membership Cards shall be surrendered by any holder who ceases to occupy a Unit, or any time upon written notification from the Association that the holder no longer is entitled to hold a Membership Card.

(c) Issuance to Declarant. As long as Declarant owns any Unit, Lot or portion of the Property, the Association shall provide Declarant, free of charge, with as many Membership Cards as Declarant, in its sole discretion, deems necessary for the

purpose of marketing the Property. Declarant may transfer the Membership Cards to prospective purchasers of Units subject to such terms and conditions as Declarant, in its sole discretion, may determine. Membership Cards provided to Declarant shall entitle the bearer to use all facilities, Common Areas and Areas of Common Responsibility, subject to the payment of admission fees or other use fees.

5. Rights of Action. The Association and any aggrieved Owner shall have a right of action against any Owner(s) who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association. The prevailing party in any action between the Association and an Owner shall be entitled to recover all fees and costs incurred in pursuing such action.

6. Declarant's Rights Assignable. The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

7. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and 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. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

8. Covenants to Run With Land. This Declaration and all of 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 Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

9. Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of

Davis County, Utah. The Board may, for all purposes, act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Davis County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

10. Registered Agent. The Registered Agent for service of process for any action involving the subdivision shall be the same as the registered agent for the Association. The name and address of the initial registered agent is: W. Scott Kjar, C/O SKY PROPERTIES, 585 West 500 South, Suite 110, Bountiful, Utah 84010.

11. Agency Approval of Certain Amendments. Notwithstanding anything stated herein to the contrary, so long as the Declarant is in control of the Association, prior approval of the Department of Veterans and/or HUD may be required to amend the Articles, Bylaws, Declaration if there is VA or FHA financing in place on any Unit at the time of such Amendment. However, such approval shall not be required where amendment operates to add phases to an expandable condominium regime if such phases implement a previously approved general plan for total development or amendments otherwise expressly permitted in the Declaration.

12. Arbitration. If so determined in Declarant's sole discretion, any controversy, claim, issue, dispute or lawsuit arising out of or relating to this Declaration ("Dispute") brought by the Association or one (1) or more Unit Owners against Declarant, shall be submitted to arbitration pursuant to Title 78 Chapter 31a of the Utah Uniform Arbitration Act.

13. Attorneys' Fees. In any dispute resolution or other proceeding, including appeal, the party prevailing will receive from the other all costs, expenses and reasonable attorneys' fees as fixed by the Arbitrator or court.

14. Jury Waiver. The Association and Unit Owners hereby waive a trial by jury in any court action, proceeding or counterclaim. This waiver will expressly survive the expiration or earlier termination of this Declaration.

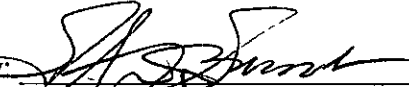
15. Effective Date. This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.

(end of text Signature pages attached)

DECLARANT:

BVE, LLC
a Utah limited liability company

By: Excel Investment Corporation,
a Utah Corporation

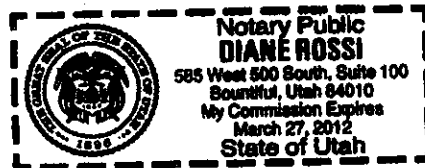
By: 
Steven E. Smoot, Its President

Its: Manager

STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

On this 12th day of March, 2009, personally appeared before me **STEVEN E. SMOOT**, and who, being by me duly sworn, says that he is the President of **EXCEL INVESTMENT CORPORATION**, which corporation is the manager of **BVE, LLC**, the limited liability company that executed the above and foregoing instrument and that said instrument was signed by him/her by authority of its by-laws, (or by authority of a resolution of its board of directors, as the case may be) in behalf of said corporation in its capacity of manager of said limited liability company.


