

SHADOW MOUNTAIN SUBDIVISION- PHASE 3

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS:

Whereas, the undersigned (hereafter "Developer") is the owner of certain real property located in St. George, Washington County, State of Utah, identified as **Shadow Mountain, Phase 3**, such property being more particularly described in Addendum "A" attached hereto and made a part thereof;

Whereas, Developer shall cause such property to be conveyed subject to certain protective covenants, conditions and restrictions as hereinafter set forth.

NOW THEREFORE, developer hereby declares that all of the properties described in Addendum "A" 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 properties. These covenants, conditions and restrictions shall run with the properties and shall be binding on all parties having or acquiring any right, title or interest in the properties and shall inure to the benefit of each such party.

1. Land Use and Building Type: No property shall be used except for residential purposes. No Building shall be erected, altered, placed or permitted to remain on any property other than one detached single-family dwelling not to exceed two stories in height. Every dwelling shall have as a minimum a two-car garage. 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, except that used brick may be used with the prior written approval of the Architectural Control Committee (hereafter referred to as the "Committee").

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 which may be or may become an annoyance or nuisance to the neighborhood. No lot shall be used for any illegal purpose. Any violation of these covenants shall be deemed a nuisance and shall be corrected immediately by the owner and if not corrected immediately shall be corrected by the architectural control committee at the owners expense.

4. Temporary Structures: No structure of a 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 property for sale or rent or identifying the home during construction.

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, in the opinion of the Committee, 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 materials or other objects are to be stored on any lot in view of the general public or neighboring lot owners.

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 or street side yards shall be planted in either grass or other ground cover acceptable to the Committee. 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 by the owner of said lots. Should excessive growth occur, the owner shall be notified of such condition and shall be given thirty (30) days to correct the same, after which time the Committee may order such correction affected, the expense of which shall be charged to the owner of the undeveloped lot or lots.

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 60 days of completion of buildings or improvements erected upon the subject lot. Any RV or other parking pad to be constructed to the side of the home/garage, must first be approved by the Architectural Control Committee and must not be visible from the street or from any other lot.

10. Storage of Materials: During construction and for a period of 60 days after completion, a lot may be used for the storage of materials used in the construction of the building or improvement. The total storage period shall not exceed 180 days unless specifically approved by the Committee.

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 unless otherwise approved by the Architectural Control

Committee. 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 as, in the opinion of the Committee, shall create a serious potential hazard or aesthetically offensive appearance. Fences and walls must be either concrete, block, brick, stucco, wrought iron, and in some cases PVC may be allowed. No wood or chain link fences will be allowed.

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 on a driveway or 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 accumulate upon any street or lot or road areas adjacent thereto. **No automobile, boat, 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.** The foregoing restriction shall not be deemed to prevent temporary parking for loading or unloading of such vehicles. No boats, trailers, buses, motor homes, campers, recreational vehicles or other such vehicles shall be parked or stored upon any lot except within an enclosed garage or on a cement pad behind the required front lot line set-back area and out of sight of neighboring lots and shall not be visible from the street. No vehicle shall be parked on the street in excess of 7 days in any 30 day period.

14. Commercial Activities Prohibited: Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind. Home offices may be an exception if approved by the architectural control committee.

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 which may change the direction of flow of drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. Any damage to existing surface and subsurface drainage systems shall be repaired to the standards of the City of St. George without delay, and the cost shall be borne by the party which has inflicted damage.

16. Re-subdivision of Lots: No lot in this subdivision shall be divided, subdivided, partitioned, parceled or broken up into small lots or units.

17. Damages: Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks, drainage pipes and such, by the purchaser or owner and/or their agents or builder 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.

18. Architectural Control Committee: The developer shall appoint an Architectural Control Committee (hereafter referred to as "The Committee") consisting of three persons, one of whom shall be knowledgeable in the area of residential development. The Developer shall have the power to create and fill vacancies on the Committee until the Developer shall relinquish this power or until 75% of the lots in the subdivision have been sold or when a structure has been constructed on 50% of the lots in **Shadow Mountain Subdivision, Phase 3** and such structures are occupied, whichever event first occurs. When the developer ceases to have this power, it shall give written notice of this event to each property owner and thereafter the property owners in **Shadow Mountain Subdivision, Phase 3** shall within 60 calendar days select new members of the Committee by one vote for each lot. The initial committee members shall be elected for terms of one, two, and three years each, and thereafter committee members shall be elected for terms of three years. No construction of any kind may occur without the written consent of the majority of the Committee.

