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Original Declaration of Covenants, Conditions and Restrictions for Hillcrest Nine Homeowners' Association was recorded in Maricopa County under recording docket# 13557PC008 on April 10, 1979. Amended and Restated Declaration of Covenants, Conditions and Restrictions for Hillcrest Nine Homeowners' Association was recorded in Maricopa County under recording # 94-0225751 on March 21, 1994.

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AMENDED and RESTATED
DECLARATION of
COVENANTS, CONDITIONS and RESTRICTIONS
for
HILLCREST NINE HOMEOWNERS' ASSOCIATION

KNOW ALL MEN BY THESE PRESENTS:

The Board of Directors of the Hillcrest Nine Homeowners' Association, an Arizona non-profit corporation, pursuant to the affirmation vote of the majority of the lot owners of the following described premises, situate within the County of Maricopa, State of Arizona, to-wit:

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NW 1/4, SE 1/4, § 9, T3N, R3E, G&SRB&M, Maricopa County, also described as:

Lots One (1) through One Hundred Twenty (120), inclusive, and Tracts A, B, C, D and E [Tract F is the Hillcrest Nine subdivision's internal streets. These were deeded to the City of Phoenix in late 1989. Therefore Tract F is being deleted from the Hillcrest Nine CCR property description.], Hillcrest Nine, according to the plat of record in the Office of the County Recorder, Maricopa County, Arizona, in Book 210 of Maps, Page 15, hereby declares the following restrictions shall apply to the said properties in Hillcrest Nine, and to the owners, occupants, heirs and assigns of said Lots, and to the use and enjoyment of all the properties, and all conveyances of said lots hereafter made shall be subject to the said restrictions, which shall constitute covenants running with the land.

(See the Amended and Revised Declaration of Covenants, Conditions and Restrictions for Hillcrest Nine Homeowners' Association dated November 3, 1993.)

1. DEFINITIONS:

(a) "Articles" shall mean the Articles of Incorporation of the Association which are filed in the office of the Arizona Corporation Commission, as said Articles may be amended from time to time.

(b) "Association" shall mean and refer to the Hillcrest Nine Homeowners' Association, Inc., an Arizona nonprofit corporation, its successors and assigns.

(c) "Board" shall mean the Board of Directors of the Association.

(d) "By-Laws" shall mean the By-Laws of the Association, as such By-Laws may be amended from time to time.

(e) "Common Areas" shall mean Tracts, A, B, C, D, and E as shown on the recorded plat and owned by the Association for the common use and enjoyment by the owners of lots in the Hillcrest Nine subdivision. Tracts A through E are those areas found along the west and south boundaries of 12th and Hearn Streets, arroyo areas north and south of Acoma Street south to Hearn between 12th and 13th Streets. The majority of the common areas will remain as natural desert and will not be improved in any manner.

Improvement, if any, of common areas will be pursuant to plans submitted to and approved by the City of Phoenix.

(f) "Declarant" shall mean HILLCREST NINE HOMEOWNERS' ASSOCIATION,
INC. Unofficial Document

(g) "Declaration" shall mean this entire document as same from time to time may be amended.

(h) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any lot.

(i) "Lots" Shall mean and refer to any plot of land shown upon any recorded subdivision of any of the premises with the exception of the common areas.

(j) "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

2. RESIDENTIAL PURPOSE: All of said lots in said Hillcrest Nine shall be known and described as residential lots, and none of said lots or any part thereof shall be used for business purposes.

3. **LIMITATIONS ON CONSTRUCTION:** No part of any dwelling shall be used for living purposes until the entire structure has received final inspection approvals on construction, electrical, HVAC and plumbing from the City of Phoenix. No structure of a temporary nature shall be used as a dwelling on any lot in Hillcrest Nine, nor shall any trailer, tent, shack, garage, barn or any other structure be used as a residence, either temporarily or permanently, nor shall any such structure or dwelling be moved onto said lots in Hillcrest Nine from outside the subdivision. All dwellings shall be construed to mean single family dwellings and only one such dwelling shall be allowed on each lot.

