HEN RECORDED RETURN TO: Doug Shumway MILLER HARRISON 5292 S. College Dr. #304 Murray, UT 84123

FIFTH AMENDMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MARRCREST PLANNED UNIT DEVELOPMENT

This FIFTH AMENDMENT of Covenants, Conditions, and Restrictions for Marrcrest Planned Unit Development (hereafter referred to as the "Amended Declaration") is made on the date executed below by Marrcrest Homeowners Association, Inc., a Utah nonprofit corporation (the "Association").

RECITALS

- A. Marrcrest is a planned unit development located in the City of Provo, Utah County, Utah, more fully described by the legal description in Exhibit A (hereafter referred to as the "Project");
- B. Marrcrest is governed by the first recorded Declaration of Restrictive and Protective Covenants and Conditions of Marrcrest Planned Unit Development recorded on March 8, 1968, as Entry No. 2355 in Book 1105 Page 72, in the Utah County Recorder's Office. This declaration is referred to herein as the "Original Declaration;"
- C. The Original Declaration was amended by the Amendment recorded on September 27, 1968, as Entry No. 9638 in Book 1122 Page 454, in the Utah County Recorder's Office.
- D. A second amendment to the Original Declaration, titled the Amendment to the Declaration of Restrictive and Protective Covenants and Conditions of Marrcrest Planned Unit Development, was recorded on December 27, 1968, as Entry No. 12928 in Book 1132 Page 245, in the Utah County Recorder's Office.
- E. The Original Declaration was amended a third time by the Amendment recorded on October 26, 1971, as Entry No. 14355 in Book 1243 Page 21, in the Utah County Recorder's Office.

F. The Original Declaration was amended a fourth time by The Amendment to the

Declaration of Restrictive and Protective Covenants and conditions of Marrcrest Planned Unit Development recorded on January 31, 2006, as Entry No. 12259:2006, in the Utah County Recorder's Office.

- G. This Amended Declaration shall be binding against all Lots within the Project as described in Exhibit A;
- J. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Amended Declaration and Bylaws;
- K. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit A and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;
- L. The signers of this document, including the President and Secretary of the Association, certify that this Amended Declaration was approved by the affirmative vote of at least 67% of the total votes of the Lot Owners in the Association as required by Section 57-8a-104 of the Utah Code.

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following AMENDMENTS to the covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

1. Amendment of ARTICLE I, Section 8 which presently reads as follows:

"Tract shall be considered in two classifications, namely dwelling units and Common Area. Dwelling units shall confirm to the basic overall plan for the Properties in that the Lots designed for single family dwellings shall have been constructed upon them single family dwellings and not more than a three car garage. Lots shown on the overall plan as doubles shall have constructed upon them two family dwelling units with individual garages of not more than three car capacity each, or may have constructed upon them single family dwellings and not more than a three car garage. Lots shown on the overall plan as triples shall have constructed upon them three family dwelling units with individual garages of not more than three car capacity each or may constructed upon them two family dwelling units with individual garages of not more than three car capacity each, or may have constructed upon them single family dwellings and not more than a three car garage."

ARTICLE I, Section 8 shall be amended remove the three car garage limitation and shall read as follows:

"Tract shall be considered in two classifications, namely dwelling units and Common Area. Dwelling units shall confirm to the basic overall plan for the Properties in that the Lots designed for single family dwellings shall have been constructed upon them single family dwelling. Lots shown on the overall plan as doubles shall have constructed upon them two family dwelling units with individual garages of not more than three car capacity each, or may have constructed upon them single family dwellings and not more than a three car garage. Lots shown on the overall plan as triples shall have constructed upon them three family dwelling units with individual garages of not more than three car capacity each or may constructed upon them two family dwelling units with individual garages of not more than three car capacity each, or may have constructed upon them single family dwellings and not more than a three car garage."

2. Amendment of Article III, Section 1 (e) which presently reads as follows:

"(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by the members entitled to cast two-thirds (2/3) of the votes of Class A Membership and two-thirds of the vote of Class B Membership, if any, has been recorded, agreeing to such dedication or transfer, unless written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance."

