

When recorded, return to:  
Mulcahy Law Firm, P.C.  
3001 E Camelback Road, Suite 130  
Phoenix, AZ 85016

CCRsHillcrestnine-16-1-1--  
morgana

**SECOND AMENDED and RESTATED  
DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS  
FOR HILLCREST NINE HOMEOWNERS' ASSOCIATION, INC.**

This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made this 9<sup>th</sup> day of July 2021 by Hillcrest Nine Homeowners' Association, Inc., an Arizona non-profit corporation, herein referred to as the "Association."

WHEREAS, Hillcrest Nine Homeowners' Association, Inc., recorded the

- Declaration of Covenants, Conditions and Restrictions on April 10, 1979 in Recording Number 1979-0123565 ("Original Declaration");
- Declaration of Covenants, Conditions and Restrictions on September 26, 1986 in Recording Number 1986-522598 ("Declaration");
- Amended and Restated Declaration of Covenants, Conditions and Restrictions on March 21, 1994 in Recording Numbers 1994-0225751 and 1994-0225752 ("First Amended and Restated Declaration"); and
- First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions on February 1, 2018 in Recording Number 2018-0080976 ("Amendment");

in the official records of Maricopa County, Arizona.

WHEREAS, the Original Declaration, Declaration, First Amended and Restated Declaration, Amendment and this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions govern the real property situated in the County of Maricopa, State of Arizona, which is described below, together with all buildings and improvements located thereon:

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 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, Records of Maricopa County Arizona.

WHEREAS, Paragraph 19(b) of the First Amended and Restated Declaration requires an amendment to the Declaration be effected by instruments in recordable form executed by a majority of the Lot Owners and filed in the proper office of record.

NOW THEREFORE, this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions upon recordation, supersedes the Original Declaration, Declaration, First Amended and Restated Declaration, and Amendment in their entirety. The Association hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Association Property. The covenants,

conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth herein shall run with the Association Property; shall be binding upon all persons having or acquiring any interests in the Association Property or any part thereof; shall inure to the benefit of every portion of the Association Property and any interest therein; and shall inure to the benefit of and be binding upon the Association, its successors in interest, each Owner and his/her respective successors in interest.

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) "Bylaws" shall mean the Bylaws of the Association; as such Bylaws may be amended from time to time.
- (e) "Common Areas" shall mean Tracts A, B, C, D, and E and 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. Tracks 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 shall remain as natural desert and shall 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) "Declaration" shall mean this entire document as same from time to time may be amended.
- (g) "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. All Lot Owners shall, by virtue of ownership, agree to become 'Members' of the Association.
- (h) "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.
- (i) "Structure" shall mean any building, addition, or modification (and improvement thereon) that is either temporarily or permanently placed, installed, erected, on a Lot. By example, and not by limitation, structure shall include patios/patio covers, home additions, gazebos, home expansions, driveways, walls and fencing.
- (j) "Exterior Improvement" shall mean any construction, installation, addition, alteration, repair, change, change of color, hardscaping (i.e. pavers, concrete), removal, demolition or other work that alters the exterior appearance of a Lot, the Structures, or the Improvements located thereon.
- (k) "Visible from Neighboring Property" shall mean, with respect to any given object, that such objects 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.

- (l) "Visible from Common Areas" shall mean visible from Common Areas, Tract D or the Mountain Preserve, with respect to any given object, that such objects are or would be visible to a person six feet tall, standing on any part of such Common Area at an elevation no greater than the elevation of the base of the object being viewed.
  - (m) "Public Multi-Use Trail Easement" shall mean the 25-foot-wide easement located on the Association's eastern boundary (Tract D) parcel 214-47-572.
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. An Owner or other resident may conduct a business activity within the Lot so long as:
- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot;
  - (b) The business activity conforms to all applicable zoning ordinances or requirements for the Lot;
  - (c) The business activity neither involves the door-to-door solicitation of Owners or others in the subdivision nor generates traffic more than an occasional visit by a client and has minimal impact on the community; and
  - (d) The business activity is consistent with the residential character of the subdivision and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Owners in the subdivision, as may be determined from time to time in the sole discretion of the Board.