No member of the Committee shall receive any compensation or make any charge for services rendered. The Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. The Committee shall meet as often as needed on a regular basis as determined by the Committee. The Committee shall have power, by majority vote, to promulgate rules and regulations to guide it in its activities. The initial rules and regulations, subject to amendment by the Committee, are attached as Addendum B. By majority vote of the property owners, by one vote for each lot, any rule or regulation may be amended, adopted or repealed.

19. Severability: In the event that any provision, restriction, covenant or condition 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.

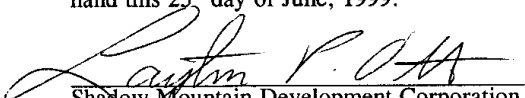
20. Duration: This Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of 10 years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

21. This Declaration may be amended by written document signed by the owners of two-thirds of the lots in the subdivision.

22. The Developer is exempt from all constraints in this Declaration.

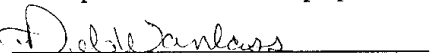
23. **Additional Property:** Additional property may be subjected to these covenants, conditions and restrictions by the Developer. The Developer shall indicate its intent to have such property bound by these covenants, conditions and restrictions on the plat of such property, or by recording an additional set of covenants, and thereafter such additional property shall be considered as part of the Property in all respects. This right of the Developer shall be assignable to one or more assignees.

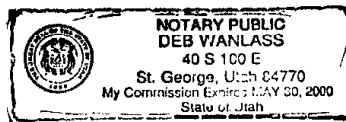
IN WITNESS WHEREOF, the undersigned, being the developer, has hereunto set its hand this 25th day of June, 1999.


 Shadow Mountain Development Corporation
 Layton P. Ott, President
 Developer

STATE OF UTAH)
) ss.
 COUNTY OF WASHINGTON)

On this 25th day of June 1999, before me personally appeared **Layton P. Ott**, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the president of **Shadow Mountain Development Corporation**, a Utah corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.

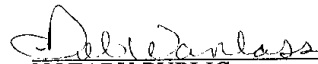

 NOTARY PUBLIC
 Address: St. George
 My Commission Expires: 5-30-2000

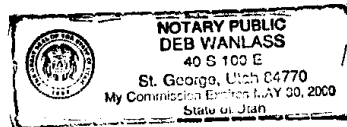




 Quentin Ence - Member
 QSE L.C.
 Developer

STATE OF UTAH)
)ss.
 COUNTY OF WASHINGTON)

On this 25th day of June, 1999, personally appeared before me **Quentin Ence**, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is a Member of **QSE L.C.**, a Utah limited liability company, and that the foregoing document was signed by him on behalf of said limited liability company being authorized and empowered to do so by the operating agreement of QSE L.C. and he did duly acknowledge to me that such limited liability company executed the same for the uses and purposes stated therein.



 NOTARY PUBLIC
 Address: St. George
 My Commission expires: 5-30-2000

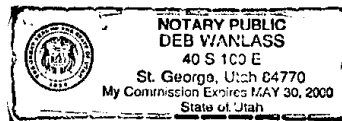




 Rodney T. Ence - Member
 Ence Associates L.C.
 Developer

STATE OF UTAH)
)ss.
 COUNTY OF WASHINGTON)

On this 25th day of June, 1999, personally appeared before me **Rodney T. Ence**, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is a Member of **Ence Associates L.C.**, a Utah limited liability company, and that the foregoing document was signed by him on behalf of said limited liability company being authorized and empowered to do so by the operating agreement of Ence Associates L.C. and he did duly acknowledge to me that such limited liability company executed the same for the uses and purposes stated therein.