Notary Public



Exhibits to This Declaration:

- EXHIBIT "A" Legal Description of Bella Vida
- EXHIBIT "B" Plat Map
- EXHIBIT "C" Master Plan
- EXHIBIT "D" List of Units, Votes and Assessment Percentages
- EXHIBIT "E" Legal Description of Additional Land
- EXHIBIT "F" List of Initial Monthly Assessment
- EXHIBIT "G" Bylaws

EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

LEGAL DESCRIPTION

ALL OF THE CLUB HOUSE PARCEL OF BELLA VIDA AT EAGLEWOOD PLANNED UNIT DEVELOPMENT, AMENDED according to the official plat thereof on file and of record in the Office of the Davis County Recorder as Entry No. 2336300, Book 4455, Page 1341.

ALL OF PHASE 1 OF BELLA VIDA AT EAGLEWOOD PLANNED UNIT DEVELOPMENT, AMENDED according to the official plat thereof on file and of record in the Office of the Davis County Recorder as Entry No. 2336300, Book 4455, Page 1341; as more particularly described at BELLA VIDA AT EAGLEWOOD CONDOMINIUMS PHASE 1, according to the official plat thereof on file and of record in the Office of the Davis County Recorder as Entry No. 2336885, Book 4457, Page 466.

EXHIBIT "B"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

PLAT MAP

S-PATH

Bella Vida at Eaglewood Condominiums Phase 1

Sheet 2 of 2

Balling Engineering

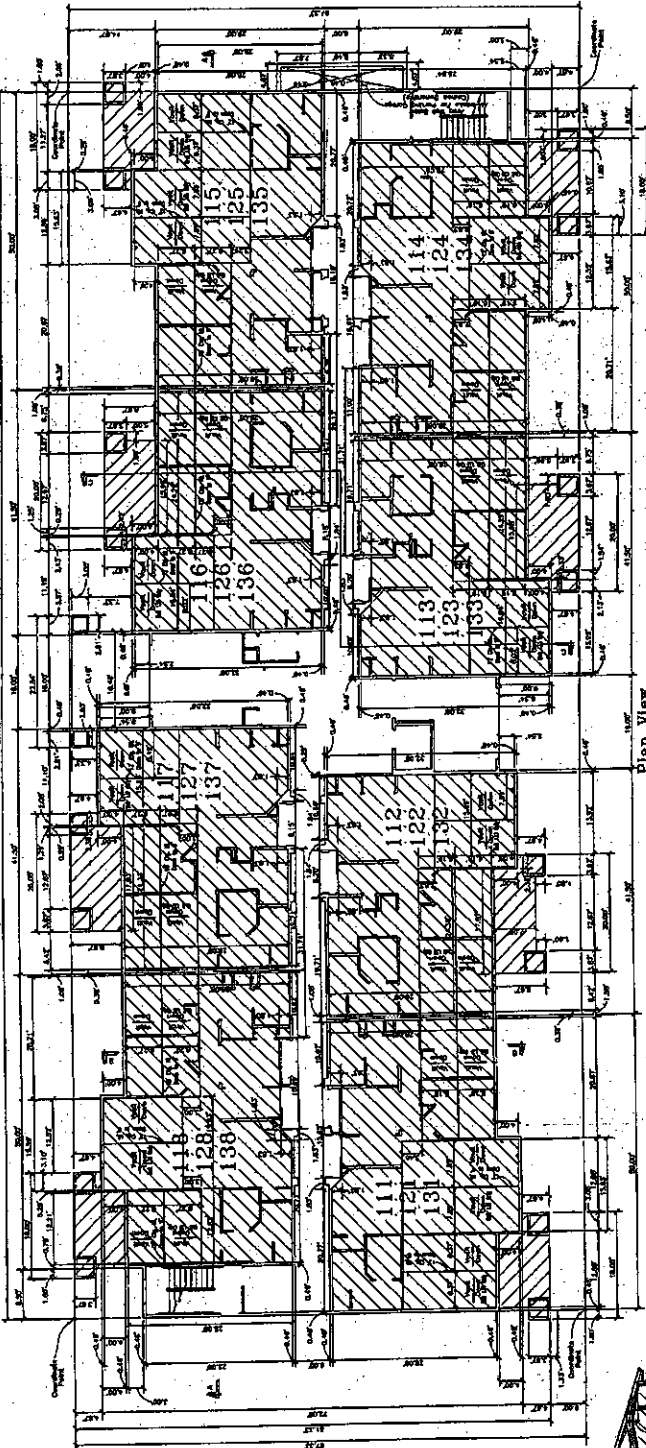
Typical Address System
 Building Number
 Floor
 Unit Number

