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## 2355

1 DECLARATION  
2 OF RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS  
3 OF MARRCREST PLANNED-UNIT DEVELOPMENT  
45 M. WARNER MURPHY and CORALEE A. MURPHY, husband and wife,  
6 the owners of record of the real property hereinafter described by meets and  
7 bounds in Exhibit "A" attached hereto and made a part hereof by this reference,  
8 the same being the real property now duly platted as "MARRCREST PLANNED-  
9 UNIT DEVELOPMENT", a subdivision of the city of Provo, Utah County, State  
10 of Utah, and on file in the office of the Recorder of Utah County, State of Utah,  
11 hereby make the following declarations as to limitations, restrictions and uses  
12 to which the lots and/or tracts constituting said addition may be put, hereby  
13 specifying that said declaration shall constitute covenants to run with all of the  
14 land, as provided by law, and shall be binding on all parties and all persons  
15 claiming under them, and for the benefit of and limitations upon all future  
16 owners in said addition, this declaration of restriction being designed for the  
17 purpose of keeping said addition desirable, uniform and suitable in architectural  
18 design and use as herein specified.  
1920 ARTICLE I  
2122 DEFINITIONS  
2324 Section 1. "Association" shall mean and refer to MARRCREST HOME-  
25 OWNERS' ASSOCIATION, a non-profit corporation of the State of Utah, its  
26 successors and assigns.27 Section 2. "Properties" shall mean and refer to that certain real pro-  
28 perty hereinabove referred to, and to such additional property as may here-  
29 after be added by addendum hereto and described in additional exhibits.30 Section 3. "Common Area" shall mean all real property owned by the  
31 Association for the common use and enjoyment of the members of the Association.  
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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.

30                  ARTICLE II

31                  MEMBERSHIP

32                  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 III

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 excercised as they among themselves determine, but in no event shall more  
18 than one vote be cast with respect to any Lot.

19  
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 IV

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;

9 (c) The right of the Association, in accordance with its Articles and  
10 By-Laws, to borrow money for the purpose of improving the Common  
11 Area and facilities and in aid thereof to mortgage said property.

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

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

27 Section 2. Delegation of Use. Any member may delegate, in accordance  
28 with the By-Laws, his right of enjoyment to the Common Area and facilities

1 to the members of his family, his tenants, or contract purchasers who reside  
2 on the property.

## ARTICLE V

## COVENANT FOR MAINTENANCE ASSESSMENTS

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

8       Section 3. Basis and Maximum of Annual Assessments. Until January  
9 1 of the year immediately following the conveyance of the first Lot to an Owner,  
10 the maximum annual assessment shall be One Hundred Twenty-five <sup>50</sup> <sub>100</sub> dollars  
11 ~~(\$120. 00)~~ per Lot. From and after January 1, of the year immediately  
12 following the conveyance of the first Lot to an Owner, the maximum annual  
13 assessment may be increased effective January 1 of each year without a vote  
14 of the membership in conformance with the appropriate expenditure record of  
15 the previous year adjusted in accordance with expected expenditures for the  
16 following year. After consideration of current maintenance costs and future  
17 needs of the Association, the Board of Directors may fix the annual assessment  
18 at an amount sufficient to fulfill the needs of the Association.  
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20       Section 4. Special Assessments for Capital Improvements. In addition to  
21 the annual assessments authorized above, the Association may levy in any  
22 assessment year, a special assessment applicable to that year only, for the  
23 purpose of defraying, in whole or in part, the cost of any construction or re-  
24 construction, unexpected repair or replacement of a described capital improve-  
25 ment upon the Common Area, including the necessary fixtures and personal  
26 property related thereto, provided that any such assessment shall have the  
27 assent of two-thirds (2/3) of the votes of each class of members who are voting  
28 in person or by proxy at a meeting duly called for this purpose, written notice  
29 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:  
15 The annual assessments provided for herein shall commence as to all Lots  
16 on the date fixed by the Board of Directors of the Association to be the date of  
17 commencement. The first annual assessment shall be adjusted according  
18 to the number of months remaining in the calendar year. The Board of Direc-  
19 tors shall fix the amount of the annual assessment against each Lot at least  
20 thirty (30) days in advance of each annual assessment period. Written notice  
21 of the annual assessment shall be sent to every Owner subject thereto. The  
22 due dates shall be established by the Board of Directors. The Association shall  
23 upon demand at any time furnish a certificate in writing signed by an officer  
24 of the Association setting forth whether the assessments on a specified Lot have  
25 been paid. A reasonable charge may be made by the Board for the issuance of  
26 these certificates. Such certificate shall be conclusive evidence of payment of  
27 any assessment therein stated to have been paid.

28       Section 8. Effect of Non-payment of Assessments: Remedies of the

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.

## ARTICLE VI

## EXTERIOR MAINTENANCE

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

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 asses-  
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.  
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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.

## ARTICLE VI

## ARCHITECTURAL CONTROL

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

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## 1 ARTICLE VIII

## 2 NEW BUILDING AND PROCEDURE

3 To maintain a degree of protection to the investment which home owners  
4 in this development may make, homes of superior design are requisite. Designs  
5 shall be limited to those prepared by architects licensed to practice in the State  
6 of Utah, or by designers of outstanding ability whose previous work may be  
7 reviewed as a part of the approval process.

