

WHEN RECORDED RETURN TO:

Larry G. Moore
Ray, Quinney & Nebeker
P O Box 45385
Salt Lake City, Utah 84145-0385

00458548 Bk00840 Pg00296-00301
PATSY CUTLER - IRON COUNTY RECORDER
2002 DEC 31 16:26 PM FEE \$21.00 BY PTC
REQUEST: RAY QUINNEY & NEBEKER

SKI LIFT EASEMENT AND
COVENANT OF EQUITABLE SERVITUDE

KNOWN ALL MEN BY THESE PRESENTS:

That the undersigned Brian Head Town, a Utah municipality ("Grantor"), its successors and assigns, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, conveys, bargains and sells unto Brian Head Ski, Ltd., a Utah limited partnership, whose address is P.O. Box 190008, Brian Head, Utah 84719 ("Grantee"), its successors and assigns, a perpetual easement, right of way and right on, over, above and across the property located in Section 1, Township 36 South, Range 9 West, SLBM, in Brian Head, Iron County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein, for the purposes of the installation, construction, operation, repair, maintenance and replacement of a ski lift with related lift towers, chairs and overhead cables and lines, at the location depicted on the site plan attached hereto as Exhibit "B" and incorporated herein by this reference.

This easement shall also include the following rights: (i) ingress and egress and crossing, on the lift only, by skiers, snow boarders, bikers and others engaging in recreational outdoor activities as customers and other bona fide patrons of Grantee, but excluding the use of the ground surface of the easement by such persons; (ii) the construction of related improvements necessary to the construction and maintenance of the ski lift; (iii) leveling, filling, removing rocks and other irregular terrain factors as reasonably necessary to accommodate the construction, maintenance, and repair of the ski lift; and (iv) the operation, maintenance, upkeep and repair of the property subject to this easement including taking equipment onto the property as needed by Grantee to accomplish the purposes of this easement. This easement shall be for the use and benefit of Grantee, and its employees, agents, representatives, successors and assigns. The easement shall not create rights in the public generally nor anyone else that, in the sole determination of Grantee, is not specifically authorized to use Grantee's ski lift. Grantor shall retain title to, all ownership rights in, and use of the property subject to the easement but shall not use the property in any way which interferes with the easement herein conveyed unless contamination caused by Grantee's use, or the imminent prospect of contamination to the Grantor's water source can be demonstrated by competent engineering requiring Grantor to protect the property and the springs, water sources and facilities of Grantor currently existing or constructed in the future. In entering into this easement agreement, it is the Grantor's intent not to disrupt the Grantee's use of the easement. However, at such time as Grantor has sufficient information to establish either contamination of its property or causation associated with Grantee's use, Grantor shall give written notice of such information and any intent to restrict

Grantee's use. Grantee may thereafter submit a remediation plan to Grantor, supported by competent engineering, which Grantor shall consider as an alternative to any restriction or disruption to Grantee's use. Consideration and implementation of Grantee's remediation plan as an alternative to restriction or disruption of Grantee's use shall not be unreasonably withheld. Any and all other restrictions on the use of the property shall be subject to the same terms and conditions as set forth in the original deed of grant. In the event Grantor is required to take action restricting or interrupting Grantee's use, any such restriction or interruption shall terminate upon the demonstrated abatement of the contamination prompting the restriction. However, it is recognized that remediation and preventative measures may require that Grantee's use be permanently restricted. In such event, any permanent restriction will be limited to that necessary to remediate or prevent contamination of the Town's water supply and sources. Notwithstanding any of the foregoing, nothing herein shall limit Grantor's police powers to protect its water sources and facilities.

Grantee may release this grant of easement and right of way any time by filing a release of same with the Iron County Recorder.