234

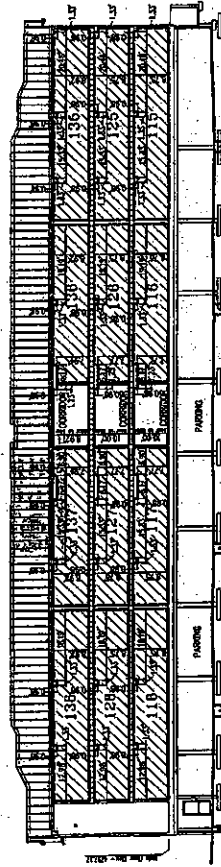
Note:
 1 - See Sheet 1 of 2 for the Building Conditions.

Legend

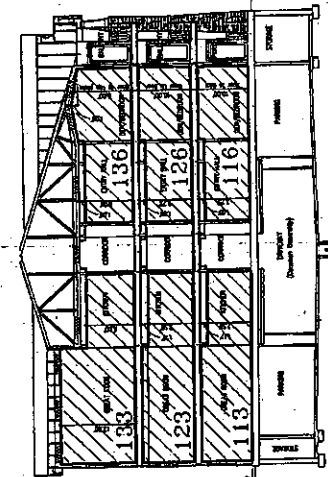
- Private Ownership
- Limited Common Ownership
- Common Ownership
- Ownership Boundary
- Break Lines for Vented Ceilings (Top Floor Only)



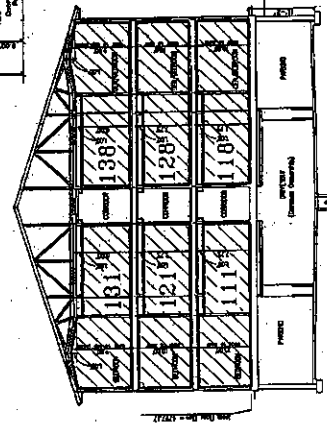
Plan View
 Scale: 3/32"=1'-0"



Section A-A
 Scale: 1/16"=1'-0"



Section C-C
 Scale: 3/32"=1'-0"



Section B-B
 Scale: 3/32"=1'-0"

Davis County Recorder
 Book No. 2334
 Page 466
 Filed for Record and Recorded this 28th day of January, 2008
 at 1:58 PM. In Witness Whereof, I have hereunto set my hand and the Seal of said County at Paducah, Kentucky, this 28th day of January, 2008.

By: *Michelle S. McLaughlin*
 Davis County Recorder

S-PATH

EXHIBIT "C"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

Bella Vida Master Plan

EXHIBIT "D"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

List of Units, Votes and Assessment Percentages

<u>Unit</u>	<u>Unit Square Footages</u>	<u>Votes</u>	<u>Assessment Percentages/ Undivided Interest in Common Area</u>
111	1,476	4.5055	4.5055%
112	1,254	3.8278	3.8278%
113	1,254	3.8278	3.8278%
114	1,476	4.5055	4.5055%
115	1,476	4.5055	4.5055%
116	1,254	3.8278	3.8278%
117	1,254	3.8278	3.8278%
118	1,476	4.5055	4.5055%
121	1,476	4.5055	4.5055%
122	1,254	3.8278	3.8278%
123	1,254	3.8278	3.8278%
124	1,476	4.5055	4.5055%
125	1,476	4.5055	4.5055%
126	1,254	3.8278	3.8278%
127	1,254	3.8278	3.8278%
128	1,476	4.5055	4.5055%
131	1,476	4.5056	4.5056%
132	1,254	3.8278	3.8278%
133	1,254	3.8278	3.8278%
134	1,476	4.5056	4.5056%
135	1,476	4.5056	4.5056%
136	1,254	3.8278	3.8278%
137	1,254	3.8278	3.8278%
138	1,476	4.5056	4.5056%
TOTALS:	24	100	100.0000%