Article II, Section 1 (e) shall be amended to (i) remove Class B in that there are no Class B members (ii) allow a transfer of the Common Are to any person and (iii) to allow the instrument transferring any such transfer to be executed duly authorized officers of the Association by the Board of Directors following a vote of the Members, and shall read as follows:

"(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any person, public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless members entitled to cast two-thirds (2/3) of the votes of the Membership have approved such dedication or transfer, after written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance, and an instrument signed by duly authorized officers by the Board of the Association has been recorded, agreeing to such dedication or transfer."

IN WITNESS WHEREOF, the Board has duly authorized officers.	caused this Declaration to be executed by its
DATED:	
Signed	
By (print):	
President - Marrcrest Homeowners Association	
STATE OF UTAH) :ss. County of)	
	, 2025, personally appeared before me
President of the Association authorized to execurequired number of Owners have approved it.	
	NOTARY PUBLIC

Exhibit A

Legal Description

Commencing 1093.62 feet South along the Section line and 84.72 feet South 4° 01' 40" East 128.23 feet of the Northeast corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base & Meridian; thence as follows: South 4° 01' 40" East 429.50 feet along West boundary of U.S. Highway 189; South 2° 04' 10" East 160.57 feet along chord of 2789.79 foot radius curve 160.58 feet;

North 89° 48' 20" West 417.35 feet along fence line;

South 89'° 51' 10" West 88.18 feet along fence line;

North 130.17 feet;

South 85° 26' East 4.83 feet;

North 1° 34' East 133.55 feet;

South 89° oo' East 73.50 feet;

North 84° 10' East 87.00 feet;

South 88° 57.5' East 149.04 feet;

North 6° 55' East 10.5 feet;

North 7° 50' West 83.00 feet;

North 9° 46' East 126.00 feet;

North 32° 25' East 68.50 feet;

North 12° 52' East 41.00 feet;

North 89° 00' East 95.00 feet to point of beginning

Exhibit B

Bylaws of Marrcrest Homeowners Association

1. BYLAW APPLICABILITY/DEFINITIONS

1.1. Definitions

The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

1.2.Bylaw Applicability

The provisions of these Bylaws are binding upon the Association, Owners, guests, invitees, agents, and residents. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

2. ASSOCIATION

2.1.Composition

All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Association. Except for matters specifically reserved for a vote of the Owners, the Board, on behalf of the Owners, shall administer the Association's affairs.

2.2.Annual Meeting

Annual meetings shall be held once a year. The Board shall determine the date, time, and place of the annual meeting. The Association shall send notice of annual meetings at least 10 days but not more than 60 days in advance of the meeting. At the annual meeting the Association shall conduct the following business in any order the Board sees fit:

- 2.2.1. Roll call and enumeration of quorum;
- 2.2.2. Approval of minutes from preceding annual meeting;
- 2.2.3. Reports of officers;
- 2.2.4. Special committee reports;
- 2.2.5. Election of Directors;
- 2.2.6. Review of reserve analysis;
- 2.2.7. Unfinished business from preceding annual meeting; and
- 2.2.8. New business.

2.3. Special Meeting

Special meetings may be held at any time for any purpose. A special meeting may be called by a majority of the Directors or upon petition of at least 20% of the Owners in good standing. The Association shall schedule and send notice of a special meeting within 30 days of request. The notice of a special meeting shall state the date, time, place, and purpose of the meeting. The Association shall send notice of a special meeting at least 10 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice.

2.4.Place of Meeting

Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Utah County.

2.5. Conduct of Meeting

The President shall preside over all meeting of the Association. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

2.6.Quorum

For any votes required under Section 5.5 or Section 10.1.2 of the Declaration, 60% of the Owners in good standing, whether in person or by proxy, shall constitute a quorum. However, if a quorum is not present or represented at a meeting, the Owners present at the meeting shall have the power to adjourn the meeting, without notice other than by announcement at the meeting, until a quorum shall be present or represented. A reconvened meeting may take place at any time provided that at least 30% of the Owners are present in person or by proxy. If 30% of the Owners are not present at the reconvened meeting, the Owners present at the reconvened meeting shall have the power to once again adjourn the meeting by announcement and reconvene for a third time, at which point a quorum shall be the Owners in good standing and present in person or by proxy at the third meeting.

