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DIXIE B. MATHESON - IRON COUNTY RECORDER
1994 AUG 18 09:54 AM FEE \$71.00 BY PTC
REQUEST: BRIAN HEAD RESORT INC

Trails at Navajo

DECLARATION OF RESTRICTIVE
COVENANTS AND CONDITIONS
AFFECTING THE REAL PROPERTY
KNOWN AS
THE TRAILS AT NAVAJO SUBDIVISION

WITNESSETH:

WHEREAS, the undersigned, Brian Head Resort, Development, L.L.C., (hereafter "Declarant"), is the sole owner and developer of the real property herein described, which is situate in Iron County, State of Utah, and a subdivision more particularly known as the Trails at Navajo subdivision; and

WHEREAS, Declarant desires to divide the subject property and to convey it subject to the restrictions and covenants herein contained between itself and the several purchasers of the subject property, and thereafter to impose the restrictive covenants and conditions between and among the several purchasers; and

WHEREAS, the property subject to these restrictive covenants is located in Iron County, State of Utah, and is more particularly described as follows:

**THE TRAILS AT NAVAJO SUBDIVISION,
PHASE I-A DESCRIBED AS FOLLOWS:**

Beginning at the Northeast corner of Section 3, Township 36 South, Range 9 West, Salt Lake Base and Meridian; thence South 00°25'00" West along the East line of said Section 703.45 feet to the Northeast corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence North 89°44'24" West along the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 659.13 feet to the Northwest corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section, said point also being the true point of beginning; thence South 00°23'35" West along the West line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 660.96 feet to the Southwest corner of the Southeast Quarter of the Northeast Quarter of the

Northeast Quarter of said Section; thence South 89°43'57" East along the South line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 104.85 feet; thence South 00°16'04" West 280.20 feet; thence South 53°58'42" West 218.22 feet; thence South 39°25'32" West 303.03 feet; thence South 61°34'42" West 295.05 feet to the point of beginning of a 225.00 foot radius non-tangent curve to the left (center bears South 83°19'46" West); thence along the arc of said curve 57.82 feet through a central angle of 14°43'23"; thence North 21°23'36" West 59.05 feet; thence South 68°36'24" West 50.00 feet; thence South 21°23'36" East 59.05 feet to the beginning of a 175.00 foot radius curve to the right (center bears South 68°36'24" West); thence along the arc of said curve 49.44 feet through a central angle of 16°11'08"; thence South 05°12'29" East 9.22 feet; thence South 68°06'24" West 126.33 feet; thence North 21°23'36" West 185.79 feet; thence North 68°36'24" East 31.31 feet; thence North 21°23'36" West 153.58 feet; thence North 66°32'58" East 234.54 feet; thence North 61°39'54" East 225.28 feet; thence North 06°17'00" East 152.70 feet; thence South 83°43'00" East 121.07 feet; thence North 6°17'00" East 50.00 feet; thence North 83°43'00" West 121.07 feet; thence North 6°17'00" East 159.84 feet; thence North 38°17'59" West 173.10 feet; thence North 49°16'23" West 193.88 feet; thence North 40°43'37" East 78.50 feet; thence North 49°20'43" West 50.00 feet; thence South 40°43'37" West 112.58 feet; thence North 49°16'23" West 191.40 feet to the Southeasterly right of way of Hunter Ridge Drive as shown on the NAVAJO RIDGE SUBDIVISION as recorded as Entry No. 228070, on June 17, 1981 at the Iron County Recorder's Office; thence along said right of way the following eleven courses: 1) North 46°50'06" East 183.79 feet to the beginning of a 1175.67 foot radius curve to the right (center bears South 43°09'54" East); 2) thence along the arc of said curve 136.03 feet through a central angle of 6°37'45"; 3) thence North 53°27'51" East 156.77 feet to the beginning of a 142.56 foot radius curve to the left (center bears North 36°32'09" West); 4) thence along the arc of said curve 63.97 feet through a central angle of 25°42'31"; 5) thence North 27°45'20" East 122.68

feet to the beginning of a 55.74 foot radius curve to the right (center bears South 62°14'40" East); 6) thence along the arc of said curve 112.54 feet through a central angle of 115°40'39"; 7) thence South 36°34'01" East 87.18 feet to the beginning of a 148.08 foot radius curve to the left (center bears North 53°25'59" East); 8) thence along the arc of said curve 132.03 feet through a central angle of 51°05'15"; 9) thence South 87°39'16" East 160.89 feet to the beginning of a 114.99 foot radius curve to the right (center bears South 02°20'44" West); 10) thence along the arc of said curve 81.83 feet through a central angle of 40°46'26"; 11) thence South 46°52'50" East 109.62 feet to a point on the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 3; thence North 89°44'24" West along said North line 240.43 feet to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Northeast corner of Section 3, Township 36 South, Range 9 West, Salt Lake Base and Meridian; thence South 00°25'00" West along the East line of said Section 703.45 feet to the Northeast corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence North 89°44'24" West along the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 659.13 feet to the Northwest corner of the Southeast Quarter of the Northeast Quarter of said Section; thence North 89°44'24" West 33.76 feet; thence South 93.58 feet to the true point of beginning; thence South 06°49'05" East 118.21 feet; thence South 03°42'55" West 90.69 feet; thence South 56°26'43" West 100.41 feet; thence North 31°22'03" West 111.75 feet to the beginning of a 60.00 foot non-tangent radius curve to the right (Center bears North 31°22'03" West); thence along the arc of said curve 35.51 feet through a central angle of 33°54'41" to the beginning of a 18.00 foot radius reverse curve to the left (Center bears South 2°32'38" West); thence along the arc of said curve 17.76 feet through a central angle of 56°32'42" thence South 35°59'56" West 85.93 feet; thence North 54°00'04" West 50.00 feet; thence North 35°59'56" East 85.93 feet to the beginning of an 18.00 foot radius curve to the left (Center bears North 54°00'04" West); thence along the arc of said curve 17.76 feet through a central angle of 56°32'42" to the beginning of a 60.00 foot radius curve to the right (Center bears North

69°27'14" East); thence along the arc of said curve 34.93 feet through a central angle of 33°21'18"; thence North 77°11'28" West 94.46 feet; thence North 07°06'19" East 97.50 feet; thence North 63°48'55" East 88.21 feet; thence North 82°17'32" East 90.22 feet; thence South 64°10'28" East 149.89 feet to the true point of beginning.

The property will be divided and sold in parcels. Each of the separate parcels shall be subject to the covenants, restrictions and agreements herein contained; and

NOW THEREFORE, Declarant hereby declares and decrees as follows:

ARTICLE I CREATION OF COVENANT

The property herein described shall be hereafter held, sold, conveyed, leased, encumbered, improved and occupied subject to the easements, restrictions, covenants and conditions hereinafter set forth, which shall be covenants running with the land in perpetuity and which shall be binding upon all persons who acquire any interest therein, and between Declarant and the several owners and purchasers, and between and among the several owners and purchasers themselves, and the heirs, successors and assigns of each.