Grantee acknowledges that a portion of the property underlying this easement, as described as "Lift Easement #2" on Exhibits A and B, is within the Town's source protection and spring protection zones as a portion of the Town's culinary water source lies within this area. The Grantee shall be responsible to assure compliance, by itself and its employees, agents, representatives, patrons, customers and all other persons using the lift or the easement property as part of the activities herein authorized with all applicable laws, ordinances, policies and programs, including, without limitation, those with regard to such source protection and spring protection. Grantee will comply with all applicable Brian Head Town ordinances and state, federal and county laws in the activities allowed under the terms and conditions of this easement. Specifically, Grantee acknowledges that the Drinking Water Source Protection Plan, of May 2002, provides certain restrictions regarding activities conducted in the affected water source protection zone(s). Grantee agrees that it will comply with all provisions set forth under the Drinking Water Source Protection Plan, May 2002 and any subsequent amendments adopted thereto, as may relate to the easement area, as may be required or requested by the State of Utah, as may be required to comply with or maintain compliance with applicable water standards, or as may be required by the Town in the exercise of its police powers to protect the water sources or facilities. In addition, Grantee agrees that it will comply with the applicable Brian Head Town building permit ordinances and procedures in effect at such time as Grantee submits an application for building permit for the subject ski lift. In addition to the above, Grantee agrees that plans for any construction or other activities within the easement area shall be submitted to the Town, in writing and including detailed construction plans, no later than six months prior to the desired date of commencement of construction or other activities. It is further a condition of the grant of easement hereunder that the Town shall have authority to choose and maintain, at the Grantee's expense, an inspector to be present on sight at all times the Grantee is engaged in construction, reconstruction, major repair or major maintenance activities within the portion of the easement described as the "Lift Easement #2" on Exhibits A and B. Such inspector shall be empowered to oversee and direct the construction, reconstruction, major repair or major maintenance activities of the Grantee as necessary to assure compliance with the process or processes of the Town with

regard to construction approvals, inspections, plan checks, monitoring of construction or use related to such activities. Additionally, whenever the Grantee is within the portion of the easement described as the "Lift Easement #2" on Exhibits A and B and is engaged in any other construction, reconstruction, repair or maintenance activities or is present with mechanical

shall keep a written log of such activities to include the date, time, persons and activities involved and a list by name and amount of any contaminants brought onto or over such portion of the easement. Such log shall be available to the Town upon the Town's request. In the event that there is any accident, contamination, or other event which occurs within the easement property during or related to any activities carried on by Grantee hereunder and which may pose a threat, danger or detriment to the Town's springs or water supply, Grantee shall, as soon as reasonably possible, notify the Town, verbally and in writing, of the details and circumstances of such event. Grantee shall, within a reasonable time following disturbance, revegetate any disturbed areas resulting from the installation or maintenance of facilities as near as reasonably feasible to their natural appearance.

Grantee agrees to indemnify Grantor, and its successors and assigns, from claims, liabilities suits, costs, demands, actions and causes of action of any kind or nature resulting from the use of this easement by Grantee and such other persons as specified by this easement. Grantee will assure that use of the easement is restricted to the activities set forth above and that such activities will be restricted to the easement area. Grantee shall be liable to Grantor for any and all damages of any kind caused by contamination to, interference with, or with regard to, the applicable springs or culinary water sources attributable to the Grantee or its employees, agents, representatives, successors, assigns, patrons, customers and all other persons using the lift or the easement property as part of the activities herein authorized.

This easement and the covenants, restrictions, conditions and rights contained herein shall be construed as covenants of equitable servitude which shall run with and bind the land which is the subject of this easement. All rights, obligations and powers of the Grantee herein contained may be delegated, transferred, or assigned in full, however, no partial delegation, transfer or assignment shall be allowed. In the event of any transfer of all of Grantee's rights, obligations and powers, the Grantee shall be relieved, from and after the date of such transfer, of all liability and obligations arising after such transfer in relation to this agreement, and the successor or assignee shall have all the rights, obligations and powers of Grantee herein. Nothing in the foregoing shall relieve the Grantee from liability for damages or from compliance with any of the terms of this agreement with regard to any event occurring prior to the date of any assignment, delegation or transfer.

IN WITNESS WHEREOF, Grantor and Grantee have executed this instrument this 23rd day of December 2002.

