

MCARTHUR HEIGHTS SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned Developer is the owner of certain real property located in St. George, Washington County, State of Utah, which is identified as the McArthur Heights Subdivision, such property being more particularly described in Addendum "A", attached hereto and by this reference incorporated herein; and

WHEREAS, Developer shall cause the Lots within the Subdivision to be conveyed subject to certain protective covenants, conditions and restrictions as hereinafter set forth;

NOW, THEREFORE, Developer hereby declares that all of the Lots shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These covenants, conditions and restrictions shall run with the Lots and shall be binding on all parties having or acquiring any right, title or interest in the Lots and shall inure to the benefit of each such party.

1. Land Use And Building Type: No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family residential dwelling not to exceed two stories in height and a garage for said dwelling. Every dwelling shall have as a minimum a two-car garage which may be attached to the dwelling or detached therefrom, subject to the provisions hereof, including addenda. All residences shall have a concrete paved driveway connecting the parking with a street allowing safe ingress and egress. All construction shall be of new materials.

2. Care And Maintenance Of Lot: The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times.

3. Nuisances: No noxious or offensive activity shall be carried out on any Lot nor shall anything be done thereon

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FOR: WASHINGTON COUNTY TITLE CO

which may be or may become an annoyance or nuisance to the neighborhood. No Lot shall be used for any illegal purpose.

4. Temporary Structures: No structure of temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No lumber, material or bulk materials shall be kept, stored or allowed to accumulate on any Lot except building or other materials to be used in connection with any construction, alteration or improvement approved in accordance with the terms hereof.

5. Signs: No signs of any kind shall be displayed to the public view on any Lot except one sign of not more than one square foot for identification (numbering) purposes. One sign of not more than six square feet may be used for advertising the Lot for sale or rent.

6. Livestock And Poultry: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets, in reasonable numbers, may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the Owner's premises or on a leash under the handler's control. Pets shall not be kept if they create noise that constitutes a nuisance.

7. Garbage And Refuse Disposal: 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. No unsightly material or other objects are to be stored on any Lot in view of the general public or neighboring Lot occupants.

8. Landscaping: Within 120 days from the issuance of a Certificate Of Occupancy, a Lot shall be landscaped in a manner providing that all unpaved portions of street front and street side yards shall be planted in either grass or other groundcover. Landscaping shall be maintained at a reasonable standard compatible with other homes in the Subdivision. Shrub and tree planting on corner Lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner. Undeveloped Lots shall be kept free of all tall weeds.

9. Paving: All driveways, walkways, parking areas and other areas of similar nature shall be paved with concrete in accordance with the approved plans and specifications within sixty (60) days of completion of buildings or improvements erected upon the subject Lot.

10. Storage Of Materials: During construction and for a period of ninety (90) days after completion, a Lot may be used for the storage of materials used in the construction of the building or improvement.

11. Fences, Walls, Hedges And Shrubs: Fences, walls and hedges may be erected or planted in rear yards and side yards not extending beyond the front line of the dwelling to a height not exceeding 6 feet. Fences, walls, and hedges may be erected or planted on remaining side yards and property lines not to exceed 4 feet. No fence, wall, hedge, shrub or other structure shall be placed along any front property line. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner that it shall create a potential hazard or aesthetically offensive appearance.

12. Sight Distance At Intersections: No fence, wall or hedge which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street property lines extended. The same sight line limitations shall apply to each driveway and alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

13. Vehicles: Motor vehicles that are inoperable shall not be permitted to remain upon any street or Lot or road areas adjacent thereto. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired or repainted on or in front of any Lot unless performed within a completely enclosed garage or other structure located on the Lot which screens the sight and sound of such activity from the public streets and neighboring Lots. No trucks (except pickup trucks, similar sized vans and recreational vehicles) and no commercial-type vehicles shall be stored or parked on any street, Lot or road areas adjacent thereto. The foregoing restrictions shall not be deemed to prevent temporary parking for loading or unloading of such vehicles.

14. Commercial Activities Prohibited: No Lot shall be used for or in connection with the conduct of any trade, business, professional or commercial activity of any kind.

15. Slope and Drainage Control: No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or

change the direction of flow of drainage channels. The slope control areas of each Lot shall be kept and maintained and all improvements shall be constructed and maintained so as to comply with all requirements imposed by applicable public authorities or utility companies.

16. Re-subdivision of Lots: No Lot shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units.

17. Damages: Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such by any Owner and/or such Owner's contractors, subcontractors, builders, tenants or agents must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the Owner.