4. **ARCHITECTURAL CONTROL:**

(a) No structure or building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, height of structures, and as to location with respect to topography and finished grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved, and said fence or wall shall be constructed only with masonry or wrought iron, or a combination of both. Masonry walls must be stuccoed on both sides in a texture to match that of the house, and must be painted with a bright "White" on both sides. The only acceptable "White" colors for the exterior of homes and fence walls in Hillcrest Nine are the following:

- Sinclair: White #1300
- Frazee: White #001
- Sherwin Williams: Pure White #SW1004
- Glidden: Base Pure White
- Dunn Edwards: Base Pure White
- Other suppliers: White that match the 5 samples listed above.

The only acceptable trim colors in Hillcrest Nine, in addition to the approved "White" identified above, are the following:

- Whites: Listed for exterior house and wall color.
- Sinclair: Norwood #259, Sheffield #1381, Burlywood #1380, Dusty Gray #1391, Cape Cod Gray #1356
- Frazee: Pepperwood #204, Spanish Brown #212, Gunsmoke Blue #379
- Sherwin Williams: Belgian Chocolate. #SW1049, Silken Web #SW1148, Mexican Sand #SW1089, Cubist Gray #SW1022
- Glidden: Stafford Brown no #, Jefferson House #47/145, Sand White #58/082
- Dunn Edwards: Country Blue #179

Other paint suppliers can be used so long as the colors match the approved colors listed above but must be approved in advance by the Architectural Control Committee as provided in Section 6.

(b) All existing paint colors used for houses, trim, garage doors, fences and/or fence walls in Hillcrest Nine are exempted from the new paint color requirements, until either:

- (1) the house, trim, garage door, fences and/or fence walls must be repainted due to natural deterioration or weathering; or
- (2) upon sale of house.

All homes, trim, garage doors, fences and/or fence walls, not painted in approved colors identified above, in Hillcrest Nine must be repainted in an approved color identified above no later than seven (7) years from the date of adoption of the Amended and Restated Covenants, Conditions and Restrictions, unless repainting is required earlier by the Architectural Control Committee, in its sole discretion. If house, trim, garage door, fence and/or fence walls are not painted with Hillcrest Nine approved colors, any new owner of a home in Hillcrest Nine must repaint the house, trim, garage door, fences and/or fence walls with approved colors identified above within one hundred eighty (180) days from date of purchase of the home. Approval shall be as provided in Section 6.

(c) Failure to comply with these architectural control restrictions may will result in a fine of \$150 per month for any structure as provided in Section 25 on page 11.

5. **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee shall be composed of the Board of Directors. A majority vote is needed for approval of plans.

A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or to restore to it any of its powers and duties.

6. **WRITTEN APPROVAL REQUIRED:** The Architectural Control Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Architectural Control Committee or its designated representative fails to approve or disapprove the submitted plans and specifications within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin (to prohibit or restrain by injunction) the construction has been commenced prior to the completion thereof, approval will not be required and the improvements shall be deemed to comply fully with the related covenants.

7. **SIGNS:** No signs whatsoever (including but not limited to, commercial, political and similar signs) which are visible from neighboring property (see Section 1, Paragraph (j), on page 2) shall be erected or maintained on any of the premises except:

- (a) Such signs as may be required by legal proceedings;
- (b) A residential identification sign of a face area of 36 square inches or less;
- (c) During the time of construction of any building or other improvement, one (1) job identification sign not larger than 18 by 24 inches and having a face area not larger than three (3) square feet, or as required by law;

Failure to comply with these sign restrictions may result in a fine as provided in Section 25 on page 11.

8. **TRASH:** Trash, garbage, recycle materials or other waste shall not be kept on the premises except in City of Phoenix approved sanitary containers. In no event shall such containers be stored or maintained so as to be visible from neighboring property at the same elevation (see Section 1, Paragraph (j), on page 2) except to make the same containers available for collection and then, only the shortest time reasonably necessary to effect such collection. Exception is made for the quarterly scheduled City of Phoenix large rubbish and debris pickups, large rubbish and debris only to be put out on the premises on the weekend immediately preceding the scheduled week for pickup. Failure to comply with these trash restrictions may result in a fine as provided in Section 25 on page 11.

