

Mountain Shadow Subdivision - Phase 2

RESTRICTIVE COVENANTS AND DECLARATION OF  
USE RESTRICTIONS FOR  
MOUNTAIN SHADOW SUBDIVISION PHASE # 2

KNOW ALL MEN BY THESE PRESENTS: That Kay & Ellen Ence and Irvin & Betty Ence, are the owners of the following described real property located in Washington County of Utah, here in after referred to as "Mountain Shadow Subdivision Phase 2" more particularly described as follows:

All of Lots 13 - 26, Mountain Shadow Subdivision Phase 2, City of Ivins, Washington County, Utah.

Whereas, certain covenants and building and use restrictions must be established and observed to insure harmonious relationships, protect property values, eliminate hazardous conditions, and preserve the natural beauty of the area, whenever persons reside in the close proximity to one another.

NOW, THEREFORE, Kay & Ellen Ence and Irvin & Betty Ence, ("Declarant"), hereby declare that all of the lots in the above-described subdivision are held, conveyed, hypothecated, encumbered, leased, used, occupied and improved, subject to the following covenants, conditions, and restrictions:

1. PURPOSE. The purpose of these restrictions is to insure the use of the property for attractive residential purposes only, to prevent the impairment of the attractiveness of the property to establish a general plan of improvement, to enhance and protect the value of the property, and to maintain the desired tone of the community, and hereby to secure to each owner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his lot that is necessary to insure the same advantages to all lot owners.
2. USE. No residence shall be less than one thousand two hundred square feet (1,200) in size on the main level exclusive of one-story open porches and garages, for a one-story dwelling nor less than one thousand (1,000) square feet for a dwelling more than one story. The second story shall have a minimum of four hundred (400) square feet. All structures roofing shall be tile or as per approved by the Architectural Control Committee. All residences shall have (a minimum of) one, two car garage. A carport is not an acceptable alternative. All lots shall be used for not more than one detached, single family

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dwelling not to exceed two stories in height. All construction shall be of new materials, except that used brick may be used so long as it conforms with the building and subdivision ordinances of the City of Ivins. All structures shall be constructed in accordance with the prevailing zoning and building ordinances of the City of Ivins.

3. LOT SIZE. Lot sizes as described on the subdivision plat for Mountain Shadow Subdivision Phase 1, file in the office of the Washington County Recorder, are considered minimum lot sizes and no person shall subdivide any lot as shown on the recorded plat of said subdivision into smaller parcels.

4. BUILDING LOCATION. Building location on lot as to set-back requirements shall be in accordance and in compliance with prevailing zoning and building ordinances of the City of Ivins.

5. LANDSCAPING. All property shall be landscaped appropriately with lawns, trees, shrubs, etc., and all landscaping shall be maintained at a reasonable standard compatible with other lots in the subdivision. Shrub and tree plantings on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. Landscaping within the front 25 feet of each lot (front yard) shall be installed within 12 months of commencing construction of the dwelling.

6. GARBAGE AND REFUSE DISPOSAL. No garbage or trash shall be kept, maintained or contained in or on any lot so as to be visible from another lot or from any street. No incinerators shall be kept or maintained in or on any lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on any lot. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All containers used for the storage and disposal of such material shall be kept in clean and sanitary condition. During construction, building and landscaping contractors shall be required to police the lot and construction site on a regular basis, placing all rubbish, trash and waste in a container and disposing of the same properly.

\* 7. TEMPORARY OR OTHER STRUCTURES. No structure of a temporary nature: trailer, bus, basement house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality, workmanship, and materials.

8. EASEMENTS. Easements for installation and maintenance of utilities, drainage facilities, and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or draining channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

9. ANIMALS. No animals, including horses or other domestic farm animals, fowl or reptiles of any kind may be kept, bred, or maintained in or upon any lot, except for household pets. No animals shall be kept, bred or raised within any lot for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's lot without a leash, or so as to create a nuisance.

10. COMMERCIAL AND RECREATIONAL VEHICLES. No boats, trailers, buses, motor homes, campers, trucks or commercial vehicles shall be parked for longer than 48 hours on any public street within the subdivision, nor within the front 18 feet of each lot. These vehicles may be stored on the lot beyond the front 18 feet of each lot provided they do not violate local zoning and planning ordinances and fire codes.

11. NUISANCES. No owner shall permit or suffer anything to be done or kept about or within his lot which will obstruct or interfere with the rights of other owners, occupants, or persons authorized to use any lot, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance or commit to suffer any illegal act to be committed therein. Each owner shall comply with any and all requirements of all health authorities and other governmental authorities having jurisdiction over the property subject to this declaration.

12. VIOLATION OF LAW OR INSURANCE. No lot owner shall permit anything to be done or kept in or upon his lot which will result in the cancellation of insurance thereon or which would be kept in violation of any law.

13. SAFE CONDITION. Without limiting any other provision of this declaration, each owner shall maintain and keep his lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective lots.

14. ANTENNAE. No radio antennae, or devise for the reception or transmission of radio, microwave, or other similar signals shall be

permitted on any lot, unless enclosed by a wall, fence or shrubbery so as not to be seen from any adjoining lots or from any street.

15. MINING. No portion of any lot shall be use in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

16. FIRES. Other than barbecues in properly constructed barbecue pits or grills and fire pits, no open fires shall be permitted on the lots, nor shall any other similar activity or condition be permitted which would tend to create a nuisance or increase the insurance rates for any owner. Controlled fires are permitted on approved city burn days in accordance with local ordinances and fire codes.

17. ARCHITECTURAL CONTROLS. No building shall be erected, placed, or altered on any lot until the construction plans showing the location of the structure have been approved by the Architectural Control Committee as to qualify of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Roof and exterior colors shall be approved by the Committee. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum building setback line unless similarly approved.