18. Architectural Development: The Developer shall maintain control of the architectural development of the Subdivision until such time that all Lots are sold and house construction is complete on all Lots. The Rules and Regulations governing said architectural control by the Developer until that time are attached hereto as Addendum "B", and are by this reference incorporated herein.

19. Severability: In the event that any provision, restriction, covenant or condition contained herein is found to be invalid by a court of competent jurisdiction, the remaining provisions, restrictions, covenants and conditions shall remain in full force and effect.

20. Duration: This Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of 10 years unless an instrument, signed by the then Owners of two-thirds (2/3) of the Lots, has been recorded agreeing to amend or terminate such Declaration.

21. Amended Declarations: This Declaration may be amended by a written document signed by the Owners of two-thirds (2/3) of the Lots in the Subdivision.

22. Exempt: The Developer is exempt from all constraints in this Declaration until such time as development of all Lots and construction of houses thereon are complete.

23. Remedies For Violation: In the event of a violation or breach of any provision of this Declaration by any

Owner, contractor, subcontractor, builder, tenant or agent, or any other person claiming by, through or under the Developer or by virtue of any judicial proceedings, the Developer and the other Owners, or any of them severally, shall have the right to proceed at law or in equity to compel compliances with the terms hereof, to prevent the violation or breach thereof, and/or to recover damages. In addition, the Developer shall have the right, whenever there shall be any violation or breach of one or more of the terms hereof, to enter upon the property whereon such violation or breach exists and summarily abate or remove the same at the Owner's expense, and any such entry and abatement or removal shall not be deemed a trespass; and a lien shall arise and be created in favor of the Developer and against the Owner's Lot for the full cost of such removal or abatement, which amount shall be due and payable in full within thirty (30) days after the Owner is billed for it. Should the Owner fail, neglect or refuse to pay, satisfy and discharge any such lien within said thirty (30) day period, the Developer shall have the right to interest thereon at the rate of eighteen percent (18%) per annum, which interest, and all costs to collect the same, including a reasonable attorney's fee, shall be added to the amount of said lien. The failure to promptly enforce any of the terms hereof shall not be deemed a waiver of the right to do so or otherwise bar their enforcement. A person who has violated or breached the terms hereof shall be liable for all costs and expenses, including a reasonable attorney's fee, that may be incurred by the Developer or the other Owners in enforcing the same or in pursuing any remedy provided herein or by applicable law, whether or not suit is instituted.

24. Definitions: As used herein:

(a) "Declaration" means this Declaration of Covenants, Conditions and Restrictions, including all addenda incorporated herein;

(b) "Developer" means McArthur-Jones Development Company, a joint venture of McArthur Brothers, L.C., a Utah limited liability Company, and H. Jones Construction, L.C., a Utah limited liability company;

(c) "Lot" means one of the subdivided lots of the Subdivision.

(d) "Owner" means the person or entity who is the owner of record (in the Office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a

deed of trust unless and until such property has acquired title pursuant to foreclosure or other arrangement or proceeding in lieu thereof. A contract purchaser in good standing shall be deemed an Owner. For purposes of enforcing the terms hereof and redressing any breach or violation of the same, all duties and obligations delegated by an Owner to a contractor, subcontractor, builder, tenant, agent or other person or entity, whether by contract or otherwise, shall nevertheless be deemed the duties and obligations of the Owner as well as the duties and obligations of such contractor, subcontract, builder, tenant, agent or other person or entity.

(e) "Subdivision" means the McArthur Heights Subdivision, as set forth in the subdivision plat on file in the Office of the County Recorder of Washington County Utah.


IN WITNESS WHEREOF, the undersigned, being the Developer, has hereunto set its hand this 29th day of April, 1994.

MC ARTHUR-JONES DEVELOPMENT COMPANY
Developer

By: [Signature]
Harry V. Jones, attorney-in-fact
for H. Jones Construction, L.C.,
Managing Venturer

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

SUBSCRIBED and SWORN to before me this 29 day of April, 1994.

