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

(62)

This Second Amendment and Supplement to Declaration of Restrictive Covenants and Conditions Affecting the Real Property known as the Trails at Navajo subdivision (hereinafter referred to as the "**Second Amendment and Supplement to Declaration**") is made and executed this 20th day of September, 1999, by the Declarant, Brian Head Resort Development, LLC.

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PATSY CUTLER - IRON COUNTY RECORDER
2001 DEC 04 14:56 PM FEE $78.00 BY DBJ
REQUEST: BARBARA DWYER

RECITALS

A. The Declaration of Restrictive Covenants and Conditions Affecting the Real Property Known as the Trails at Navajo Subdivision (the "**Declaration**") in effect was executed and recorded in the office of the County Recorder of Iron County, Utah on August 18, 1994, in Book 510, Pages 567-587, Entry No. 341648. The Declaration describes certain real property identified as all lots within the Trails at Navajo subdivision.

B. Article VIII, Subsection 3, of the Declaration provides, among other things, that the Declarant has the right to unilaterally amend the Declaration (1) until all portions of the Additional Land are included in the Development or until the right to enlarge Development through the addition of tracts or subdivision terminates and (2) if he determines it is reasonably necessary or desirable to accurately express the intent of any provisions of the Declaration in light of then existing circumstances or information.

C. At the time of the execution of this Third Amendment and Supplement to Declaration, all portions of the Additional Land have not been included in the Development and the right to enlarge the Development through the addition of tracts or subdivisions has not yet terminated under the Declaration. In addition, the Declarant has reviewed the Declaration and has determined that it is reasonably necessary and desirable in this instance to amend the Declaration.

D. Based on the foregoing, the Declarant desires hereby to officially amend and supplement the Declaration. The Declaration shall remain in effect except to the extent that it is amended or supplemented herein. Any prior amendments or supplements to the Declaration which are contradictory to this Third Amendment and Supplement to Declaration is amended to conform herewith.

NOW, THEREFORE, for the foregoing purposes and pursuant to the provisions of the original Declaration, the Declarant executes this Amendment and Supplement to Declaration and hereby declares as follows:

1. Article III, Subsection 6, is hereby amended to read as follows:

6. **Signs.** It is determined that signs generally detract from the overall esthetic and natural surroundings of the subdivision. No signs of any kind shall be displayed to public view on any Lot, except under the following two provisions: First, that each Owner may display one sign on the individual's lot of not more than five (5) square feet advertising the property for sale, and second, that during the course of construction of an Owner's residence, Owner or Owner's Contractor may exhibit a maximum of two signs at any one time, not exceeding four (4) square feet, advertising the identity of the Contractor performing said construction. All signs shall be removed by the Owner or Contractor at the time the occupancy permit is issued by the appropriate building authority. At no time shall any sign be attached, affixed or secured to any tree or natural vegetation or otherwise cause permanent damage to the natural beauty of the Subdivision. 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 (5) 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.

2. Article IV, Subsection 1, is hereby amended to read as follows:

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 7,000 square feet total or 5,000 square feet on ground level (foot print).

3. Article IV, Subsection 13, is hereby amended to read as follows:

13. **Water Control.** Prior to the commencement of any construction, all Owners shall furnish to the Architectural Review Committee a detailed drainage plan drafted by a qualified engineer specifying adequate provisions by the Owner for controlling storm water and snow melt run-off onto adjacent properties and to ensure that sediments do not enter the natural drainage system.

4. Article IV, Subsection 17, is hereby amended to read as follows:

17. **Time for Construction.** Except as provided hereafter, each Owner, or successor, shall establish electrical service on his Lot within five (5) years from date electrical service is initially installed in a specific phase of the subdivision regardless of the Owners actual purchase date of the lot. 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 $1,250.00 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. Notwithstanding the time limitation of five (5) years to install electrical service on a specific lot, all lots shall have established electrical service in Phase I-B no later than August 1, 2001, and all lots shall have established electrical service in Phase II-A no later than October 1, 2003, or each owner shall be required to compensate Declarant for its electrical deposit forfeiture as set forth herein.

5. Article IV, Subsection 3, is hereby amended to read as follows:

(g) Except over designated roads, streets or driveways, no motorized or recreational vehicles shall be used within the common areas. All pathways, open areas, trails, or other natural areas which have been identified as common areas shall be strictly limited to pedestrian traffic and non-motorized vehicles only.

6. Article IX, Subsection 2, is hereby amended to read as follows:

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.

Each Owner shall comply strictly with the provisions of this Declaration, the By-Laws of the Association and the rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure and refusal after written notice to comply with any of the same shall be grounds for an action to recover sums due, for damages and/or injunctive relief, for fines in the amount as may from time-to-time be determined appropriate by the Association, said fines to be utilized for improvements to the common areas, or all of the above, and for reimbursement of all attorney's fees incurred in connection therewith and interest on all such amounts at the rate of 18% per annum, which action shall be maintainable by the Association Manager or Board of Trustees in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such amounts is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the amounts is assessed due. 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 amounts become due.

Executed the day and month first above written.

BRIAN HEAD RESORT DEVELOPMENT, L.L.C

By Barbara Dwyer

Its agent

STATE OF UTAH)

: ss.

COUNTY OF IRON)

On the 21st day of September, 1999 personally appeared before me Barbara Dwyer, who being by me duly sworn, did say that (s)he is the agent of Brian Head Resort Development, L.L.C, 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 agent acknowledged to me that said Company executed the same.

Suzette Bulloch
Notary Public

Notary Public
Suzette Bulloch
329 South Highway 143
Brian Head, Utah 84719
My Commission Expires
11-15-2004
State of Utah

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