8 PRELIMINARY DRAWINGS ( To be filed for approval and acceptance before further  
9 work is begun. ) Shall include as minimum the following:

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- 11 1. Plot plan to scale of entire site with buildings located and elevation  
12 of floors shown above or below a designated point on the street.
  - 13 2. Floor plans of each floor level to scale.
  - 14 3. Elevations to scale of all sides of the house.
  - 15 4. A perspective (optional)
  - 16 5. Outline specifications giving basic structure system and materials  
17 used, with specific descriptions of all materials to be used on  
18 the exterior of the buildings.

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

23 Finally, the Committee has the authority to judge buildings, materials,  
24 fences, plantings, etc., on whatever basis available to it with the aim of pre-  
25 serving what it feels are the best interests of the property Owners represented.  
26 These shall include aesthetics, reasonable protections of view, permanence of  
27 materials, etc. All decisions of the Committee shall be final.

## 28 ARTICLE IX

## 29 USE RESTRICTIONS

30 No building shall be located nearer than twenty (20) feet to an adjoining  
31 building except that a garage or carport will be allowed within fifteen (15) feet  
32 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  
(7  $\frac{1}{2}$ ) 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.

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

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

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

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

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

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

24       Any tenant renting within MARRCRESS PLANNED-UNIT DEVELOPMENT  
25 who engages in noxious or offensive activity may be expelled on thirty (30) day  
26 notice upon majority vote of the Board of Directors of the Association. (This  
27 restriction shall take precedence over leases and rental agreements.)

28       No signs, billboards or advertising structures may be erected or

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.  
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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.

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

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

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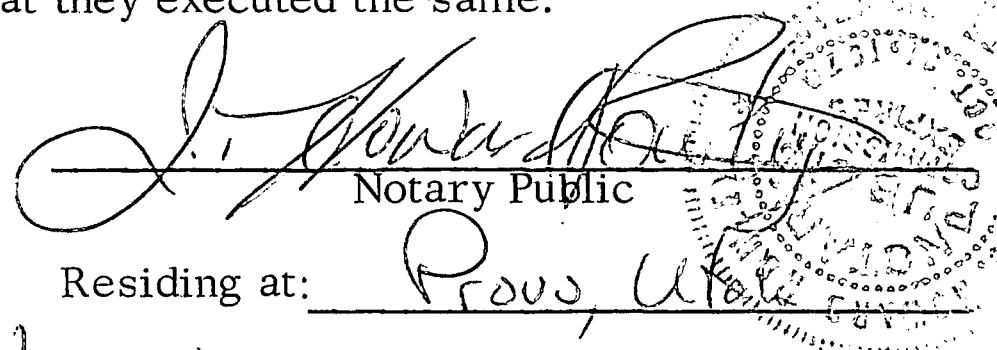
1 IN WITNESS WHEREOF, the undersigned, being the Declarant herein,  
2 has hereunto set their hands this 21<sup>st</sup> day of February, 1968.

3 M. Warner Murphy  
4 Declarant

5 Coralee A. Murphy  
6 Declarant

7 STATE OF UTAH )  
8 ss:  
9 COUNTY OF UTAH)

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

14   
15 Notary Public  
16 Residing at: Provo, Utah

17 My commission expires: Nov. 1, 1970

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RECORDED AT THE REQUEST OF  
SECURITY TITLE & ABS. CO.  
BOOK 11 PAGE 145-50  
1966 FEB 10 PH 2.53  
CLERK OF COURT  
UTAH COUNTY RECORDER  
DEPUTY Leslie 145-50  
MAIL SECURTY TITLE & ABS. CO.

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## EXHIBIT "A"

Commencing 1093.62 feet South along the Section line and 84.72 feet South  $4^{\circ} 01' 40''$  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  $4^{\circ} 01' 40''$  East 429.50 feet along West boundary of U.S. Highway 189;

South  $2^{\circ} 04' 10''$  East 160.57 feet along chord of 2789.79 foot radius curve 160.58 feet;

North  $89^{\circ} 48' 20''$  West 417.35 feet along fence line;

South  $89^{\circ} 51' 10''$  West 88.18 feet along fence line;

North 130.17 feet;

South  $85^{\circ} 26'$  East 4.83 feet;

North  $1^{\circ} 34'$  East 133.55 feet;

South  $89^{\circ} 00'$  East 73.50 feet;

North  $84^{\circ} 10'$  East 87.00 feet;

South  $88^{\circ} 57.5'$  East 149.04 feet;

North  $6^{\circ} 55'$  East 10.5 feet;

North  $7^{\circ} 50'$  West 83.00 feet;

North  $9^{\circ} 46'$  East 126.00 feet;

North  $32^{\circ} 25'$  East 68.50 feet;

North  $12^{\circ} 52'$  East 41.00 feet;

North  $89^{\circ} 00'$  East 95.00 feet to point of beginning.