[Signature]
NOTARY PUBLIC
Residing at: [Signature]


My Commission Expires:
11-26-95

ADDENDUM "A"

All that portion of **Section 21, Township 42 South, Range 15 West, Salt Lake Meridian, Washington County, Utah**, described as follows:

Commencing at the Center 1/4 Corner of said Section 21, thence South 00°30'20" East along the Center Section line 641.68 feet to an existing monument at the intersection of 2000 East and 450 North Streets; thence North 89°29'40" East 337.71 feet along the centerline of 450 North, said line also being the North line of "CIMARRON AT RED CLIFFS - PLAT C" to the Point of Beginning, thence North 89°29'40" East 171.77 feet to a 450.00 foot radius curve to the right; thence 74.81 feet along the arc of said curve through a central angle of 09°31'32" to a 450.00 foot radius reverse curve to the left; thence 1.71 feet along the arc of said curve through a central angle of 00°13'06"; thence South 00°30'20" East 655.65 feet to the North right-of-way line of 350 North Street, thence South 89°11'50" West along the said right-of-way line of 350 North Street, 247.93 feet to a point on the East Boundary line of "CIMARRON AT RED CLIFFS - PLAT C; thence North 00°30'20" West 663.41 feet along said boundary line to the Point of Beginning.

Basis of Bearing is North 00°30'20" West between the South 1/4 Corner and the Center 1/4 Corner of **Section 21, Township 42 South, Range 15 West, Salt Lake Base and Meridian**, as per Washington County Area Reference Map.

ADDENDUM "B"

RULES AND REGULATIONS
FOR ARCHITECTURAL CONTROL BY
MCARTHUR-JONES DEVELOPMENT COMPANY

While architectural controls must be maintained, the Developer does not intend to stifle innovative designs or architectural freedom. If any design elements of a prospective home appear to be in conflict with the controls or recommendations herein set forth, such conflicts must be resolved with the Developer and will, whenever possible, be resolved in favor of aesthetic and design quality. However, the Developer reserves the right to refuse to approve any plans or specifications based on any ground, including such aesthetic grounds as the Developer may, in its sole discretion, deem sufficient.

No construction may begin on any Lot in the Subdivision without the approval of the Developer and the issuance of a building permit by the City of St. George building inspector. A set of drawings and specifications with the Developer's Stamp of approval should be submitted to the building inspector to obtain a permit. This stamp of approval will be given upon compliance with all provisions stated in the Declaration and these Rules and Regulations and upon execution of the final agreement page of these Rules and Regulations by the Owner and/or contractor legally responsible for the project.

All terms used in these Rules and Regulations shall have the same meanings as those defined in the Declaration.

SECTION "A"

Three (3) Complete sets of plans shall be submitted by the Owner or contractor to the Developer and shall contain the minimum exhibits listed below. Two (2) sets will be stamped and returned, one for the St. George City building inspector and one for construction use.

1. SITE PLAN:
 - a. Scale 1/8" = 1' or 1" = 10'. Scale must be noted.
 - b. Indicate Lot number and street name.
 - c. Indicate setback from street (front yard minimum setback is 25 feet and side yards

minimum setbacks are 8 feet on one side and 10 feet on the other side, with no two 8 foot setbacks being contiguous).

- d. Indicate grade elevations at front corners of Lot and finished floor elevations.
- e. All finished floor elevations must be a minimum of twelve (12) inches above the crown of the road in front of the house. Finished floor elevations are to be consistent with existing homes on the adjacent Lots. (In instances where the contour of the land prohibits compliance, a special examination of the site will be made by the Developer and a determination will follow).
- f. Location of the HVAC unit shall be noted.

2. FLOOR PLAN:

- a. Scale 1/4" = 1' 0". Show over-all dimensions.
- b. Indicate window and door locations and sizes.
- c. Show location of all HVAC units, satellite dishes and any other mechanical and/or non-mechanical devices. Location of these items must be in the rear of the house or out of street view. (Special consideration will be given when rear installation is not feasible. In such a situation, the unit must be screened from the street view with materials compatible with materials used in the construction of the house.)

3. ELEVATIONS:

Scale 1/4" = 1' 0".

4. COLOR SCHEMES AND EXTERIOR MATERIALS:

- a. Colors shall be subdued earth tones. The color scheme should compliment the neighborhood. The Developer reserves the right to reject any scheme it deems not consistent with the area.
- b. The general design expressed in the front of the house must continue to each side elevation.
- c. Innovative designs used on the front of the house using stone, brick or other materials will be considered on an individual basis.

5. CONSTRUCTION AND MATERIALS WHICH ARE NOT
ACCEPTABLE:

- a. Log houses.
- b. Pre-manufactured houses.
- c. Metal and vinyl siding except when used on gables, soffits, facia and/or as accent.
- d. Earth or berm houses.
- e. Relocated houses.

6. ACCEPTABLE ROOFING MATERIALS:

Roofing materials must be slate, clay or concrete tile. The Developer may allow a tile facsimile at its discretion.

