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When Recorded return to: The Cove @ Sun Peak (aka Winter Park @ Sun Peak) HOA P.O. Box 2220 Park City, Utah 84060

AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS,
AGREEMENTS, CONDITIONS AND RESTRICTIONS FOR
THE COVE AT SUN PEAK
(aka, WINTER PARK AT SUN PEAK)

Summit County, Utah

November 2003

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39 AMENDED AND RESTATED

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41 DECLARATION OF PROTECTIVE COVENANTS,
42 AGREEMENTS, CONDITIONS AND RESTRICTIONS FOR

43
44
45 ***THE COVE AT SUN PEAK***
46 ***(aka, WINTER PARK AT SUN PEAK)***
47

48
49 THIS Amended and Restated Declaration of Protective Covenants, Agreements, Conditions and
50 Restrictions for The Cove at Sun Peak (also known as the Winter Park at Sun Peak) is made by
51 The Cove at Sun Peak Home Owners Association (aka Winter Park at Sun Peak Home Owners
52 Association) pursuant to Title 57, Chapter 8 of the Utah Code to establish the subdivision
53 project, and set forth the terms and conditions of its governance.
54

- 55 A. The subdivision is approximately 98.4 acres of land in Summit County, Utah, consisting
56 of 31 twin home units, 18 condominiums and 9 Estate home sites, together with streets,
57 underground utilities, and other improvements necessary for the use and occupancy of the
58 dwellings.
59
- 60 B. The provisions of this Declaration are intended to be equitable servitudes that run with
61 the land for the mutual benefit of the owners of each of the Units created within the
62 project.
63
- 64 C. The Cove at Sun Peak (also known as Winter Park at Sun Peak) Subdivision Plat and the
65 Bear Lodge (currently known as the Lillehammer Lodges) Condominiums Condominium
66 Plat for the Cove at Sun Peak has been recorded in the office of the Summit County
67 Recorder on June 12, 1996 as Entries Number 456153 and 456154
68 and are not altered or amended by this First Amended Declaration.
69
- 70 D. The Cove at Sun Peak Subdivision (aka, Winter Park Subdivision) is a part of the Master
71 Planned Community of Sun Peak. To that end, The Cove (aka, Winter Park) at Sun Peak
72 is subject to all of the terms and conditions of that certain Master Declaration of
73 Conditions and Restrictions for Sun Peak, Summit County, Utah.
74

75 Now, therefore, in furtherance of the overall construction of the Project, the Declarant adopts the
76 following declaration of condominium:
77

77
78 ARTICLE I

79 DEFINITIONS

80
81 1. When used in this Declaration, these defined terms shall have following meaning, unless
82 the context clearly requires otherwise:

83
84 1.1 “Act” shall mean the Utah Condominium Ownership Act, Section 57-8-1 et seq.
85 of the Utah Code.

86
87 1.2 “Amendment” shall mean any subsequent amendment to this Declaration.

88
89 1.3 “Arrears” shall mean an overdue debt to the Association as prescribed by the
90 Association's Delinquent Assessment Policy.

91
92 1.4 “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of
93 The Cove (aka, Winter Park) at Sun Peak Homeowners Association, Inc. on file or to be
94 filed with the Utah Department of Commerce.

95
96 1.5 “Association” shall mean The Cove (aka, Winter Park) at Sun Peak Homeowners
97 Association, which is the designated management entity for the management of the
98 Project under the Act. The Association may be incorporated, or may function as an
99 unincorporated association.

100
101 1.6 “Board of Trustees” shall mean and refer to the Board of Trustees of Owners
102 elected to direct the affairs of the Association, sometimes also referred to as the “Board of
103 Trustees”.

104
105 1.7. “Building” shall mean and refer to any of the structures constructed in the Project.

106
107 1.8. “Business Use and Trade” shall mean and refer to any occupation, work, or
108 activity undertaken on an ongoing basis which involves the provision of goods or services
109 to persons other than the provider's family and for which the provider receives a fee,
110 compensation, or other form of consideration, regardless of whether: a) such activity is
111 engaged in full or part-time; b) such activity is intended to or does generate a profit; or c)
112 a license is required therefore

113
114 1. 9 “By-Laws” shall mean the By-Laws of the Association, as they may be amended
115 from time to time.

116
117 1.10 “Capital Improvement” shall mean and refer to all new improvements intended to
118 add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as
119 opposed to ordinary repair and maintenance.

120
121 1.11 “Committee” shall mean and refer to the Board of Trustees of the Association or

122 if the context requires any subcommittee as duly constituted.

123
124 1.12 “Common Expense” shall mean and refer to: (a) All sums lawfully assessed
125 against the Owners; (b) Expenses of administration, maintenance, repair or replacement
126 of the Project; (c) Expenses allocated by the Association among the Owners; (d)
127 Expenses agreed upon as “common expenses” by the Association; and (d) Expenses
128 declared “common expenses” by the Declaration.

129
130 1.13 “Common Area” shall mean those elements of the Project that are defined as
131 Common Area below, or designated as Common Area on the Record of Subdivision Plat.

132
133 1.14 “Common Area Assessments” or “Assessments” shall mean the assessments
134 levied by the Association for the purpose of maintaining, improving, and repairing
135 Common Areas of the Project, including routine and special assessments.

136
137 1.15. “Community” shall mean and refer to the Project.

138
139 1.16. “Community Wide Standard” shall mean and refer to the standard of conduct,
140 maintenance, or other activity generally prevailing in the Community, as determined by
141 the Board of Trustees from time to time.

142
143 1.17 “Condominium” shall mean the Lillehammer Lodge Condominiums, and may be
144 referred to as The Lodges.

145
146 1.18 “Condominium Plat” shall mean and refer to the Bear (currently Lillehammer)
147 Lodges condominiums, together with the subdivision plat for The Cove (aka, Winter
148 Park), at Sun Peak Project, which were filed for record in the office of the Summit County
149 Recorder on 6/12/1996 as Entry Numbers 456153 and 456154 and any subsequent
150 amendments that may be filed under the terms of this Declaration, as amended or
151 supplemented from time to time.

152
153 1.19 “Declarant” shall mean The Cove (aka, Winter Park) Home Owners Association.

154
155 1.20 “Declaration” shall mean this Declaration of The Cove (aka, Winter Park) Home
156 Owners Association Subdivision, and any subsequent amendments adopted by the Owner,
157 together with any Supplemental Declarations.

158
159 1.21 “Eligible Insurer” shall mean and refer to an insurer or governmental guarantor of
160 a mortgage or trust deed that has requested notice in writing of certain matters from the
161 Association in accordance with this Declaration.

162
163 1.22 “Eligible Mortgagee” shall mean and refer to a mortgagee, beneficiary under a
164 trust deed, or lender who has requested notice in writing of certain matters from the
165 Association in accordance with this Declaration.
166

167 1.23 “Eligible Votes” shall mean and refer to those votes available to be cast on any
168 issue before the Association or the Board of Trustees. A vote, which is for any reason
169 suspended, is not an "eligible vote".
170

171 1.24 “Family” shall mean one of the following: (1) a single person living alone, (2) a
172 group of natural persons related to each other by blood or legally related to each other by
173 marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister,
174 uncle, aunt, nephew, niece, great-grandparent or great-grandchild, and an additional person
175 or persons as domestic help or as a caretaker; or (3) a group of unrelated persons, not
176 greater than the established limit of occupants allowed for the unit, living and cooking
177 together as a single housekeeping unit and maintaining a common household, but not as a
178 boarding or rooming house.
179

180 1.25 “Land” shall mean and refer to all of the real property subject to this Declaration.
181

182 1.26 “Limited Common Areas” will mean those areas of the Project, up to a maximum
183 of 12 feet from the rear wall of the twin home, that are not part of a Unit, but which are
184 reserved for the exclusive use of a particular Unit. Limited Common Areas are shown on
185 the subdivision plat and the Condominium Plat, but are also described in the Declaration.
186 Any portico, colonnade, Unit entry, doorsteps, landings, porches, balconies, decks, patios,
187 private yard areas, garages, carports, assigned parking spaces, storage lockers, or other
188 improvements intended to serve only a single Unit, shall constitute Limited Common Area
189 appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a
190 designation.
191

192 1.27 “Majority” shall mean and refer to those eligible votes of Owners or other groups
193 as the context may indicate totaling more than fifty (50.0%) percent of the total eligible
194 number.
195

196 1.28 “Manager” shall mean and refer to the person or entity appointed or hired by the
197 Association to assist in the administration, management and operation of the Project.
198

199 1.29 “Map” shall mean and refer to the Condominium Plat on file in the office of the
200 County Recorder of Summit County, Utah.
201

202 1.30 “Member” shall mean and refer to the Owner of a Unit who by virtue of his
203 ownership is a member of the Association, unless the context clearly requires otherwise.
204

205 1.31 “Mortgage” shall mean any purchase money financing for the purchase of any
206 Unit, whether it takes the form of a Trust Deed, Mortgage, or contract for deed.
207

208 1.32 “Mortgagee” shall mean the holder of any purchase money security interest in any
209 Unit.
210

211 1.33 “Owner” shall mean the owner of any Unit, but shall exclude any Mortgagee who

212 holds title only for security purposes but is not in exclusive possession of the Unit. Owner
213 shall not include persons renting or leasing a Unit from the Owner.

214

215 1.34 “Person” shall mean and refer to a natural person, corporation, partnership, trust,
216 limited liability company, or other legal entity.

217

218 1.35 “Project” shall mean the entire condominium/subdivision area, including all
219 Units, Common Areas, and Limited Common Areas to the extent they have not been
220 withdrawn from the Project. The Project may also be referred to as “subdivison”.

221

222 1.36 “Property” shall mean the land on which the Project is constructed. The
223 boundaries of the Project include the land described on Exhibit A.

224

225 1.37 “Record of Survey Map” or “Map” shall mean the official Record of Survey Map
226 now known under the Act as the Condominium Plat

227

228 1.38 “Recreational, Oversized or Commercial Vehicle” shall mean and refer to any
229 recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor,
230 golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer,
231 boat or other watercraft, boat trailer, or any other recreational or commercial transportation
232 device of any kind.

233

234 1.39. “Repair” shall mean and refer to merely correcting the damage done sometimes by
235 accident or fire or other cause, but more often due to the ravages of time and the
236 deterioration resulting from ordinary wear and tear, by substituting for the damage,
237 decayed or worn-out parts, new material, usually similar to that replaced, and so restoring
238 the structure to its original sound condition.

239

240 1.40. “Single Family Residence” shall mean and refer to both the architectural style of a
241 Unit and the nature of the residential use permitted.

242

243 1.41 “Survey Map” shall mean and refer to the Condominium Plat on file in the office of
244 the County Recorder of Summit County, Utah.

245

246 1.42 “Twin Homes” shall mean the duplexes.

247

248 1.43 “Total Vote or Votes” shall mean and refer to *all* of the undivided ownership
249 interest in the Common Areas and Facilities, including ineligible votes

250

251 1.44 “Total Voting Rights” shall mean and refer to *all* of the voting rights of the
252 undivided ownership interest in the Common Areas and Facilities, including the rights of
253 the holders of ineligible votes.

254

255 1.45 “Unit” shall mean the portion of the Project that has been designated as a Unit in
256 the Condominium Plat and by the Declaration. The Unit is privately owned, subject to the
257 terms of this Declaration. Unless expressly stated otherwise in Section 3.1 below, each
258 Unit shall include that separate physical part of the Property intended for independent use,
259 including one or more rooms or spaces located in one or more floors or part or parts of
260 floors in a building. Mechanical equipment and appurtenances located within any one
261 Unit, or located without said Unit but designated and designed to serve only that Unit,
262 such as appliances, electrical receptacles and outlets, air conditioning compressors,
263 furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be
264 considered part of the Unit; so shall all decorated surfaces of interior walls, floors and
265 ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and
266 window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes,
267 wires, conduits, or other utility lines or installations constituting a part of the Unit or
268 serving only the Unit, and any structural members, parts, components or any other property
269 of any kind, including fixtures or appliances within any Unit, which are removable without
270 jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building
271 within which the Unit is located shall be deemed to be part of the Unit.
272

273 1.46 “Unit Number” shall mean the designated number assigned to each Unit on the
274 Condominium Plat. The Unit Number shall be the legal description of the Unit by which it
275 is conveyed and assessed.
276

277 1.47 “Vote” shall mean the percentage of the total voting rights of the Project allocated
278 to each Unit, as shown on Exhibit B.
279

280 1.48 Winter Park @ Sun Peak and The Cove @ Sun Peak, shall for purposes of this
281 document refer to the same Association, Subdivision and Project.
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ARTICLE II

SUBMISSION TO THE ACT

2. The Association hereby re-submits the Project, the Property, and all improvements to the Property to the provisions of the Act All Property within the Project shall be held, occupied, used, sold, mortgaged, assessed, and otherwise possessed as condominium/subdivision property subject in all respects to the Act. All of the Project is subject to the covenants, conditions, and restrictions contained in this Declaration, each of which is intended to be for the mutual burden and benefit of the Project, and for each of the Owners within the Project, for the purpose of creating a common pattern of use and development. The covenants, conditions, and restrictions are intended to be covenants running with the land, binding on the successors, assigns, lessees, and Mortgagees of each Owner for so long as the Property is subject to the Act.

2.1 Term of Declaration. This declaration shall remain in full force and effect until the Owners elect to terminate the project, or the Project is destroyed and liquidated as provided below.

2.2 Designation of Unit. The Condominium Plat has designated a Unit number for each Unit. That Unit number shall be the legal description of the Unit, and each Unit shall constitute a separate parcel of real property which can be conveyed, mortgaged, taxed, and otherwise identified by the description: “Unit Number - of The Cove (aka, Winter Park) at Sun Peak Condominium/Subdivision, as it appears of record in the office of the Summit County Recorder, together with its appurtenant interest in the common areas.”

2.3 Nature of Ownership. Each Unit shall convey not only the Unit itself, but an appurtenant undivided interest in the Common Areas. The undivided interest is based on the proportion of the floor area of the Unit relative to the total floor area of all Units in the Project. The percentage undivided interest in the Common Area is shown on Exhibit B. The undivided interest of each Unit Owner in the Common Areas and Facilities shall have a permanent character and shall not be altered without the consent of two-thirds of the Unit Owners expressed in an amended declaration duly recorded.