For any other meeting of the Owners under the Governing Documents, a quorum shall be the Owners in good standing present in person or by proxy at a meeting.

2.7.Voting

Owners in good standing shall have one vote per Lot.

If a Lot is owned by more than one Person and multiple Owners are present at a meeting, the vote appertaining to that Lot shall be cast by agreement of a majority of the Owners. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. The Association may conclusively presume the consent of all a Lot's Owners when a vote is cast by a Lot with multiple Owners.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of Directors, any decision requiring Owner consent shall be passed by majority vote of a quorum.

2.8.Good Standing

An Owner shall be in good standing if voting rights have not been suspended pursuant to Declaration Sections 5.11 or 8.2.4, and if the Owner has paid all delinquent assessments, including all levied late fees, interest, fines, collection costs, and attorney fees. An Owner must have paid in full at least three days prior to the meeting or action and the receipt and clearance of such amounts have been verified by the Association.

2.9.Proxies

An Owner in good standing may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Association in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxy's name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation delivered to the Association, a subsequent proxy appointment, notice of death or incapacity of the Owner, or the passage of 11 months.

2.10.Mail-in Ballots

Actions requiring a vote of the Owners may be taken by any method prescribed by the Board and allowed under Utah Law, including the procedures set forth for mail-in ballots in Section 16-6a-709 of the Nonprofit Act, as amended from time to time. If votes are taken electronically, the Board shall enforce measures to affirm the identity of all voters. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

2.11. Written Consent in Lieu of Vote

Any action requiring a vote of the Owners, except election of Directors, may be taken by written consent. Action by written consent shall comply with the procedures set forth in Nonprofit Act Section 16-6a-707, as amended from time to time. Directors may only be elected by written consent if unanimous written consent of all members entitled to vote is given. Written consents may be collected electronically.

2.12.Record Date

The record date for determining which people are entitled to vote shall be the date notice of the meeting or action is sent. The Board may change the record date prior to sending notice of the action. The Owners shown on the records of the Association on the record date shall be the people entitled to vote on an action.

3. BOARD OF DIRECTORS

3.1. Number and Qualification of Directors

There shall be either three, five, or seven Directors. The exact number of Directors shall be decided by the Board by rule. Directors must be Owners in good standing.

3.2. Election and Term of Directors

Directors shall serve for a term of two years and shall serve until their successors have been elected. No Owner may serve more than three consecutive terms as a Director. An Owner who has served three consecutive terms as a Director may not serve as a Director again until after they have been off the Board for the duration of one term. Directors terms shall be staggered as follows: (i) two Directors, if three or five Directors are serving, and four Directors, if seven Directors are serving, shall be elected in years ending with an even number; and (ii) the remaining Director shall be elected in years ending with an odd number. If the term of Directors is uncertain, the newly elected Directors shall determine their terms.

3.3. Vacancies

Director vacancies, for any reason other than removal by vote of the Association, shall be filled by vote of a majority of the remaining Directors. The Board shall conduct a special meeting for the purpose of filling the vacancy. The meeting shall be valid even if a quorum, as defined in Section 3.9 is not present. Each replacement Director shall serve until the next annual Owners' meeting, then the vacancy shall be filled by vote of the Owners. The replacement Director elected by the Owners shall serve the remaining term of the replaced Director. During the vacancy, the Board shall have the same powers as during the time when a full Board is sitting so long as a majority of the sitting Board, or a higher number if otherwise required by the Governing Documents, approves the matter in accordance with the Governing Documents.

3.4.Removal of Directors

A Director may be removed with or without cause by vote of a majority of a quorum of Owners. If the Owners propose to remove a Director, the Association shall give the Director and Owners

at least 15 day written notice of the meeting and the purpose of the meeting. The Director shall be given an opportunity to be heard at the meeting prior to the vote to remove him. At any meeting where a Director is removed by the Owners, the Owners must vote to replace the Director. The replacement will serve the remaining term of the removed Director.

