

ENABLING DECLARATION
ESTABLISHING A PLAN FOR
CONDOMINIUM OWNERSHIP

BRIAN HEAD VILLAGE, RESORT CONDOMINIUMS
PHASE NO. I

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in Iron County, State of Utah, this 25 day of August, 1970 by R. Terence Marten, Edgar J. Thompson, David A. Hutchison, Peter D. Fraser, C. Joanne Thompson, Diane Hutchison, and Deanna Marten (hereinafter referred to as "Grantor") pursuant to the provisions of the Utah Condominium Ownership Act,

WITNESSETH:

WHEREAS, Grantor owns certain real property herein described; and

WHEREAS, said Grantor has improved said property by constructing thereon a twenty (20) unit multifamily structure know as Brian Head Village, Resort condominiums, Phase I, said structure constituting a "Condominium Project" under the terms of the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953), and having been constructed in accordance with plans and specifications prepared by McLean and Schultz, Consulting Engineers, Fullerton, California, said plans being on record in the office of the Tax Assessor of the City of Cedar, County of Iron, State of Utah, FHA Project No. 105-34001, and consisting of sheets 1A through 12 and specification sheets 1 through 39, etc., all inclusive; and

WHEREAS, said Grantor hereby establishes by this declaration a plan for the individual ownership of the real property estates consisting of the area or space contained in each of the apartments units in said multifamily structure, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining real property which is hereinafter defined and referred to herein as the "common areas and facilities."

NOW, THEREFORE, said Grantor, the fee owner of the following property located in the vicinity of Brian Head Ski Resort on Highway 143, Iron County, State of Utah and more particularly defined as:

Beginning at a point North 183.77 and East 145.27 feet from the SW corner of Section 2, T3GS, R3W, Salt Lake Base and Meridian: thence N43°50'00"W 65.00 feet, N46°10'00"E 20.00 feet, N43°50'00"W 105.62 feet, North 132.50 feet, East 175 feet, S43°50'00"E 145.00 feet, S 46°10'00"W 238.00 feet to point of beginning.

Containing 1.0358 acres

Recorded (indecipherable details) Edgar J. Thompson

Date: AUG 25 1970 (indecipherable details)

by (indecipherable details) 155

(indecipherable details.....)

Fee Paid: \$29.00

Iron County

Page 225-251

hereby makes the following declaration as to divisions, covenants, restrictions, limitation, conditions and uses to which the above described real property and improvements thereon, may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

- A. Said Grantor, in order to establish a plan of condominium ownership for the above described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates.
 - 1. The twenty (20) separately designed and legally described freehold estates consisting of the spaces or areas, being the area or space contained in the perimeter wall of each of the twenty (20) apartment units in said multifamily structure constructed on said property, said spaces being defined and referred to herein as "apartment spaces."
 - 2. A freehold estate consisting of the remaining portion of the real property is described and referred to herein as the "common areas and facilities," which definition includes the multifamily structure and the property upon which it is located, and specifically includes, but is not limited to, the land, roof, main walls, slabs, staircases, halls, parking spaces, storage spaces, community and commercial facilities, swimming pool, pumps, water tank, trees, pavement, balconies, pipes, wire conduits, air conditioners and ducts, or other public utility lines. .
- B. For the purpose of this declaration, the ownership of each "apartment space" shall include:
 - 1. The respective undivided interest in the common areas and facilities specified and established in Exhibit "D" hereof, and each "apartment space" together with the undivided interest is defined and hereinafter referred to as "family unit."
 - 2. A portion of the "common areas and facilities" is hereby set aside and allocated for the restricted use of the respective "apartment spaces" as shown on a survey attached hereto and made as part hereof as Exhibit "A", and said areas shall be known as "restricted common areas and facilities."
- C. The individual "apartment spaces" hereby established and which shall be individually conveyed are described in the survey attached hereto as Exhibit "A".
- D. The undivided interest in the "common areas and facilities" hereby established and which shall be conveyed with each respective "apartment space" and the proportionate shares of the separate owners of the respective "family units" in the profits and common expenses in the "common areas and facilities," as well as their proportionate representation for voting purposed in the Association of Owners set forth and included herein as Exhibit "B".