ARTICLE II PURPOSES AND DEFINITIONS

1. **Purposes.** This Declaration of Restrictive Covenants and Conditions (hereafter "Restrictive Covenants") is placed of record as a series of covenants running with the land, as herein set forth, for the purpose of establishing and preserving a quality residential and recreational subdivision, and uniformly enhancing and protecting the value and desirability of all lots in the Subdivision. These Restrictive Covenants shall insure that high quality building standards will be preserved, that the Property will be kept free and clear of any rubbish, trash, noxious or offensive activity, and that the owners of Lots within the Subdivision will be assured of peaceful enjoyment of their Lot. Any person who purchases any Lot within the Subdivision, or acquires any interest therein, after the date of recording of these Restrictive Covenants, takes their interest subject to and with a commitment to abide by each of the covenants and conditions herein contained.

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2. **Declarant's Reservations.** Notwithstanding the foregoing, no provisions of these Restrictive Covenants shall be construed as to prevent or limit Declarant's rights to complete development of the Subdivision and improvements thereon, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any Lot owned by Declarant nor Declarant's right to post signs incidental to construction, sales or leasing.

3. **Definitions.** "Additional Land" shall mean the property described on Exhibit A, and which may be made a part of the Subdivision by expansion as set forth in Article VIII, *infra*.

"Architectural Review Committee" shall mean the committee created pursuant to Article VI hereof.

"Association" shall mean the Trails at Navajo Owners Association, a Utah non-profit corporation, organized to be the association referred to herein. Association shall also mean Declarant, in regard to its actions taken prior to the formation of the non-profit corporation, as set forth in Section V, below.

"Common Area" shall mean those areas referred to on the Plat as Common Areas, which shall be owned by the Association for the use, benefit and enjoyment of the Owners as set forth in this Declaration.

"Declarant" shall mean and refer to Brian Head Resort Development, LLC, a Utah Limited Liability Company, its successors and assigns so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

"Dwelling" shall mean and refer to a building located on a single Lot designed and intended for use and occupancy as a residence on a Lot.

"Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than five (5) persons not all so related, inclusive of their domestic servant, who maintain a common household in a residence on a Lot.

"Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls,

retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

"Lot" shall mean any of the designated lots within the Subdivision as shown on the recorded plat of the Subdivision (the "Plat").

"Owner" shall mean any person or entity, or combination thereof, including Declarant, at any time holding fee simple interest of a Lot within the Subdivision, as shown on the records of Iron County, State of Utah. The term "Owner" shall not refer to any mortgagee, unless the mortgagee has acquired title for other than security purposes.

"Property" shall mean the property described in the recitals.

"Subdivision" shall mean the Property as divided into separate building lots, and other areas as shown on the Plat.

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

Lot No. _____ contained within the Trails at Navajo subdivision, as the same is identified in the Plat recorded in the office of the Iron County Recorder, and in the Declaration of Restrictive Covenants and Conditions Affecting the Real Property Known as the Trails at Navajo subdivision (the Declaration) recorded in Book _____ at Page _____ as Entry No. _____ of the official records of Iron County, Utah, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas, described and as provided for, in the Declaration. SUBJECT TO all of the provisions of the Declaration, and subject, also, to liens for current taxes.

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

ARTICLE III USE AND OCCUPANCY

1. **Single Family Limitation.** Except as otherwise set forth herein, the Lots as divided shall

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be used only for single family residential dwellings. There shall be no multiple unit dwellings of any kind, including but not limited to basement apartments, duplexes or apartment buildings. No condominiums of any kind are allowed. No time-sharing of any kind is allowed. Nothing herein shall limit co-tenancy or other joint ownership of a Lot.

2. **Boarding House Prohibition.** Each dwelling shall be occupied only by a single family, as defined above. No one shall be entitled to reside in a Dwelling Unit constructed on a Lot unless they are members of the family therein residing, or are authorized foster children or wards. Except for the bed and breakfast lodging described below, no boarding houses or other group housing for unrelated people of any kind is allowed, regardless of the method or structure of the occupancy arrangement. Provided, however, that bed and breakfast type commercial lodging, on a daily basis, shall be allowed so long as there are not more than four guest rooms and the operation complies in all respects with the Brian Head Town ordinances.

3. **Nuisances.** No noxious, illegal, or offensive use of property shall be carried on within the Subdivision, nor shall anything be done thereon that is, or may become, an annoyance or nuisance to the neighborhood.

4. **Safety.** No activity shall be carried on within the Subdivision, nor any improvements constructed thereon, which are or may become unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearm shall be discharged within the Subdivision and no outdoor fires shall be lighted except in a contained barbecue unit while attended and used for cooking purposes, or self-contained outdoor fireplaces.

5. **Vehicle Storage.** No automobiles, trailers, recreational vehicles, snowmobiles or other vehicles may be parked, kept or stored on streets within the Subdivision, except on a temporary basis, such as overnight stays. No automobiles, trailers, recreational vehicles, snowmobiles or other vehicles may be parked, kept or stored on the Lots unless they are in running condition, properly licensed and are being regularly used, or are parked inside a fully-enclosed garage completely out of view. All such vehicles kept or stored beyond two weeks on the Property must be kept out of view from the streets, runs and other Lots. Construction equipment shall not be kept or stored on any Lot except as used in the course of active construction.

6. **Signs.** No signs of any kind shall be displayed to public view on any Lot, except that each Owner may display one sign of not more than five (5) square feet advertising the property for sale. Anything contained herein notwithstanding, Declarant may, during the course of development of the Property and sale of Lots, place attractive signs in excess of this five square foot restriction as necessary to advertise the Property. And, nothing herein shall prohibit an Owner from displaying a sign containing their name and address, or otherwise identifying their residence, which is no more than two and one-half (2½) square feet.

7. **Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept within the Subdivision, excepting only household pets. Each owner may keep a maximum of three dogs, three cats, and a total of six household pets. Dogs, cats and other household pets may not be bred or kept for commercial purposes and are restricted to the Owner's premises or under the Owner's control by leash or otherwise while within the Subdivision. Owners and others keeping household pets within the Subdivision shall maintain them, clean up after them and keep them quiet such that no nuisance or annoyance is created for others.

8. **Trash Removal.** All Lots shall be used and kept free from trash, rubbish, garbage or other waste, and the Lots shall at all times be kept by the various Owners in a clean, safe, sightly and attractive manner. All improvements shall be properly maintained.

9. **Waste Containers.** All waste shall be kept at all times in appropriate sanitary containers. Garbage containers shall at all times be stored out of prominent view. Any building materials or construction materials shall be neatly stacked and kept upon the Property and shall not remain thereon for more than thirty (30) days following the completion of construction.

