

2355

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.

1 Section 4. "Lot" shall mean and refer to any plot of land shown upon
2 any recorded subdivision map of the Properties with the exception of the Com-
3 mon Area.

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

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

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

14 Section 8. Tract property shall be considered in two classifications,
15 namely dwelling units and Common Area. Dwelling units shall conform to the
16 basic overall plan for the Properties in that Lots designed for single family
17 dwellings shall have constructed upon them single family dwellings and not
18 more than a three car garage. Lots shown on the overall plan as doubles shall
19 have constructed upon them two-family dwelling units with individual garages
20 of not more than three car capacity each, or may have constructed upon them
21 single family dwellings and not more than a three car garage. Lots shown
22 on the overall plan as triples shall have constructed upon them three-family
23 dwelling units with individual garages of not more than three car capacity each,
24 or may have constructed upon them two-family dwelling units with individual
25 garages of not more than three car capacity each, or may have constructed
26 upon them single family dwellings and not more than a three car garage.

31 ARTICLE II

32 MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided

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1 fee interest in any Lot which is subject by covenants of record to assessment
 2 by the Association, including contract sellers, shall be a member of the As-
 3 sociation. The foregoing is not intended to include persons or entities who
 4 hold an interest merely as security for the performance of an obligation.
 5 Membership shall be appurtenant to and may not be separated from ownership
 6 of any Lot which is subject to assessment by the Association. Ownership of
 7 such Lot shall be the sole qualification for membership.
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9 ARTICLE I I I

10 VOTING RIGHTS

11 The Association shall have two classes of voting membership:

12 Class A. Class A Members shall be all those Owners as defined in
 13 Article II with exception of the Declarant, Class A Members shall be entitled
 14 to one vote for each Lot in which they hold the interest required for member-
 15 ship by Article II. When more than one person holds such interest in any Lot,
 16 all such persons shall be members, however, the vote for such Lot shall be
 17 exercised as they among themselves determine, but in no event shall more
 18 than one vote be cast with respect to any Lot.
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20 Class B. The Class B Members shall be the Declarant. The Class B
 21 Members shall be entitled to three (3) votes for each Lot in which he or she
 22 holds the interest required for membership by Article II, provided that the
 23 Class B Membership shall cease and be converted to Class A Membership on
 24 the happening of either of the following events, whichever occurs earlier:
 25

- 26 (a) When the total votes outstanding in the Class A
- 27 Membership equal the total votes outstanding in
- 28 the Class B Membership, or
- 29 (b) On April 1, 1980

30 ARTICLE I V

31 PROPERTY RIGHTS

32 Section 1. Members' Easements of Enjoyment. Every member shall have

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1 a right and easement of enjoyment in and to the Common Area and such ease-
 2 ment shall be appurtenant to and shall pass with the title to every assessed
 3 Lot, subject to the following provisions:

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

6 (b) The right of the Association to charge reasonable admission
 7 and other fees for the use of any recreational facility situated upon
 8 the Common Area;
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10 (c) The right of the Association, in accordance with its Articles and
 11 By-Laws, to borrow money for the purpose of improving the Common
 12 Area and facilities and in aid thereof to mortgage said property.

13 (d) The right of the Association to suspend the voting rights and
 14 right to use of the recreational facilities by a member for any
 15 period during which any assessment against his Lot remains unpaid;
 16 and for a period not to exceed 180 days for any infraction of its
 17 published rules and regulations; and
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19 (e) The right of the Association to dedicate or transfer all or
 20 any part of the Common Area to any public agency, authority, or
 21 utility for such purposes and subject to such conditions as may be
 22 agreed to by the members. No such dedication or transfer shall be
 23 effective unless an instrument signed by members entitled to cast
 24 two-thirds (2/3) of the votes of the Class A Membership and two-
 25 thirds (2/3) of the votes of the Class B Membership, if any, has been
 26 recorded, agreeing to such dedication or transfer, and unless written
 27 notice of the proposed action is sent to every member not less than 30
 28 days nor more than 60 days in advance.
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30 Section 2. Delegation of Use. Any member may delegate, in accordance
 31 with the By-Laws, his right of enjoyment to the Common Area and facilities
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1 to the members of his family, his tenants, or contract purchasers who reside
2 on the property.