Furthermore, no advertising or directional signs may be placed upon the Lot, or any portion of the Common Areas regarding the business activity. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; (c) a license is required for such activity.

3. **RENTALS:** No Owner of a Lot shall rent or lease such Lot for a period of less than six (6) months, provided that any Owner who owned a Lot on February 1, 2018 may rent or lease his/her/their/its Lot for a period of less than six (6) months, except that such right to rent or lease the Lot for a period of less than six months shall terminate upon the transfer of title of the Lot by the person(s) who are/were the Owner on February 1, 2018.

No Owner may lease less than his/her/its entire Lot. All leases must be in writing and must provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the Rules and that any violation of this Declaration or the Rules by the lessee or the other Occupants shall be a default under the lease. Any Owner renting

his/her/its Lot shall be required to register the rental Lot in accordance with any applicable State or local Statutes/Ordinances. There shall be no subleasing of Lots or assignments of leases.

The Board of Directors may grant variances to the above two paragraphs whenever, in its opinion, such action may be necessary or desirable to alleviate a hardship resulting from death, extended illness, transfer or other similar cause.

At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with a completed Rental Registration form. The Owner must disclose the following information:

- (a) the commencement date and expiration date of the lease term;
- (b) the names of each of the adult lessees;
- (c) a description of the lessee's vehicles and license plate numbers;

Any Owner who leases his/her/its Lot must provide the lessee with copies of this Declaration and the Rules. The Owner shall be liable for any violation of this Declaration or the Rules by the lessees or other persons residing in the Lot and their guests or invitees and, in the event of any such violation, the Lot Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

4. **LIMITATIONS ON CONSTRUCTION:** 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.

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

The Architectural Control Committee shall develop an Architectural Change Request Form (ACRF) which shall set forth the required details and specifications an Owner must submit at least one week prior to the ACC reviewing any application. The ACC may edit or amend the Architectural Change Request Form as needed.

The Board of Directors shall have the authority to develop, adopt and amend architectural Rules and Regulations, including but not limited to, specific architectural guidelines concerning exterior modifications, additions, and/or improvements, approved trim color palette, and the process for approval that the ACC shall follow. The Board shall have the power to amend the architectural Rules and Regulations by a majority vote. Amendments shall be provided to the Owners after adoption.

6. **ARCHITECTURAL CONTROL:**

- (a) All structure and exterior improvements must be approved by the Architectural Control Committee. An Architectural Change Request Form must be submitted by the Owner to the ACC at least one week prior to a Committee meeting via hand delivery, email or U.S. mail. No structure or building, patios/patio covers, home additions, gazebos, home expansions, driveway additions, walkways or fencing, etc. shall be erected, placed, or altered on any Lot until the construction plans, detailed specifications and a plan showing the location of the structure and/or improvements have been approved, in writing, by the ACC. When reviewing an application, the ACC shall consider whether the requested change is in harmony with the external design and location of the change in relation to surrounding structures, landscaping and topography, as well as the overall aesthetic of the community. The ACC will have the right to examine the work, during and after construction, as to quality of workmanship and materials, harmony of external design with existing structure, height of structures, and as to location with respect to topography and finished grade elevation.
- (b) The only acceptable color for the exterior of homes and fence walls is bright "White." An Owner shall contact the ACC for its list of acceptable white paints to ensure a uniform color scheme. Additionally, any trim color change to any structure on the Lot must first be submitted to the ACC for approval and all proposed colors must be part of the approved color palette for trim which shall be adopted from time to time by the ACC. Owners are required to keep their home painted in a neat and attractive condition and shall not allow for the paint to fade or become deteriorated. Should the paint become faded or deteriorated, the Lot shall be a violation of the Declaration.
- (c) No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the City of Phoenix 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 stucco on both sides in a texture to match that of the house, and must be painted with a bright "White" on both sides and all trim colors must be painted in accordance with an approved color palette developed by the ACC.
- (d) If an Owner shall commence work prior to receiving written approval the Owner shall be in violation of the Declaration and subject to penalties which may include monetary penalties, and/or the Association filing an injunctive relief lawsuit. All attorney fees and costs incurred to enforce compliance with the Declaration shall be the responsibility of the Owner, whether or not suit is filed.