The above respective undivided interests established and to be conveyed with the respective "apartment spaces" as indicated above, cannot be changed, and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the "common areas and facilities" and the fee titles to the respective "apartment spaces" conveyed therewith, shall not be separated or

separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective "apartment space"

- E. Said Grantor, its successors and assigns, by this declaration, and all future owners of the "family units," by their acceptance of their deeds, covenant and agree as follows:
1. There shall be no judicial partition of the project or any part thereof, nor shall Grantor or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph I hereof in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in Section 57-8-22 thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants, but such partition shall not affect any other condominium.
 2. That the "apartment spaces" shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose.
 3. The owner of the respective "apartment spaces" shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective "apartment space," nor shall said owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective "apartment spaces" which are utilized for, or serve more than one "apartment space" except tenants in common with the other "family unit" owners as heretofore provided in "D". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective "apartment space" and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including, plaster, paint, wallpaper, etc.
 4. The owners of the respective "apartment spaces" agree that if any of the "common areas and facilities" encroaches upon the "apartment space," a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily structure is partially or totally destroyed, and then rebuilt, the owners of "apartment spaces" agree that minor encroachment of parts of the "common areas and facilities" due to construction shall be permitted and that valid easement for said encroachment and thereof shall exist.
 5. That an owner of a "family unit" shall automatically, upon becoming the owner of a "family unit or units," be a member of Brian Head Village, Phase 1 Homeowners Association, hereafter referred to as the "Association," and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.
 6. That the owners of "family units" covenant and agree that the administration of the condominium shall be in accordance with the provisions of the Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit "C", and shall

be subject to the terms of a Regulatory Agreement executed by the Association and the Commissioner of the Federal Housing Administration, which Agreement is made a part hereof and is attached as Exhibit "D".

7. That each owner, tenant or occupant of a "family unit" shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions decisions or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.
 8. That no owner of a "family unit" may exempt himself from liability for this contribution towards the common expenses by waiver of the use of enjoyment of any of the common areas and facilities or by the abandonment of his "family unit."
- F. All sums assessed by the Association shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectable as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment assessed to the Owner of any condominium plus interest at seven percent (7%) and costs, including reasonable attorneys' fees, shall become a lien upon such condominium upon recordation of a notice of assessment as provided in Section 57-8-20 of the Condominium Act. The said lien for nonpayment of common expenses shall have a priority over all other liens and encumbrances, recorded or unrecorded, except only
1. Tax and special assessment liens on the unit in favor any assessment unit, and special district, and
 2. All sums unpaid on the first mortgage of record,
- Such lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the owners of the family units, in like manner as a mortgage or real property. In any such foreclosure the family unit owner shall be required to pay a reasonable rental for the family unit, if so provided in the By-Laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the family units, shall have power, unless prohibited herein, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.
- G. Where the mortgage of a first mortgage of record or other purchaser of a family unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association, chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the family units including such acquirer, his successors and assigns.

- H. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each "family unit" and the Common Area having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished or caused to be accomplished by the Board of Directors of the Association of Owners.

If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the Manager of Management Committee, using proceeds of insurance, if any, on the buildings for that purpose, and the Unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the buildings are destroyed or substantially damaged and if the Owners, by a vote of at least three-fourths of the voting power, do not voluntarily, within one hundred days after such destruction or damage, make a provision for reconstruction, the Manager or Management Committee shall record, with the county recorder, a notice setting forth such facts, and upon recording of such notice;

1. The property shall be deemed to be owned in common by the Owners;
 2. The undivided interest in the property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area;
 3. Any liens affecting any of the condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the property; and
 4. The property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by first paying out of the respective shares of the Owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each Owner. Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of at least three-fourths of the voting power, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.
- I. In a voluntary conveyance of a "family unit" the grantee of the unit shall be jointly and severally liable with the grantor of the unit for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or the Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable

for, nor shall the family unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