EXHIBIT "E"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

Additional Land

ALL OF THE CLUB HOUSE PARCEL OF BELLA VIDA AT EAGLEWOOD PLANNED UNIT DEVELOPMENT, AMENDED according to the official plat thereof on file and of record in the Office of the Davis County Recorder as Entry No. 2336300, Book 4455, Page 1341.

ALL OF LOT 2, LOT 3, LOT 4, AND LOT 5, OF BELLA VIDA AT EAGLEWOOD PLANNED UNIT DEVELOPMENT AMENDED according to the official plat thereof on file and of record in the Office of the Davis County Recorder.

Also described as:

ALL OF PHASE 2, PHASE 3, PHASE 4, AND PHASE 5, OF BELLA VIDA AT EAGLEWOOD PLANNED UNIT DEVELOPMENT AMENDED according to the official plat thereof on file and of record in the Office of the Davis County Recorder.

Also described as:

Beginning at the Northwest Corner of Lot 1 of Bella Vida at Eaglewood Planned Unit Development which point is $N0^{\circ}04'00''E$ 1,551.93 ft. along the quarter section line and West 1,186.36 ft. to an existing brass monument at the intersection of Edgewood Drive and Eaglepointe Drive and $N71^{\circ}54'18''W$ 520.98 ft. from the South Quarter Corner of Section 12, T.1N., R.1W., S.L.B.& M. and running thence along the boundary of said Lot 1 in the following five courses: (i) $S12^{\circ}17'24''W$ 131.12 ft., (ii) $S62^{\circ}25'30''W$ 49.92 ft., (iii) $S27^{\circ}34'30''E$ 53.36 ft., (iv) Southeasterly 46.38 ft. along the arc of a 63.50 ft. radius curve to the left through a central angle of $41^{\circ}51'02''$ (chord bears $S48^{\circ}30'01''E$ 45.36 ft.), (v) $S69^{\circ}25'31''E$ 30.42 ft.; thence along the boundary of the Club House Lot of said Bella Vida at Eaglewood PUD in the following six courses (i) $S20^{\circ}34'29''W$ 102.66 ft., (ii) $S69^{\circ}25'31''E$ 90.31 ft., (iii) $S19^{\circ}18'41''E$ 43.56 ft., (iv) $N70^{\circ}41'19''E$ 15.10 ft., (v) Easterly 20.88 ft. along the arc of a 30.00 ft. radius curve to the right through a central angle of $39^{\circ}53'09''$ (chord bears $S89^{\circ}22'06''E$ 20.47 ft.), (vi) $S69^{\circ}25'32''E$ 38.43 ft.; thence along the boundary of the Park Parcel of said Bella Vida at Eaglewood PUD in the following four courses: (i) Southeasterly 6.28 ft. along the arc of 4.00 ft. radius curve to the left through a central angle of $90^{\circ}00'00''$ (chord bears $S24^{\circ}25'32''E$ 5.66 ft.), (ii) $S69^{\circ}25'32''E$ 13.50 ft., (iii) $S20^{\circ}34'28''W$ 80.85 ft., (iv) $S69^{\circ}44'02''W$ 213.80 ft.; thence along the boundary of said Bella Vide at Eaglewood PUD in the following seven courses to the point of beginning: (i) $N85^{\circ}00'00''W$ 25.81 ft., (ii) $N75^{\circ}00'00''W$ 163.05 ft., (iii) $S66^{\circ}48'00''W$ 195.85 ft., (iv) $N23^{\circ}41'56''W$ 352.35 ft., (v) $N27^{\circ}30'32''W$ 192.53 ft., (vi) $N75^{\circ}30'50''E$ 463.87 ft., (vii) $S89^{\circ}58'06''E$ 210.07 ft.