2.4 Consent to Declaration. Acceptance of a deed to a Unit in The Cove (aka, Winter Park) @ Sun Peak subdivision is deemed to be consent to the terms and conditions of this Declaration, and the restrictions, assessments and obligations it creates, and to be bound thereby.

2.5 Easements for Encroachment. To the extent that any building is constructed or due to settlement or shifting later inadvertently encroaches on Common Areas, or that Common Areas encroach upon Units as a result of construction or settlement, the Owners and the Association each grant to the other easements for such encroachments.

324 2.6 Easements for Repairs. To the extent necessary to efficiently complete any repairs
325 to Common Areas, the Owners of each Unit are subject to an easement and right of entry
326 through each Unit for the benefit of the Association and the adjoining Unit Owner.
327 Specifically including attics, crawl spaces, party walls, and any common utility facilities.
328 Although unlikely in this building configuration, each Owner also grants the Association
329 the right to enter his or her Unit in cases of emergencies to secure the Unit, or to
330 disconnect utilities as necessary to prevent damage to the adjoining Unit until repairs can
331 be arranged. The Manager or Board of Trustees shall have the right to access each Unit:
332 (a) from time to time during reasonable hours and after reasonable notice to the residents
333 of the Unit being entered, as may be necessary for such maintenance, repair or
334 replacement of any of the Common Areas and Facilities; or (b) for making emergency
335 repairs necessary to prevent damage to the Common Areas and Facilities or to another
336 Unit or Units, provided that a reasonable effort is made to provide notice to the residents
337 of the Unit prior to entry.
338

339 2.7 Mechanical Liens. Each Unit is private property of the Owner. Persons providing
340 labor or materials to the Unit at the request of the Owner shall have the right to enforce a
341 mechanics lien against only that Unit, but not against the Common Areas of the
342 subdivision and in accordance with Title 38 Chapter 1 of the Utah Code.
343
344

345 ARTICLE III

346 ELEMENTS OF THE PROJECT

347
348 3. The Project is divided into Units, Common Areas, and Limited Common Areas. The
349 nature of each of these areas is described below:
350

351 3.1 Units. The Units within the project shall consist of several different unit types.
352 They will include the twin home units, the two large condominium-building units and the
353 nine estate home sites. One half of the twin home structures constructed within the
354 Project is considered one Unit. (i.) The Twin Home unit shall include the land underneath
355 the structure, and the structure itself, including structural elements and exterior wall
356 surfaces, roofs, exterior doors and windows, and the interior space enclosed by the
357 structure. All utility and mechanical systems within each dwelling are part of the Unit,
358 except to the extent they service more than one dwelling. Within each twin home
359 structure, the boundary between the Units will be the center of the double-studded party
360 wall. Each Unit will be part of a twin home structure with a concrete foundation, wood
361 frame construction, with wooden siding, and a truss roof system with asphalt shingles.
362 The buildings are two and three stories, containing kitchen, bathing and living areas, and
363 from two to four bedrooms, and a two car garage. (ii) The large condominium buildings
364 referred to as the "Lillehammer Lodges" Units shall not include the land beneath the
365 structure. They will have a separate condominium plat recorded within this subdivision.

366 “The Lillehammer Lodges” units shall share in the ownership of the common space but
367 be subject to their own-recorded *Supplemental Declaration of Protective Covenants and*
368 *Restrictions*. (iii.) The Estate Home Sites referred to as “The Cove (aka, Winter Park) @
369 Sun Peak Estates” will consist of nine lots on a private street and shall share in the
370 ownership of the common space but be subject to their own recorded *Supplemental*
371 *Declaration of Protective Covenants and Restrictions*.
372

373 3.2 Easement for Exterior Maintenance. Notwithstanding the inclusion of the exterior
374 surfaces of the buildings as part of the Unit, the Association shall have a perpetual
375 easement over the exterior wall surfaces, siding, roofing, and other exterior surfaces; and
376 the foundations, load bearing walls, joists, trusses, and other load bearing or structural
377 elements of each Unit for the purposes of maintenance. The costs of any maintenance or
378 repairs carried out under this easement shall be assessed as Common Area Expenses.
379 Under the terms of this easement, the Association shall:

380
381 (a) Maintain, repair, periodically re-paint and replace exterior siding and
382 exterior doors and window frames on the buildings within the project; maintain,
383 repair, and periodically replace the shingles and roofing on the buildings within
384 the project
385

386 (b) Repair and restore any structural damage to the foundations, columns, load
387 bearing walls, joists, rafters, trusses or other structural elements necessary for the
388 support of the structures following damage by fire, storm, or other casualty or
389 failure.

390 3.3 Exterior Modifications. Without the prior written consent of the Association, no
391 Owner will make exterior modifications to siding, roofing, exterior doors or windows, or
392 to structural elements of the Units within the Project.
393

394 3.4 Common Areas. Unless included in the Unit, the remainder of the Project is
395 Common Area. Common Areas specifically include:
396

397 (a) The land not included within the Units and not dedicated as public streets,
398 and improvements on that land including landscaping and sprinklers, lighting, and
399 other improvements that were made by the Declarant or have been or may later be
400 installed by the Association.
401

402 (b) Utility lines which serve more than one Unit, including water lines
403 upstream of the individual Units, water meter, sewer lines outside of the
404 foundation of the buildings, and storm drainage pipes are all Common Areas. To
405 the extent not owned by the utility company providing service to the Unit, all
406 wires, pipes, conduits or other utility service equipment will be Common Area up
407 to the point at which the utility line enters the Building, the Unit Owner’s side of

408 the meter, or the point at which the line splits to serve only one Unit.
409

410 3.5 Limited Common Areas. Some Common Areas have been designated as for the
411 exclusive use and possession of the Units to which they are appurtenant. The Association
412 is responsible for structural maintenance of the Limited Common Areas (excluding
413 fixtures or equipment installed by Owner or assigned to Owner under this Declaration),
414 but the Owner of the Unit to which the Limited Common Area is appurtenant shall have
415 exclusive possession of that area. Unless the Association so elects, from time to time, the
416 routine maintenance, landscaping, sprinkling, and other maintenance of Limited Common
417 Areas will be the responsibility of the Owner of the Unit to which the Limited Common
418 Area is appurtenant. The Limited Common Areas are:

419
420 (a) Driveways, walks, and porches/decks serving only one Unit.
421 Notwithstanding the status as Limited Common Area, the Unit Owner is
422 responsible for snow removal on his or her own driveway (Association may
423 provide limited scraping of the driveways down to within a few inches of the hard
424 surface), approach walk, and porch/deck unless the Association agrees, from time
425 to time, to include that service within the Common Area Assessments. Driveways
426 and walkways may not be shown on the Map, but whether shown or not, they are
427 considered Limited Common Areas of the Units they serve.
428

429 Driveways and walks, serving more than one Unit are shared Limited Common
430 Areas. Notwithstanding the status as Limited Common Area, the Unit Owners
431 share responsibility for snow removal on their shared approach walk, and
432 driveways (Association may provide limited scraping of the driveways down to
433 within a few inches of the hard surface), unless the Association agrees, from time
434 to time, to include that service within the Common Area Assessments. Driveways
435 and walkways may not be shown on the Map, but whether shown or not, they are
436 considered Limited Common Areas of the Units they serve
437

438 (b) Open Space area designated as Limited Common Area I on the Record of
439 Survey Map. This area is intended for use by the owners of The Cove (aka, Winter
440 Park) @ Sun Peak Estates only for recreation, and other related activities.
441

442 (c) Limited Common Area designated as the Lillehammer Lodges
443 Condominiums. This area is intended for the use by the owners of the
444 Lillehammer Lodge units for access and parking.
445

446 (d) That portion of the Property of up to a maximum of 12 feet from the rear
447 wall at the rear yard of the twin home units is deemed as Limited Common Area.
448 The individual Owners can partition this Limited Common Area into rear yards
449 appurtenant to each Unit through the use of landscaping, shrubbery, and trees. The
450 exact location of these partitions will be determined in the field based on the

451 Assessment of views, the utility of the yard area and the efficient layout of the
452 space and must be approved at the sole discretion of the Association. The
453 Association, with approval of the affected Owners, may approve adjustments in
454 the locations of these areas without a formal amendment of the Map or adjustment
455 of the percentage of Common Area Ownership. When so approved by the
456 Association, this area shall be designated and function as the private back yard of
457 the Unit. Within this Limited Common Area, it is anticipated that there will be
458 some elements that are the maintenance obligation of the Association, and other
459 elements or improvements that are the sole obligation of the Owner. No fencing
460 shall be permitted within the Limited Common or Common Areas.

461
462 (e) After application, the Unit Owner may make improvements, with the
463 express prior written approval of the Board of Trustees, within the Limited
464 Common Area described in (d), as provided in this Declaration. The Unit Owner
465 is solely responsible for the initial construction costs, maintenance, insurance, and
466 operation of any improvements installed by the Unit Owner (or by a prior Owner)
467 including hot tubs, spas, planters, landscaping, or other improvements permitted
468 by this Declaration.

469
470 (1) No Waiver of Future Approvals. The approval of the Board of
471 Trustees of any proposals or plans and specifications or drawings for any
472 work done or proposed, or in connection with any other matter requiring
473 the approval and consent of such Board of Trustees, shall not be deemed to
474 constitute a waiver of any right to withhold approval or consent as to any
475 similar proposals, plans and specifications, drawings or matters whatever
476 subsequently or additionally submitted for approval or consent.

477
478
479 (2) Variance. The Board of Trustees may authorize variances from
480 compliance with any of the provisions of the design guidelines when
481 circumstances such as topography, natural obstructions, hardship,
482 aesthetic, or environmental considerations require, but only in accordance
483 with its duly adopted rules and regulations. Such variances may only be
484 granted, however, when unique circumstances dictate and no variance
485 shall (a) be effective unless in writing, (b) be contrary to the restrictions
486 set forth in the body of this Declaration, or (c) stop the Board of Trustees
487 from denying a variance in other circumstances. For purposes of this
488 Section, the inability to obtain approval of any governmental agency, the
489 issuance of any permit or the terms of financing shall not be considered a
490 hardship warranting a variance.

491
492 (3) Limitation of Liability. Neither the Board of Trustees nor any of
493 its employees, agents, or consultants shall be responsible in any way for

494 any defects in any plans or specifications submitted, revised or approved in
495 accordance with the provisions of this Declaration, nor for any structural
496 or other defects in any work done according to such plans and
497 specifications. In all events, the Board of Trustees and its members shall
498 be defended and indemnified by the Association as provided herein.
499

500 (4) Enforcement. Any construction, alteration, or other work done in
501 violation hereof shall be deemed to be nonconforming. Upon written
502 request from the Board of Trustees, a defaulting Owner shall, at his own
503 cost and expense, remove such construction, alteration, or other work and
504 shall restore the property to substantially the same condition as existed
505 prior to the construction, alteration, or other work. Should an Owner fail
506 to remove and restore the as required hereunder, the Board of Trustees or
507 its designees shall have the right to enter the property, remove the
508 violation, and restore the property to substantially the same condition as
509 existed prior to the construction, alteration or other work, without being
510 guilty of a trespass. In addition to the foregoing, the Board of Trustees
511 shall have the authority and standing, on behalf of the Association, to
512 pursue all other formal legal and equitable remedies available, including
513 the recovery of a reasonable attorneys fee.
514

514 3.6 Ownership of Common Areas. The ownership of the Common Areas (Including
515 Limited Common Areas) is an appurtenance to the ownership of the Units, and the Owner
516 of each Unit shall own an undivided interest in the Common Areas equal to the
517 proportion of the total interior floor area that Unit bears to the total interior floor area
518 within the Project as a whole. The percentage of Common Area Ownership for each Unit
519 is shown on Exhibit B.
520

521 3.7 Water Service. The contracted Water Company provides water service to the
522 Project. If shares are issued in the Company, those shares will be held by the Association
523 for the benefit of the Members. The Water Company is responsible for maintaining water
524 mains within the public right of way and the dedicated utility easements. Maintenance of
525 water laterals between the water mains and the foundation of each building will be the
526 responsibility of the Association as a common area expense. From the individual service
527 meter serving each unit, or the point at which the lines enter the foundation of each unit
528 or building, the maintenance responsibility is that of the unit owner.
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530

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532

ARTICLE IV

533
534

OWNERS ASSOCIATION

535 4. Management of the Project will be carried out by the Association, which shall have those
536 duties, and powers set out for the management of the condominium in the Act, and the additional
537 enforcement powers created under this Declaration. Management of the Project may be delegated
538 to a contracted property manager.

539

540 4.1 Trustees. The Board of Trustees will govern the Association. There will be no less
541 than three and no more than seven Trustees. The trustees will be elected by majority vote
542 of the Owners as called for in the Declaration and By-Laws. Each Trustee will serve a 2-
543 year term, provided that Trustees will continue to serve until their successors have been
544 elected or replacements appointed. Terms will be staggered, and the initial board will
545 divide itself into terms of 1 and 2 years by drawing lots. To be considered a candidate for
546 election to The Cove (aka, Winter Park) @ Sun Peak Board of Trustees, or to remain a
547 member of the Board of Trustees after election, a person must own at least one unit in
548 The Cove (aka, Winter Park) @ Sun Peak and must have paid his or her share of the
549 Common Expenses and may not be in Arrears.

550

551 4.2 Powers, Status and General Authority of Board of Trustees.

552 Any instrument executed by the Board of Trustees that recites facts which, if true, would
553 establish the Board of Trustees' power and authority to accomplish through such
554 instrument what is purported to be accomplished thereby, shall conclusively establish said
555 power and authority in favor of any person who in good faith and for value relies upon
556 said instrument. The Association shall, in connection with its exercise of any of the
557 powers delineated in subparagraphs (a) through (m) below, constitute a legal entity
558 capable of dealing in its Board of Trustees name. The Board of Trustees shall have, and
559 is hereby granted, the following authority and powers:

560

561 (a) Access. The right, power and authority to have access to each Unit:

562 (1) from time to time during reasonable hours and after reasonable notice to the
563 occupant of the Unit being entered, as may be necessary for the maintenance,
564 repair or replacement of any of the Common Areas and Facilities; or (2) for
565 making emergency repairs necessary to prevent damage to the Common Areas and
566 Facilities or to another Unit or Units, provided that a reasonable effort is made to
567 provide notice to the occupant of the Unit prior to entry.