10. **Land Use Compliance.** All land use and all buildings constructed shall fully comply with all zoning and land-use ordinances and regulations applicable to the property, which include the land-use and zoning ordinances of the State of Utah, of Iron County, and of Brian Head Town. All grading shall be done so as to preserve or restore the drainage and natural vegetation on the land and so as to comply with all flood control requirements of any agency with regulatory jurisdiction.

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11. **Partial Conveyance.** No Lot within the Subdivision shall be divided or conveyed in part, without the approval of the Architectural Review Committee.

12. **Easements.** Non-exclusive eight foot easements for installation and maintenance of utilities and drainage have been reserved and dedicated, as shown on the Plat, on each side of all Lot lines. Within these easements, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. This easement area of each Lot shall be maintained continuously by the Owner except for those improvements for which a public or utility company is responsible.

13. **No Mining, Drilling or Quarrying.** No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted on the surface of the Property.

14. **Service Yards.** All clotheslines, equipment, service yards or storage piles on any Lot, to the extent allowed, shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring Lots, access roads and surrounding area.

15. **No Annoying Lights, Sounds or Odors.** No light shall be emitted from any Lot or other places within the Subdivision which is unreasonably bright or causes unreasonable glare or does not comply with Brian Head Town ordinances. All lights installed on a Lot shall be directed inward, toward the Lot, rather than outward towards other areas within the Subdivision. No sound shall be emitted from any Lot or other places within the Subdivision which is unreasonably loud or annoying including but without limitation, speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively to protect any of the Property or Buildings. No odors shall be emitted from any Lot or Property which are noxious or offensive to others.

16. **Rentals.** For reasons of safety and security, all daily rentals of Lots or Dwellings within the Subdivision shall be handled by the manager of the Association ("Association Manager"). Any Owner desiring to so rent shall make appropriate arrangements with the Association Manager prior to doing so.

ARTICLE IV

DESIGN AND BUILDING RESTRICTIONS

1. **Minimum and Maximum Size.** No Dwelling shall be constructed or erected on any Lot which has a finished, ground-level living area of less than 1,200 square feet (foot print), excluding porches, decking, garages and other outbuildings, except that a dwelling which has two or more levels above ground shall have a minimum of 1,000 square feet on ground level (foot print) (excluding porches, decking, garages and other outbuildings) and a minimum of 1,400 square feet above ground. No dwelling shall be constructed which has a finished total living area (excluding porches, decking, garages and other outbuildings) of more than 6,000 square feet total or 4,500 square feet on ground level (foot print).

2. **Garage.** All garages shall be fitted with a door, which shall be closed, except for normal use. The garage does not have to be attached to the primary dwelling. All vehicles stored or kept on a Lot on a permanent basis must be stored in a garage.

3. **Setbacks.** The setbacks for all Dwellings shall be those established by Brian Head Town. Provided, however, that in no event shall the side yard setback be less than ten (10) feet on each side, and the minimum front yard setback for all dwellings shall be twenty-five (25) feet. Further provided that the Lots designated in the following paragraph shall be subject to the special set back requirements for wetlands and meadow preservation.

4. **Wetlands and Meadow Preservation.** There is hereby established a special setback requirement in order to preserve and protect the wetlands located within the Subdivision, and the meadow. The wetlands boundary and the meadow boundary are established on the Plat. The wetlands encroach upon Lots 64, 65, 73 and 74. An easement is hereby granted and reserved over said Lots within the wetland boundary. No improvement, development or other disturbance of any kind shall be allowed within the wetlands or the meadow. No use or occupancy of these Lots shall damage, restrict or impair the wetlands in any way. As to these four Lots, there is hereby established a 25-foot setback from the wetlands, as accepted by the U.S. Army Corp of Engineers. There is also hereby established a 25-foot setback from the lot lines located within the meadow, as identified on the Plat. There is also hereby established a 20-foot setback from all trails, as identified on the Plat. No construction, building

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or other improvement shall be built within the identified setback from the boundaries of the wetlands, meadows or trails as identified.

5. **Open Area Preservation.** The stated intent of the scheme of building within the Subdivision is to keep open areas free and unobstructed. All dwellings and driveways shall, to the extent possible, be constructed in the wooded areas where the buildings can be naturally screened from obvious view. All Dwellings, driveways, garages and other outbuildings shall only be constructed on the building area within each Lot designated by the Architectural Review Committee, as more fully described in Article VI, below.

6. **Pre-built Dwellings.** Pre-fabricated, pre-built, or modular Dwellings may be moved onto or constructed on the Property with the approval of the Architectural Review Committee.

7. **Plan Approval.** No Dwelling or other improvement shall be constructed or erected on any Lot until the plans, specifications and plot plans showing the location and style of such Dwelling or improvement have been approved in writing as to conformity with these Restrictive Covenants and harmony with existing structures in the Subdivision, by the Architectural Review Committee, as set forth in Article VI, below, which approval shall not be unreasonably withheld. All Dwellings shall have natural color on the exterior, colors that are earth tone in nature or natural materials of wood, stone or other material approved by the Architectural Review Committee. Any modification or alteration (including re-painting) of an existing structure, or any other improvement, or construction, which requires a Brian Head Town building permit shall also require approval of the Architectural Review Committee.

8. **Fences.** No fence, wall or hedge shall be constructed along the front of any Lot. No fence, wall or hedge will be constructed which will restrict access to and from the ski runs. No fence, wall or hedge shall be constructed except after approval and review by the Architectural Review Committee, and each such fence, wall or hedge shall be designed and constructed so as to be compatible with the neighborhood. No fence, wall or hedge higher than 6 feet shall be erected or maintained on any Lot. All fences, walls and hedges shall be designed and constructed so as to not constitute a nuisance or offensive effect on other persons residing within the Subdivision. All materials shall be approved by the Architectural Review Committee prior to

construction. All fences, walls and hedges shall be maintained after installation. Anything contained herein notwithstanding, the Association shall have the right to install a fence, wall or hedge around all or part of any Common Area or the Subdivision boundary where it abuts public property or private property not owned by Brian Head Resort, Inc., or its related entities. Fences, walls or hedges adjacent to ski runs or other ski resort property may be constructed only with the consent of Brian Head Resort, Inc.

9. **New Materials.** All construction within the Subdivision shall be with new materials only, except when properly approved by the Architectural Review Committee. All materials shall comply with all applicable building codes, including but not limited to those established by Brian Head Town. All materials shall be aesthetically acceptable and consistent with the intents expressed herein, as determined by the Architectural Review Committee.

10. **Landscaping.** Landscaping shall be done in a manner consistent with vegetation natural to the area. The front and side yard landscaping shall be completed for each Lot within one year after the occupancy of any Dwelling on said Lot.

11. **Mechanical Equipment.** Heat pumps, propane tanks, solar devices, chimney flues, hot tub pumps, swimming pool pumps and filtration systems, heating and cooling equipment, satellite dishes (when allowed), and similarly exposed mechanical equipment, shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize visibility, noise and safety impact on other Lots and the Subdivision. All vent pipes or other venting apparatus shall be on the back side of all roofs, and shall be hidden from view from the street and ski slopes to the extent possible within reasonable design standards.