9. **NUISANCES:** No nuisance shall be permitted to exist or operate upon any property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. No overhanging trees, shrubs or other vegetation may obstruct common areas, side walks and/or streets. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property and no odor shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants or users. All properties shall be maintained and kept in good repair. Homes are to be painted and maintained in Hillcrest Homeowners' Association pre-approved colors only. Yards are to be kept free from weeds, dead branches, dead shrubs and trees. The front yards of all newly constructed homes are to be landscaped within six (6) months of occupancy. Failure to comply with these nuisance restrictions may result in a fine as provided in Section 25 on page 11. The Architectural Control Committee, in its sole discretion, shall have the right to determine the existence of any nuisance.

10. **PETS:** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that a reasonable number of dogs, cats or other commonly recognized household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. A reasonable number shall be presumed to be two (2). Pets are to be restrained in accordance with current City of Phoenix leash or restraint laws whenever outside the owner's property. Owners must clean up after their pets in all common areas, including sidewalks and streets. Failure to comply with these pet restrictions may result in a fine as provided in Section 25 on page 11.

11. CLOTHES DRYING FACILITIES:

(a) No line for drying laundry or other outside facilities for drying or airing clothes shall be erected, placed or maintained so as to be visible from the street or any neighboring property.

(b) No article, including but not limited to, bathing suit, mop or rug shall be aired, draped or placed so as to be visible from the street or any neighboring property.

(c) Failure to comply with these clothes drying restrictions may result in a fine as provided in Section 25 on page 11.

12. TRAILERS AND MOTOR VEHICLES: Except for emergency repairs, no vehicle of any kind, including, but not limited to, campers, boats, trailers, motor homes, trucks, automobiles, and motorcycles, shall be constructed, reconstructed or repaired upon any lot, street, or common area within the subdivision in such a manner as will be visible from any other lot, street, or common area in the subdivision. In no event shall any vehicle, as described above, be parked in any Hillcrest Nine subdivision street overnight between the hours of 2:00 and 5:00 A.M.

All vehicles must, except for an occasional short period of less than twenty-four (24) hours, or with prior written consent of the Board of Directors, be parked in a closed garage or paved driveway, or in such other location or manner as not to be visible from the street or any neighboring property in the subdivision at the same elevation (see Section 1, Paragraph (j), on page 2). The Board of Directors shall, upon request, determine whether or not any vehicle is in violation of this provision. Failure to comply with these trailer and motor vehicle restrictions may result in a fine as provided in Section 25 on page 11.

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13. RE-SUBDIVISION: No lot or lots shall be re-subdivided except for the purpose of combining two (2) or more lots into one (1) home site, providing however, that no additional or smaller lot is created thereby.

14. PROPERTY RIGHTS:

(a) Tracts A, B, C, D and E are common areas for those purposes set forth in the plat recorded in Book 210 of Maps, Page 15, in the records of the Maricopa County Recorder;

(b) Every owner shall have a right and easement of enjoyment in and to the common area property which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(1) The Hillcrest Nine Association has the right to suspend the voting rights of an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for all infractions of this declaration.

(2) The Hillcrest Nine Association has the right to dedicate or transfer all or any part of the common areas 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 is signed by a majority of the Board of Directors.

15. UTILITIES: Except for emergencies, all utility, telephone and cable television connections after July 1, 1986, shall be underground.

16. HOMEOWNERS' ASSOCIATION:

(a) Hillcrest Nine Homeowners' Association, a nonprofit corporation, organized under and by virtue of the laws of the State of Arizona governing nonprofit corporations, shall have such duties and obligations as are set forth in the Articles of Incorporation and By-Laws as such Articles and By-Laws may be subsequently amended.