Any Director who allows his assessments to become more than 90 days past due may be removed and replaced by vote of a majority of the Board. The Board shall give the Director 10 day written notice to cure the default prior to voting to remove the Director.

3.5.Organization Meeting

The Directors shall hold a meeting following the annual owners meeting for the purpose of electing officers. Notice of the organization meeting shall be given verbally at the annual meeting. The organization meeting shall be conducted at the next regular meeting of the Board or may be conducted at a special meeting.

3.6. Regular Meetings

The Board shall hold regular meetings. The Board shall determine frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Director at least three days prior to the meeting.

3.7. Special Meetings

A Director may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

3.8.Conduct of Meetings

The President shall preside over all meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

3.9.Quorum

A majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. If less than a quorum is present at a meeting, the majority of those present may adjourn the meeting until such time as a quorum is present. Once established, a quorum will be present even if Directors leave. Directors may attend a meeting telephonically.

3.10. Notice and Waiver of Meeting Notice

Notice to Directors may be personally delivered, mailed, or delivered by any available electronic means, including, without limitation: text, email, and fax. Directors may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Director at a meeting will be considered a waiver of notice, unless the Director attends to dispute notice. If all Directors are present at a meeting, notice of the meeting is waived and any business may be conducted.

3.11. Action without Meeting

Any action by the Board may be taken without a meeting if all the Directors submit a written vote either for, against, or abstaining from the action. Written votes may be given in person, by mail, or electronically. The Association shall file the written votes with its record of minutes.

3.12. Powers and Duties

The Board shall manage the affairs and business of the Association. The Board is vested with all

power and authority necessary to administer the affairs of the Association in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law.

Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority:

- 3.12.1. Prepare an annual budget and establish what constitutes a Common Expense;
- 3.12.2. Adopt and amend rules, regulations, policies, and procedures governing the Common Areas, Lots, Living Units, administration of the Association, and to enforce and interpret the Governing Documents;
 - 3.12.3. Delegate authority to a managing agent to act on behalf of the Association;
- 3.12.4. Provide for the maintenance, repair, and replacement of the Common Areas and specific components of the Lots and Living Units within the Project as delineated in this Amended Declaration or by rule, as the same may be amended from time to time;
- 3.12.5. Hire, contract for, and terminate personnel or contractors necessary for the maintenance repair and replacement of the Common Areas, exterior of Living Units, specific components of the Lots and Living Units within the Project as delineated by this Amended Declaration or by Rule, and administration of Association business. Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Association;
- 3.12.6. Open and maintain bank accounts on behalf of the Association. Designate authorized signers for the bank accounts;
 - 3.12.7. File lawsuits or initiate other legal proceedings on behalf of the Association;
- 3.12.8. Defend lawsuits, administrative actions, and other legal proceedings against the Association:
- 3.12.9. Pay costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;
 - 3.12.10. Keep books with detailed accounts of the receipts and expenditures of the Association. Make the books available to the Owners as required by the Community Association Act and Nonprofit Act. The books shall be kept in accordance with generally accepted accounting practices. Upon resolution by the Board, retain an independent auditor to audit the books;
- 3.12.11.Grant easements, licenses, or permission over, under, and through the Common Areas;
 - 3.12.12.Upon approval by 67% of the ownership interest in the Common Areas, to convey Common Areas;
 - 3.12.13.Create committees;
 - 3.12.14. Prepare, authorize, approve, and adopt a reserve study and budget;

3.12.15. Upon approval of a majority of the Owners, to take out necessary loans to cover emergency Association expenses costing in excess of 20% of the annual budget;

3.12.16. Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act;

3.12.17. Any act allowed or required to be done in the name of the Association.

3.13.Manager

The Board shall employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed in Bylaw Sections 3.12.2, 3.12.6, 3.12.7, 3.12.8, 3.12.11, 3.12.12.

3.14.Compensation

Directors shall not be compensated for their work. However, Directors may seek reimbursement for actual costs and mileage incurred during their service.