12. **Mailboxes.** All mailboxes and mailbox holders shall be of standard design accepted by the Architectural Review Committee and adhering to the applicable specifications of the U.S. Postal Service. All mailboxes shall be located as directed by the U.S. Postal Service. Each Lot Owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.

13. **Water Control.** All Owners shall provide and maintain proper facilities to control storm water and snow melt run-off onto adjacent properties

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and to ensure that sediments do not enter the natural drainage system.

14. **Underground Utilities.** All lines or wires for telephone, power, cable television, or other utilities shall be placed underground and no such wires shall show on the exterior of any building unless the same shall be in a conduit attached to a building. All television or radio antennae shall be installed inside an existing structure, except as provided in paragraph 19, *infra*.

15. **Roofs.** All roof pitches shall meet applicable building codes, and shall be designed so as to withstand winter snow accumulation. All roofing material shall be approved by the Architectural Review Committee, and all roof finishes shall be a non-reflective matte finish.

16. **Driveways and Parking.** All driveways and parking surfaces shall be constructed of concrete, concrete aggregate, or asphalt, unless written approval for the use of some other material is given by the Architectural Review Committee.

17. **Time for Construction.** Each Owner, or successor, shall establish electrical service on his Lot before August 1, 1999. In the event electrical service is not established as herein required, each such Owner shall pay an impact fee to the Declarant in the amount of \$1,250 to compensate Declarant for its electrical deposit forfeiture. The impact fee shall be a direct obligation enforceable by Declarant against each such Owner, and in addition shall be a lien against the Lot subject to enforcement in the same manner as is specified in Article V, 4, below.

18. **Height Limitations.** No building on any Lot shall be erected to a height greater than 35 feet as measured by the standard set in Section 409 of the Uniform Building Code as adopted by Brian Head Town (or similar standard in effect from time to time). This measurement applies to all elevations of the building, the intent being that buildings will conform with and reflect the natural contour of the land.

19. **Towers and Antennae.** No towers, and no exposed, or outside, radio, television or other electronic antennae shall be allowed or permitted to remain on any Lot, except by approval of the Architectural Review Committee upon a showing of unusual demonstrated need and only when they are hidden from view. Because cable TV will be available, satellite TV dishes are strongly discouraged and shall only be allowed upon specific approval of the Architectural Review Committee. Any dishes

approved shall be installed so as to minimize visual exposure and shall be shielded by a hedge of natural vegetation or other approved aesthetic buffer.

20. **Preservation of Existing Site Vegetation.** All buildings and yards should be located to preserve and utilize existing tree masses. Except for those trees which are within the perimeter of the outer roof lines of buildings, the plans for which have been approved by the Architectural Review Committee, or a reasonable sized yard with grass or other suitable ground covering, also as approved by the Architectural Review Committee, trees with a caliper measurement of three inches or more, measured at a point on the tree trunk four feet above natural grade may not be removed, cut, destroyed or in any way harmed without approval in writing from the Architectural Review Committee. With respect to those trees, shrubs, bushes, and other vegetation required to be removed for the purposes of building construction, access, utility runs and related matters, all vegetation to be cut or removed must be identified clearly with red surveyor's flagging, inspected and approved by the Architectural Review Committee in writing prior to the issuance of excavation permits from the City. If unauthorized trees are removed, Owner shall replace the tree with a tree of the same variety elsewhere on the Lot. The size of the replanted tree shall be as large as is practical, with the general range to be between 6 feet and 12 feet in height. In addition, the offending Owner may be subject to a fine payable to the Association of \$500 per tree removed without authorization. All dead and diseased trees shall be removed as soon as is reasonably practical for fire safety purposes.

21. **Architectural.** All Dwellings, buildings and other improvements shall be designed in compliance with Brian Head Town ordinances and with the general purposes and intents of the Brian Head Town design guidelines and all applicable building codes.

22. **Water Fixture Units.** Brian Head Town requires the ownership of "Water Fixture Units" as a method of acquiring water and assessing a hookup fee for water service within the town. To assure that adequate culinary water will be available to all Lots, Declarant has purchased an inventory of Water Fixture Units in advance to be made available to Owners of Lots within the Subdivision. Each Owner covenants and agrees to purchase all necessary Water Fixture Units for improvements constructed on

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the Property from Declarant. Declarant shall sell the Water Fixtures Units for the same price as that which they are available from Brian Head Town, at the time of purchase. If any Owner has excess Water Fixture Units which were acquired from Declarant, and said Owner desires to sell them, Declarant shall have a First Right of Refusal to repurchase the Water Fixture Units for the same price paid for them by Owner, less an administrative charge of ten percent (10%).

ARTICLE V
HOMEOWNERS ASSOCIATION AND
ARCHITECTURAL REVIEW COMMITTEE

1. **Establishment.** There shall immediately be established the Trails at Navajo Owners Association (a non-profit corporation existing under the laws of the State of Utah) which membership shall include all Owners of Lots in the Trails at Navajo subdivision (the "Owners Association" or "Association"). The Articles of Incorporation of such corporation shall specify, among the purposes and duties of such corporation, the enforcement of all of the restrictions, covenants, and conditions, contained in this instrument, and the maintenance, preservation, and improvements of such properties; the ownership, keeping and maintaining of Common Areas of the Trails at Navajo, the maintaining of every part thereof in a clean and sanitary condition, including the removal of weeds and rubbish from streets and vacant property, so far as it may lawfully act to do so, and the transaction of such other businesses as may be permitted by law. The rights and responsibilities herein granted to the Architectural Review Committee are hereby delegated to and established in the Association, by and through the Architectural Review Committee. The Association shall have all rights and responsibilities set forth in these Restrictive Covenants. The Purchaser or Owner of a Lot in said Subdivision agrees to pay to such corporation, when formed, dues or assessments for such purposes, the amounts of which may be fixed by its By-Laws or by lawful act of its board of directors, which dues and assessments shall be subject to enforcement as herein specified. Until the nonprofit corporation is formed, the Declarant shall have all rights of the Association.

2. **Membership and Voting Rights.**

A. **Membership.** Every Owner shall be a Member of the Association. Membership in the

Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

B. **Voting Rights.** The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all the Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

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

(b) The expiration of nine (9) years after the date on which this Declaration is filed for record in the office of the County Recorder of Iron County, Utah.

Since the Declarant has the right to expand the Subdivision into additional land, as set forth in Article VIII, below, anything contained herein notwithstanding, the conversion of the Class B shares herein set forth shall not occur until the expansion is complete or the time for expansion has expired. As new Lots are included within the Subdivision by expansion, the number of Class A Members and Class B Members shall be adjusted accordingly.

C. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

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3. Property Rights in Common Areas.