Containing 7.1399 Acres.

EXHIBIT "F"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

List of Initial Monthly Assessments

<u>Unit</u>	<u>Initial Monthly Assessment</u>
111	\$318.00
112	\$270.00
113	\$270.00
114	\$318.00
115	\$318.00
116	\$270.00
117	\$270.00
118	\$318.00
121	\$318.00
122	\$270.00
123	\$270.00
124	\$318.00
125	\$318.00
126	\$270.00
127	\$270.00
128	\$318.00
131	\$318.00
132	\$270.00
133	\$270.00
134	\$318.00
135	\$318.00
136	\$270.00
137	\$270.00
138	\$318.00

EXHIBIT "G"
TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

Bylaws

P 20081203019

**BYLAWS
OF
BELLA VIDA AT EAGLEWOOD HOMEOWNERS' ASSOCIATION, INC.**

ARTICLE ONE
Name and Location

The name of the corporation is **BELLA VIDA AT EAGLEWOOD HOMEOWNERS' ASSOCIATION, INC.** ("Association"). The principal office of the Association shall be located at 585 West 500 South, Suite 110, Bountiful, Utah 84010, but the meetings of Members and Trustees may be held at such places in Davis County, State of Utah, as may be designated by the Board of Trustees.

ARTICLE TWO
Application of Bylaws

All present and future owners, mortgagees, lessees and occupants of any Unit or Building and any other persons who may use the facilities or the Project in any manner are subject to these Bylaws, the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Bella Vida at Eaglewood ("**Declaration**") and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit or Condominium shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Certain capitalized terms in these Bylaws shall be defined in accordance with the definition for such terms set forth in the Declaration.

ARTICLE THREE
Meetings of Members

3.1 **Annual Meetings.** The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular meeting of the Members shall be held on the second Tuesday of each January, at the hour of 7:00 o'clock p.m. at the Project or some reasonable location in Davis County, Utah or on such other annual date and time fixed by the Board of Trustees. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

3.2 **Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board of Trustees, or upon written request of the Members who are entitled to vote twenty-five percent (25%) of all of the votes of the membership.

3.3 **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

3.4 **Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, sixty percent (60%) or more of the votes of the membership shall constitute a quorum for any

action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

3.5 Voting. At all meetings of Members, each Member may vote in person or by proxy.

3.6 Action Taken Without a Meeting. Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

3.6.1 A written ballot is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Member to return the ballot to the Association.

3.6.2 The number of votes cast by ballot within the specified time under Subparagraph 3.6.1 equals or exceeds the quorum required to be present at a meeting authorizing the action.

3.6.3 The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

3.6.4 The written ballot distributed to Members affords an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the Members shall be cast in accordance with the choice specified.

3.7 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall meet the requirements set forth in Subparagraph 3.6.4 above and shall indicate the name of the secretary of the Association, or such other officer or person or who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Member's vote as specified in the form of proxy. If a Unit is jointly held, the instrument authorizing a proxy to act must have been executed by all Owners of such Unit or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

ARTICLE FOUR

Board of Trustees, Selection, Term of Office

4.1 Number. The affairs of this Association shall be managed by a Board of at least three (3) but no more than seven (7) trustees or directors (hereafter "Trustees") who need not be Members of the Association.

4.2 Term of Office. At the first annual meeting the Members shall elect at least one trustee for a term of one (1) year, at least one trustee for a term of two (2) years, and at each annual meeting thereafter the Members shall elect replacement trustees for a term of two (2) years.

4.3 Removal. Any trustee may be removed from the Board of Trustees, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a trustee, his successor shall be selected by the remaining Members of the Board of Trustees and shall serve for the unexpired term of his predecessor.

4.4 Compensation. No trustee shall receive compensation for any service he may render to the Association. However, any trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

4.5 Action Taken Without a Meeting. The trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the trustees. Any action so approved shall have the same effect as though taken at a meeting of the trustees.