568

569 (b) Grant Easements. The authority, without the vote or consent of the

570 Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other
571 person, to grant or create, on such terms as it deems advisable, reasonable permits,
572 licenses, and non-exclusive easements over, under, across, and through the
573 Common Areas for utilities, roads, and other purposes reasonably necessary or
574 useful for the proper maintenance, operation or regulation of the Project.
575

576 (c) Execute Documents. The authority to execute and record, on behalf of
577 all Owners, any amendment to the Declaration or Condominium Plat which has
578 been approved by the vote or consent necessary to authorize such amendment.
579

580 (d) Standing. The power to sue and be sued.
581

582 (e) Enter Into Contracts. The authority to enter into contracts which in
583 any way concern the Project, so long as any vote or consent necessitated by the
584 subject matter of the agreement has been obtained.
585

586 (f) Transfer Interests in Real Property. The power and authority to
587 exchange, convey or transfer any interest in real property, so long as it has been
588 approved by at least a Majority of the Total Vote.
589

590 (g) Purchase Property. The power and authority to purchase, otherwise
591 acquire, and accept title to, any interest in real property, so long as it has been
592 approved by at least a Majority of the Total Vote.
593

594 (h) Add Property. The power and authority to add any real property, or
595 interest therein, obtained pursuant to subparagraph (g) above to the Project, so
596 long as it has been approved by at least a Majority of the Total Vote.
597

598 (i) Borrow Money and Pledge Collateral. The power and authority to
599 borrow money and pledge collateral so long as it has been approved by at least a
600 Majority of the Total Vote.
601

602 (j) Promulgate Rules. The authority to promulgate such reasonable
603 administrative guidelines, rules, regulations, policies and procedures as may be
604 necessary or desirable to aid the Board of Trustees in carrying out any of its
605 functions or to insure that the Project is maintained and used in a manner
606 consistent with the Act and this Declaration.
607

608 (k) Meetings. The authority to establish procedures for the conduct of its
609 meetings, including but not limited to the power to decide what portion of the
610 meeting shall be open or closed to Owners or Occupants not on the Board of

611 Trustees, to retire to executive session, to regulate record keeping, and to allow,
612 control or prohibit the electronic reproduction (video or audio) of Board of
613 Trustees meetings.

614
615 (l) Delegation of Authority. The power and authority to delegate its
616 responsibilities over the management and control of the Common Areas and
617 regulation of the Project to a professional manager, reserving the right, power and
618 authority, however, to control and oversee the administration thereof.

619
620 (m) All other Acts. The power and authority to perform any and all other acts,
621 and to enter into any other transactions which may be reasonably necessary for the
622 Board of Trustees to perform its functions on behalf of the Owners.

623
624 4.3 Budget. At least 30 days prior to the annual meeting of the Owners, the Trustees
625 will prepare a proposed operating budget for the ensuing year, and a statement showing
626 actual expenditures for the current: year (with projections for the final months). The
627 budget will detail the income and expenses of the Association showing expenses for
628 building maintenance, operations, reserves, repairs, insurance, utilities, snow removal,
629 landscaping, management fees, professional fees, and where applicable, capital
630 improvements to the Project. The budget will also show income derived from all sources,
631 and the amounts of any receivables. The proposed budget will be mailed to each Owner at
632 his or her last known address (as shown by the most recent County property tax
633 assessment rolls, if no other address is available) at least 30 days prior to the annual
634 Owners meeting. The budget will also indicate the resulting Common Area Assessment
635 to be levied on each Unit. The budget will also include the notice of the annual meeting.

636
637 4.4 Common Area Assessments. The Trustees have the power to levy Common Area
638 Assessments for the operation of the Project. The assessments shall be for building
639 maintenance, operations, reserves, repairs, insurance, utilities, snow removal,
640 maintenance and repairs on walkways and the private roads shown on the Map,
641 landscaping, management fees, professional fees, and where applicable, capital
642 improvements to the Project, and other items which may be authorized by the Act, this
643 Declaration, or by the Owners. The assessment will be levied on an annual basis, in
644 advance. Unless the Trustees vote to require monthly payment, assessments will be paid
645 in equal quarterly installments. When preparing the annual budget efforts will be made to
646 keep the common area assessments as low as reasonably possible and still provide a high
647 level of maintenance to the Project, as well as necessary improvements. Any legal action
648 deemed acceptable by the Trustees may be utilized to collect an account in Arrears. This
649 may include, but is not limited to imposing late fees, default interest, penalties, liens,
650 fines, foreclosures, suspension of the right to use recreational amenities or the right to
651 vote, arrest warrants, garnishments, and use of independent collection agencies. For the

652 Association to be responsible to pay for any maintenance, repairs or replacement, a
653 written application must be submitted to the Board of Trustees and pre-approved in
654 writing. The initial overall maintenance obligation and cost allocation is as follows:
655

655 (a) Common Services and Expenses. Each Unit, the Limited Common Area,
656 and Common Area shall be maintained, repaired, and replaced in accordance with
657 the following provisions:
658

659 (1) Clean, Safe, Sanitary and Attractive Condition. The Units, Limited
660 Common Area, and Common Area shall be maintained in a usable, clean,
661 functional, safe, sanitary, attractive and good condition, consistent with
662 Community Standards.
663

664 (2) Landscaping. All landscaping in the Project shall be maintained
665 and cared for in a manner consistent with the standards of design and
666 quality originally established by Declarant and in accordance with
667 Community Standards. Specific written guidelines, standards, controls,
668 and restrictions on landscaping may be adopted or amended by the Board
669 of Trustees from time to time. All landscaping shall be maintained in a
670 neat and orderly condition. Any weeds or diseased or dead lawn, trees,
671 ground cover or shrubbery shall be removed and replaced. All lawn areas
672 shall be neatly mowed and trees, shrubs and bushes shall be neatly
673 trimmed. In a word, all landscaping shall be tasteful, so as not to affect
674 adversely the value or use of any other Unit, or to detract from the uniform
675 design and appearance of the Project.
676

677 (3) The following items of maintenance, repair or replacement and
678 operating expenses will be considered an Area of Common Responsibility
679 and a Common Expense to be paid for by the Association as Common
680 Area expenses shared by all owners within the Project:
681

682 i. Snow removal, maintenance and repairs (due to
683 normal wear and tear) on the private roads shown on the
684 map, (Road damage resulting from construction work will
685 be the responsibility of the lot owner), any other
686 Association improvements installed in or adjacent to the
687 public rights of way serving more than one unit
688

689 ii. The premiums for insurance required by the Act,
690 including by way of illustration but not limitation the
691 property insurance, liability insurance, directors and

- 692 officers insurance, and a fidelity bond;
 693
 694 iii. Maintenance, repair, and replacement of Common
 695 Area improvements, including by way of illustration but not
 696 limitation the irrigation and watering systems, mowing,
 697 edging and trimming of the grass and other care of the
 698 landscaping;.
 699
 700 iv. Utility charges for power, gas, water, sewer, garbage
 701 collection or other common utilities used in conjunction
 702 with Common Area and Facilities
 703
 704 v. Project administrative costs, including mailing,
 705 office expenses, bookkeeping, accounting, legal and other
 706 professional services required, bank charges, and other
 707 administrative expenses for the efficient management of the
 708 project;
 709
 710 vi. Cash reserves for Repairs and Capital
 711 Improvements
 712
 713 vii. Other items of Common Expense as required by
 714 law,
 715

716 (b) Additional Twin Home and Lodge Condominium Owners Area of
 717 Responsibilities: The following items of maintenance, repair and replacement and
 718 operating expenses are applicable to the twin home and Lodge condominium units
 719 exclusively (the “Twin Home and Condominium Owners Area of Responsibility”)
 720 and are not to be considered an Area of Common Responsibility or Common
 721 Expense of The Cove (aka, Winter Park) @ Sun Peak Estates’ Homeowners
 722 Association and are to be paid through the Association as an Exclusive Benefit
 723 Expense solely by the Twin Home and Lodge Condominium Owners; (See
 724 Exhibit B, Column F).
 725

726 (1) Cash reserves for periodic Repair, maintenance or replacement of
 727 capital assets, such as roofs, exterior painting, etc.;

728
 729 (2) Structural Repair, maintenance or replacement of the buildings,
 730 including by way of illustration but not limitation the re-staining or
 731 painting of exterior surfaces (including exterior doors, garage doors), and
 732 siding; provided, however, such maintenance must be pre-approved in
 733 writing by the Board of Trustees. In addition, Owners are responsible for
 734 maintaining, repairing or replacing exterior doors and garage doors if

735 damage is in the opinion of the Board of Trustees caused by or arising out
736 of abuse, misuse, neglect, or Owners failure to provide proper care and
737 maintenance.

738
739 (3) Re-roofing and roof repair, including the repair of leaks,
740 (provided, however, that Owners immediately notify the Board of Trustees
741 or Property Manager of any leaks or maintenance concerns) and
742 maintenance on all buildings, etc. Heat tape installation is provided, in
743 those areas, if any, that routinely develop ice dams due to drift patterns or
744 sun exposure, with the prior express written consent of the Board of
745 Trustee

746
747 (4) The Repair, maintenance and replacement due to normal wear and
748 tear, of porches, decks and patios within the Limited Common Area and
749 concrete flatwork driveways, and entry walks; provided, however, if an
750 Owner has applied an unauthorized paint or finish product that would
751 interfere with the normal application of the approved stain, or require other
752 procedures or labor in excess of the normal staining maintenance task, the
753 Owner is responsible for all additional costs. For example, if an Owner
754 applies a paint product to the decking and normal staining cannot be
755 accomplished without sanding off the unauthorized paint product, the
756 Owner is responsible for the added cost.

757
758 (5) Twin Home and Lodge Owners individual driveways may be
759 scraped to within a few inches of hard surface; however, any additional
760 snow removal will be the responsibility of the Owner.

761
762 (6) The Association will be responsible for the Repair, maintenance
763 and replacement of exterior building surfaces, berms, walks, decks, patios,
764 and other improvements constructed as part of the initial design and
765 construction scheme of the Project, or later installed by the Association.

766
767 (7) Lodge Units may be responsible for and shall share among
768 themselves the cost of operating heat tape in winter months, shared
769 satellite repairs and maintenance, or other expenses unique to the Lodges.

770
771 (8) Any other expenses unique to the Twin Homes and Lodges.

772
773 (c) Additional Estate Lot Owners Area of Responsibilities: The following
774 items of maintenance, repair and replacement and operating expenses are
775 applicable to the Estate Lot Owners exclusively and are not to be considered an
776 Area of Common Responsibility or Common Expense of The Cove (aka, Winter
777 Park) @ Sun Peak Homeowners Association and are to considered areas of

Personal Responsibility by the Estate Lot Owners;

- 778 (1) Snow Removal on all Estate Lot Driveways
- 779
- 780
- 781
- 782 (2) Repairs, routine maintenance and replacement of the Common
- 783 Area intended for exclusive use by the owners of The Cove (aka, Winter
- 784 Park) @ Sun Peak Estates only, including by way of illustration but not
- 785 limitation the landscaping, the control and removal of all noxious and
- 786 nuisance weeds, and irrigating
- 787
- 788 (3) All maintenance, repairs, replacements to undeveloped lots and
- 789 improvements to the lots, including by way of illustration but not
- 790 limitation the landscaping, buildings, driveways.
- 791
- 792 (4) Any expenses unique to The Cove (aka, Winter Park) @ Sun Peak
- 793 Estate Owners.
- 794
- 795 (5) The Association may, by Majority vote of the Owners, change an
- 796 item included in the area of Additional The Cove (aka, Winter Park) @
- 797 Sun Peak Estate Owners Responsibilities to Common Responsibility and
- 798 increase the Common Expenses from time to time in order to achieve cost
- 799 savings, convenience of the Owners, and maintain a consistent level of
- 800 maintenance, quality of construction and uniformity of appearance.

801

802 (d) Owner Maintenance Obligations. The following items are the

803 responsibility of the Owner for his or her Unit including by way of illustration but

804 not limitation the landscaping, and will not be paid for as a Common Expense:

805

- 806 (1) Snow removal on entry walks, patios and porches/decks, and
- 807 sidewalks serving the Unit(s);
- 808
- 809 (2) Installation, Repair, maintenance and replacement of rain gutters
- 810 and down spouts on Twin Homes
- 811
- 812 (3) Casualty, property or homeowners insurance on Owner's contents,
- 813 personal property, possessions, belongings and effects within the Unit, and
- 814 betterments, improvements, or upgrades to interior finishes, cabinetry, or
- 815 other fixtures, and liability insurance on the Owner's Unit and Limited
- 816 Common Area appurtenant thereto;
- 817
- 818 (4) Utility costs for the Unit, including power, gas, water, telephone,
- 819 cable/satellite television, sewer service, and other utility services or similar
- 820 charges exclusive to the use and occupation of the Unit; Gas and power

821 service must be maintained within an occupied or non-occupied unit at all
822 times with interior temperatures maintained at a level to prevent freezing
823 of water pipes.

824
825 (5) Interior maintenance and repairs, including paint, floor coverings,
826 fireplaces and flues, furnaces, water heaters, all fire sprinklers (Twin
827 Homes) and other mechanical equipment and appliances, non-load bearing
828 walls, all drywall, ceilings, doors, glass replacement on exterior windows,
829 windows, window units and frames, garage floor flatwork, garage door
830 operations, automatic garage door openers and damage to garage doors,
831 and any other equipment, devices, or appliances installed by Owner.
832 Windows and doors must be approved in writing by the Board of Trustees
833 as to the quality of construction and uniformity of appearance;

834
835 (6) All owners are required to have yearly inspections of all fire
836 sprinklers, and submit proof of inspection if requested by the Board of
837 Trustees.

838
839 (7) Repair, maintenance and replacement of sewer lateral lines serving
840 only the Unit.

841
842 (e) Increase of Association Obligations. The Association may, by Majority
843 vote of the Owners, change an item included in the Area of Personal
844 Responsibility to the Area of Common Responsibility and to increase the
845 Common Expenses from time to time in order to achieve cost savings,
846 convenience of the Owners, and maintain a consistent level of maintenance,
847 quality of construction and uniformity of appearance.