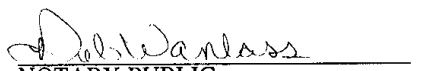

 NOTARY PUBLIC
 Address: St. George
 My Commission expires: 5-30-2000

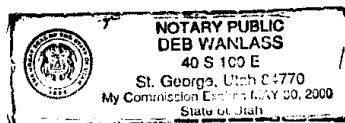



 Floyd G. Ence - Member
 Ence Associates L.C.
 Developer

STATE OF UTAH)
)ss.
 COUNTY OF WASHINGTON)

On this 25th day of June, 1999, personally appeared before me **Floyd G. Ence**, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is a Member of **Ence Associates L.C.**, a Utah limited liability company, and that the foregoing document was signed by him on behalf of said limited liability company being authorized and empowered to do so by the operating agreement of Ence Associates L.C. and he did duly acknowledge to me that such limited liability company executed the same for the uses and purposes stated therein.


 NOTARY PUBLIC
 Address: St George
 My Commission expires: 5-30-2000



ADDENDUM "A"

Beginning at a point being South 89°28'01" East 2070.65 feet along the Section line and South 233.97 feet from the North Quarter Corner of Section 26, Township 42 South, Range 16 West, Salt Lake Base and Meridian, said point also being the common corner of Shadow Mountain Subdivisions Phase I, II, and IV-B, as recorded in the Office of the Washington County Recorder and running thence along the East Boundary Line of 'Shadow Mountain Subdivision - Phase IV-B' as recorded in Office of the Washington County Recorder South 00°31'59" West 450.00 feet to a point on the Northerly boundary of 'Shadow Mountain Subdivision - Phase VII' as recorded in the Office of the Washington County Recorder; thence along the boundary of said Subdivision for the following six courses: South 89°28'01" East 70.73 feet; thence North 74°22'04" East 108.66 feet; thence South 15°37'56" East 168.08 feet to a point on a 621.00 foot radius curve to the right (Center Bears North 15°37'56" West); thence Southwesterly along the arc of said curve 26.02 feet through a central angle of 02°24'03"; thence South 13°13'53" East 100.00 feet to a point on a 721.00 foot radius curve to the left (Center Bears North 13°13'53" West); thence Northeasterly along the arc of said curve 551.48 feet through a central angle of 43°49'30" to a point on the Southerly boundary of 'Shadow Mountain Subdivision - Phase VI' as recorded in the Office of the Washington County Recorder; thence along the boundary of said Subdivision for the following six courses: North 57°03'23" West 100.00 feet; thence North 38°38'22" West 52.96 feet; thence North 58°44'08" West 110.00 feet; thence North 26°23'52" East 78.22 feet; thence North 16°39'52" East 78.22 feet; thence North 00°31'59" East 74.79 feet to a point on the South boundary of 'Shadow Mountain Subdivision - Phase II' as recorded in the Office of the Washington County Recorder; thence along said boundary line North 89°28'01" West 501.12 feet to the point of beginning.

ADDENDUM "B"**RULES AND REGULATIONS OF THE
ARCHITECTURAL CONTROL COMMITTEE**

While the controls exercised by the Architectural Control Committee (hereafter referred to as the "Committee") must be maintained, the Committee 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 set forth, such conflicts must be resolved by the Committee and will, whenever possible, be resolved in favor of aesthetic and design quality.

The guidelines and restrictions contained herein are consistent with the provisions of the recorded covenants of Shadow Mountain subdivision. The protective covenants for Shadow Mountain are on record in the office of the Recorder, Washington County, Utah, at 197 East Tabernacle, St. George, Utah. Any violations of these guidelines, or the restrictions or protective covenants may result in required changes to floor plans, colors, materials, etc. at the owner's and/or contractor's expense.

No construction may begin in Shadow Mountain without the issuance of a building permit issued by the City of St. George building inspector. A set of drawings and specifications with Shadow Mountain stamp of approval must 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 protective covenants and conditions and these rules and regulations and by execution of the final agreement page of these rules by the owner and/or contractors legally responsible for the project.

SECTION "A"

Three (3) complete sets of plans shall be submitted to the Committee and shall contain the minimum exhibits as listed below. Two (2) sets will be stamped and returned, one for the City Building Inspector and one for construction use.

A. SITE PLAN

1. Show scale and over-all dimensions.
2. Indicate lot number and street name.
3. Indicate setback from street (front yard minimum setback is 25 feet and side yards minimum setbacks are 8 feet and 10 feet).
4. Indicate grade elevations at front corners of lot and finished floor elevations.
5. All finished floor elevations must be a minimum of twelve (12) inches above the crown of the road of the front street elevations. 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 Committee and a determination

will follow.