(b) The Board of Directors of the Association shall be empowered to determine and decide all questions regarding enforcement of these restrictions and assessments or changes necessary for maintenance and insurance of common areas, for the use and benefit of all homeowners, except as provided in the By-Laws.

(c) The Board of Directors of the Association shall have the right to contract for services or to transfer to any other corporation, person or partnership, all of its rights and obligations hereunder, but upon such transfer and the assumption of such obligations by the transferee, the enforcement of covenants shall remain the sole responsibility of the Association.

(d) All Lot owners shall, by virtue of ownership, agree to become members of the Association and shall be subject to the provisions of the Articles, By-Laws and Rules as though fully set forth herein and shall be entitled to cast one (1) vote per lot in any vote of the Association.

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17. ASSESSMENTS:

(a) The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the owners and for the improvement, maintenance, and insurance of the common areas.

(b) The maximum annual assessment may be increased each year by not more than thirty percent (30%) above the maximum assessment for the previous year without a vote of the membership and may be increased above thirty percent (30%) by an affirmation vote of two-thirds (2/3) of members voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum.

(d) 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, reconstruction, repair or replacement of a capital improvement upon the common area or replacement of damaged or destroyed property in the common areas, provided that any such assessments shall have the assent of two-thirds (2/3) of the votes of members voting in person or by proxy at a meeting duly called for this purpose.

(e) Both annual and special assessments must be fixed at a uniform rate for all lots and shall be collected on a semi-annual basis due on April 1st and October 1st of each year of assessment.

(f) 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 date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

18. COVENANT FOR MAINTENANCE ASSESSMENTS:

(a) Each owner, by execution of a purchase contract, is deemed to covenant and agree, for himself, his heirs, successors and assigns, to pay to the Association all assessments, impounds, fines and late payment penalties as provided in the Articles, By-Laws and herein. All assessments, impounds, fines and late payment penalties, if any, together with interest, costs and reasonable attorney's fees, shall be a lien upon the lot. Each such assessment, impound, fine, late payment penalty, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who is the owner of the Lot at the time the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, or unless prior to the transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessment shall have been filed or recorded.

(b) The Association shall be entitled to enforce its rights hereunder by following the procedure provided for the enforcement of Mechanics' and Materialmen's liens in the State of Arizona. No claim against the Association shall constitute a ^{Unofficial Document} defense nor set-off in any action by the Association for non-payment of any amounts which may be assessed hereunder.

19. DURATION, AMENDMENTS, TRANSFERS AND CONVEYANCES:

(a) The covenants herein contained run with the land and shall bind all persons in interest, all owners of lots, blocks and parcels in said subdivision and their heirs, legal representatives, successors and assigns until January 1, 1999, at which time said covenants shall be automatically extended for successive periods of five (5) years each unless, prior to the end of the initial term or any successive period of five (5) years, such covenants are amended, changed or terminated in whole or in part.

(b) Such amendments, changes or terminations shall be effected by instruments in recordable form executed by a majority of the lot owners and filed in the proper office of record.

(c) Any amendment to this Declaration which limits or terminates membership in the Association must be signed by two-thirds (2/3) of the Directors of the Association.

(d) After the date hereof, each party who acquires any interest in all or any part of the property described herein further agrees that upon such acquisition of any interest in all or part of the real property, said acquiring party shall look only to the other subsequent property owner or owners acquiring an interest in said property for any performance or relief deemed equitable for the enforcement of the covenants, conditions and restrictions contained herein.

(e) Deeds of conveyance of said property, or any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made in such deeds, or any part thereof, each and all of such restrictive covenants shall be valid and binding upon the respective grantees.

(f) Violation of any one (1) or more of such covenants shall continue as a violation of the respective grantees.

20. COMMON FENCES: The rights and duties of Owners with respect to common fences on the south and west boundaries of the development shall be as follows:

(a) In the event that any common fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair such fence without cost to the other adjoining Owner or Owners.

(b) In the event any such common fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests, or family, it shall be the joint obligation of the Owners to rebuild and repair such fence.