A. Easement of Enjoyment. Each Member, and their bona fide guests and lessees, shall have a right and easement of use and enjoyment over all Common Areas, including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom.

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

(a) The Association shall have the right to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Lot remains unpaid and for a period exceeding ninety (90) days; or for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The Association shall have the right to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(c) Guests, invitees and lessees shall only be entitled to the use and enjoyment of the Common Areas as an actual bona fide incident to the use of the Lot. Said guests, invitees and lessees shall not be allowed to traverse or otherwise use the Common Areas for convenience in getting to and from properties not part of the Subdivision;

(d) The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Owners present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be

sent to all Owners at least ten (10) days but not more than thirty (30) days prior to the meeting date;

(e) The right of Brian Head Town and Iron County and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service; and

(f) The use and enjoyment of the Common Areas is limited to Owners, and their bona fide guests and lessees only, and the use thereof by the public is not allowed.

C. Transfer of Title. Declarant agrees that it shall, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Areas of the Subdivision, and the Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in the Development.

4. Assessments.

A. Personal Obligation and Lien. Declarant, for each Lot owned by it, and each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the annual and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due.

B. Purpose of Assessments. Annual assessments levied by the Association shall be based upon the anticipated budget, prepared in advance for each year, and shall be used exclusively for the purpose of promoting the maintenance, health, safety,

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and welfare of residents of the Property, maintaining and improving the Common Areas, and carrying out the rights and obligations of the Association (including the Architectural Review Committee) hereunder. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, replacement, and improvement of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation or Bylaws.

C. **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; (b) the costs of any construction, reconstruction, or unexpected repair or replacement in connection with the Common Areas; or (c) any other unforeseen expense which must be paid in order for the Association to carry out its responsibilities hereunder, including covering operational shortfalls for prior years. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Owners at least ten (10) days but not more than thirty (30) days prior to the meeting date.

D. **Quorum Requirements.** The quorum required for any action authorized by this Article V shall be as follows: at the first meeting called the presence of Owners or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth herein) at which a quorum shall be such Owners as are present at the meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

E. **Equal Rate of Assessment.** Both annual and special assessments shall be fixed at a uniform (equal) rate for all Lots.

F. **Annual Assessment Due Dates.** The annual assessments provided for herein shall be payable monthly and shall commence as to all Lots on the date deed is delivered to the first purchaser of a Lot (or contract of sale) or the date of occupancy under an occupancy agreement whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned. Owners shall be entitled to pay each annual assessment in one lump sum, in advance, if they choose to do so.

G. **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

H. **Effect of Non-Payment -- Remedies.** Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The Association may, but shall not be required to, record a notice of its lien in the records of the Iron County Recorder at any time an assessment against any lot is more than thirty (30) days past due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Co-Owners shall be jointly and severally liable. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus late payment service charge equal to five percent (5%) of each delinquent amount due and the

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Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot, or both. Any judgment obtained by the Association in either an action against the Owner or an action to foreclose a lien shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

I. Tax Collection From Lot Owners by Iron County Authorized. It is recognized that under the Declaration, the Association will own the Common Areas and that it will be obligated to pay property taxes to Iron County. It is further recognized that each Owner of a Lot as a Member of the Association and as part of his monthly common assessment will be required to pay to the Association his pro-rata share of such taxes. Notwithstanding anything to the contrary contained in the Declaration, or otherwise, Iron County shall be, and is, authorized to collect such pro-rata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Iron County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board of Trustee may require each Owner to pay to the Association, in advance by separate assessment, an amount equal to said Owner's pro-rata share of the taxes. The Association may also assess the taxes as part of the regular assessment, as set forth above.

J. Use Fee. The Association may also assess a reasonable fee for the use of the Common Areas and any improvements thereon.

6. Operational Matters.

A. Name. The non-profit corporation shall be known as the Trails at Navajo Owners Association. The Association shall have all rights and authorities granted to it as a non-profit corporation in the State of Utah, including the authority to establish an Architectural Review Committee, as set forth below.

B. Acceptance of Corporation Authority. By acceptance of the deed or other instrument of conveyance for his or her Lot within the Subdivision, each Lot Owner shall be deemed to covenant and agree to be bound by the Articles of Incorporation and By-Laws of the Association and to pay the Association annual assessments and special assessments for maintenance or necessary capital improvements. Such assessments shall be fixed, established, and collected from time to time as

provided in the Articles of Incorporation or By-Laws of the non-profit corporation, and as herein set forth.

C. Operation of Owners Association. The business affairs of the Owners Association, including meeting schedules, duties of officers and all conduct of the Association shall be governed by the By-Laws of the Association. Unless otherwise specified herein, action to be taken by the membership by vote, shall be done by simple majority of all votes to be cast.

7. Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Trails at Navajo Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be in such amount as is set from time to time by the Trustees of the Association for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner

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in the Development because of negligent acts of the Association or other Owners. The following additional provisions shall apply with respect to insurance:

(1) Additional Insurance. In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(2) Underwriter Requirements. All policies shall be written by a company holding a rating of Class A or better from Best's Insurance Reports. Each insurer must be specifically licensed in the State of Utah.

(3) Adjustment. The Association shall have the authority to adjust losses.

(4) Miscellaneous Requirements. Each policy of insurance obtained by the Association shall, if reasonably possible without jeopardizing coverage, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners. All policies shall be reviewed from time to time and shall include such other provisions as the Association shall determine to be appropriate.

ARTICLE VI ARCHITECTURAL REVIEW COMMITTEE

The Owners Association shall establish an Architectural Review Committee for the purpose of approving the building and site plans for all construction within the Subdivision, and for performing all other rights and responsibilities

delegated to it hereunder. The Architectural Review Committee shall consist of three members, or such greater number as shall be established from time to time by the Board of Trustees of the Association. Until the Class B memberships have been converted to Class A memberships, as described in Article V2.B., above, the members of the Architectural Review Committee shall be appointed by the Declarant. Thereafter, the members shall be appointed by the Trustees of the Association. The Architectural Review Committee may be the same as the Board of Trustees, and any Trustee may also serve as a member of the Architectural Review Committee.

A. Approval of Improvements. No improvements of any kind, including but not limited to dwelling houses, swimming pools, parking areas, fences, walls, tennis courts, garages, drives or driveways, antennae, flag poles, curbs and walks shall be erected, altered or permitted to remain on any lands within the Subdivision, nor shall any excavating, clearing, removal of trees or other landscaping be done on any lands within the Subdivision, unless the complete plans and specifications therefore are approved by the Architectural Review Committee prior to the commencement of such work.

B. Location of Building and Driveways. To minimize the impact of construction, the Architectural Review Committee shall establish a dwelling pad site, a driveway site and a garage site, if separate, for each Lot within the Subdivision. The Architectural Review Committee shall keep the site designations in its records, which shall be available for review by any Owner, or any party interested in purchasing a Lot. All dwellings and driveways shall be constructed only on the site designated unless an exception is specifically granted by the Architectural Review Committee upon application by an Owner, and only upon a showing of exceptional circumstances.