848
849 4.5 Owners' Obligation to Maintain. Each Owner covenants with the Association and
850 each other Owner that he or she will maintain in a state of good condition and repair his
851 or her Unit and the appurtenant Limited Common Areas (including by way of illustration
852 but not limitation not allowing an accumulation of trash, garbage, refuse, litter, debris or
853 pet waste) and those other items for which the Unit Owner is responsible. In the event an
854 Owner fails to maintain these areas, and as a result of the failure to maintain, there are
855 conditions which are dangerous, unsightly, unhealthy, unsanitary, or which constitute a
856 nuisance, the Association shall have the right, but not the obligation, to make necessary
857 repairs or carry out necessary maintenance, and may bill the Owner for such costs and
858 expenses. Such an Assessment is a debt of the Owner at the time the Assessment is made
859 and is collectible as such. If an Owner fails to pay such an Assessment when due, that
860 amount constitutes a lien on the interest of the Owner in the property, and upon the
861 recording of notice of lien by the Manager or Board of Trustees it is a lien upon the
862 Owner's interest in the property prior to all other liens and encumbrances, recorded or
863 unrecorded, except: (a) tax and special assessment liens on the Unit in favor of any

864 assessing unit or special improvement district; and (b) encumbrances on the interest of
865 the Owner recorded prior to the date such notice is recorded which by law would be a lien
866 prior to subsequently recorded encumbrances Prior to exercising this right to maintain,
867 the Association will give the Owner written notice of the items needing maintenance or
868 repair, and the owner will have at least 15 days from the date of notice to commence
869 repairs. If the Owner has not commenced repairs or maintenance, or fails to pursue repairs
870 or maintenance with reasonable diligence, then the Association may enter and complete
871 the repairs, perform the maintenance, or abate the nuisance at the Owner's expense, and
872 without being guilty of a trespass.
873

874 4.6 Purpose of Common Expenses. The Assessments provided for herein shall be
875 used for the general purpose of operating the Project, promoting the recreation, health,
876 safety, welfare, common benefit and enjoyment of the Owners and residents, including
877 the maintenance of any real and personal property owned by the Association, and
878 regulating the Community, all as may be more specifically authorized from time to time
879 by the Board of Trustees.
880

881 4.7 Creation of Assessments. Since the Assessments shall pay for the common
882 expenses of the Association, as shall be determined by the Board of Trustees from time to
883 time, each Owner, by acceptance of a deed to a Unit, whether or not it shall be so
884 expressed in such deed, covenants and agrees to pay to the Association in a timely
885 manner all Assessments assessed by the Board of Trustees. Assessments will be made
886 against all owners whether the unit/lot is unfinished, vacant, improved or unimproved.
887

888 4.8 Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the
889 Board of Trustees shall prepare and deliver to the Owners a proposed Budget which:
890

891 (a) Itemization. Shall set forth an itemization of the anticipated Common
892 Expenses for the twelve (12) month calendar year, commencing with the
893 following January 1.
894

895 (b) Basis. Shall be based upon advance estimates of cash requirements by the
896 Board of Trustees to provide for the payment of all estimated expenses growing
897 out of or connected with the maintenance and operation of the Common Areas
898 and regulation of the Association, which estimate shall include but is not limited
899 to expenses of management, irrigation water, grounds maintenance, taxes and
900 special assessments, premiums for all insurance which the Board of Trustees is
901 required or permitted to maintain, common lighting and heating, water charges,
902 trash collection, sewer service charges, carpeting, painting, repairs and
903 maintenance of the Common Areas and replacement of those elements of the
904 Common Areas that must be replaced on a periodic basis, wages for Board of
905 Trustees employees, legal and accounting fees, any deficit remaining from a
906 previous period; the creation of a reasonable contingency reserve, surplus or

907 sinking fund, capital improvement reserve, and other expenses and liabilities
908 which may be incurred by the Association for the benefit of the Owners under and
909 by reason of this Declaration. Until the Project is completed, and all Phases are
910 added, this estimate may need to be adjusted periodically as each new Phase is
911 completed.

912
913 4.9 Apportionment. The common profits, losses and voting rights of the Project shall
914 be distributed among and the common expenses shall be charged equally to the Unit
915 Owners.

916
917 4.10 Approval of Budget and Assessments. The proposed Budget and the Assessments
918 shall become effective unless disapproved at the Annual Meeting by a vote of at least a
919 Majority of the percentage of ownership interest in the Common Areas. Notwithstanding
920 the foregoing, however, if the membership disapproves the proposed budget and
921 Assessments or the Board of Trustees fails for any reason to establish the Budget and
922 Assessments for the succeeding year, then and until such time as a new budget and new
923 Common Area Assessment schedule shall have been established, the Budget and the
924 Assessments in affect for the then current year shall continue for the succeeding year.

925
926 4.11 Personal Obligation of Owner. Owners are liable to pay all Assessments assessed
927 and Additional Charges; provided, however, no first mortgagee or beneficiary under a
928 first deed of trust (but not the Seller under a uniform real estate contract, land sales
929 contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies
930 provided in the mortgage or trust deed shall be liable for unpaid Assessments which
931 accrued prior to the acquisition of title. For purposes of this Section, the term "Owner"
932 shall mean and refer jointly and severally to: (1) the Owner of both the legal and
933 equitable interest in any Unit; (2) the owner of record in the offices of the County
934 Recorder of Summit County, Utah; and (3) both the Buyer and Seller under any
935 executory sales contract or other similar instrument.

936
937 4.12 Equitable Changes. If the aggregate of all monthly payments on all of the Units is
938 too large or too small as a result of unanticipated income or expenses, the Board of
939 Trustees may from time to time effect an equitable change in the amount of said
940 payments, but, without the prior approval of a majority of the percentage of ownership
941 interest in the Common Area, not greater than fifteen (15%) percent of the Common Area
942 Assessment in any calendar year. Owners shall be given at least thirty (30) days written
943 notice of any changes.

944
945 4.13 Dates and Manner of Payments. The Board of Trustees shall determine the dates
946 and manner of payment.

947
948 4.14 Reserve Account. The Board of Trustees shall establish and maintain a reserve
949 account or accounts to pay for unexpected operating expenses and capital improvements.

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4.15 Capital Asset Report. The Board of Trustees shall establish and update at least annually a Capital Asset Report which shall list each major capital assets in the Project (e.g. roofs, roads, building exteriors, etc.), each item's expected useful life, the present cost of replacement, the estimated cost to replace the item at the end of its useful life, the percentage and amount of the monthly Assessment currently set aside in the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

4.16. Statement of Assessments Due. Upon written request, the Board of Trustees shall furnish to any Owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within thirty (30) days after the Secretary receives a written request shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

4.17 Superiority of Assessments. By accepting a deed or other document of conveyance to a Unit, each Owner waives his right to claim that his or her statutory homestead exemption is superior to the Association's lien for unpaid Assessments or his or her share of the Common Expenses.

4.18. Special Assessment. The Trustees have the authority to levy Special Assessments as necessary to cover shortfalls in the budget or unanticipated expenses. So long as the Special Assessment (or the sum of all Special Assessments in the current operating year) is no greater than 10% of the currently approved budget, the Trustees may adopt a Special Assessment without a meeting of the Owners. If the Special Assessment (or sum of all prior Special Assessments in the current operating year) exceeds 10% of the current budget, a special meeting of the Owners will be called, and the purposes and amounts of the Special Assessments submitted to the Owners for approval.

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

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

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

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Failure of the Board of Trustees to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Trustees and shall not constitute a waiver of the Board of Trustees' right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Trustees has not previously exercised its authority under this Section.

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

4.21 Capital Improvements. No funds may be expended for a Capital Improvement without the affirmative approval of at least a Majority of the undivided ownership interest in the Common Areas and Facilities.

4.22 Collection of Assessments. The Owners must pay their Assessments in a timely manner, as determined by the Board of Trustees.

(a) Accounts in Arrears. Any Assessment not paid when due shall be deemed in Arrears and a lien securing the obligation may be attached to the Unit, regardless of whether a written notice is recorded

(b) Late Fees and Accruing Interest. A late fee, determined by the Board of Trustees, shall be assessed on all tardy payments. Default interest at the rate of at least one percent (1.5%) per month or at least eighteen percent (18%) per annum shall accrue on all delinquent accounts

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

- 1036 (d) Foreclosure of Lien and/or Collection Action. If the Assessments remain
1037 unpaid, the Association may, as determined by the Board of Trustees, institute suit
1038 to collect the amounts due and/or to foreclose the lien.
1039
- 1040 (e) Personal Obligation. Each Owner, by acceptance of a deed or as a party
1041 to any other type of conveyance, vests in the Association or its agents the right
1042 and power to bring all actions against him or her personally for the collection of
1043 the charges as a debt or to foreclose the lien in the same manner as mechanics
1044 liens, mortgages, trust deeds or encumbrances may be foreclosed.
1045
- 1046 (f) No Waiver. No Owner may waive or otherwise exempt himself or herself
1047 from liability for the Assessments provided for herein, including but not limited to
1048 the non-use of Common Areas or the abandonment of his Unit.
1049
- 1050 (g) Duty to Pay Independent. No reduction or abatement of Assessments
1051 shall be claimed or allowed by reason of any alleged failure of the Association or
1052 Board of Trustees to take some action or perform some function required to be
1053 taken or performed by the Association or Board of Trustees under this Declaration
1054 or the By Laws, or for inconvenience or discomfort arising from the making of
1055 repairs or improvements which are the responsibility of the Association, or from
1056 any action taken to comply with any law, ordinance, or with any order or directive
1057 of any municipal or other governmental authority, the obligation to pay
1058 Assessments being a separate and independent covenant on the part of each
1059 Owner.
1060
- 1061 (h) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment
1062 of Assessments may be enforced by sale or foreclosure of the Owner's interest
1063 therein by the Board of Trustees. The sale or foreclosure shall be conducted in the
1064 same manner as foreclosures in deeds of trust or mortgages or in any other manner
1065 permitted by law. In any foreclosure or sale, the Owner shall pay the costs and
1066 expenses of such proceedings, including but not limited to the cost of a
1067 foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit
1068 during the pendency of the foreclosure action. The Association in the foreclosure
1069 action may require the appointment of a receiver to collect the rental without
1070 regard to the value of the mortgage security. The Board of Trustees may bid for
1071 the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the
1072 same.
1073
- 1074 (i) Appointment of Trustee. If the Board of Trustees elects to foreclose the
1075 lien in the same manner as foreclosures in deeds of trust, then the Owner by
1076 accepting a deed to the Unit hereby irrevocably appoints the attorney of the
1077 Association, provided s/he is a member of the Utah State Bar, as Trustee, and
1078 hereby confers upon said Trustee the power of sale set forth with particularity in

1079 Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner
 1080 hereby transfers in trust to said Trustee all of his right, title and interest in and to
 1081 the real property for the purpose of securing his performance of the obligations set
 1082 forth herein

1083
 1084 (j) Attorney in Fact. Each Owner by accepting a deed to a Unit hereby
 1085 irrevocably appoints the Association as his attorney in fact to collect rent from any
 1086 person renting his Unit, if the Unit is rented and Owner is delinquent in his
 1087 Assessments. Rent due shall be paid directly to the Association, upon written
 1088 demand, until such time as the Owner's Assessments are current; and the Owner
 1089 shall credit the Renter, against rent due, for the amount of money paid to the
 1090 Association.

1091
 1092 4.23 Manner of Assessment. Each Unit/Lot will pay that portion of the Common Area
 1093 Assessment and any Special Assessment equal to the appurtenant undivided interest in
 1094 the Common Areas held by that Unit, as shown on Exhibit B.

1095
 1096 4.24 Voting. Each Unit will have the number of votes equal to its appurtenant
 1097 percentage interest in the Common Area, as shown on Exhibit B. Only one person may
 1098 vote for each Unit regardless of multiple Owners, and all votes appurtenant to each Unit
 1099 must be cast the same way. If the Owners are not able to agree on how to cast their votes,
 1100 no vote will be accepted from that Unit (though the Owners will be counted for purposes
 1101 of establishing a quorum). When one of the multiple Owners is present at the meeting,
 1102 that person shall be deemed to be acting with authority of all of the Owners of that Unit
 1103 unless written objection from the other Owners has been received. Unless otherwise
 1104 provided in this Declaration, the Association may act by a simple majority of the eligible
 1105 votes. Any Owner in Arrears will not be eligible to vote on any Owner related matter in
 1106 his or her name or vote any proxies. Any Owner in Arrears would not be eligible to
 1107 qualify, serve or vote as a member of the Board of Trustees.

1108
 1109 ~~14095~~ 4.25 Easements. The Trustees shall have the power to grant easements for utilities,
 1110 trails, and similar public or quasi-public purposes over the Common Areas of the Project.

1111
 1112 ~~14126~~ 4.26 Certain Work Prohibited. No Unit Owner shall do any work or make any
 1113 alterations or changes which would jeopardize the soundness or safety of the Property,
 1114 reduce its value or impair any easement or hereditament, without in every such case the
 1115 unanimous written consent of all the other Unit Owners being first had and obtained.

1116
 1117 4.27 Insurance. The Manager, Board of Trustees or Association, will obtain insurance
 1118 against loss or damage by fire and other hazards for:
 1119 (1) all Common Areas and Facilities; and (2) all Buildings that contain more than one
 1120 Unit, including any improvement which is a permanent part of a Building. The insurance
 1121 coverage shall be written on the property in the name of the Manager, Board of Trustees

1122 or Association, as trustee for each of the Unit Owners in the percentages established in
1123 this Declaration. The insurance premiums shall be a Common Expense. This Section is
1124 without prejudice to the right of each Unit Owner to insure his own Unit for his benefit.
1125 The Manager, Board of Trustees or Association shall satisfy at least the following
1126 minimum requirements:

1127
1128 (a) Property Insurance. Blanket property insurance using the standard
1129 "Special" or "All Risk" building form. Loss adjustment shall be based upon
1130 replacement cost. For purposes of this sub-section, the term "casualty insurance"
1131 shall not mean or refer to "earthquake" or other special risks not included in the
1132 standard 'condominium' casualty policy. This additional coverage may be added
1133 by the Board of Trustees, as it deems necessary in its best judgment and in its sole
1134 discretion.