GRANTOR:

GRANTEE:

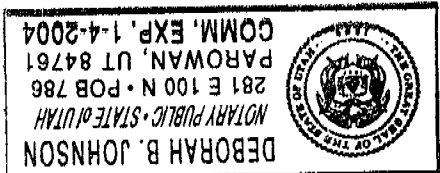
By: [Signature]

By: [Signature]

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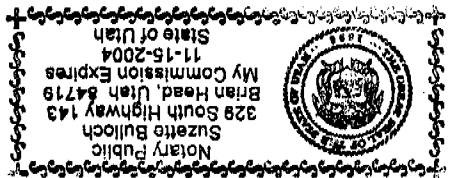
On the 23rd day of December, 2002, personally appeared before me Deborah Johnson, the signer of the foregoing instrument, who duly acknowledged to me that (s)he executed the same on behalf of Weply Hornberger, general partner of Brian Head Ski, Ltd., and is duly authorized to do so pursuant to



Deborah B. Johnson
Notary Public
Residing at: Parowan, UT

STATE OF UTAH)
COUNTY OF IRON)
SS:

On the 27th day of December, 2002, personally appeared before me H.C. Deutschlander, the signer of the foregoing instrument, who duly acknowledged to me that (s)he executed the same, as duly authorized Mayor of Brian Head Town, a Utah Municipality.



Suzette Bulloch
Notary Public
Residing at: Brian Head, UT

STATE OF UTAH)
COUNTY OF IRON)
SS:

ACKNOWLEDGEMENTS

H.C. Deutschlander
Mayor

Weply Hornberger
General Partner

Lift Easement #1
 Across
 Town of Brian Head Property

A 50' easement for the purpose of an overhead transport lift running for an approximate length of 789.20 feet across a portion of the East Half of the Southwest Quarter of the Southeast Quarter of Section 1, Township 36 South, Range 9 West of the Salt Lake Base and Meridian in the Town of Brian Head, Iron County, Utah more particularly described as follows:

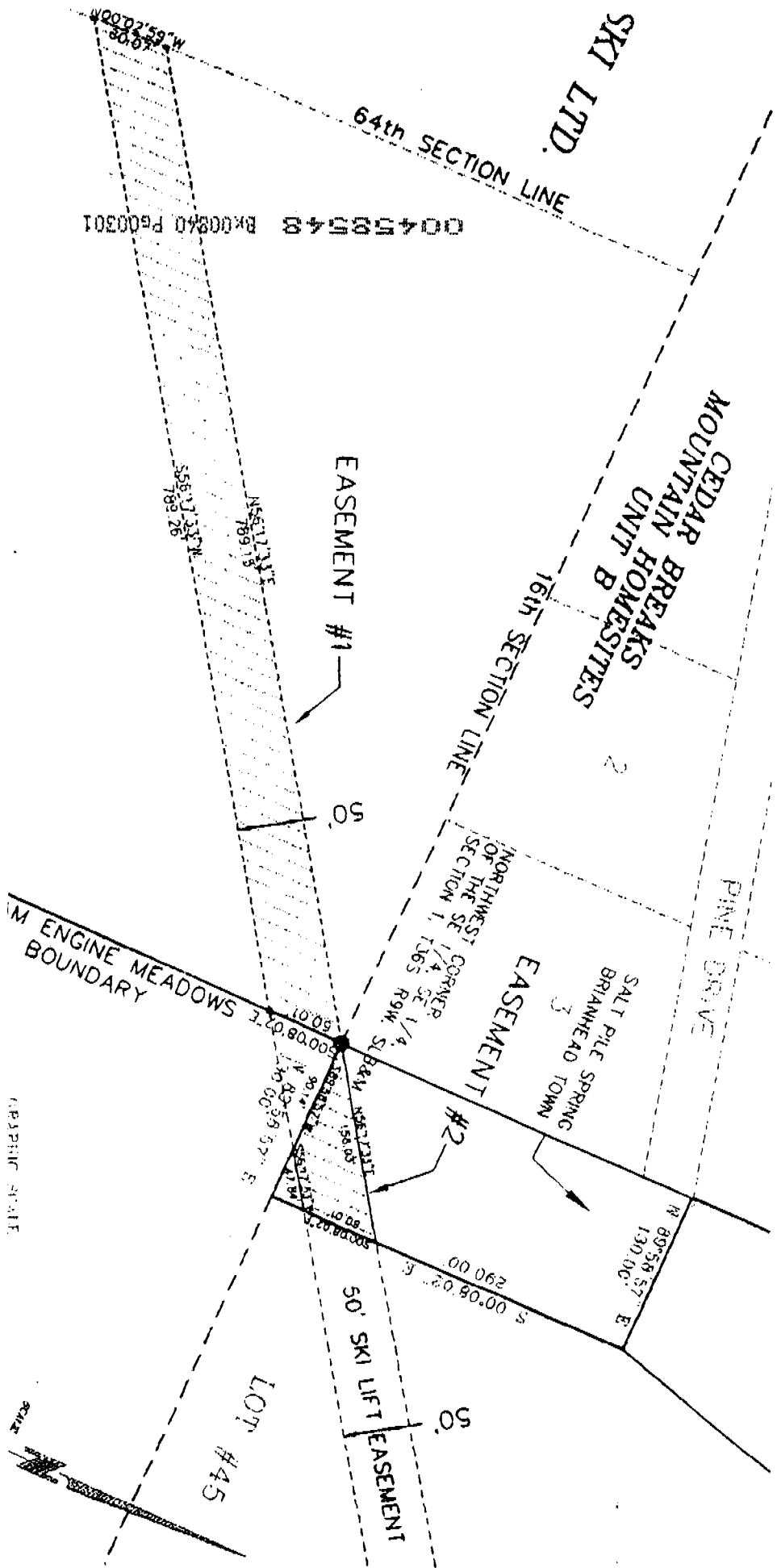
Beginning at a point which is South $89^{\circ} 43' 39''$ West 1320.54 feet along the South section line and North $00^{\circ} 00' 00''$ West 1257.02 feet from the Southeast corner of Section 1, Township 36 South, Range 9 West of the Salt Lake Base and Meridian, said point being a point on the Westerly boundary line of the Steam Engine Meadows Subdivision, and running thence South $56^{\circ} 17' 33''$ West 789.26 feet to the 64th section line; thence North $00^{\circ} 02' 59''$ West 60.07 feet along the said 64th line; thence North $56^{\circ} 17' 33''$ East 789.15 feet to the Northwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 1, said point also being a boundary corner of the Steam Engine Meadows Subdivision; thence South $00^{\circ} 08' 02''$ East 60.01 feet along the Westerly boundary line of the said Steam Engine Meadows Subdivision to the point of beginning.

Lift Easement #2
 Across
 Salt Pile Springs

A 50' easement for the purpose of an overhead transport lift running for an approximate length of 101.94 feet across a portion of the Northeast Quarter of the South East Quarter of Section 1, Township 36 South, Range 9 West of the Salt Lake Base and Meridian in the Town of Brian Head, Iron County, Utah, this area more commonly know as Salt Pile Springs, more particularly described as follows:

Beginning at a point which is South $89^{\circ} 43' 39''$ West 1320.68 feet along the South section line and North $00^{\circ} 00' 00''$ West 1317.03 feet from the Southeast corner of Section 1, Township 36 South, Range 9 West of the Salt Lake Base and Meridian, said point being the Northwest corner of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 1, and running thence North $56^{\circ} 17' 33''$ East 156.03 feet to a point on the Easterly boundary of the Salt Pile Springs; thence South $00^{\circ} 08' 02''$ East 60.01 feet along the said Easterly boundary line; thence leaving said Easterly boundary line South $56^{\circ} 17' 33''$ West 47.84 feet to a point on the Southerly boundary line of the said Salt Pile Springs; thence South $89^{\circ} 58' 57''$ West 90.14 feet along the said Southerly boundary line to the point of beginning.

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