6. Location of the HVAC unit shall be noted. No HVAC unit will be placed on the roof.

B. FLOOR PLAN

1. Show scale and over-all dimensions.
2. Indicate window and door locations and sizes.
3. 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).

C. ELEVATIONS

1. Note scale on plan.

D. COLOR SCHEMES AND EXTERIOR MATERIALS

1. Stucco colors shall be white or subdued earth tones. The color scheme should compliment the neighborhood. The Committee reserves the right to reject any scheme it deems not consistent with the area.
2. The general design expressed in the front of the house must continue to each side elevation and to all out buildings.
3. Innovative designs used on the front of the house using stone, brick or other materials will be considered on an individual basis.

E. CONSTRUCTION AND MATERIALS WHICH ARE NOT PERMITTED

1. Log house.
2. Pre-manufactured houses.
3. Earth or berm houses.
4. Re-located houses.
5. Wood, vinyl or aluminum siding.

F. ACCEPTABLE ROOFING MATERIALS

1. Roofing materials must be slate, clay or concrete tile.

G. HEIGHT OF HOUSE

1. No house will exceed **thirty-five** feet from street frontage view.
2. All houses proposed to be over one story in height will be examined by the Committee as to the aesthetic value for adjoining houses, lots and/or their views. The Committee has the right to restrict the height of a house if it unduly restricts a neighbors' view.

H. SIZE OF HOUSE, LANDSCAPING, AND SPECIAL RESTRICTIONS

1. The outside measurement of each house containing a single level, or of each house containing a ground level and a basement level, will not be less than eighteen hundred (1800) square feet on the main floor, exclusive of garages, porches, patios, and/or storage. The main floor of a two story home, exclusive

of garages, porches, patios, and/or storage, will not be less than 1250 square feet.

2. All storage units, detached garages, etc., are to have the same design and materials as the main dwelling.
3. All homes are to have a minimum two car garage attached or detached.
4. Fences and swimming pools will follow the St. George zoning requirements.
5. All required landscaping (as outlined in #8 of the Declaration) will be completed within 120 days after the date of occupancy.
6. Campers, boats, pickups, hot rods, and/or other recreational and commercial vehicles must be kept in a garage or on a concrete (or other suitable material) pad at the side behind the setback or in the rear of the house, and located out of view from the street or neighboring lots.
7. All walls around houses shall be of masonry materials and shall conform to the St. George zoning requirements. No chain link or wire fences/walls will be allowed.
8. Blasting of any kind will not be allowed.
9. In order to maintain the integrity of the project, no roof-top mounted air conditioning or heating equipment, or any other such device will be allowed.
10. Basements: A geo-technical investigation was performed by Southwest Testing in a report dated July, 1994. This report is available from the developer and a copy is on file with the City of St. George. Owners, builders and contractors should become familiar with this report and comply with its recommendations. In addition, due to the varying level of the underground water table in the subdivision, all basements must be constructed in accordance with the recommendations of a geo-technical engineer on a lot by lot basis. Ground water encountered during construction of basements, or at any other time, shall not be permitted to be discharged into the curb and gutter and roadway drainage system or sanitary sewer system but must only be discharged into a ground water drainage system.

I. EASEMENTS

Easements for installation and maintenance of utilities, drainage and trail facilities are reserved as shown on the recorded plat. Structures of any type are prohibited within these easements. Plants or other materials may be placed or permitted to remain within such easements which will not damage utilities, or which will not 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, APPLICANT AND CONTRACTORS WILL COMPLY WITH THE FOLLOWING CONDITIONS AND AGREEMENTS:

- a. Daily. All garbage and construction materials must be kept in a container.
- b. Daily. No material may be stored, piled or put on any adjacent lots, roads

or natural areas.

c. Daily. The volume of stereos, radios or any equipment must be maintained at a low level that does not disturb the quiet, peace and enjoyment of adjoining property owners or the surrounding neighborhood.

d. Daily. All vehicles must drive over the curb and gutter and sidewalks of the lot under construction. Driving on adjacent lots without the owners written permission is prohibited. Any and all damage caused by vehicles to adjacent lots will be repaired by the owner of the lot under construction even if a sub-contractor caused the damage.

e. Daily. No material may be removed from adjacent lots or natural areas without written permission of the lot owner.