The minimum total square footage of living area on the ground floor level of any residential dwelling constructed within the subdivision, exclusive of porches, balconies, patios, carports, and garages, shall not be less than 1,200 square feet for a one story dwelling, nor less than 1,000 square feet for a dwelling more than one story and comply with all other requirements so listed within the restrictive covenants.

18. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee which is vested with the powers described herein shall consist of three persons: Robert Ence, Brent Ence, and Rick Rosenberg. Prior to the commencement of any excavation, construction or remodeling or adding to any structure therefore completed, there shall first be filed with the Architectural Control Committee one complete set of building plans, specifications and application fee therefore, together with a block or plot plan indicating the exact part of the building site the improvements will cover, and said work shall not commence unless the Architectural Control Committee shall endorse said plans as being in compliance with these covenants and/or otherwise approved by the committee. In the event said committee fails to approve or disapprove in writing said plans within thirty (30) days after submission, then said approval shall not be required. When all lots in said tract and adjacent tracts of land controlled by declarant and proposed for future development, have been sold by the Declarant, said plans and specifications shall be approved by

an Architectural Control Committee appointed by a majority of owners of lots in the subdivision herein described.

19. FEES. The Application Fee which shall be submitted with the plans shall be fifty dollars (\$50.00) for a proposed residential structure and twenty-five dollars (\$25.00) for proposed outbuildings, additions, and alterations to the exterior of existing structures which construction cost exceeds five hundred dollars (\$500.00). A one hundred and fifty dollar (\$150.00) landscaping deposit shall be submitted upon approval of the plans and specifications to be held by the committee until such time as the minimum landscaping requirements are completed in the front 25 foot setback area (front yard). Upon completion of the landscaping improvements the deposit shall be returned without interest.

20. DRIVEWAYS. Driveways shall be constructed of cement or asphalt. Driveway widths shall not exceed those permitted by the City planning and zoning ordinances.

21. DAMAGES. Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the purchaser or owner and/or their agents of any particular lot in this subdivision must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner, not the developer.

22. VIOLATION CONSTITUTES NUISANCE. Every act or omission whereby any restriction, condition or covenant as set forth in this declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by the Declarant, affected property owners, or by the City of Ivins, and such remedy shall be deemed to be cumulative and not exclusive.

23. DURATION. All of the covenants, conditions and restrictions set forth in this declaration shall take effect upon the recording of the same, and shall continue and remain in full force and effect at all times against said property and the owner thereof or any subsequent owners thereof, for a period of twenty (20) years from the date of adoption. Said covenants shall then be automatically renewed for successive periods of ten (10) years. These requirements may be altered or changed or modified only by a written agreement of not less than a majority of the lot owners of said subdivision. Such changes shall not include easement or other areas dedicated to public use.

24. VIOLATION AND DAMAGES. Any deed, lease, conveyance, or contract made in violation of the provisions hereof shall be void and may be set aside on petition of any lot owner. Furthermore, if the owner of any lot in the subdivision, or any other person claiming an interest therein, shall violate any of the covenants, conditions or restrictions herein contained, it shall be lawful for any other person or persons owing an interest in any lot in the

subdivision to prosecute and file proceedings at law or in equity against the person or persons violating or attempting to violate any of the covenants, conditions, or restrictions hereof, either at law for damage, or in equity for an injunction, or other equitable relief. All costs and expenses of such proceedings as specified in the paragraph, including a reasonable attorney's fee, shall be taxed against the offending party or parties and shall be declared by the Court to constitute a lien against the real estate of said party located within the subdivision and such lien may be enforced in such a manner that the Court may order.

25. WAIVER. If the violation of these covenants, conditions and restrictions is of a continuing nature, the failure to prosecute such a violation for any period after such violation occurs shall not operate as a waiver of the right to subsequently prosecute with respect to said violation, nor bar the seeking of relief, injunctive or otherwise, against other violations occurring on any other lot in the subdivision. It is further agreed that all of the covenants, conditions and restrictions set forth herein shall not be deemed changed or abandoned by change of conditions in the neighborhood, by acquiescence, by violation or other act or failure to act by any lot owner or any other person.

26. COMPLIANCE WITH ZONING ORDINANCES OF THE CITY OF IVINS. All present and future successive lot owners agree to abide and conform to all Ivins city ordinances then in effect, which pertain to this subdivision, unless otherwise modified by the covenants herein contained.

27. SAVINGS CLAUSE. If any provision hereof, or the application of any provision to any person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall be deemed valid.

28. ASSIGNMENT OF POWERS. Any and all rights and powers of the Declarant herein contained may be deleted, transferred, or assigned. Wherever the term "Declarant" is used herein, it includes assigns or successors in interest of the Grantor.

IN WITNESS WHEREOF we have hereunto set our hands and seals this  
7th day of September, 1993

Kay Ence  
Kay Ence

Ellen Ence  
Ellen Ence

Irvin Ence  
Irvin Ence

Betty Ence  
Betty Ence

ACKNOWLEDGEMENT

State of Utah

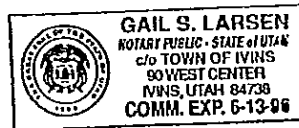
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County of Washington

On the 7<sup>th</sup> day of September, 1993, personally appeared before me, the undersigned Notary Public in and for the County of Washington in said State of Utah, Kay and Ellen Ence, Irvin and Betty Ence who being by duly sworn, acknowledged to me that they signed the foregoing Mountain Shadow Subdivision Phase II Restrictive Covenants and Declaration of Use Restrictions freely and voluntarily for the uses and purposes stated therein.

My Commission  
expires June 13, 1996

Gail S. Larsen  
Notary Public  
Residing in Washington County, Utah



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