

DECLARATION
OF RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS
OF MARRCREST PLANNED UNIT DEVELOPMENT

M. WARNER MURPHY and CORALEE A. MURPHY, husband and wife, the owners of record of the real property hereinafter described by meets and bounds in Exhibit "A" attached hereto and made a part hereof by this reference the same being the real property now duly platted as "MARRCREST PLANNED UNIT DEVELOPMENT", a subdivision of the city of Provo, Utah County, State of Utah, and on file in the office of the Recorder of Utah County, State of Utah, hereby make the following declarations as to limitations, restrictions and uses to which the lots and/or tracts constituting said addition may be put, hereby specifying that said declaration shall constitute covenants to run with all of the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations upon all future owners in said addition, this declaration of restriction being designed for the purpose of keeping said addition desirable, uniform and suitable in architectural design and use as herein specified.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to MARRCREST HOME OWNERS' ASSOCIATION, a non-profit corporation of the State of Utah, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain

real property hereinabove referred to, and to such additional property as may hereafter be added by addendum hereto and described in additional exhibits.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association .

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to M. WARNER MURPHY and CORALEE A. MURPHY, his wife, and their heirs, successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. Tract property shall be considered in two classifications, namely, dwelling units and Common Area. Dwelling units shall conform to the basic overall plan for the Properties in that Lots designed for single family dwellings shall have 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 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.

ARTICLE II

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

ARTICLE III

VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those owners as defined in Article II with exception of the Declarant. Class A. Members

shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members, however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Members shall be the Declarant. The Class B. Members shall be entitled to three (3) votes for each Lot in which he or she holds the interest required for membership by Article II, provided that the Class B. Membership shall cease and be converted to Class A. Membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B. Membership, or

(b) On April 1, 1980

ARTICLE IV

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions.

(a) The right of the Association to limit the number of guests of members and to limit parking of vehicles on the streets.

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(c) The right of the Association, in accordance with its Articles and By-Laws to borrow money for the purpose of improving

the Common Area and facilities and in aid thereof to mortgage said property.

(d) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid and for a period not to exceed 180 days for any infraction of its published rules and regulations; and

(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 purposes 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 members entitled to cast two-thirds (2/3) of the votes of the Class A Membership and two-thirds (2/3) of the votes of the Class B Membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for themselves, their heirs and assigns, that they will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, at or before the time when the whole project is completed and until such time the members of the Association shall have the use and benefit of such Common Area.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association, except as hereinafter described (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. EXCEPTION: Any owner of a double unit site (two (2) Lots) who elects to build a single living unit residence on those lots shall then be considered to have one ownership, one assessment, and one vote.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and main-

tenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty (\$120.00) Dollars per Lot. From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the appropriate expenditure record of the previous year adjusted in accordance with expected expenditure for the following year. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount sufficient to fulfill the needs of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the

meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 6. Quorum for Any Action Authorized Under Section 4. At the First meeting called, as provided in Section 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty per cent (60%) or all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates: The annual assessments provided for herein shall commence as to all Lots on the date fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified

Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 6½ per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property and interest, costs, and reasonable attorney's fees of any such actions shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject

to this Declaration shall be exempt from the assessments created herein (a) All properties dedicated to and accepted by local public authority; and (b) the Common Area. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Neither the members of such committee, nor its designated representative(s) shall be entitled to any compensation for services performed pursuant to this Covenant. The powers and duties of such committee, and of its designated representative, shall cease on and after January 1, 1998. Thereafter, the approval described in this Covenant shall not be required unless prior to said date and effective thereon a written

instrument shall be executed by the then record owners of a majority of the Lots in the Properties and duly recorded appointing a representative, or representatives, who shall thereafter exercise the same powers previously exercised by said committee.

ARTICLE VII

EXTERIOR MAINTENANCE

In the event the owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VIII

NEW BUILDING AND PROCEDURE

To maintain a degree of protection to the investment which home owners in this development may make, homes of superior design are requisite. Designs shall be limited to those prepared by architects licensed to practice in the State of Utah, or by designers of outstanding ability whose previous work may be reviewed as a part of the approval process. PRELIMINARY DRAWINGS (To be filed for approval and acceptance before further work is begun) shall include as minimum the following:

1. Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
2. Floor plans of each floor level to scale.

3. Elevations to scale of all sides of the house.
4. A perspective (optional)
5. Outline specifications giving basic structure system and materials used, with specific descriptions of all materials to be used on the exterior of the buildings.

An owner whose plans are rejected shall meet with the Committee at the Committee's invitation where he shall be informed of the nature of the cause of the action so that he can take the steps necessary toward obtaining approval of his plans.