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

11 COVENANT FOR MAINTENANCE ASSESSMENTS

12 Section 1. Creation of the Lien and Personal Obligation of Assessments.

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

3 Section 2. Purpose of Assessments. The Assessments levied by the
4 Association shall be used exclusively for the purpose of promoting recreation,
5 health, safety, and welfare of the residents in the Properties and in particular
6 for the improvement and maintenance of the Properties, services, and facilities
7 devoted to this purpose and related to the use and enjoyment of the Common Area.
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9 Section 3. Basis and Maximum of Annual Assessments. Until January
10 1 of the year immediately following the conveyance of the first Lot to an Owner,
11 the maximum annual assessment shall be One Hundred Twenty Five dollars
12 (\$120.00) per Lot. From and after January 1, of the year immediately
13 following the conveyance of the first Lot to an Owner, the maximum annual
14 assessment may be increased effective January 1 of each year without a vote
15 of the membership in conformance with the appropriate expenditure record of
16 the previous year adjusted in accordance with expected expenditures for the
17 following year. After consideration of current maintenance costs and future
18 needs of the Association, the Board of Directors may fix the annual assessment
19 at an amount sufficient to fulfill the needs of the Association.
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22 Section 4. Special Assessments for Capital Improvements. In addition to
23 the annual assessments authorized above, the Association may levy in any
24 assessment year, a special assessment applicable to that year only, for the
25 purpose of defraying, in whole or in part, the cost of any construction or re-
26 construction, unexpected repair or replacement of a described capital improve-
27 ment upon the Common Area, including the necessary fixtures and personal
28 property related thereto, provided that any such assessment shall have the
29 assent of two-thirds (2/3) of the votes of each class of members who are voting
30 in person or by proxy at a meeting duly called for this purpose, written notice
31 of which shall be sent to all members not less than 30 days nor more than 60
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1 days in advance of the meeting setting forth the purpose of the meeting.

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

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

14 Section 7. Date of Commencement of Annual Assessments: Due Dates:
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16 The annual assessments provided for herein shall commence as to all Lots
17 on the date fixed by the Board of Directors of the Association to be the date of
18 commencement. The first annual assessment shall be adjusted according
19 to the number of months remaining in the calendar year. The Board of Direc-
20 tors shall fix the amount of the annual assessment against each Lot at least
21 thirty (30) days in advance of each annual assessment period. Written notice
22 of the annual assessment shall be sent to every Owner subject thereto. The
23 due dates shall be established by the Board of Directors. The Association shall
24 upon demand at any time furnish a certificate in writing signed by an officer
25 of the Association setting forth whether the assessments on a specified Lot have
26 been paid. A reasonable charge may be made by the Board for the issuance of
27 these certificates. Such certificate shall be conclusive evidence of payment of
28 any assessment therein stated to have been paid.

29 Section 8. Effect of Non-payment of Assessments: Remedies of the
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1 nature, kind, shape, height, materials, and location of the same shall have
2 been submitted to and approved in writing as to harmony of external design and
3 location in relation to surrounding structures and topography by the Board of
4 Directors of the Association, or by an architectural committee composed of three
5 (3) or more representatives appointed by the Board of Directors. In the event
6 said Board, or its designated committee, fails to approve or disapprove such de-
7 sign and location within thirty (30) days after said plans and specifications have
8 been submitted to it, approval will not be required and this Article will be
9 deemed to have been fully complied with. Neither the members of such committee,
10 nor its designated representative(s) shall be entitled to any compensation for
11 services performed pursuant to this Covenant. The powers and duties of such
12 committee, and of its designated representative, shall cease on and after January
13 1, 1998. Thereafter, the approval described in this Covenant shall not be re-
14 quired unless prior to said date and effective thereon a written instrument shall
15 be executed by the then record owners of a majority of the Lots in the Properties
16 and duly recorded appointing a representative, or representatives, who shall
17 thereafter exercise the same powers previously exercised by said committee.
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20 ARTICLE VII

