

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATIONS ON
BRIAN HEAD UNIT NO. 1

THE BRIAN HEAD CORPORATION, DECLARANT

KNOW ALL MEN BY THESE PRESENTS:

That THE BRIAN HEAD CORPORATION, hereinafter referred to as "Declarant," a Utah corporation and the owner and subdividers of real property in the County of Iron, State of Utah, sometimes hereinafter referred to as "said property" and particularly described as follows, to wit:

Lots 1 through 9, Block A: Lots 1 through 12, Block B: Lots 1 through 13, Block C: Lots 1 through 21 Block D: and Lots 1 through 13, Block E as per map recorded in the office of the County Recorder, Iron County, State of Utah.

does certify and declare that it has established and does hereby establish a general plan for the improvement and development of said property and does hereby establish restrictions, easements, conditions, covenants and reservations upon said property and subject to which all of the aforementioned lots and parcels of said real property shall be improved and sold or conveyed by Declarant as such owner, each and all of which is or are for the benefit of the Declarant and the owner of any part or parcel of said property or interest therein and shall apply to and bind the respective successors in interest of the owner or owners thereof and are, and each thereof is, imposed upon said property as a servitude in favor of Declarant and of each of Declarant's successors in interest and of each and every parcel of land described herein as a dominant tenement or tenements, as follows:

1. No temporary building, structure, improvement, shack, house trailer or tent shall ever be erected or maintained on any of said lots or parcels or portions thereof, and no outbuildings or private garage shall be erected, placed or maintained on said lots or parcels until the building or buildings as described herein has been built, except for those used by any subcontractors or other builders of any building, structure or improvement.
2. No building shall be erected upon said lots that is of an temporary nature or is of an industrial pre-fab type (such as a Butler all-steel building).
3. Prior to the commencement of the construction on any of the said lots or parcels, the owner or builder shall obtain a building permit herefor as required by Iron County and further, shall comply with the requirements of the Iron County and State of Utah Health Departments pertaining to sewage disposal.

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By Cora J. Threlkeld - Dep. Book 128 Page 167-171
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4. No dwelling, garage, building, fence, wall, retaining wall or other structure or excavation therefore shall be moved onto, commenced, erected or maintained, nor shall any addition to or change, or alteration therein be made until plans and specifications showing the nature, kind, shape, height, material, floor, plans, color schemes, locations, and approximate cost of such structure, and the grading plan of the lot to be built upon showing accurately the location of such structure on the lots, showing street lines and the boundaries thereof shall have been submitted in writing, signed by the owner or authorized agent, together with an architect's Committee named or appointed as hereinafter provided and approved in writing by Declarant or said Committee.

Such approval may be withheld (a) because of the non-compliance with any of the specific conditions and restrictions contained herein, or (b) because of the reasonable dissatisfaction of the Declarant or said architect's Committee with the location of the structure on the building site or with the appearance of the proposed structure having in mind the character of the neighborhood in which it is proposed to be erected, the materials of which it is to be built, the harmony thereof with the surroundings, and the effect of the building or other structures as planned on the outlook from the neighboring or adjacent property or properties.

5. No horses, livestock, poultry of any kind or any other animals shall be raised, bred or kept on any of said lots except that cats, dogs or other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose, and further provided that they do not create a nuisance.

6. No sign or signs shall be erected or maintained on said property unless permission is obtained in writing from the architectural Committee.

7. No garbage, refuse, or obnoxious or offensive material shall be permitted to accumulate on any of said lots or parcels, and the owner thereof shall cause all garbage and other like material to be disposed of by and in accordance with accepted sanitary practices.

8. No building constructed, erected or maintained on any lot or portion thereof shall be less than 750 square feet, counting living areas with 5' - 0" minimum head clearance, and not counting carports, basements, porches, decks, garages, etc.

9. When the construction of a building is commenced upon any of said lots, the owner thereof shall prosecute, with all reasonable diligence, the completion thereof and shall complete the construction thereof within one year from the date of said commencement, unless permission is given by the Declarant and the architect's Committee.

10. No evergreen tree of Englemann spruce or Alpine fir varieties located on any of said lots and which is over six inches in diameter measured at a point four feet above the ground shall be cut back, removed, or killed without the written consent or approval of Declarant and the architect's Committee.

11. No building, structure, or improvement shall be located on any of said lots nearer than 10 feet to the front line when fronting on any road. No building, structure, or improvement shall be located on any of said lots nearer than 10 feet to any side lot line and, in the case of any side street lines, nearer than 10 feet. It is expressly understood that no cave or roof overhang shall violate the terms and provisions of this paragraph. The owner of a lot may apply to the architect's Committee for a variance to allow the building of a home, a garage or other improvement nearer to a road or said lot line than above provided on ground of parking needs, improved winter use, physical necessity or other suitable grounds. Said Committee shall determine within 30 days from submission whether said variance shall be granted, applying a standard or reasonableness which takes into consideration all relevant factors, including, but not limited to, the need for all-weather off-street parking, the physical characteristics of the particular lot and appearance.