1135
1136 (b) Liability Insurance. A public liability policy covering the Common Area,
1137 the Association and its Members for all damage or injury caused by the negligence
1138 of the Association or any of its Members or agents. The public liability policy
1139 shall have at least a One Million (\$1,000,000) Dollar single person limit as
1140 respects bodily injury and property damage, a One Million (\$1,000,000) Dollar
1141 limit per occurrence, if reasonably available, and a One Million (\$1,000,000)
1142 Dollar minimum property damage limit, or the minimum acceptable amount
1143 recommended by our contracted insurance agent. If possible, the policy should be
1144 written on the comprehensive form and shall include non-owned and hired
1145 automobile liability protection

1146
1147 (c) Directors and Officers Insurance. A director's and officer's liability or
1148 errors and omissions policy, if reasonably available, with at least One Million
1149 (\$1,000,000) Dollars in coverage, or the minimum acceptable amount
1150 recommended by our contracted insurance agent. .

1151
1152 (d) Fidelity Bond. A separate fidelity bond in a reasonable amount to be
1153 determined by the Board of Trustees to cover all non-compensated officers as well
1154 as all employees for theft of Association funds.

1155
1156 (e) Worker's Compensation. The Association will maintain Workers
1157 Compensation Insurance on any employees. If a Property Manager is contracted,
1158 he or she will be responsible for his or her own Worker's Compensation Insurance
1159 for himself, herself and any employees.

1160
1161 (f) The named insured will be The Cove (aka, Winter Park) @ Sun Peak
1162 Homeowners Association, or its authorized representative, for the use and benefit
1163 of the individual Owners as their interests might appear.
1164

1165 (g) Each such policy will include a standard mortgagee clause, without
1166 contribution, which shall be either endorsed to provide that any proceeds are
1167 payable to the Association for the use and benefit of the Mortgagees, as their
1168 interest may appear, or shall be otherwise endorsed to fully protect the interests of
1169 the Mortgagees. Further, the policy shall require 30 days written notice to
1170 Mortgagees in the event of a cancellation, reduction, or non-renewal of coverage.
1171

1172 (h) Each policy shall contain a provision that, notwithstanding anything in the
1173 policy that gives the carrier the right to restore the Project rather than make cash
1174 settlement, such right will not be exercised without the prior written approval of
1175 the Association.
1176

1177 (i) Prompt Repair. Each Owner further covenants and agrees that in the event
1178 of any partial loss, damage or destruction of his Unit, the Owner shall proceed
1179 promptly to repair or to reconstruct the damaged structure in a manner consistent
1180 with the original construction.
1181

1182 (j) Disbursement of Proceeds. Proceeds of insurance policies shall be
1183 disbursed to repair promptly and reasonably the damages. Any proceeds
1184 remaining thereafter shall be placed in the Capital Improvement Reserve Account
1185 and retained by and for the benefit of the Association. This is a covenant for the
1186 benefit of the Association and any Mortgagee of a Unit, and may be enforced by
1187 the Association as needed.
1188

1189 (k) Deductible. The deductible on a claim made against the Association's
1190 Property Insurance Policy shall be paid for by the party who would be liable for
1191 the loss, damage, claim, or repair in the absence of insurance.
1192

1193 (l) Owners and residents are solely responsible for public liability and
1194 contents insurance and hereby covenants to save, indemnify and hold the
1195 Association, Board of Trustees, Manager, and other Owners harmless from any
1196 such claims.
1197

1198 4.28 Additional Services. With the approval of a majority of the Owners, the
1199 Association may undertake additional services not specifically mandated by this
1200 Declaration or the Act for the benefit of the Owners, including such things as snow
1201 removal services on Limited Common Areas, landscaping in Limited Common Areas,
1202 bulk purchases of cable/satellite television or other utility type services, or such other
1203 services that might be advantageous to the Owners. Such additional services may be
1204 added or discontinued from time to time as the Association sees fit.
1205

1206 4.29 Landlord Responsibilities. Owners that lease their unit(s) are responsible for
1207 ensuring their tenants are aware of and adhere to this Declaration. In the event of a

1208 violation, the Owner of the Unit (s) will be held responsible. Rental Income may be
1209 garnished for delinquent dues.

1210
1211 4.30 Owner Contact Information. Owners are responsible for maintaining a
1212 current address, phone number and emergency contact information on file with the
1213 Board of Trustees and contracted Property Manager.

1214
1215 4.31 All Owners are responsible for ensuring Association business is transacted timely
1216 through prompt reply and participation either in person or by proxy.

1217
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1219

ARTICLE V

1220 RESTRICTIONS ON THE USE OF UNITS

1221
1222 5. The developer established a general plan of development for the Project as a master
1223 planned community in order to protect the quality of life and collective interests of all Owners,
1224 the aesthetics and environment and the vitality of and sense of community within the Project, all
1225 subject to the ability of the Manager, Board of Trustees and Owners to respond to changes in
1226 circumstances, conditions, needs, and desires within the Subdivision. The Project is subject to
1227 the land development, architectural, and design provisions described herein, the other provisions
1228 of this Declaration governing individual conduct, and uses of or actions upon the Project, and the
1229 guidelines, rules, and restrictions promulgated pursuant hereto, as each may be amended from
1230 time to time, all of which establish affirmative and negative covenants, easements, and
1231 restrictions on the Project.

1232
1233 5.1 Except as otherwise expressly provided herein, all provisions of this Declaration
1234 and any rules shall apply to all Owners, residents, occupants, tenants, guests, visitors, and
1235 invitees.

1236
1237 5.2 Subject to the terms of this section and in accordance with its duty of care and
1238 undivided loyalty to the Association and its Members, the Board of Trustees may amend
1239 the Initial Use Restrictions and may adopt rules that modify, cancel, limit, create
1240 exceptions to, or expand the Use Restrictions then in effect. Notice of any such proposed
1241 action shall be posted in a prominent place within the Project or published in the
1242 Association's newsletter, if any, at least five (5) business days prior to the Board of
1243 Trustees meeting at which such action is to be considered. Members shall have a
1244 reasonable opportunity to be heard at a Board of Trustees meeting prior to such action
1245 being taken. Any such action shall become effective after compliance with the
1246 requirements set forth below unless disapproved at a meeting by at least two-thirds of the
1247 undivided ownership interest in the Common Areas and Facilities. The Board of Trustees
1248 shall have no obligation to call a meeting of the Members to consider disapproval except
1249 upon receipt of a petition of the Members as required for special meetings in the By-

1250 Laws. If a meeting to consider disapproval is requested by the Members prior to the
1251 effective date of such action, the action may not become effective until after such meeting
1252 is held. The Association shall provide, without cost, a copy of the Use Restrictions and
1253 rules then in effect to any Member or Mortgagee requesting a copy. Nothing in this
1254 section shall authorize the Board of Trustees or the Members to otherwise amend, repeal,
1255 or expand the Declaration, the By-Laws, or the Articles of Incorporation except in
1256 accordance with the Amendment provisions set forth below.

1257
1258 5.3 All Owners are subject to the Use Restrictions and are given notice that (1) their
1259 ability to use their privately owned property is limited thereby, and (2) the Board of
1260 Trustees and/or the Members may amend the Use Restrictions or adopt rules which
1261 modify, cancel, limit, create exceptions to, or expand the Use.

1262
1263 5.4 Each Owner by acceptance of a deed or other document of conveyance to a Unit
1264 acknowledges and agrees that the use and enjoyment and marketability of his or her
1265 property can be affected by this provision and that the Use Restrictions and rules may
1266 change from time to time.

1267
1268 5.5 Except as may be specifically set forth in the Initial Use Restrictions, neither the
1269 Board of Trustees nor the Members may adopt any rule in violation of the following
1270 provisions:

1271
1272 (a) Similar Treatment. Similarly situated Owners and occupants shall be
1273 treated similarly.

1274
1275 (b) Religious and Holiday Displays. The rights of Owners and occupants to
1276 display religious and holiday signs, symbols, and decorations on their Lots of the
1277 kinds normally displayed in residences located in single family residential
1278 neighborhoods shall not be abridged, except that the Association may adopt time,
1279 place, and manner restrictions regulating displays which are visible from outside
1280 the Lot.

1281
1282 (c) No rule shall interfere with the freedom of occupants of Dwelling Units to
1283 determine the composition of their households, except that the Declaration limits
1284 residency in a Dwelling Unit to a single family and the Association shall have the
1285 power to limit the total number of occupants permitted in each Dwelling Unit on
1286 the basis of the size and facilities of the Dwelling Unit and its fair share use of the
1287 Common Area.

1288
1289 (d) Activities Within Dwelling Units. No rule shall interfere with the activities
1290 carried on within the confines of Dwelling Units, except that the Association may
1291 prohibit activities not normally associated with property restricted to residential
1292 use, and it may restrict or prohibit any activities that create monetary costs for the

1293 Association or other Owners, that create a danger to the health or safety of
1294 occupants of other Dwelling Units, that generate excessive noise or traffic, that
1295 create unsightly conditions visible from outside the Dwelling Unit, or that create
1296 an unreasonable sounds of annoyance.
1297

1298 (e) Allocation of Burdens and Benefits. No rule shall alter the basis for
1299 allocation of financial burdens among various Lots or rights to use the Common
1300 Area to the detriment of any Owner over that Owner's objection expressed in
1301 writing to the Association. Nothing in this provision shall prevent the Association
1302 from changing the use of the Common Area, from adopting generally applicable
1303 rules for use of Common Area, or from denying use privileges to those who abuse
1304 the Common Area, violate rules or this Declaration, or fail to pay assessments.
1305 This provision does not affect the right to increase the amount of Assessments.
1306

1307 (f) Alienation. No rule shall prohibit the leasing or transferring of any Lot, or
1308 require consent of the Association or Board of Trustees for leasing or transferring
1309 of any Lot; provided, the Association or the Board of Trustees may require a
1310 minimum lease term of up to twelve (12) months. The Association may require
1311 that Owners use lease forms approved by the Association (or include specific
1312 terms in their leases), and may impose a review or administration fee on the lease
1313 or transfer of any Lot.
1314

1315 (g) Abridging Existing Rights. Any rule which would require Owners to
1316 dispose of personal property being kept on the Property shall apply prospectively
1317 only and shall not require the removal of any property which was being kept on
1318 the Property prior to the adoption of such rule and which was in compliance with
1319 all rules in force at such time unless otherwise required to be removed by law.
1320 The limitations in this subsection shall apply to rules only; they shall not apply to
1321 amendments to this Declaration.
1322

1323 5.6 Nature and Restrictions on Ownership and Use in General. Each Owner shall
1324 have and enjoy the privileges of fee simple ownership of his or her property. There shall
1325 be no requirements concerning who may own a Unit, it being intended that they may and
1326 shall be owned as any other property rights by persons. This is a residential community
1327 and as such the Units shall be used only for residential purposes, except as expressly set
1328 forth below, and the Common Areas shall only be used in a manner consistent with the
1329 residential nature of the Project.
1330

1331 5.7 The following activities are prohibited within the Property unless expressly
1332 authorized by, and them subject to such conditions as may be imposed by, the Board of
1333 Trustees:
1334

1335 (a) Posting of signs of any kind, including posters, circulars, campaign signs,

1336 political signs, and bills, except those required by law and except as permitted by
 1337 the Board of Trustees on any Unit, the Limited Common Area or Common Area
 1338 (see 5.13);

1339
 1340 (b) Subdivision or partition of a Unit;

1341
 1342 (c) Capturing, trapping or killing wildlife within the Property, except (1) in
 1343 circumstances posing an imminent threat to the safety of persons or pets using the
 1344 Property; and (2) when authorized and supervised by the Board of Trustees in
 1345 accordance with a game management program;

1346
 1347 (d) Activities which materially disturb or destroy the vegetation, wildlife, or
 1348 air quality within the Property or which result in unreasonable levels of sound or
 1349 light pollution;

1350
 1351 (e) Disposal of any oil, gas, or lubricants, and the storage or disposal of other
 1352 hazardous materials (as may be determined in the Board of Trustee's reasonable
 1353 discretion and as defined by applicable law) anywhere within the Property;

1354
 1355 (f) Parking of any vehicle (including, but not limited to, any Recreational,
 1356 Commercial or Oversized vehicle, car, truck, motorcycle, boat, or trailer) in
 1357 violation of the Parking Rules adopted by the Board of Trustees, or containing or
 1358 displaying a "for sale" sign, or other indication of being "for sale"ⁱⁿ any driveway
 1359 or other portion of any Lot, or on any street or any portion of the Common Area;

1360
 1361 (g) No garage, patio, porch or lawn sale shall be held in any Unit or the
 1362 Common Area, except that an Owner may conduct such a sale from his Unit with
 1363 the prior written consent of the Board of Trustees provided the items sold are only
 1364 his or her own furniture, furnishings and belongings, not acquired for purposes of
 1365 resale, if such sale is held at such time and in such manner as not to disturb any
 1366 other resident of the neighborhood and if such sale is held in full compliance with
 1367 all applicable governmental ordinances, statutes, laws, rules, regulations and
 1368 resolutions.

1369
 1370 (h) Behavior that causes erosion or unreasonable amounts of dust or pollen.

1371
 1372 5.8 Prohibited Conditions. The following shall be prohibited within the Project:

1373
 1374 (a) Dog runs, animal pens, walls or fences of any kind on any Lot except as
 1375 approved by the Board of Trustees in writing;

1376
 1377 (b) Garage doors shall remain closed at all times except when in actual use;

1378

- 1379 (c) Stand-alone flagpoles, clotheslines, or other outside facilities for drying of
1380 clothes;
1381
- 1382 (d) Excessive exterior lighting;
1383
- 1384 (e) Temporary or permanent storage buildings or sheds, whether
1385 prefabricated, metal or of any other construction whatsoever, unless constructed
1386 by the Association;
1387
- 1388 (g) Furniture, fixtures, firewood, appliances, machinery, equipment, or other
1389 goods or chattels which are not in active use stored in any building or any Unit or
1390 Common Area in such a manner as to be visible from the Common Area or which
1391 creates or may create a health or safety hazard; provided, however, this restriction
1392 shall not apply to the property of the Association;
1393
- 1394 (h) Without limiting the generality of any of the foregoing provisions, the
1395 Board of Trustees shall be permitted to establish and enforce reasonable rules with
1396 respect to noise levels originating from a Unit and with respect to the placement
1397 and use of noise making apparatus on any Unit or motor vehicle. No activities
1398 shall be conducted in any Unit or the Common Area, which are or might be unsafe
1399 or hazardous to any other person or property in the Project. No open fires shall be
1400 lighted or permitted on the Property, except in a contained outdoor fireplace or
1401 barbecue unit while attended and in use for cooking purposes or within a safe and
1402 well-designed interior fireplace. No odors shall be permitted to arise or emit from
1403 any Unit, which are offensive or detrimental to any neighboring Unit, as
1404 determined in the discretion of the Board of Trustees. Outdoor playground
1405 equipment not authorized in writing by the Board of Trustees.
1406
- 1407 (i) Permitting any thing or condition to exist in any Unit or the Common Area
1408 that is likely to induce, breed, or harbor infectious plant diseases or noxious
1409 insects.
1410
- 1411 5.9 No Owner may create or allow the creation or maintenance of a nuisance. The
1412 term "nuisance" includes but is not limited to the following:
1413
- 1414 (a) The development of any unclean, unhealthy, unsightly, or unkempt
1415 conditions on, in or about his Unit or the Common Areas;
1416
- 1417 (b) The maintenance of any plants, animals, devices or items, instruments,
1418 equipment, machinery, fixtures, or things of any sort whose activities or existence
1419 in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as
1420 may diminish or destroy the enjoyment of the Project by other residents, their
1421 guests or invitees;

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(c) Unreasonable amounts of noise or traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m. during the week and between midnight and 8:00 a.m. during weekends; and

(d) Allowing drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; parties which occur frequently which bother, annoy or disturb other reasonable residents or interfere with their quiet and peaceful enjoyment of the premises; prostitution; or other violation of U.C.A., Section 78-38-9 (1999) as amended or supplemented.