ARTICLE FIVE

Nomination and Election of Trustees

5.1 Nomination. Nomination for election to the Board of Trustees shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and two (2) or more Members of the Association. The nominating committee shall be appointed by the Board of Trustees prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Trustees as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

5.2 Election. Election to the Board of Trustees shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

5.3 Declarant's Rights. Until such time as the responsibility for electing the Board of Trustees of the Association is turned over to the Owners, Declarant shall have the exclusive right to appoint and remove all such Trustees. This exclusive right of the Declarant to appoint the Trustees shall terminate upon the first to occur of the following:

- (a) Six (6) years from the date on which the first Unit in the Project is conveyed; or
- (b) One Hundred Twenty (120) days after 75% of the Units of the Project have been conveyed by Declarant.

ARTICLE SIX
Meeting of Trustees

6.1 **Regular Meetings.** The Board of Trustees shall hold a regular meeting at least quarterly, without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Trustees. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

6.2 **Special Meetings.** Special meetings of the Board of Trustees shall be held when called by the President of the Association, or by any two (2) trustees, after not less than three (3) days notice to each trustee.

6.3 **Quorum.** A majority of the number of trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the trustees present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Trustees.

ARTICLE SEVEN
Powers and Duties of the Board of Trustees

7.1 **Powers.** The Board of Trustees shall have power to:

- 7.1.1 Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their guests thereon, and to establish penalties of the infraction thereof;
- 7.1.2 Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and an opportunity for hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- 7.1.3 Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;
- 7.1.4 Declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Trustees; and
- 7.1.5 Employ a Manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.

7.2 **Duties.** It shall be the duty of the Board of Trustees to:

- 7.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

- 7.2.2 Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- 7.2.3 As more fully provided in the Declaration, to:
 - 7.2.3.1 Fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
 - 7.2.3.2 Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - 7.2.3.3 Foreclose at its discretion the lien against any Unit for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.
- 7.2.4 Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Trustees for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- 7.2.5 Procure and maintain adequate liability and hazard insurance on property owned by the association, and adequate officers and trustees indemnity insurance, and all other insurance required by the Declaration;
- 7.2.6 Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- 7.2.7 Cause the Common Areas and the Building Exteriors to be maintained;
- 7.2.8 Permit First Mortgagees of Units in the Project to pay taxes or other charges which are in default and which may or have become a charge against the Common Areas of the Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such First Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Association;
- 7.2.9 Assess and collect all assessments referred to or authorized in the Declaration.

ARTICLE EIGHT
Officers and Their Duties

8.1 Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be Members of the Board of Trustees, a Secretary, and a Treasurer, and such other officers as the Board of Trustees may from time to time by resolution create.

8.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Trustees following each annual meeting of the Members.

8.3 Term. The officers of this Association shall be elected annually by the Board of Trustees and each shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments. The Board of Trustees may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the board of Trustees may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Trustees. Any officer may resign at any time by giving written notice to the Board of Trustees, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office may be filled by appointment by the Board of Trustees. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant Section 8.4 above.

8.8 Duties. The duties of the officers are as follows:

- (a) President. The President shall preside at all meetings of the Board of Trustees; shall see that orders and resolutions of the Board of Trustees are carried out; shall sign leases, mortgages, promissory notes, checks, deeds and other written instruments.
- (b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board, including, but not limited to executing written instruments under the direction of the Board.
- (c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- (d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall, together with the President, sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, and deliver a copy of each to the Members.

ARTICLE NINE
Indemnification of Officers and Trustees

The Association shall provide any indemnification required or permitted by the laws of Utah and shall indemnify trustees, officers, agents and employees as follows:

9.1 Third Party Litigation. The Association shall indemnify any trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was such trustee or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

9.2 Association Litigation. The Association shall indemnify any trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was such a trustee or officer of an employee or agent of the Association, or is or was serving at the request of the Association as trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

9.3 Expenses. To the extent that a trustee or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article Nine, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 4 of this Article Nine.