C. Materials. All exterior materials used in any construction of any kind on a Lot shall first be approved by the Architectural Review Committee.

D. Fee. A fee of \$50 shall be paid to the Architectural Review Committee to cover costs and expenses of review. The fee shall be paid at the time the review is applied for.

E. Variances. The Architectural Review Committee has the authority to deviate from the requirements contained herein in extenuating

circumstances, when following these covenants would create an unreasonable hardship or burden for an Owner. An affirmative vote of Declarant and of two-thirds of the members of the Architectural Review Committee must be gained for a variance to be granted. The Declarant and the Architectural Review Committee do not, however, have authority to allow deviation or variances from the Brian Head Town ordinances and applicable building and safety codes.

F. General Requirements. The Architectural Review Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Subdivision conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the overall objectives of the Subdivision.

G. Plans. The Architectural Review Committee shall disapprove any plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

H. Declarant and Architectural Review Committee Not Liable. The Architectural Review Committee, the Board of Trustees and Declarant shall not be liable in damages to any person submitting any plans for approval, or to any Owner or Owners of lands within the Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans. The Architectural Review Committee nor any member thereof, nor their duly authorized representative, nor the Declarant, nor the Board of Trustees shall be liable to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of their duties hereunder unless due to their willful misconduct or bad faith. Any person or group acquiring title to any Property in the Subdivision or any person submitting plans to the Architectural Review Committee for approval, by so doing shall be deemed to have agreed and covenanted that he, she, or they will not bring any action or suit to recover damages against the Architectural Review Committee, its members as individuals, or its advisors, employees, or agents, the Board of Trustees or the Declarant.

I. Written Records. The Architectural Review Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all preliminary

sketches and all architectural plans so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument which records shall be maintained for a minimum of four (4) years after approval or disapproval.

J. Limited Extent of Committee Review. The Architectural Review Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, on the basis of aesthetic considerations, compliance and the overall benefit or detriment which would result on the immediate vicinity and the Subdivision generally, and consistent herewith. The Architectural Review Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall their approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes. No review or approval of any plan by the Architectural Review Committee shall substitute for or waive any review or approval required by Brian Head Town under Brian Head Town building or zoning ordinances, and design guidelines. All determinations of compliance hereunder, including compliance with Brian Head Town ordinances and design guidelines shall be exclusively and conclusively made by the Architectural Review Committee, and shall not be subject to review or appeal. Such determination shall not, however, bind or restrict Brian Head Town from independent enforcement of its ordinances or guidelines.

K. Completion Required Before Occupancy. No Building within the Property shall be occupied until and unless the Owner of any Building shall have completed the Building in accordance with, and complied with, all approved plans and specifications.

ARTICLE VII RIGHTS OF FIRST MORTGAGEES

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

1. Preservation of Regulatory Structure and Insurance. Unless the holders of 75% of all first Mortgagees and 75% of the Lot

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Owners shall have given their prior written approval, the Association shall not be entitled:

(a) to fail to maintain fire and extended coverage insurance on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(b) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

2. **Preservation of Common Area; Change in Method of Assessment.** Unless the Association shall receive the prior written approval of (1) seventy-five percent (75%) of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots, the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; provided, however, that Declarant shall be entitled to abandon or dedicate the streets and trails within the Subdivision to Brian Head Town for public use without approval of either the Owners or the Mortgagees; or

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

Neither this Article VII nor the insurance provision contained in Article V may be amended without the prior approval seventy-five (75%) of the first Mortgagees.

3. **Notice of Matters Affecting Security.** The Association shall give written notice to any first Mortgagee of a Lot requesting such notice in writing wherever:

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured

within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any improvement on any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisition of any portion of the common areas within ten (10) days after the Association learns of the same; or

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

(i) abandonment or termination of the Subdivision established by this Declaration; or

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association.

4. **Notice of Meetings.** The Association shall give to any first Mortgagee of a Lot requesting the same in writing notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. **Right to Examine Association Records.** Any first Mortgagee shall have the right to examine the books, records and audited financial statements of the Association.

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

7. **Rights Upon Foreclosure of Mortgage.** Each holder of a first Mortgage (or deed

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of trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosures of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, unless the amount due to the Association accrued before the mortgage was recorded.

8. **Restrictions on Alienation of Common Areas.** Except as to the Association's right to grant easements for utilities and similar or related purposes, the Subdivision's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered.

9. **Mortgagees' Rights Concerning Amendments.** Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article VIII 3 of this Declaration, no material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association which affects the Mortgagee's rights or protections hereunder shall be accomplished or effective unless seventy-five percent (75%) of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

ARTICLE VIII

ANNEXATION OF ADDITIONAL LAND

1. Annexation by Declarant.

Declarant retains the unconditional right to expand the Property subject to this Declaration by the annexation of all of the Additional Land. (See Exhibit A hereto for description of all Additional Land.) The annexation of such land shall become effective upon the recordation in the office of the County Recorder of Iron County, Utah, of a Supplementary Declaration which (i) describes the land to be annexed, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, (iii) sets forth such additional limitations, restrictions, covenants, and conditions as are applicable to the annexed land, and (iv) is signed by the Declarant or its successors and assigns. When such annexation becomes effective, the annexed land shall become part of the Property, and shall be subject to the rights, covenants and obligations herein contained. Such annexation may be accomplished in

one or more annexations without limitation as to size or location within the Additional Land.

2. **Limitation on Annexation.** Declarant's right to annex said Additional Land to the Property shall be subject to the following limitations, conditions and rights granted to the Declarant:

(a) The annexed land must be part of the land which is Additional Land as of the date of this Declaration, as described at Exhibit A hereto.

(b) Declarant's right to annex land to the Property shall expire nine (9) years after this Declaration is filed for record in the Office of the County Recorder of Iron County, Utah.

(c) All Lots added shall be for residential purposes as provided for in this Declaration.

(d) Dwellings when constructed shall be compatible with existing structures on the Property, provided that such determination shall be made in the discretion of Declarant, or as approved by the Architectural Review Committee.

(e) The configuration of annexed land as to lot size, Common Areas and the nature, quantity or quality of improvements shall be in discretion of the Declarant or its assigns. No assurances can therefore be given.

(f) Declarant reserves unto itself and its assigns the right to create limited Common Areas and facilities within any portion of the annexed land. No assurances can therefore be made with respect to such items.

3. Declarant's Right to Amend.

Until all portions of the Additional Land are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration as may be reasonably necessary or desirable: (i) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (ii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iii) to facilitate the practical, technical, administrative or functional integration of

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any additional tract or subdivision into the Subdivision.