21 EXTERIOR MAINTENANCE

22 In the event the owner of any Lot in the Properties shall fail to maintain
23 the premises and the improvements situated thereon in a manner satisfactory
24 to the Board of Directors, the Association, after approval by two-thirds (2/3)
25 vote of the Board of Directors, shall have the right, through its agents and em-
26 ployees, to enter upon said parcel and to repair, maintain, and restore the Lot
27 and the exterior of the buildings and any other improvements erected thereon.
28 The cost of such exterior maintenance shall be added to and become part of the
29 assessment to which such Lot is subject.
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1 Association. Any assessments which are not paid when due shall be delinquent.
2 If the assessment is not paid within thirty (30) days after the due date, the assess-
3 sment shall bear interest from the date of delinquency at the rate of $6\frac{1}{2}$ per cent
4 per annum, and the Association may bring an action at law against the Owner
5 personally obligated to pay the same, or foreclose the lien against the property,
6 and interest, costs, and reasonable attorney's fees of any such action shall be
7 added to the amount of such assessment. No owner may waive or otherwise es-
8 cape liability for the assessments provided for herein by non-use of the Common
9 Area or abandonment of his Lot.

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

22 Section 10. Exempt Property. The following property subject to this
23 Declaration shall be exempt from the assessments created herein: (a) All
24 properties dedicated to and accepted by a local public authority; and (b) the
25 Common Area. However, no land or improvements devoted to dwelling use shall
26 be exempt from said assessments.

27 ARTICLE VI

28 ARCHITECTURAL CONTROL

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30 No building, fence, wall or other structure shall be commenced, erected,
31 or maintained upon the Properties, nor shall any exterior addition to or change
32 or alteration therein be made until the plans and specifications showing the

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, plantings, 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, permanence 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.

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

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

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8 No trailer, basement, tent, shack, garage, barn, or other outbuilding
9 shall be used on any Lot at any time, either temporarily or permanently, pro-
10 vided hower, during actual construction on the Lot the contractor or builder
11 may have reasonable temporary structure or device.

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

13
14 No building material of any kind or character shall be placed or stored up-
15 on any Lot until the owner thereof is ready to commence improvements, and then
16 the material shall be placed within the property lines of the plot upon which
17 the improvements are to be erected, and shall not be placed in the streets.

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

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

23
24 No trash, ashes or any other refuse may be dumped or thrown on any
25 Lot hereinbefore described or any part or portion thereof. All homes must
26 subscribe to Provo City garbage disposal service.

27 Any tenant renting within MARRCRESS PLANNED-UNIT DEVELOPMENT
28 who engages in noxious or offensive activity may be expelled on thirty (30) day
29 notice upon majority vote of the Board of Directors of the Association. (This
30 restriction shall take precedence over leases and rental agreements.)
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32 No signs, billboards or advertising structures may be erected or

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

7 ARTICLE X

8 GENERAL PROVISIONS

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

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

20 Section 3. Amendment. The covenants and restrictions of this Declara-
 21 tion shall run with and bind the land, and shall inure to the benefit of and be
 22 enforceable by the Association, or the Owner of any Lot subject to this Declara-
 23 tion, their respective legal representatives, heirs, successors, and assigns, for
 24 a term of thirty (30) years from the date this Declaration is recorded, after which
 25 time said covenants shall be automatically extended for successive periods of
 26 ten (10) years. The covenants and restrictions of this Declaration may be
 27 amended during the first thirty (30) year period by an instrument signed by not less
 28 than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument
 29 signed by not less than seventy-five (75%) per cent of the Lot Owners. Any
 30 amendment must be properly recorded.
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Michael Murphy
Declarant

Coralie A. Murphy
Declarant

SS:

COUNTY OF UTAH)

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. Gordon H. [Signature]
Notary Public

Residing at:

My commission expires:

Nov. 1, 1970

2355

RECORDED AT THE REQUEST OF
SECURITY TITLE & ABS. CO.

BOOK _____ PAGE _____
1966 MAR -0 PM 2:53

GORDON R. CARPENTER
UTAH COUNTY RECORDER
DEPUTY
MAIL ROOM SECURITY TITLE & ABS. CO.
8-4 4/15/55

EXHIBIT "A"

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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° 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 95.00 feet to point of beginning.