9.4 Determination of Right to Indemnity. Any indemnification under Section 1 or 2 of this Article Nine (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the trustee or officer is proper in the

circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2 of this Article Nine. Such determination shall be made (i) by the Board of Trustees of the Association by a majority vote of a quorum consisting of trustees who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested trustees so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.

9.5 Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article Nine.

9.6 Other Indemnification Rights. Agents and employees of the Association who are not trustees or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Trustees of the Association.

9.7 Benefitted Parties. Any indemnification pursuant to this Article Nine shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a trustee or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person,

ARTICLE TEN Committees

The Association shall appoint a nominating committee, as provided in these Bylaws. In addition, the Board of Trustees shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE ELEVEN Books and Records

11.1 Accounting.

11.1.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

11.1.2 At the close of each fiscal year, the books and records of the Association shall be reviewed or audited by an independent public accountant approved by the Association, and distributed to all Owners.

11.2 Inspection of Records. The membership register, books of account and minutes of meetings of the Association, of the Board of Trustees and of committees of the Board of Trustees and all other records of the Project maintained by the association or Manager shall be made available for inspection and copying by any member of the Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as a Member, at the office where the records are maintained. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the board of Trustees to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Member a

copy of any and all records requested. The Board of Trustees shall establish reasonable rules with respect to:

- 11.2.1 Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- 11.2.2 Hours and days of the week when such an inspection may be made; and
- 11.2.3 Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board of Trustees, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

ARTICLE TWELVE

Assessments

All Assessments shall be made in accordance with the general provisions of Article V of the Declaration. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board of Trustees in assessing Common Expenses against the Units and Owners, the Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner.

ARTICLE THIRTEEN

Corporate Seal

The Association may, but shall not be obligated to, have a seal in circular form having within its circumference the words: "Bella Vida at Eaglewood Homeowners' Association, Inc.", or in lieu thereof the word "SEAL" may be placed adjacent to the signature of an authorized officer of the Association.

ARTICLE FOURTEEN

Amendments

14.1 Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of at least sixty-seven percent (67%) of the authorized Members. So long as Declarant is in control of the Association, no amendment to these Bylaws shall be effective without prior approval of the Veterans Administration so long as there is VA financing on any Unit.

14.2 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE FIFTEEN


Transfer of Control by Declarant

Declarant shall relinquish all special rights, express or implied, through which Declarant may directly or indirectly control, direct, modify or veto any action of the Association or a majority of the

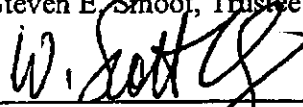
Unit Owners, and control of the Association shall pass to the Unit Owners within the Project not later than the earlier of the following:

- (i) Six (6) years from the date of the first conveyance to a Unit purchaser is made; or
- (ii) One Hundred Twenty (120) days after the date by which seventy-five percent (75%) of the Units have been conveyed to the Unit purchasers.

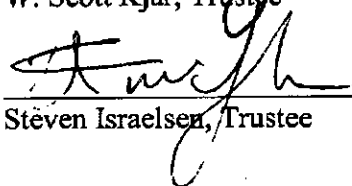
IN WITNESS WHEREOF, we, being all of the originals trustees of BELLA VIDA AT EAGLEWOOD HOMEOWNERS' ASSOCIATION, INC., have hereunto set our hands this 14th day of January, 2008.



Steven E. Smoot, Trustee



W. Scott Kjar, Trustee



Steven Israelsen, Trustee

CERTIFICATION


I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Bella Vida at Eaglewood Homeowners' Association, Inc., a Utah non-profit corporation; and

That the foregoing Bylaws constitute a true and correct copy of the original Bylaws of said Association, as duly adopted at a meeting of the Board of Trustees thereof, held on the 14th day of January 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name on the 14th day of January 2008.

BELLA VIDA AT EAGLEWOOD
HOMEOWNERS' ASSOCIATION, INC.



Steven Israelsen, Secretary