- J. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the By-Laws, shall be deemed to be binding on all owners of family units, their successors and assigns.
- K. That the Board of Directors of the Association of Owners, or the management Agent, or the Manager shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering family units. That the Board of Directors shall further obtain and maintain at all times insurance of the type and kind in at least the amounts provided in Exhibit "C" and including insurance for such other risks, or a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, which insurance shall be governed by the following provisions:
 - 1. All policies shall be written with a company licensed to do business in the State of Utah and holding a rating of "AAA" or better by Best's Insurance Reports;
 - 2. Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Directors of the Association of Owners or their authorized representatives;
 - 3. In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder, be brought into contribution with insurance purchased by individual owners or their mortgages;
 - 4. Each Owner may obtain additional insurance at his own expense; provided, however that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, in behalf of all of the Owners, may realize under any insurance policy with the Board of Directors may have in force on the project at any particular time;
 - 5. Each Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his Unit, the value of which is in excess of One Thousand Dollars (\$1000.00);
 - 6. Any owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance;
 - 7. The Board of Directors shall be required to make every effort to secure insurance policies that will provide for the following:
 - a. A waiver of subrogation by the insurer as to any claims against the Board of Directors, the Manager, the Owners and their respective servants, agents, and guests;

- b. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners;
 - c. That the master policy on the project cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors or Manager without a prior demand in writing that the Board of Directors or Manager cure the defect;
 - d. That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration;
8. The Board of Directors shall conduct an annual insurance review for the Association to ensure the adequacy of the insurance coverage. This review shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.
- L. That insurance premiums for any blanket insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association of Owners; and that such payments shall be held in a separate escrow account of the Association of Owners and used solely for the payment of the blanket property insurance premiums as such premiums become due.
- M. That so long as said Grantor, its successors and assigns, owns one or more of the family units established and described herein, said Grantor, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibits "A", "B", "C" and "D" attached hereto; and said Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association, the members of such association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.
- N. The terms "Declaration" and "Condominium Ownership" as used herein shall mean and include the terms "Master Deed" and Apartment Ownership" respectively.
- O. The provisions of this Declaration shall be literally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.
- P. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- Q. The respective "family units" shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) day; or (b) any rental if the occupants of the "family unit" are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service. Other than the foregoing obligations, the owners of the respective "family units" shall have the absolute right to lease same provided that said lease is made subject to the covenants and

restrictions contained in this Declaration and further subject to the By-Laws and Regulatory Agreement attached hereto.

This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 25 day of August 1970.

GRANTOR

By (Signature)
R. Terence Marten

By (Signature)
Edgar J. Thompson

By (Signature)
David A. Hutchison

By (Signature)
Peter D. Fraser

By (Signature)
C. Joanne Thompson

By (Signature)
Diane Hutchison

By (Signature)
Deanna Marten

Notary
Seal

Before me, (Notary's Signature), a Notary Public in and for said Iron County, personally appeared R. Terence Marten known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Notary
Seal

(Notary's Signature)

Before me, (Notary's Signature), a Notary Public in and for said Iron County, personally appeared Edgar J. Thompson known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Notary
Seal

(Notary's Signature)

Before me, (Notary's Signature), a Notary Public in and for said Iron County, personally appeared David A. Hutchinson known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

(Notary's Signature)

Before me, (Bella Albert), a Notary Public in and for said Marin County, personally appeared Peter D. Fraser known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Notary Seal

(Notary's Signature)
State of California, Marin County

Before me, (Notary's Signature), a Notary Public in and for said Iron County, personally appeared C. Joanne Thompson known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Notary
Seal

(Notary's Signature)

Before me, (Katherine L. Burns), a Notary Public in and for said Orange County, personally appeared Diane Hutchison known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Notary Seal

(Notary's Signature)
State of California, County of Orange

Before me, (Katherine L. Burns), a Notary Public in and for said Orange County, personally appeared Deanna Marten known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Notary Seal

(Notary's Signature)
State of California
County of Orange