5.10 Zoning Regulations. The lawfully enacted zoning regulations of Summit County, and duly adopted building, fire, and health codes, and the master covenants of the Sun Peak Development, and the Consent Agreement between Summit Ranch Joint Venture and Summit County governing the development of the Property are in full force and effect in the Project, and no Unit may be occupied in a manner that is in violation of any such statute, law, ordinance, covenant, or conditional use permit.

5.11 No Mining Uses. The Property within the Project shall be used for residential purposes only, and no surface occupation for mining, drilling, or quarrying activity will be permitted at any time.

5.12 No Business or Commercial Uses. No portion of any Unit may be used for any commercial business use, provided however that nothing in this provision is intended to prevent (a) the use of Common Area for storage of construction materials, equipment or a plant nursery in conjunction with the construction authorized by the Project, or (b.) the use by any Owner of his Unit for a home occupation as defined by applicable ordinance. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or others to come to the Unit to conduct business, or which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Project. No materials, machinery, equipment, or inventory associated with any home occupation may be stored outside of any Unit or on any Common Area or Limited Common Area. No signs associated with any home occupation are permitted.

5.13 Restrictions on Signs. No signs will be permitted on any Unit or within the Project, except for traffic control signs, and temporary signs warning of some immediate danger. Signs indicating the Unit is for sale may be placed in accordance with County sign regulations, and no such sign may exceed six square feet. The Owner's name and address may be posted adjacent to the front door of a Unit on a sign or plaque not exceeding 2 square feet in area. A project sign will be installed off of Highway 224 as approved by Summit County and The Sun Peak Homeowners association.

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5.14 Completion Required Before Occupancy. No Unit may be occupied prior to its completion and the issuance of a Temporary or Permanent Certificate of Occupancy by Summit County.

5.15 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Project are to be underground, including lines within any Limited Common Area. No propane tanks or oil tanks may be installed within the Project except for temporary heat during construction. Heating is to be natural gas supplied by utility pipeline.

5.16 Service Yards. All service yards, hot tubs, spas, and exterior mechanical equipment must be within the Limited Common Area.. Playground equipment, swimming pools, trampolines, etc. are not permitted in the Project Service Yards.

5.17 Maintenance of Property. All Units, including the Limited Common Area appurtenant to the Unit, shall be maintained in a clean, sanitary, attractive and marketable condition at all times by the Owner (this includes but is not limited to, removal of trash, pet waste, etc). No Owner shall permit his Unit an/or his appurtenant Limited Common Area to fall into disrepair.

5.18 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out in any Unit or on any portion of the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby or adjoining Units.

5.19 No Hazardous Activity. No activity may be conducted within any Unit, or within the Project that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues). No Owner will occupy a Unit in a manner that is in violation of any State or Federal environmental protection law or regulation concerning the storage, disposal, or use of toxic or hazardous materials.

5.20 No Open Burning. The open burning of yard trimmings, construction waste, or other materials on the Unit or within the Project is prohibited.

5.21 No Unsightliness. No unsightliness is permitted on any Unit or its Limited Common Areas. This shall include, without limitation, (a) the open storage of any building, landscape or gardening materials (except during the construction or repair of any Unit); (b) open storage or parking of farm or construction equipment, inoperable

1508 motor vehicles, boats, campers, trailers, trucks larger than pick-up trucks (except during
1509 periods of actual loading and unloading); (c) accumulations of lawn or tree clippings or
1510 trimmings; (d) accumulations of construction debris or waste; household refuse or
1511 garbage except as stored in tight containers in a garage; and (e) lawn or garden furniture,
1512 window air conditioners, and holiday lights except during the season of use.
1513

1514 5.22 No Annoying Sounds. No speakers, or other noise making devices may be used or
1515 maintained on any Unit or Limited Common Area which create noise that might
1516 reasonably be expected to be annoyingly loud from adjoining Units, except for properly
1517 operating and maintained security or fire alarms.
1518

1519 5.23 Vehicle Restrictions. No motor vehicle, including by way of illustration but not
1520 limitation all cars, trucks, snowmobiles, off-road vehicles, motorcycles, and Recreational,
1521 Commercial and Oversized Vehicles may be operated on the Property in violation of the
1522 Parking Rules adopted by the Board of Trustees.
1523

1524 5.24 No Automobile Repair. No automobile repairs or restoration work may be made
1525 within the Property. No inoperative, unlicensed, unregistered or damaged motor vehicles
1526 may be stored on the Property or within any Unit.
1527

1528 5.25 Animals. Only ordinary, domesticated household pets may be kept in any Unit.
1529

1530 (a) Invisible or fenceless dog runs may be placed only in the Limited
1531 Common Area appurtenant to the Owner's Unit. The Owner will maintain any
1532 dog run area in a clean and sanitary manner to that there are no annoying odors
1533 affecting other Units.
1534

1535 (b) Owners are responsible for picking up their pet's waste throughout the
1536 Common and Limited Common areas.
1537

1538 (c) Owners are responsible for adhering to all Animal Control and Summit
1539 County laws pertaining to pets.
1540

1541 (d) Owners are responsible for ensuring their pets are not disruptive or a
1542 nuisance to other Owners. The following acts of an animal may constitute a
1543 nuisance: (i) it causes damage to the property of anyone other than its owner; (ii)
1544 it causes unreasonable fouling of the air by odors; (iii) it causes unsanitary
1545 conditions; (iv) it defecates on any common area and the feces are not
1546 immediately cleaned up by the responsible party; (v) it barks, whines or howls, or
1547 makes other disturbing noises in an excessive, continuous or untimely fashion; or
1548 (vi) it molests or harasses passersby by lunging at them or chasing passing
1549 vehicles.
1550

1551 (e) Pets may not be tied or tethered in the Common Area. The Board of
1552 Trustees may require a pet deposit or a pet registration fee.
1553

1554 (f) The Association may require an Owner to remove nuisance pets due to
1555 noise, running at large, sanitary violations, or other violations of applicable
1556 ordinances.
1557

1558 5.26 No Transient Lodging Uses. The Units are to be used for residential housing
1559 purposes only, and shall not be rented in whole or in part for transient lodging purposes,
1560 boarding house, “bed and breakfast,” or other uses for providing accommodations to
1561 travelers. No lease of any Unit or Dwelling shall be for a period of less than one month.
1562 No Unit shall be subjected to time interval ownership.
1563

1564 5.27 No Time Interval Ownership. No Unit may be owned, leased, or otherwise held in
1565 a manner that divides either the legal title or the right of use into formal or informal time
1566 intervals or timeshare ownership, or any other contract, trust, partnership, or other
1567 arrangement that permits, allows, or as a practical matter, creates or establishes time
1568 interval ownership or rotating use of the Unit that is indistinguishable from time interval
1569 ownership.
1570

1571 5.28 No Firearms, Weapons, or Hunting. No firearms or weapons of any kind,
1572 including bb guns, pellet guns, or similar air-powered firearms may be discharged within
1573 the Project. No archery ranges or other weapons target areas or use is permitted. The
1574 hunting, trapping, and harassment of wildlife, by firearms, or any other means, is
1575 expressively prohibited within the Property.
1576

1577 5.29 Fireplaces, Chimneys. Only one wood burning stove, fireplace, or other such
1578 appliance is permitted in each Unit. The primary heat source must be natural gas or solar
1579 rather than wood. No coal-fired appliances may be use, and no coal shall be burned in
1580 fireplaces. Chimneys must be enclosed in an approved siding material with a spark
1581 arrester. No exposed metal flues are permitted, other than sections less than 2 feet at the
1582 top of the chimney.
1583

1584 5.30 Antennas/Dishes. All Antennas/dishes must be pre-approved by the Board of
1585 Trustees prior to installation. Any satellite dishes in excess of 24 inches in diameter must
1586 be located and screened in a manner approved in advance by the Board of Trustees.
1587 Antennas/Dishes are not to be visible from either adjoining Units, Lots or from outside
1588 the Subdivision.
1589

1590 5.31 Solar Panels. Solar panels will be permitted in accordance with Utah law and the
1591 prior written consent of the Sun Peak Architectural Committee, and The Cove (aka,
1592 Winter Park) @ Sun Peak Board of Trustees
1593

- 1594 5.32 Fencing. No Fencing shall be permitted in the Limited Common Areas or the
1595 Common Areas without specific approvals from Summit County and The Cove (aka,
1596 Winter Park) @ Sun Peak Board of Trustees
1597
- 1598 5.33 Repairs and Replacements Repairs and replacements to any Unit or to the
1599 Common Areas constituting the exterior of the buildings will be made in a manner that is
1600 consistent in architectural design, materials, colors, and of equal or better quality than the
1601 remainder of the Project, and with the original construction.
1602
- 1603 5.34 New Construction/Additions. No Unit Owner may construct additions to his Unit
1604 without the consent of the Association, which may require a formal amendment of the
1605 Map to reflect the expansion of the Unit on to land that was previously Common Area,
1606 and appropriate consideration paid to the Association. All costs associated with the
1607 amendment of the Map and Declaration will be borne by the Unit Owner requesting the
1608 amendment. The Sun Peak Architectural Design Review Committee must approve all
1609 new construction.
1610
- 1611 5.35 Interior Alterations. Unit Owners may make interior alterations within their Units
1612 as they see fit, provided that no structural or bearing wall may be altered, moved, or
1613 penetrated with new openings without the approval of the Association. Any alterations
1614 must be carried out pursuant to a properly issued building permit, and in full compliance
1615 with all applicable codes. No interior alterations that involve the relocation of any interior
1616 partition will be made without advance notice to the Association, complete with copies of
1617 plans indicating the alterations to be made.
1618
- 1619 5.36 Outdoor Lighting. All exterior lighting should be limited to the confines of the lot
1620 on which it is installed. Holiday lights should not be installed prior to November 1st and
1621 should be removed by March 30th.
1622
- 1623 5.37 Landscaping. Owners may add additional landscaping to the Common and
1624 Limited Common areas appurtenant to their Unit as long as it is within the confines of the
1625 overall The Cove (aka, Winter Park) @ Sun Peak landscape scheme.
1626
- 1627 (a) The Board of Trustees must approve any landscaping that may
1628 impact/compromise the integrity of the irrigation system and/or infringe on
1629 the rights of a neighboring unit.
1630
- 1631 (b) The Association has the right to remove any overgrown, diseased, dead,
1632 dying or unsightly vegetation from the Common/Limited Areas.
1633
- 1634 (c) Lawn ornaments should be in keeping with The Cove (aka, Winter Park)
1635 @ Sun Peak landscape theme and be of natural woods, stone or metal and should
1636 not be offensive in nature.

- 1637 5.38 Window Coverings, Awnings and Sun Shades. No-aluminum foil, newspapers,
1638 reflective film coatings, or any other similar materials may be used to cover the exterior
1639 windows of any residential structure on a Unit. Sunshades are not allowed on the exterior
1640 of any Building, unless the color, style, construction material and uniformity of
1641 appearance is approved by the Board of Trustees.
1642
- 1643 5.39 Windows. All windows and windowpanes in the Project shall be harmonious,
1644 and comparable in size, design and quality so as not to detract from uniformity in
1645 appearance and quality of construction.
1646
- 1647 5.40 Subdivision of a Unit. No Unit may be partitioned or subdivided.
1648
- 1649 5.41 No Severance. The elements of a Unit and other rights appurtenant to the
1650 ownership of a Unit, including interest in Common Areas and Facilities and Limited
1651 Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he shall
1652 not, while this Declaration is in effect, make any conveyance of less than an entire Unit
1653 and such appurtenances. Any conveyance made in contravention of this Subsection,
1654 including under any conveyance, encumbrance, judicial sale or other transfer (whether
1655 voluntary or involuntary) shall be void.
1656
- 1657 5.42 Insurance. Nothing shall be done or kept in, on or about any Unit or in the
1658 Common Areas or Limited Common Areas, which may result in the cancellation of the
1659 insurance on the Property, or an increase in the rate of the insurance on the Property, over
1660 what the Board of Trustees, but for such activity, would pay.
1661
- 1662 5.43 Laws. Nothing shall be done or kept in, on or about any Unit or Common Areas,
1663 or any part thereof, which would be a violation of any statute, rule, ordinance, regulation,
1664 permit or other validly imposed requirement of any governmental body.
1665
- 1666 5.44 Damage or Waste. No damage to, or waste of, the Common Areas or Limited
1667 common Areas shall be committed by any Owner or Resident, their guests or invitees;
1668 and each Owner and Resident shall indemnify and hold the Board of Trustees and the
1669 other Owners in the Project harmless against all loss resulting from any such damage or
1670 waste caused by that Owner or Resident, their guests or invitees.
1671
- 1672 5.45 Structural Alterations. Except in the case of an emergency repair, no structural
1673 alterations, plumbing, electrical or similar work within the Common Areas or Limited
1674 Common Areas shall be done or permitted by any Owner without the prior written
1675 consent of the Board of Trustees.
1676
1677
1678
1679

ARTICLE VI

DESTRUCTION OR TERMINATION OF CONDOMINIUM

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

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

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

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

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

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

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

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

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

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

(i) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board of Trustees or Association. Available Funds shall not include that portion