4. **Expansion of Definitions.** In the event the Property is expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded. E.g., "Property" shall mean the real property described in the recitals of this Declaration plus any additional real property added by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

ARTICLE IX MISCELLANEOUS

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

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

3. **Amendment.** Any amendment to this Declaration, or the Plat, except as otherwise set forth in Article VIII 3., above, and as set forth herein, shall require: (a) the affirmative vote of at least two-thirds of all membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and (b) so long as the Class B membership exists, the written consent of Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10), but not more than thirty (30), days prior to the meeting date. The quorum required for any such meeting shall be as

follows: At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument, an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this section 4 shall be determined as of the date on which the last consent is signed.

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

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

5. **Reserve Fund.** The Association shall establish adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. **Lease Provisions.** Any Owner may lease his Lot or Dwelling, provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, at least, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the Bylaws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

7. **Declarant's Covenant to Construct Common Areas.** Declarant hereby covenants to construct all Common Areas and amenities thereto indicated on the Plat. Declarant makes no other covenants regarding improvements to be constructed.

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

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

10. **Covenants to Run With Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or

in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. In the event of a failure to comply with any of the provisions hereof, the Association or any Owner shall have the right to enforce this Declaration. The remedies available shall include an action for the recovery of damages, or for injunctive relief, or both, plus all other remedies available by law. The prevailing party in any such action shall be entitled to recover all attorney's fees and costs so incurred. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

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

EXECUTED the day and year first above written.

BRIAN HEAD RESORT DEVELOPMENT, LLC

By *Rick Hunt*
Its *vice president*

STATE OF UTAH)
: ss.
COUNTY OF IRON)

On the *17th* day of *August*, 1994, personally appeared before me *Rick Hunt*, who being by me duly sworn, did say that he is the *Vice President* of Brian Head Resort Development, LLC, a Utah Limited Liability Company, and that said instrument was signed in behalf of said corporation by authority of its Operating Agreement (or a resolution of its Members) and said *RICK HUNT* acknowledged to me that said corporation executed the same.

Barbara Foster
Notary Public

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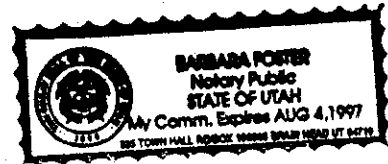


EXHIBIT A

Beginning at the Northeast Corner of Section 3, Township 36 South, Range 9 West, Salt Lake Base & Meridian; thence South $00^{\circ}25'00''$ West along the East line of said Section 703.45 feet to the Northeast Corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said section; thence North $89^{\circ}44'24''$ West along the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 659.13 feet to the Northwest Corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section, said point also being the TRUE POINT OF BEGINNING; thence South $00^{\circ}23'35''$ West along the West line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 660.96 feet to the Southwest Corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence South $89^{\circ}43'57''$ East along the South line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 104.85 feet; thence South $00^{\circ}16'04''$ West 280.20 feet; thence South $53^{\circ}58'42''$ West 218.22 feet; thence South $39^{\circ}25'32''$ West 303.03 feet; thence South $61^{\circ}34'42''$ West 295.05 feet to the beginning of a 225.00 foot radius non-tangent curve to the right (center bears South $83^{\circ}19'46''$ West; thence along the arc of said curve South 5.74 feet through a central angle of $1^{\circ}27'45''$; thence South $05^{\circ}12'29''$ East 124.83 feet; thence North $74^{\circ}57'36''$ East 285.07 feet; thence South $13^{\circ}51'14''$ East 365.40 feet; thence South $35^{\circ}43'08''$ West 357.24 feet to the beginning of a 60.00 foot radius non-tangent curve to the right (radius bears North $82^{\circ}22'10''$ West); thence along the arc of said curve 82.33 feet through a central angle of $78^{\circ}37'02''$ to the beginning of an 18.00 foot reverse curve to the left (radius bears South $03^{\circ}45'08''$ East); thence along the arc of said curve 14.11 feet through a central angle of $44^{\circ}54'46''$ to the beginning of a 155.00 foot reverse curve to the right (radius bears North $48^{\circ}39'54''$ West); thence along the arc of said curve 104.56 feet through a central angle of $38^{\circ}39'01''$; thence South $10^{\circ}00'53''$ East 82.39 feet; thence South $37^{\circ}54'49''$ West 171.62 feet; thence South $37^{\circ}41'19''$ West 250.08 feet; thence North $50^{\circ}55'08''$ West 284.13 feet; thence North $31^{\circ}17'23''$ East 251.58 feet; thence North $69^{\circ}30'44''$ West 87.56 feet; thence South $34^{\circ}12'05''$ West 303.98 feet; thence North $50^{\circ}57'00''$ West 282.89 feet; thence North $32^{\circ}28'49''$ East 221.20 feet; thence North $43^{\circ}28'32''$ East 382.35 feet; thence South $42^{\circ}21'50''$ East 151.36 feet; thence South $16^{\circ}35'04''$ West 244.61 feet; thence South $69^{\circ}30'44''$ East 81.18 feet; thence North $28^{\circ}06'43''$ East 295.62 feet; thence North $73^{\circ}11'24''$ East 66.53 feet; thence North $16^{\circ}48'36''$ West 130.64 feet; thence North $16^{\circ}58'28''$ East 128.67 feet; thence North $84^{\circ}47'32''$ East 77.54 feet; thence North $05^{\circ}12'29''$ West 228.97 feet; thence South $68^{\circ}06'24''$ West 498.58 feet; thence South $38^{\circ}25'57''$ West 116.83 feet; thence South $20^{\circ}10'29''$ West 91.99 feet; thence South $75^{\circ}15'32''$ West 125.10 feet; thence North $73^{\circ}34'00''$ West 29.98 feet; thence South $16^{\circ}25'58''$ West 205.11 feet; thence North $76^{\circ}33'36''$ West 224.89 feet; thence North $00^{\circ}07'30''$ West 698.62 feet to the easterly property line of the Plein property as recorded at the Iron County Recorder's Office in Book 470, Page 206; thence North $52^{\circ}51'15''$ East along said property line 386.80 feet to the Southeast corner of Lot 23, Block 2, Navajo Ridge Subdivision; thence North $37^{\circ}24'05''$ East along the property line of said Lot, 53.99 feet to a point on a 102.57 foot radius curve to the left (radius bears North $37^{\circ}24'05''$ East), said point also being