7. HEIGHT OF HOUSE:

- a. No house will exceed thirty five (35) feet from street frontage view.
- b. All houses proposed to be over one story in height will be examined by the Developer as to the aesthetic value for adjoining houses, lots and/or their views. The Developer has the right to restrict the height of a house if it unduly restricts a neighbor's view or if it is aesthetically unacceptable in the Developer's sole discretion.

8. SIZE OF HOUSE, LANDSCAPING, AND SPECIAL
RESTRICTIONS:

- a. The outside measurement of each house will not be less than thirteen hundred (1300) square feet on the main floor, exclusive of garages, porches, patios, and/or storage.
- b. All storage units, detached garages, etc., are to have the same design and materials as the main dwelling.
- c. All homes are to have as a minimum a two-car garage, attached or detached.
- d. Fences and swimming pools will follow the St. George zoning requirements.
- e. All required landscaping (as outlined in paragraph 8 of the Declaration) will be completed within 120 days after issuance of a Certificate of Occupancy.
- f. Campers, boats, pickups and other recreational and commercial vehicles must be kept in a garage or on a concrete (or other

suitable material) pad at the side or in the rear of the house.

- g. All walls around houses shall be of wood, masonry or chain-link materials and shall conform to the St. George zoning requirements.
- h. Blasting of any kind will not be allowed.

9. EASEMENTS:

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Structures of any kind are prohibited within these easements. Plants or other materials may be placed or permitted to remain within such easements which will not damage utilities, change the direction or flow of drainage channels in the easements, or obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility is responsible.

SECTION "B"

DURING THE COURSE OF CONSTRUCTION, EACH OWNER AND CONTRACTOR WILL COMPLY WITH THE FOLLOWING CONDITIONS AND AGREEMENTS.

1. A deposit of FIVE HUNDRED DOLLARS (\$500.00) will be included with each submittal by an Applicant for consideration by the Developer. FIFTY DOLLARS (\$50.00) will be used by the Developer to compensate for secretarial and bookkeeping fees and other expenses.
2. The remaining FOUR HUNDRED FIFTY DOLLARS (\$450.00) will be returned to the Applicant at the completion of the house and front yard landscaping, providing all of the conditions contained herein and in the Declaration have been met.
3. If any Developer inspections reveal any violations as noted in SECTION "A" above, a FIFTY DOLLAR (\$50.00) penalty violation shall be charged for each violation issued. A notification will be given requiring the situation to be rectified

within 24 hours, after which time, the Developer may impose an additional ONE HUNDRED FIFTY DOLLAR (\$150.00) penalty for expenses incurred in remedying the violation. Said penalties will be withdrawn from the Applicant's deposit or, if such deposit is insufficient, charged to the Applicant.

4. If a building deviation is found from the Applicant's approved plans and conditions of approval, a ONE HUNDRED DOLLAR (\$100.00) building deviation fine may be imposed against the Applicant, which shall be withdrawn from the Applicant's deposit or, if such deposit is insufficient, charged to the Applicant. All deviations and variances must be approved by the Developer in advance.
5. At completion of construction, the Owner or contractor will call for a final inspection by the Developer.
6. The remaining deposit will be refunded if it is determined that all provisions of the Declaration and these Rules and Regulations have been complied with, that the house plans as approved by the Developer have been followed, and that the premises have been cleaned up and the front yard has been landscaped.
7. If it is determined that any conditions have not been met, the Owner or contractor will be given thirty (30) days to comply, after which time the deposit will be forfeited and legal action may result.
8. No deposit refunds will be made after one hundred twenty (120) days from the date of completion. Date of completion is determined as the date final power is approved and turned on.
9. Issuance of the Developer's Stamp Of Approval obligates the Owner or contractor to carry construction to a stage of substantial completion within six (6) months from the date construction commenced. Substantial completion means that the exterior of the house is complete. After a building permit is issued, construction must be started within one hundred eighty (180) calendar days. Failure to start construction and/or failure to achieve substantial completion within

the above-stated time periods shall result in forfeiture of the deposit and, at the Developer's option, appropriate legal action.

10. Any penalty in excess of the remaining deposit which is charged to an Owner or contractor in accordance with the foregoing provisions shall constitute a lien in favor of the Developer and against the Owner's Lot for the full amount thereof, which amount shall be due and payable in full within thirty (30) days after the Owner or contractor is billed for it. Should the Owner or contractor fail, neglect or refuse to pay, satisfy and discharge any such lien within said thirty (30) day period, the Developer shall have the right to interest thereon at the rate of eighteen percent (18%) per annum, which interest and all costs to collect the same, including a reasonable attorney's fee, shall be added to the amount of said lien.