1722 of insurance proceeds legally required to be paid to any party other than the
1723 Association, including a mortgagee, or that portion of any condemnation award or
1724 payment in lieu of condemnation payable to the Owner or Mortgagee for the
1725 condemnation or taking of the Unit in which they are interested.
1726

1727 6.2 Determination by Board of Trustees. Upon the occurrence of any damage or
1728 destruction to the Project or any part thereof, or upon a complete or partial taking of the
1729 Project under eminent domain or by grant or conveyance in lieu thereof, the Board of
1730 Trustees shall make a determination as to whether the excess of Estimated Costs of
1731 Restoration over Available Funds is twenty-five percent (25%) or more of the estimated
1732 Restored Value of the Project. In addition, the Board of Trustees shall, from time to time,
1733 review the condition of the Project to determine whether Substantial Obsolescence exists.
1734 In making such determinations the Board of Trustees may retain and rely upon one or
1735 more qualified appraisers or other professionals.
1736

1737 6.3 Restoration of the Project. Restoration of the Project shall be undertaken by the
1738 Board of Trustees promptly without a vote of the Owners in the event of Partial
1739 Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken
1740 in the event of Substantial Destruction, Substantial Condemnation, or Substantial
1741 Obsolescence unless the failure to make Restoration is consented to by Owners
1742 collectively holding at least sixty-seven percent of the Project's undivided Ownership
1743 interest and is further consented to by Eligible Mortgagees holding Mortgages on Units
1744 which have appurtenant at more than 50% percent of the undivided ownership interest in
1745 the Common Areas and Facilities which is then subject to Mortgages held by Eligible
1746 Mortgagees.
1747

1748 6.4 Notices of Destruction or Obsolescence. Within thirty (30) days after the Board
1749 of Trustees has determined that Substantial Destruction, Substantial Condemnation, or
1750 Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a
1751 written description of the destruction, condemnation, or state of obsolescence involved,
1752 shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees
1753 concerning Restoration, and shall, with or without a meeting of the Owners (but in any
1754 event in accordance with the applicable provisions of this Declaration), take appropriate
1755 steps to determine the preferences of the Owners regarding Restoration.
1756

1757 6.5 Excess Insurance. In the event insurance proceeds, condemnation awards, or
1758 payments in lieu of condemnation actually received by the Board of Trustees or
1759 Association exceed the cost of Restoration when Restoration is undertaken, the excess
1760 shall be paid and distributed to the Owners in proportion to their respective undivided
1761 interests in the Common Areas. Payment to any Owner who's Unit is the subject of a
1762 Mortgage shall be made jointly to such Owner and the interested Mortgagee.
1763

1764 6.6 Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the

1765 Board of Trustees may elect to make a special assessment in accordance with Article III,
1766 Section 21 above to pay for the deficiency.
1767

1768 6.7 Reallocation in Event of Partial Restoration. In the event that all or any portion of
1769 one or more Units will not be the subject of Restoration (even though the Project will
1770 continue as a condominium project) or is taken in a condemnation proceeding or pursuant
1771 to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas
1772 and Facilities shall be immediately reallocated to the remaining Units.
1773

1774 6.8 Sale of Project. Unless Restoration is accomplished as set forth above, the Project
1775 shall be sold in the event of Substantial Destruction, Substantial Condemnation, or
1776 Substantial Obsolescence. In the event of such sale, condominium Ownership under this
1777 Declaration and the Condominium Plat shall terminate and the proceeds of sale and any
1778 Available Funds shall be distributed by the Board of Trustees to the Owners in proportion
1779 to their respective undivided interests in the Common Areas. Payment to any Owner
1780 whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the
1781 interested Mortgagee.
1782

1783 6.9 Authority of Board of Trustees to Represent Owners in Condemnation or to
1784 Restore or Sell. The Board of Trustees, as attorney-in-fact for each Owner, shall
1785 represent all of the Owners and the Association in any condemnation proceeding or in
1786 negotiations, settlements, and agreements with the condemning authority for the
1787 acquisition of all or any part of the Common Areas and Facilities.
1788

1789 6.10 Settlement Proceeds. The award in any condemnation proceeding and the
1790 proceeds of any settlement related thereto shall be payable to the Association for the use
1791 and benefit of the Owners and their mortgagees as their interests may appear.
1792

1793 6.11 Restoration Power. The Board of Trustees, as attorney-in-fact for each Owner,
1794 shall have and is hereby granted full power and authority to restore or to sell the Project
1795 and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as
1796 hereinabove provided. Such authority shall include the right and power to enter into any
1797 contracts, deeds or other instruments, which may be necessary or appropriate for
1798 Restoration or sale, as the case may be.
1799

1800 6.12 Termination of Legal Status. Any action to terminate the legal status of the
1801 Project after Substantial Destruction or Condemnation occurs shall be agreed to by Unit
1802 Owners who represent at least sixty-seven (67%) percent of the total allocated votes in
1803 the Association and by Eligible Mortgage holders who represent at least fifty-one (51%)
1804 percent of the votes of the Units that are subject to mortgages held by eligible holders.
1805 The termination of the legal status of the Project for reasons other than Substantial
1806 Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage
1807 holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged

1808 Units. However, implied approval may be assumed when an Eligible Mortgage holder
1809 fails to submit a response to any written proposal for an amendment within thirty (30)
1810 days after it receives proper notice of the proposal, provided the notice was delivered by
1811 certified or registered mail, with a "return receipt" requested. If financing has been
1812 provided by any of the following agencies, their affirmative consent is required: The
1813 Federal Housing Administration of the United States Department of Housing and Urban
1814 Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage
1815 Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government
1816 National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

1817
1818
1819
1820
1821 ARTICLE VII

1822 AMENDMENT

1823
1824 7. This Declaration may be amended from time to time by the affirmative vote of the
1825 eligible Owners (Owners in arrears are not eligible) representing more than 50% of the undivided
1826 ownership interest, based on the number of eligible Owners. The right to amend this Declaration
1827 is subject to the following limitations:

1828
1829 7.1 Mortgagee Consent. The consent of at least sixty-seven percent (67%) of the
1830 Eligible Mortgagees shall be required to any amendment which would terminate the legal
1831 status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one
1832 (51%) percent of the undivided ownership interest in the Common Areas shall be
1833 required to add to or amend any material provision of this Declaration or the Record of
1834 Survey Map which establishes, provides for, governs, or regulates any of the following:
1835 (1) voting rights; (2) increases in assessments that raise the previously assessed amount
1836 by more than 25%, assessment liens, or the priority of assessment liens; (3) reductions in
1837 reserves for maintenance, repair, and replacement of the Common elements; (4)
1838 insurance or fidelity bonds; (5) limitations and restrictions on the right to use of the
1839 Common Areas; (6) responsibility for maintenance and repairs; (7) expansion or
1840 contraction of the Project or the addition, annexation or withdrawal of property to or from
1841 the Project; (8) the boundaries of any Lot; (9) the percentages of ownership interest in the
1842 Common Areas; (10) convertibility of a Lot into Common Areas or Common Area into a
1843 Lot; (11) the imposition of any right of first refusal or similar restriction on the right of an
1844 Owner to sell, transfer, or otherwise convey his Lot; (12) express benefits or rights of
1845 Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (13) the
1846 requirement that the Project be professionally managed rather than self managed. Any
1847 addition or amendment shall not be considered material for purposes of this Paragraph if
1848 it is for the clarification only or to correct a clerical error. Notice of any proposed

1849 amendment to any Eligible Mortgagee to whom a written request to approve an addition
1850 or amendment to this Declaration or the Record of Survey Map is required shall be
1851 mailed postage prepaid to the address for such Mortgagee shown on the list maintained by
1852 the Association. Any Eligible Mortgagee who does not deliver to the Board of Trustees
1853 or the Association a negative response to the notice of the proposed amendment within
1854 thirty (30) days from the date of such mailing shall be deemed to have approved the
1855 proposal. The foregoing consent requirements shall not be applicable to amendments to
1856 this Declaration and the Record of Survey Map or the termination of the legal status of
1857 the Project. If such amendments or such termination are made or accomplished in
1858 accordance with the provisions of this Declaration regarding Condemnation or
1859 Substantial Obsolescence.

1860 1861 1862 ARTICLE VIII

1863 MORTGAGEE PROTECTION

1864
1865 8. To facilitate financing for the Units in the Project, the following provisions for the
1866 protection of Mortgagees shall apply:

1867
1868 8.1 Subordination of Lien. The Association hereby subordinates its lien for Common
1869 Area Assessments to the first lien purchase money mortgage on each Unit. In the event
1870 that a mortgagee take title to any Unit through trustees sale, foreclosure or a deed in lieu
1871 of foreclosure or sale, the Association will waive the right to a lien for accrued but unpaid
1872 Common Area Assessments. The mortgagee will take title free of the lien for unpaid
1873 Common Area Assessments accrued prior to the date of possession. The Mortgagee in
1874 possession will, however, be subject to the Common Area Assessments accruing from the
1875 date it takes possession.

1876
1877 8.2 Statement of Account. The association will give any Owner, prospective
1878 purchaser, or Mortgagee or prospective Mortgagee a written statement of account for the
1879 Unit in question, showing the balance owing, if any, for Common Area Assessments. The
1880 Association may charge a fee of \$25 for each such statement to cover its costs of
1881 preparation. Prospective purchasers and Mortgagees will be entitled to rely on the
1882 accuracy of that statement of account, and amounts not shown will be deemed waived as
1883 to the new Owner or Mortgagee.

1884
1885 8.3 No Release of Prior Owner. The obligation to pay Common Area Assessments is
1886 personal, and despite subordination or waiver for the benefit of a Mortgagee or new
1887 Owner, the Association may reserve its rights to proceed against the prior Owner to
1888 collect any amounts due.

1889
1890 8.4 Mortgagee Protection. The lien or claim against a Unit for unpaid Assessments

1891 levied by the Board of Trustees or by the Association pursuant to this Declaration or the
1892 Act shall be subordinate to any Mortgage recorded on or before the date such
1893 Assessments become due, subject to the following:
1894

1895 (a) Effects of Voluntary and Involuntary Sale. The lien or claim against a
1896 Unit for such unpaid Assessments shall not be affected by any sale or transfer of
1897 such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage
1898 affecting such Unit or the exercise of a power of sale available thereunder shall
1899 extinguish any debt payable prior to such sale or transfer. Nevertheless, any such
1900 unpaid Assessments which are extinguished in accordance with the foreclosure or
1901 power of sale shall not relieve the purchaser or transferee of such Unit from
1902 liability for, nor such Unit the lien of any Assessments becoming due thereafter.
1903

1904 (b) Books and Records Available for Inspection. The Board of Trustees or the
1905 Association shall make available to the Owners, to Mortgagees, and lenders, and
1906 to holders, insurers, or guarantors of any Mortgage current copies of the
1907 Declaration, By-Laws, and administrative rules and regulations concerning the
1908 Project, as well as the books, records, and financial statements of the Board of
1909 Trustees and the Association. The term "Available," as used in the Paragraph,
1910 shall mean available for reasonable inspection upon request during normal
1911 business hours or under other reasonable circumstances. The Association shall
1912 have the right to recover its photocopying and service charges incurred in making
1913 the inspection and photocopying available.
1914

1915 (c) Right to Financial Statement. The holder, insurer or guarantor of any
1916 Mortgage shall be entitled, upon written request, to a financial statement for the
1917 immediately preceding fiscal year. Any financial statement requested pursuant
1918 hereto shall be furnished to the requesting party within a reasonable time
1919 following such request.
1920

1921 (d) Management Contracts. Any agreement for professional management of
1922 the Project, and any contract for goods or services, or any lease, which is entered
1923 into by the Board of Trustees, shall provide, or be deemed to provide hereby, that:
1924

1925 (1) Either party may terminate the contract with cause upon at least
1926 thirty (30) days prior written notice to the other party; and
1927

1928 (2) No contract may be for an initial term greater than one (1) year.
1929

1930 (e) Eligible Mortgagee Designation. Upon written request to the Board of
1931 Trustees or the Association by the holder, insurer, or guarantor of a Mortgage
1932 (which request identifies the name and address of such holder, insurer or
1933 guarantor and the Unit Number or address of the property encumbered by the

Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

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

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

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Trustees or the Association.

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

(f) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request. If financing has been provided by any of the following agencies, such action or transaction must be approved in writing by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

ARTICLE IX

ENFORCEMENT

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9. This Declaration is enforceable by bringing an action in the District Court for Summit County, Utah, or such other court, as may have jurisdiction. The provisions are enforceable by seeking money judgments, the right to foreclose on liens, or in the case of covenants concerning the use of the property, by injunction. Trustees may take any legal measures they deem reasonable for collection of past due assessments, which may include but is not limited to late fees, interest penalties, liens, foreclosures, turning the account over to a collection agency or contacting a credit bureau.

9.1 Notices. Notice of delinquent accounts will be sent to all owners at their last known address. Notice of additional past due assessment penalties will be sent to the Owner at the last known address, and/or delivered in person to the Unit. If payment has not been made within 10 days of written notice, the Association may record a notice of lien against the Unit, proceed to collection or foreclosure, utilize garnishment procedures, turn the account over to a collection agency, contact a credit bureau or use other legal mean deemed necessary. Notices of non-monetary violations of the Declaration will be given in the same manner, and if the violation is not cured, or the acts constituting the violation are repeated within 10 days, the Association may seek an injunction compelling performance.

9.2 Severability. If any provision of this Declaration is adjudicated to be unenforceable, the remainder of the Declaration shall remain in full force and effect.

9.3 Attorneys Fees. If the Association is required to consult with an attorney for purposes of collection of past due assessments, or enforcement of other covenants, conditions, or restrictions in this Declaration, the Owner in default or violation agrees to reimburse the Association for its reasonable attorneys fees, whether suit is filed or not. If suit is filed, all costs of enforcement will be recovered in addition to whatever other relief a court may award.