7. **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.

8. **SIGNS**: Signs shall be professionally manufactured or produced. No signs other than what is listed below shall be allowed on the Owner's property:
- (a) one 'for sale' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) and a sign rider (not to exceed 6 x 24 inches) located on an Owner's Lot,
  - (b) one 'for rent' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;
  - (c) one 'open house' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;
  - (d) 'political' signs no earlier than 71 days before the day of an election and later than 3 days after an election day and the signs shall not exceed an aggregate total of nine square feet located on an Owner's Lot;
  - (e) 'cautionary' signs regarding children if the signs are used and displayed as follows:
    - i. The signs are displayed in residential areas only.
    - ii. The signs are removed within one hour of children ceasing to play.
    - iii. The signs are displayed only when children are actually present within fifty feet of the sign.
    - iv. The temporary signs are no taller than three feet in height.
  - (f) one 'job identification' sign not larger than 18 x 24 inches, during the time of construction of any building or other improvement, said sign shall be removed within ten (10) days of completion of construction.
  - (g) 'security' signs and the signs shall not exceed an aggregate total of three-square feet and must be located on an Owner's Lot.
9. **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, or from Common Areas 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 City of Phoenix Bulk Trash Collection Schedule. Bulk trash is only to be put out on the premises in accordance with the City of Phoenix scheduled placement date, and all rubbish and debris shall be removed by the final day of the collection schedule.
10. **NUISANCES**: No nuisance shall be permitted to exist or operate upon any property so as to be offensive or detrimental to any other property, or Common Areas in the vicinity thereof or to its occupants. No overhanging trees, shrubs, or other vegetation may obstruct Common Areas, sidewalks 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 there from so as to render any such property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property, or Common Areas in the vicinity thereof or to its occupants or users. The Board of Directors shall have the discretion to determine the existence of a nuisance.

11. **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. The number of pets shall not exceed three (3) pets per Lot. 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 the pets in all Common Areas, including sidewalks and streets. Pets shall not be permitted to make an unreasonable amount of noise or constitute a nuisance.
12. **CLOTHES DRYING FACILITIES**: No laundry line or other outside facilities for drying or airing clothes shall be erected, placed or maintained so as to be visible from the street, Common Areas, or any neighboring property. No laundered item, including but not limited to, bathing suits, mops or rugs shall be aired, draped or placed so as to be visible from the street or any neighboring property.
13. **PARKING, TRAILERS AND MOTOR VEHICLES**:
  - (a) In no event shall any vehicle be parked in any street within the community overnight between the hours of 2:00 a.m. to 5:00 a.m. During these hours, all vehicles must be parked in a closed garage or paved driveway. Exceptions for street parking may be granted with written permission from the Board of Directors.
  - (b) In no event shall any vehicle be parked on any portion of a yard of a Lot.
  - (c) Campers, boats, trailers, and motor homes shall not be parked in such a location or manner so as to be visible from the street, Common Areas or any neighboring property in the subdivision. Exceptions may be granted with written permission from the Board of Directors.
  - (d) 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.
  - (e) The Board of Directors shall determine whether or not any vehicle is in violation of this provision.
14. **COMMERCIAL VEHICLES**: Except for service calls, no commercial vehicle, as defined in A.R.S. §28-5201, shall be parked in any street within the community so as to be visible to neighboring properties. Commercial vehicles may be parked in garages.
15. **MAINTENANCE**:
  - (a) Exterior Maintenance by Association. The Association shall manage, maintain and repair the Common Areas. All such repairs and maintenance shall be common expenses and shall be paid for by the Association.