Finally, the Committee has the authority to judge buildings, materials, fences, planting, etc., on whatever basis available to it with the aim of preserving what it feels are the best interests of the property Owners represented. These shall include aesthetics, reasonable protections of view, permance of materials, etc. All decisions of the Committee shall be final.

ARTICLE IX

USE RESTRICTIONS

No building shall be located nearer than twenty (20) feet to an adjoining building except that a garage or carport will be allowed within fifteen (15) feet of another building. In no case shall a residence be constructed closer than ten (10) feet to the lot line, nor a garage or carport closer than seven and one-half (7½) feet to the lot line.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat, all power and telephone lines must be run underground.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time, either temporarily or permanently, provided, however, during actual construction on the Lot the contractor or builder may have reasonable temporary structure or device.

No individual sewage-disposal system shall be permitted on any Lot.

No building material of any kind or character shall be placed or stored on any Lot until the owner thereof is ready to commence improvements, and the material shall be placed within the property lines of the plot upon which the improvements are to be erected, and shall not be placed in the streets.

No garage or other buildings whatsoever shall be erected on any Lot until a dwelling building shall be erected thereon.

No fowl, animals or other creatures other than the usual and common household pets in reasonable numbers shall be kept on any lot nor within any building in said Planned Unit Development.

No trash, ashes or any other refuse may be dumped or thrown on any Lot hereinbefore described or any part or portion thereof. All homes must subscribe to Provo City garbage disposal service.

Any tenant renting with MARRCREST PLANNED UNIT DEVELOPMENT who engages in noxious or offensive activity may be expelled on thirty (30) days notice upon majority vote of the Board of Directors of the Association. (This restriction shall take precedence over leases and rental agreements.)

No signs, bill boards or advertising structures may be erected or displayed on any of the Lots hereinbefore described,

or parts or portions thereof, except that a single sign, not more than 2 x 3 feet in size, advertising a specific unit for sale or house for rent, may be displayed on the premises affected. Also, during the period of development, the owners shall be given the right to erect a sign or signs larger than herein specified on any or all Lots.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration to either prevent violations or to recover damages for such violations. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and

restrictions of this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) per cent of the Lot Owners. Any amendment must be properly recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set their hands this 21st day of February, 1968.

M. WARNER MURPHY

CORALEE A. MURPHY

Declarant

STATE OF UTAH }
COUNTY OF UTAH } SS

On the 21st day of February, A.D. 1968, personally appeared before me, a Notary Public in and for the State of Utah, M. Warner Murphy and Coralee A. Murphy, husband and wife, the signers of the above instrument who duly acknowledged to me that they executed the same.

J. HOWARD ROWLEY

Notary Public

Residing at: Provo, Utah

My Commission expires: November 1, 1970

2355

RECORDED at the Request of
Security Title & Abs. Co.

Book _____ Page _____
1966 MAR-8 PM 2:53

CLARICE B. CARTER
UTAH COUNTY RECORDER

AMENDMENT

THIS AMENDMENT to the Declaration of Restrictive and Protective Covenants and Conditions of Marrcrest Planned-Unit Development, Provo, Utah is made this 25th day of September, 1968.

IT IS hereby agreed upon by the undersigned, who represent not less than 90% of the Lot owners of Marrcrest Planned-Unit Development, that the second sentence of the first paragraph of Article IX, "USE RESTRICTIONS", which reads as follows: "In no case shall a residence be constructed closer than ten (10) feet to the lot line, nor a garage or carport closer than seven and one-half (7½) feet to the lot line," shall be deleted from said Declaration of Restrictive and Protective Covenants and Conditions of Marrcrest Planned-Unit Development, Provo, Utah and shall hereafter be declared of no validity nor consequence.

M. WARNER MURPHY

ALBIN J. SEETHALER

J. HOWARD ROWLEY

STATE OF UTAH)
)
COUNTY OF UTAH) SS

On this 5th day of September, 1968, personally appeared before me, a Notary Public in and for the State of Utah, M. Warner Murphy, Albin J. Seethaler and J. Howard Rowley, the signers of the above instrument, who duly acknowledged to me that they executed the same.

ROBERT K. ALLEN

My commission expires September 19, 1970 Residing at Provo, Utah

RECORDED AS INSTRUMENT
No. 9638

85
EXHIBIT "A"

Commencing 1073.62 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 2709.79 foot radius curve 160.58 feet;
North 89° 48' 20" West 417.35 feet along fence line;
South 89° 51' 10" West 80.18 feet along fence line;
North 130.17 feet;
South 85° 26' East 4.83 feet;
North 1° 34' East 133.55 feet;
South 89° 00' 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 55.00 feet to point of beginning.