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on the southerly right-of-way line of Hunter Ridge Drive; thence along said right-of-way the following fourteen (14) calls: (1) along the arc of said curve 204.09 feet through a central angle of $114^{\circ}00'14''$; thence (2) North $13^{\circ}23'51''$ East 571.37 feet to the beginning of a 200.05 foot radius curve to the right (radius bears South $76^{\circ}36'09''$ East); thence (3) along the arc of said curve 116.75 feet through a central angle of $33^{\circ}26'15''$; thence (4) North $46^{\circ}50'06''$ East 298.26 feet to the beginning of a 1175.67 foot radius curve to the right (radius bears South $43^{\circ}09'54''$ East); thence (5) along the arc of said curve 136.03 feet through a central angle of $06^{\circ}37'45''$; thence (6) North $53^{\circ}27'51''$ East 156.77 feet to the beginning of a 142.56 foot radius curve to the left (radius bears North $36^{\circ}32'09''$ West); thence (7) along the arc of said curve 63.97 feet through a central angle of $25^{\circ}42'31''$; thence (8) North $27^{\circ}45'20''$ East 122.68 feet to the beginning of a 55.74 foot radius curve to the right (radius bears South $62^{\circ}14'40''$ East); thence (9) along the arc of said curve 112.54 feet through a central angle of $115^{\circ}40'39''$; thence (10) South $36^{\circ}34'01''$ East 87.18 feet to the beginning of a 148.08 foot radius curve to the left (radius bears North $53^{\circ}25'59''$ East); thence (11) along the arc of said curve 132.03 feet through a central angle of $51^{\circ}05'15''$; thence (12) South $87^{\circ}39'16''$ East 160.89 feet to the beginning of a 114.99 foot radius curve to the right (radius bears South $02^{\circ}20'44''$ West); thence (13) along the arc of said curve 81.83 feet through a central angle of $40^{\circ}46'26''$; thence (14) South $46^{\circ}52'50''$ East 109.62 feet to the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 3; thence along said line North $89^{\circ}44'24''$ West 240.43 feet to the TRUE POINT OF BEGINNING.

Contains 56.263 acres of land, more or less.

EXCEPTING THEREFROM the following:

Beginning at the Northeast corner of Section 3, Township 36 South, Range 9 West, Salt Lake Base and Meridian; thence South $00^{\circ}25'00''$ West along the East line of said Section 703.45 feet to the Northeast corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence North $89^{\circ}44'24''$ West along the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 659.13 feet to the Northwest corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section, said point also being the true point of beginning; thence South $00^{\circ}23'35''$ West along the West line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 660.96 feet to the Southwest corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence South $89^{\circ}43'57''$ East along the South line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 104.85 feet; thence South $00^{\circ}16'04''$ West 280.20 feet; thence South $53^{\circ}58'42''$ West 218.22 feet; thence South $39^{\circ}25'32''$ West 303.03 feet; thence South $61^{\circ}34'42''$ West 295.05 feet to the point of beginning of a 225.00 foot radius non-tangent curve to the left (center bears South $83^{\circ}19'46''$ West); thence along the arc of said curve 57.82 feet through a central angle

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of 14°43'23"; thence North 21°23'36" West 59.05 feet; thence South 68°36'24" West 50.00 feet; thence South 21°23'36" East 59.05 feet to the beginning of a 175.00 foot radius curve to the right (center bears South 68°36'24" West); thence along the arc of said curve 49.44 feet through a central angle of 16°11'08"; thence South 05°12'29" East 9.22 feet; thence South 68°06'24" West 126.33 feet; thence North 21°23'36" West 185.79 feet; thence North 68°36'24" East 31.31 feet; thence North 21°23'36" West 153.58 feet; thence North 66°32'58" East 234.54 feet; thence North 61°39'54" East 225.28 feet; thence North 06°17'00" East 152.70 feet; thence South 83°43'00" East 121.07 feet; thence North 6°17'00" East 50.00 feet; thence North 83°43'00" West 121.07 feet; thence North 6°17'00" East 159.84 feet; thence North 38°17'59" West 173.10 feet; thence North 49°16'23" West 193.88 feet; thence North 40°43'37" East 78.50 feet; thence North 49°20'43" West 50.00 feet; thence South 40°43'37" West 112.58 feet; thence North 49°16'23" West 191.40 feet to the Southeasterly right of way of Hunter Ridge Drive as shown on the NAVAJO RIDGE SUBDIVISION as recorded as Entry No. 228070, on June 17, 1981 at the Iron County Recorder's Office; thence along said right of way the following eleven courses: 1) North 46°50'06" East 183.79 feet to the beginning of a 1175.67 foot radius curve to the right (center bears South 43°09'54" East); 2) thence along the arc of said curve 136.03 feet through a central angle of 6°37'45"; 3) thence North 53°27'51" East 156.77 feet to the beginning of a 142.56 foot radius curve to the left (center bears North 36°32'09" West); 4) thence along the arc of said curve 63.97 feet through a central angle of 25°42'31"; 5) thence North 27°45'20" East 122.68 feet to the beginning of a 55.74 foot radius curve to the right (center bears South 62°14'40" East); 6) thence along the arc of said curve 112.54 feet through a central angle of 115°40'39"; 7) thence South 36°34'01" East 87.18 feet to the beginning of a 148.08 foot radius curve to the left (center bears North 53°25'59" East); 8) thence along the arc of said curve 132.03 feet through a central angle of 51°05'15"; 9) thence South 87°39'16" East 160.89 feet to the beginning of a 114.99 foot radius curve to the right (center bears South 02°20'44" West); 10) thence along the arc of said curve 81.83 feet through a central angle of 40°46'26"; 11) thence South 46°52'50" East 109.62 feet to a point on the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 3; thence North 89°44'24" West along said North line 240.43 feet to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Northeast corner of Section 3, Township 36 South, Range 9 West, Salt Lake Base and Meridian; thence South 00°25'00" West along the East line of said Section 703.45 feet to the Northeast corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence North 89°44'24" West along the North line of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 659.13 feet to the Northwest corner of the Southeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section; thence North 89°44'24" West 33.76 feet; thence South 93.58 feet to the true point of beginning; thence South 06°49'05" East 118.21 feet; thence South 03°42'55" West 90.69 feet; thence South 56°26'43" West 100.41 feet; thence North 31°22'03" West 111.75 feet to the beginning of a 60.00 foot non-tangent radius curve to

the right (Center bears North 31°22'03" West); thence along the arc of said curve 35.51 feet through a central angle of 33°54'41" to the beginning of a 18.00 foot radius reverse curve to the left (Center bears South 2°32'38" West); thence along the arc of said curve 17.76 feet through a central angle of 56°32'42" thence South 35°59'56" West 85.93 feet; thence North 54°00'04" West 50.00 feet; thence North 35°59'56" East 85.93 feet to the beginning of an 18.00 foot radius curve to the left (Center bears North 54°00'04" West); thence along the arc of said curve 17.76 feet through a central angle of 56°32'42" to the beginning of a 60.00 foot radius curve to the right (Center bears North 69°27'14" East); thence along the arc of said curve 34.93 feet through a central angle of 33°21'18"; thence North 77°11'28" West 94.46 feet; thence North 07°06'19" East 97.50 feet; thence North 63°48'55" East 88.21 feet; thence North 82°17'32" East 90.22 feet; thence South 64°10'28" East 149.89 feet to the true point of beginning.

Phase I-A Lots, Trails at Navajo

#1 through #8
#13 through #23
#40
#54 through #58
#68 through #71
#77

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