12. Buildings constructed in Unit 1 are not to be used for commercial purposes. This includes such buildings for Hotels, Cafes, Service Stations, Stores, and others of a commercial nature.

13. At no time shall there be any mining or drilling of any kind conducted upon any of said lots without the written consent of Declarant, its successors, agents or assigns and 75 per cent of the owners of said lots. In the event Declarant and/or its successors have conveyed all of said lots, such consent may be obtained from 75 per cent of the owners of said lots. In addition, no excavation for stone, gravel, earth, sand or other matter shall be made on said lots unless such excavation is made in connection with the erection of a building or structure thereon.

14. All water lines located upon said lots shall be buried in the ground to a depth of at least four and one-half feet.

15. All rights-of-way and/or easements which may be requested by any public utility, county water district, or similar unit at any time, present or future, for the purpose of providing service to any part of said property shall be granted by each owner upon said request.

16. No fence, wall, or hedge over six (6) feet, six (6) inches in height shall be erected or grown at any place on said lots; provided however, that this restriction may be waived or modified as to any lot by the architect's Committee.

17. The restrictions, easements, conditions, covenants, and reservations contained herein shall run with the land and be binding in full force and effect until January 1, 1985, for the mutual benefit of all the lots in Brian Head Unit #1, which each other lot, both as servient and dominant tenements, as against all other lots in said tract, and thereafter for additional periods of five years unless terminated by the written consent of a majority of the owners of said lots duly recorded prior to the expiration of any such period.

18. The provisions of this declaration are intended to be separable, and the invalidation of any of the conditions, restrictions, easements, covenants or reservations by judgment or court order shall in no way affect the others, which shall remain in full force and effect.

19. It is further declared and agreed by Declarant that each and all of the conditions, covenants, restrictions and reservations set forth in Paragraphs 1 through 17 inclusive shall, as between the parties declarant herein, their heirs, successors and assigns, be deemed to be express conditions subsequent, upon each of which the conveyance of the lots mentioned herein is made.

20. A breach of any of the restrictions, easements, conditions, covenants, or reservations herein contained shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the lot or portion of the lot, or lots or portions of lots in the real property contained hereby, but said restrictions, easements, covenants, conditions and reservations shall be binding upon and effective against any owners thereof whose title is acquired by foreclosure, trustee's sale, or otherwise.

As to the owner or owners of said lots, the conditions or restrictions imposed hereby shall operate as covenants running with the land, and upon any breach of or default in any of said conditions or covenants, said owners shall have the right to institute and maintain any appropriate action to enjoin, abate or remedy said default or breach. The term "owner" shall include the bona fide owner of any agreement of sale for any lot in the tract.

21. The architect's Committee herein referred to shall be initially composed of three individuals, appointed by the Brian Head Board of Directors, one of which shall

be the President of the Corporation. The members of said Committee may assign, transfer, delegate and set over all of their rights and powers or architectural control by the appointment of other individuals or an association of individuals who are now or which may hereafter become lot owners in said tract, and which shall assume the duties of said Committee hereunder pertaining to the particular right and powers as assigned, delegated and set over, and upon such individuals or association evidencing its consent in writing to accept the same and to assume such duties it shall to the extent thereof have the same rights, powers and duties as are given to said Committee herein.

In the event of the death, resignation, incapacity or refusal to act by any member of the Committee, the remaining member or members may appoint a successor by a written designation duly verified and recorded in the office of the County Clerk of Iron County. Neither the architect's Committee nor any member thereof shall be responsible for structural or other defects of any kind or nature whatsoever in said plans or specifications, or in any building or other structure erected in accordance therewith.

22. This declaration may be amended by a written agreement executed by the then recorded owners of more than 75 per cent of the lots in said tract together with the consent of Declarant, or its successors in interest, and placed on record in the office of the County Recorder of Iron County. Declarant may assign its right to execute such consent to any association which may be organized as is referred to in Paragraph 20 hereof.

23. Each and all of said conditions shall apply to and bind the parties hereto, their heirs, executors, administrators, successors, and assigns, and are imposed pursuant to a general plan for the development and improvement of said property.

BRIAN HEAD UNIT NO. 1

The Brian Head Corporation,
a Utah corporation, Declarant
Post Office Box 931
Cedar City, Utah

BY McRay Cloward
President McRay Cloward

BY James Rust
Secretary James Rust

STATE OF UTAH)

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County of Iron)

On the 3rd day of December, A.D. 1966, personally appeared before me McRay Cloward and James Rust, the signers of the within instrument, who duly acknowledged to me that they executed the same.

Marius L. Cloward
Notary Public

My Commission expires 10/12/68

Residing in Cedar City, Utah