3.15.Limitation of Liability

The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Association shall indemnify and hold the Directors harmless against liability to third parties for actions taken on behalf of the Association, while acting in their capacity as Director, unless the action constitutes willful misconduct or criminal conduct.

4. OFFICERS

4.1. Election and Term of Officers

The Board shall elect the officers of the Association. Officers shall be elected from the Directors. Officers shall serve one-year terms and shall serve until their successor is elected.

4.2. Removal of Officers

The Board may remove any officer with or without cause by affirmative vote of a majority of a quorum of the Board. If an officer is removed, the Board shall replace him.

4.3.Officers

The Association officers shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers, who need not be Directors, as it may deem necessary. Except for the president, the same person may hold two offices.

4.3.1. President

The president shall be the chief executive officer. He or she shall preside at meetings of the Association and the Board. He or she shall be an unofficial member of all committees. He or she shall have general and active management of Association business. He or she shall see that all resolutions and policies of the Association are executed.

4.3.2. Vice President

The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the Board shall appoint a Director to fulfill the duties on an interim basis.

4.3.3. Secretary

The secretary shall attend all meetings and take minutes thereof. He or she shall also make record of all resolutions, rule, policies, and procedures. He or she shall give or cause to be given notice of all meetings. He or she shall compile or cause to be compiled a complete list of the owners and their contact information.

4.3.4. Treasurer

The treasurer shall oversee the finances of the Association. He or she shall be responsible to ensure that the Association has full and accurate records of income and expenses. He or she shall give financial reports at regular Board meetings and the annual Owners' meeting.

4.4. Delegation of Duties

The Association officers may delegate any of their duties to a manager or to committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are being properly discharged.

4.5. Compensation

Officers shall not be compensated for their work. However, officers may seek reimbursement for actual costs and mileage incurred during their service.

5. NOTICE

5.1. Manner of Notice

All notices and other communications required under the Governing Documents shall be in writing.

- 5.1.1. Notices to Owners may be delivered using the following methods:
- **5.1.1.1.**By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Association:
- **5.1.1.2.**By hand to the address of the Lot or to any other address designated by the Owner in writing to the Association;
- **5.1.1.3.**By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Association or used by the Owner to communicate with the Association.
- 5.1.2. An Owner may request that they receive notice under the Governing Documents via mail or hand delivery, pursuant to Sections 5.1.1.1 or 5.1.1.2 above. Any such request must be made to the Board in writing to be honored.
 - 5.1.3. Notice to the Association may be delivered using the following methods:
 - **5.1.3.1.**By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Association as designated in writing to the Owners; or
 - **5.1.3.2.** By facsimile, electronic mail, or any other electronic means to the

Associations official electronic contact as designated in writing to the Owners.

5.1.3.3.Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

5.2. Waiver of Notice

Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

6. FINANCES

6.1. Fiscal Year

The fiscal year of the Association shall be the calendar year.

6.2.Checks, Agreements, Contracts

All checks, contracts, deeds, leases, and other instruments used for expenditures or obligations may be executed by any person authorized by the Board.

6.3. Availability of Records

Association financial records shall be available as provided by the Community Association Act and Nonprofit Act.

7. AMENDMENT TO BYLAWS

7.1. Amendments

These Bylaws may be amended by the Board, unless it would result in changing the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. These Bylaws may also be amended by a majority vote of a quorum of the Owners.

7.2. Recording

Any amendment to these Bylaws shall become effective on the date it is recorded in the Utah County Recorder's Office.

8. MISCELLANEOUS

8.1.Office

The principal office of the Association shall be located at any place within the State of Utah which may be designated from time to time by the Board.

8.2.Conflicts

The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Map, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Association.

8.3. Severability

If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

8.4. Waiver

No provision of these Bylaws shall be deemed to be waived because of a failure to enforce the provision.

8.5. Captions

The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.

8.6.Gender, etc.

Whenever the context so requires, the singular shall include the plural and vice versa. The use of any gender shall include all genders.

IN WITNESS WHEREOF, the Board has caused these Bylaws to be executed by its duly authorized officers.

President - Marrcrest Homeowners Associatio	r