- (b) **Repair Necessitated by Owner.** In the event that the need for maintenance and/or repair work of any Common Areas is caused through the willful or negligent act of an Owner or his or her family, guests or invitees, as determined under Arizona law, the cost of such maintenance and/or repairs shall be added to and become a part of the assessment against that Owner and his or her Lot less insurance proceeds, if any, available to the Association to pay the cost of such maintenance and repairs. The Association may collect the repair assessment in the same manner as the annual assessment.

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 the Association filing an action at law against the Owner of the property causing the damage.

- (c) **Maintenance by Owner.** Each Lot and the exterior of structures located on the Lot shall be maintained in good and reasonable condition by the Owner of that Lot. No weeds, dead branches, shrubs or trees shall be permitted to accumulate on a Lot. All Lots shall be landscaped, not left bare dirt. No Owner shall allow any condition to exist which also adversely affects the other Lots of Hillcrest Nine Homeowners' Association, Inc. or their Owners.

If a Lot Owner shall fail to maintain the Lot, then upon a vote of a majority of the Board of Directors, and after following the Fine Policy, and after at least sixty (60) days, and notice to that Lot Owner, the Association shall have the right (but not the obligation) to enter upon or into that Lot and provide such maintenance. All charges incurred by the Association in conducting the necessary maintenance, repair and/or replacement shall be added to the assessments charged to the Lot Owner and shall be paid to the Association by that Owner.

16. **COMMON AREA CONDUCT:** Lot Owners, their family, household members, guests and tenants shall not engage in any activity that causes erosion or damage to vegetation in the Common Areas. Planting, pruning, dumping and acts of vandalism in the Common Areas are prohibited.

For the safety of all users, the path in the arroyo shall be utilized as a walking path only. Bicycles, motorized vehicles, skateboards, roller skates and inline skates are prohibited. This section does not apply to children riding tricycles and bicycles when accompanied by adults or to individuals with mobility impairments using motorized assistive devices.

Neither fireworks nor drones shall be permitted in Common Areas.

17. **FENCES SHARED IN COMMON WITH THE ASSOCIATION:** The rights and duties of Owners with respect to fences shared in common with the Association 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/her/its invitees, 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 Association 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 invitees, guests, or family, it shall be the obligation of the Owners to rebuild and repair such fence.
- (c) In the event that the exterior of a shared perimeter fence is damaged the Association shall be responsible for repairing said damage. If the interior of a shared perimeter fence is damaged the Owner shall be responsible for repairing said damage.
- (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.

18. **PRIVATELY OWNED FENCES:**

- (a) All fences between individual Lots are the sole responsibility of the Lot Owners to maintain, repair, and replace. Any dispute arising therefrom is a private matter of the Owners involved.
- (b) Owner fences facing Tract A (Lots 55-80), Tract E (Lots 8 and 9), along the north perimeter (Lots 1-13) and east perimeter (Lots 13, 14, 21, 22, 29, 30, 38, 39, 48, and 49) are the sole responsibility of the Owners to maintain, repair and replace.

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

20. **PROPERTY RIGHTS:** 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.

- (a) 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:
  - i. The Hillcrest Nine Association has the right to suspend the voting rights of an Owner for any period during which any assessment against his/her/its Lot remains unpaid; and for a period not to exceed sixty (60) days for all infractions of this Declaration or the other Association governing documents.
  - ii. The right of the Board of Directors of the Association to adopt and enforce reasonable rules and regulations regarding the use of the Common Areas.
  - iii. 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.

- (b) Any Owner may delegate, subject to and in accordance with the Bylaws, his/her/its right to enjoyment to the Common Areas and facilities to the members of his/her/its family, his/her/its tenants or contract purchasers who reside on the property.