(c) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a common fence, or with respect to the bearing of the cost thereof, the Owners shall submit the dispute to the Board, the decision of which shall be final and binding on all Owners.

(d) At all times, crack pointing and filling, stucco, painting, and misc. maintenance shall be the responsibility of the respective owner for their side of the common fence, this includes common fences shared with the Association as in perimeter boundary fences, etc..

21. REPAIR NECESSITATED BY OWNER: In the event that the Association determines that the Common Areas are in need of improvement, repair, restoration or painting, or that the landscaping is in need of installation, repair, or restoration which has been caused by an Owner, or any person designated by the Owner, then the Association shall give written notice to the Owner of the conditions complained of. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such reasonable period of time as may be determined by the Board after said written notice is first given, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Association shall undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and his lot and subject to levy, enforcement and collection as provided in the Articles, By-Laws and herein.

The Board shall have the sole right to determine whether any such costs expended by the Association were related to general maintenance or were repairs necessitated by an Owner, and the determination of same shall be binding and final as to an Owner.

Failure to correct a repair necessitated by the owner may result in a lien being filed against the Owner of the property causing the damage.

22. VIOLATION; REMEDIES:

(a) In the event of any violation or threatened violation of any of the covenants herein, the Association or any Owner of any lot in the subdivision may bring an action at law or in equity, either for injunction, action for damages or such other remedy as may be available. In the event the Association or Owner recovers judgment against any person for a violation or threatened violation of any of the covenants herein, the Association or Owner shall recover from such person any reasonable attorney's fees incurred by the Association or Owner.

(b) The failure by any Owner or the Association to enforce any restrictions, conditions, covenants or agreements herein contained shall not give rise to any claim or cause of action against the Association or such Owner, nor shall such failure to enforce be deemed a waiver or abandonment of this Declaration or any provision thereof.

23. SEVERABILITY: If any provision of this declaration or the application of such provision to any person or circumstance shall be held invalid, the remainder of this declaration or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

24. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. Unofficial Document No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereon.

25. FINES: Are listed by their respective CCR Section number. Violations of restrictions are subject to fines as follows:

4. ARCHITECTURAL CONTROL: Failure to comply will result in a fine of \$150 per month or portion of a month, for any structure.
7. SIGNS: Failure to comply will result in a fine of \$5.00 per day.
8. TRASH: Failure to comply will result in a fine of \$5.00 per day.
9. NUISANCES: Failure to comply will result in a fine of \$5.00 per day.
10. PETS: Failure to comply will result in a fine of \$15.00 per day.
11. CLOTHES DRYING FACILITIES: Failure to comply will result in a fine of \$5.00 per day.
12. TRAILERS AND MOTOR VEHICLES: Failure to comply will result in a fine of \$25.00 per night.

If you fail reasonable pursuit to cure or correct the violation within the time specified by the Board of Directors, in the violation notice, the fine will begin to accrue on the next day and each day thereafter until the violation is corrected. Unpaid fines will be treated as liens upon the property, like an assessment lien as covered in Section 18, Paragraphs (a) and (b).

We the undersigned, being the elected Board of Directors of the Hillcrest Nine Homeowners' Association, hereby certify these Amended and Restated Covenants, Conditions, and Restrictions.

In witness whereof, we have set our hands on this 21 day of 2, 94

John S. Jackson
President

Walter D. Maxwell
Vice President

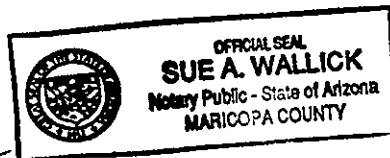
Robert J. Shepard
Secretary/Treasurer

Julie M. Brown
Board Member
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Donald B. Coleman
Board Member

STATE OF ARIZONA)
)
County of Maricopa

SUBSCRIBED AND SWORN TO before me,
a Notary Public, this 21 day of
February 1994



Sue A. Wallick
Notary Public Exp 12-8-95