9.4 Arbitration. In any dispute between the Association and any Owner arising under the terms of this Declaration or the By-laws of the Association, the parties will submit the issue to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Judgment may be issued on award or, determination of the Arbitrators in any court having jurisdiction over the property or the parties to the dispute. All fees for the American Arbitration Association will be equally divided and paid in advance by the parties, or at such time as required by the Arbitration Rules. While it was the intent of the Declarant that disputes be resolved by arbitration where ever possible, the Association shall not be deemed to have waived its rights to foreclose liens for Common Area Expenses or other charges through judicial foreclosure, nor to have

2019 waived the right of the Association to seek injunctive relief in those situations where
2020 arbitration does not provide an adequate or complete remedy. The Association will
2021 attempt to include arbitration clauses in contracts with third parties providing goods or
2022 services to the Association.
2023

2024 9.5 Separate Taxation. Each Unit and its percentage of undivided interest in the
2025 Common Areas and Facilities shall be considered to be a parcel and shall be subject to
2026 separate assessment and taxation by each assessing unit and special district for all types of
2027 taxes authorized by law, including ad valorem levies and special assessments. Neither the
2028 Building or Buildings, the property nor any of the Common Areas and Facilities may be
2029 considered a parcel for tax purposes.
2030

2031 9.6. Interpretation. To the extent Utah law is consistent with this Declaration, such
2032 provisions shall supplement the terms hereof and are incorporated herein. The captions,
2033 which precede the Articles and Sections of this Declaration, are for convenience only and
2034 shall in no way affect the manner in which any provision hereof is construed. Whenever
2035 the context so requires, the singular shall include the plural, the plural shall include the
2036 singular, the whole shall include any part thereof, and any gender shall include both
2037 genders. The invalidity or unenforceability of any portion of this Declaration shall not
2038 affect the validity or enforceability of the remainder hereof.
2039

2040 9.7 Covenants to Run with Land. This Declaration and all the provisions hereof shall
2041 constitute covenants to run with the land or equitable servitudes, as the case may be, and
2042 shall be binding upon and shall inure to the benefit of Association, all other signatories
2043 hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their
2044 respective grantees, transferees, heirs, devisees, personal representative, successors, and
2045 assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all
2046 Units shall be subject to, the terms of this Declaration and the provisions of any rules,
2047 regulations, agreements, instruments, supplements, amendments, and determinations
2048 contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the
2049 party acquiring such interest consents to, and agrees to be bound by, each and every
2050 provision of this Declaration.
2051

2052 9.8 Combination of Units. An owner of two or more adjoining units shall have the
2053 right upon approval of the Board of Trustees and the mortgagees of said units, to combine
2054 one or more adjoining units or portions thereof and to alter or amend the declaration and
2055 map to reflect such combination.
2056

2057 (a) Such amendments may be accomplished by the unit owner recording an
2058 amendment or amendments to this declaration, together with an amended map or
2059 maps containing the same information with respect to the altered units as required
2060 in the initial declaration and map with respect to the initial units. All costs and
2061 expenses required in such amendments shall be borne by the unit owner desiring

2062 such combination.

2063
2064 (b) All such amendments to the declaration and map must be approved by
2065 attorneys employed by the Board of Trustees to insure the continuing legality of
2066 the declaration and the map. The cost of such review by the attorneys shall be
2067 borne by the person wishing to combine the units.

2068
2069 (c) Any amendments of the declaration or map pursuant to this paragraph 20
2070 shall reflect the changes occasioned by the alteration. Such changes shall include
2071 a change in the percentage of undivided interest in the common areas and
2072 facilities, which are appurtenant to the units involved in the alterations. The
2073 remaining combined unit, if two or more units are totally combined, will acquire
2074 the total of the percentage of undivided interest in the common areas and facilities
2075 appurtenant to the units that are combined as set forth in Exhibit B. If a portion of
2076 one unit is combined with another, the resulting units shall acquire a proportionate
2077 percentage of the total undivided interest in the common areas and facilities of the
2078 units involved in the combination on the basis of area remaining in the respective,
2079 combined units. The percentage of undivided interest in the common areas and
2080 facilities appurtenant to all other units shall not be changed. All such
2081 amendments must, in all instances, be consented to by the Board of Trustees and
2082 also all other persons holding interest in the units affected. The consent of other
2083 unit owners need not be obtained to make such amendments or alterations valid,
2084 providing the percentages of undivided interest in the common areas and facilities
2085 of the other unit owners remain unchanged.

2086
2087 9.9 Fines. Each Owner and Resident is responsible for adhering to the Project
2088 Documents governing the Project. Pursuant to U.C.A., Section 57-8-37 (2001), a breach
2089 of these restrictive covenants and rules is subject to enforcement pursuant to the
2090 declaration and may include the imposition of a fine. Each Owner is also accountable
2091 and responsible for the behavior of his or her residents, tenants and/or guests. Fines
2092 levied against residents, tenants, and guests are the responsibility of the Owner. The
2093 Board of Trustees shall react to each material violation in the following manner:

2094
2095 (a) Fines imposed are final unless appealed in writing to the Board of Trustees
2096 within thirty (30) days of written notification of the violation. If a request for a
2097 hearing is not submitted to the Board of Trustees within thirty (30) days, the right
2098 to a hearing is waived, and the fine imposed will stand. A request for a hearing to
2099 appeal should be sent in writing to the Manager or Secretary of the Association.

2100
2101 (b) Before assessing a fine under Subsection (a), the Board of Trustees shall
2102 give notice to the homeowner of the violation and inform the owner that the fine
2103 will be imposed if the violation is not cured within the time provided in the
2104 declaration, bylaws, or rules, which shall be at least forty-eight (48) hours.

- 2105
2106 (c) A fine assessed under Subsection (a) shall:
2107
2108 (1) Be made only for a violation of a restrictive covenant, rule or
2109 regulation;
2110
2111 (2) Be in the amount specifically provided for in the declaration,
2112 bylaws, or association rules for that specific type of violation, not to
2113 exceed \$500.00; and
2114
2115 (3) Accrue interest and late fees as provided in the declaration, bylaws,
2116 or association rules.
2117
2118 (d) Cumulative fines for a continuing violation may not exceed \$500.00 per
2119 month.
2120
2121 (e) An Owner who is assessed a fine under Subsection (a) may request an
2122 informal hearing to protest or dispute the fine within thirty (30) days from the date
2123 the fine is assessed. The hearing shall be conducted in accordance with standards
2124 of due process adopted by the Board of Trustees. No finance charge, default
2125 interest, or late fees may accrue until after the hearing has been conducted and a
2126 final decision has been rendered.
2127
2128 (f) An Owner may appeal a fine issued under Subsection (a) by initiating a
2129 civil action within one hundred and eighty (180) days after: (1) A hearing has
2130 been held and a final decision has been rendered by the Board of Trustees under
2131 Subsection (e); or (2) The time to request an informal hearing under Subsection
2132 (e) has expired without Owner making such a request.
2133
2134 (g) A fine assessed under Subsection (a) which remains unpaid after the time
2135 for appeal has expired becomes a lien against the Owner's interest in the property
2136 in accordance with the same standards as a lien for the nonpayment of common
2137 expenses under Section 26(c) above.
2138
- 2139 9.10 Termination of Utilities and Right to Use Amenities for Non-Payment of
2140 Assessments
2141
- 2142 (a) If an owner fails or refuses to pay any assessment when due, the Board of
2143 Trustees may (1) terminate the owner's right to receive utility services paid as a
2144 common expense; and (2) terminate the owner's right of access and use of
2145 recreational facilities, after giving notice and an opportunity to be heard.
2146
2147 (b) Before terminating utility services or right of access and use of

2148 recreational facilities, the manager or Board of Trustees shall give written notice
2149 to the owner in the manner provided in the declaration, bylaws, or association
2150 rules. The notice shall state:

2151
2152 (1) Utility services or right of access and use of recreational facilities
2153 will be terminated if payment of the assessment is not received within the
2154 time provided in the declaration, bylaws, or association rules, which time
2155 shall be stated and be at least 48 hours;

2156
2157 (2) The amount of the assessment due, including any interest or late
2158 payment fee; and

2159
2160 (3) The right to request a hearing.

2161
2162 (c) An owner who is given such notice may request an informal hearing to
2163 dispute the assessment by submitting a written request to the Board of Trustees
2164 within 14 days from the date the notice is received. A notice shall be considered
2165 received on the date (1) it is hand delivered, (2) it is delivered by certified mail,
2166 return receipt requested, or (3) five (5) days after it is deposited in the U.S. Mail,
2167 postage prepaid, addressed to the owner's last known address on the books and
2168 records of the Association

2169
2170 (d) The hearing shall be conducted in accordance with the standards provided
2171 in the declaration, bylaws, or association rules.

2172
2173 (e) If a hearing is requested, utility services or right of access and use of
2174 recreational facilities may not be terminated until after the hearing has been
2175 conducted and a final decision has been entered.

2176
2177 (f) Upon payment of the assessment due, including any interest or late
2178 payment fee, the manager or Board of Trustees shall immediately take action to
2179 reinstate the terminated utility services to the unit and right to use of recreational
2180 facilities.

2181
2182 9.11 Assignment of Rents

2183
2184 (a) If the owner of a unit who is leasing the unit fails to pay any assessment
2185 for a period of more than 60 days after it is due and payable, the Board of Trustees
2186 may demand the tenant to pay to the association all future lease payments due the
2187 owner, commencing with the next monthly or other periodic payment, until the
2188 amount due to the association is paid; provided, however, the manager or Board
2189 of Trustees must give the owner written notice, in accordance with the
2190 declaration, bylaws, or association rules, of its intent to demand full payment from

2191 the tenant. This notice shall:

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(1) Provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

(2) State the amount of the assessment due, including any interest or late payment fee;

(3) State that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(4) Provide the requirements and rights described herein.

(b) If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or Board of Trustees may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(1) That due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the Board of Trustee's intent to collect all lease payments due to the association pursuant hereto.

(2) That until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(3) Payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the owner against the tenant for failure to pay.

(c) All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the association.

(d) Within five business days of payment in full of the assessment, including

2234 any interest or late payment fee, the manager or Board of Trustees must notify the
2235 tenant in writing that future lease payments are no longer due to the association.
2236 A copy of this notification must be mailed to the owner.

2237
2238 (e) As used in this section, the terms "lease" or "leasing" shall mean and refer
2239 to regular, exclusive occupancy of a unit by any person or persons, other than the
2240 owner, for which the owner receives any consideration or benefit, including a fee,
2241 service, gratuity, or emolument.

2242
2243 9.12 Effective Date. This Declaration, any amendment or supplement hereto, and any
2244 amendment or supplement to the Survey Map shall take effect upon its being filed for
2245 record in the office of the County Recorder of Summit County, Utah.

2246
2247
2248 Effective this 20th day of November, 2003

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DECLARANT:

The Cove @ Sun Peak Homeowners' Association
(aka Winter Park @ Sun Peak Homeowners'
Association)

By: _____
John R Michael,
President, The Cove @ Sun Peak Homeowners'
Association (aka Winter Park @ Sun Peak HOA)

By: _____
Barry Campbell,
Secretary/Treasurer, The Cove @ Sun Peak
Homeowners' Association (aka Winter Park @ Sun
Peak HOA)

State of Utah
County of Summit

On the _____ day of _____, 2004, the foregoing Declaration of Condominium for The Cove @ Sun Peak Homeowners' Association (aka Winter Park at Sun Peak Homeowners' Association) was acknowledged before me by John Michael, Barry Campbell and Marv Evans who personally appeared before me, and being by me duly sworn declared that they are members and Board of Trustee members of The Cove @ Sun Peak Homeowners' Association (aka Winter Park at Sun Peak Homeowners' Association), and that they signed the foregoing Declaration.

In witness whereof, I have set my hand and seal this _____ day of _____, 2004.

Notary Public
Residing at: _____

My Commission expires: _____

EXHIBIT A

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Parcel Description
The Cove (aka Winter Park) @ Sun Peak

EXHIBIT B

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2304

***The Cove @ Sun Peak (aka Winter Park)
Ownership Interests and Dues Structure***

2304 **Amendment to CC&R 4.1 (Approved February 7, 2007)**
 2305

2306 4.1 Trustees. The Board of Trustees will govern the Association. There shall be five (5)
 2307 Trustees of the Association. In the event of unusual circumstance, the Association can operate
 2308 with as few as three (3) Trustees. The trustees will be elected by majority vote of the Owners as
 2309 called for in the Declaration and By-Laws. Each Trustee will serve a 2-year term, provided that
 2310 Trustees will continue to serve until their successors have been elected or replacements
 2311 appointed. Terms will be staggered. To be considered a candidate for election to The Cove (aka,
 2312 Winter Park) @ Sun Peak Board of Trustees, or to remain a member of the Board of Trustees
 2313 after election, a person must own at least one unit in The Cove (aka, Winter Park) @ Sun Peak
 2314 and must have paid his or her share of the Common Expenses and may not be in Arrears.
 2315

- 2316 • One Trustee shall be an owner of The Cove @ Sun Peak Lillehammer Lodges
 - 2317 • One Trustee shall be an owner of The Cove @ Sun Peak Estates
 - 2318 • The remaining Three Trustees shall be owners of The Cove @ Sun Peak Twin Homes.
- 2319 Owners of The Cove @ Sun Peak Lillehammer Lodges and/or owners of The Cove @ Sun Peak
 2320 Twin Homes may serve as Trustees representing either the Lillehammer Lodges and/or Twin
 2321 Homes if sufficient owners of that particular owners group do not come forward since the needs
 2322 and interests of those groups are closely equivalent
 2323

2324 **Amendment to Bylaw 3.2 (Approved February 7, 2007)**
 2325

2326 3.2 Numbers and Tenure. There shall be five (5) Trustees of the Association. In the event of
 2327 unusual circumstance, the Association can operate with as few as three (3) Trustees. They
 2328 shall serve until the next annual meeting in which Trustees are elected, and shall continue to
 2329 serve until their successors have been elected and assumed office. All Trustees must be
 2330 Owners of Units in the subdivision. Members in good standing may nominate other members
 2331 in good standing to serve on the Board. A member in good standing may also self nominate
 2332 for a position on the Board.
 2333

- 2334 • One Trustee shall be an owner of The Cove @ Sun Peak Lillehammer Lodges
- 2335 • One Trustee shall be an owner of The Cove @ Sun Peak Estates
- 2336 • The remaining Three Trustees shall be owners of The Cove @ Sun Peak Twin
 2337 Homes.

2338
 2339 Owners of The Cove @ Sun Peak Lillehammer Lodges and/or owners of The Cove @ Sun
 2340 Peak Twin Homes may serve as Trustees representing either the Lillehammer Lodges and/or
 2341 Twin Homes if sufficient owners of that particular owners group do not come forward since
 2342 the needs and interests of those groups are closely equivalent.
 2343
 2344