21. **UTILITIES:**

- (a) Utility Easement. There is hereby created an easement upon, across, over and under the Common Areas for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Areas. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Areas except as initially designed, approved and constructed.
- (b) Easements for Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachments, including, but not limited to, encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the Plat and the actual construction. If any portion of the Common Areas shall actually encroach upon any Lot, or if any Lot shall actually encroach upon any portion of the Common Areas, or if any Lot shall actually encroach upon another Lot, as the Common Areas and the Lots are shown on the Plat, a valid easement for any of said encroachment and for the maintenance thereof, so long as they stand, shall and does exist. In the event any Lots or Common Areas are repaired, altered, or reconstructed, the Owners of the Lots agree that similar encroachments shall be permitted and that a valid easement for said encroachment and for the maintenance thereof shall exist.
- (c) Easements for Ingress and Egress. There is hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas. Such easements shall run in favor of and be for the benefit of the Owners and occupants of the Lots and their guests, families, tenants and invitees.

22. **HOMEOWNERS' ASSOCIATION:**

- (a) Hillcrest Nine Homeowners' Association, Inc., 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 Bylaws as such Articles and Bylaws may be subsequently amended.
- (b) 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, Bylaws 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. When more than one person holds an interest in any Lot, all such persons shall be Members but for all voting purposes and quorum purposes they shall together be considered to be one Member. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.
- (c) 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. The Board of Directors shall have the power to adopt, amend and repeal rules and regulations governing the use of the Common Areas and the conduct of the Members and their guests thereon.
- (d) 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.
- (e) To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Architectural Control Committee, shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of their being or having served in such capacity on behalf of the Association or any settlement thereof, whether or not they are a director, officer or member of the Architectural Control Committee or serving in such other specified capacity at the time such expenses are incurred; provided that the Board shall determine, in good faith, that such officer, director, member of the Architectural Control Committee or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of their duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

**23. COVENANT FOR MAINTENANCE ASSESSMENTS:**

- (a) Each Owner, by execution of a purchase contract, is deemed to covenant and agree, for themselves, their heirs, successors and assigns, to pay to the Association annual assessments and special assessments. The assessments, together with interest, costs, reasonable attorneys' fees and all other amounts payable to the Association under the governing documents shall be a lien on the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of each person who was the Owner of such Lot at the time when the assessment was levied or the Owner's successor in title. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title, unless expressly assumed by them.
- (b) The assessments levied by the Association shall be used to promote the health, safety, and welfare of the Owners, for the improvement, maintenance, and insurance of the Common Areas or to cover any other Association related expenses that the Board deems to be relevant to the operation of the Association.
- (c) The annual assessment may be increased each year by not more than twenty percent (20%) above the assessment for the previous year without a vote of the Membership and may be increased above twenty (20%) percent by an affirmation vote of two-thirds (2/3) of Members voting in person, or by absentee ballot, at a meeting duly called for this purpose.
- (d) The Board of Directors shall fix the annual assessments in accordance with paragraph 23(c). The Board shall give notice of the annual assessment to each Owner prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment. If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year, and the revised annual assessment shall commence on the date designated by the Board except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding the maximum allowable annual assessment for such fiscal year shall become effective until approved by Members entitled to cast a majority of the votes entitled to be cast by Members who are voting in person or by absentee ballot at a meeting duly called for such purpose.
- (e) 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 project (construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas or replacement of damaged or destroyed property in the Common Areas) provided that any such assessments shall have the approval of two-thirds (2/3) of Members voting in person, or by absentee ballot, at a meeting duly called for this purpose.
- (f) Special assessments levied by the Association shall be used for the common good and benefit of the project and the Owners by devoting said funds and property, among

- other things, to the acquisition, construction, alteration, maintenance, insurance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners.
- (g) The assessment year shall be the fiscal year. 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 1<sup>st</sup> and October 1<sup>st</sup> of each year of assessment.
  - (h) Any assessment or charge not paid within fifteen days (15) days after the due date shall be subject to a late penalty which shall be the greater of fifteen dollars or ten percent of the amount of the unpaid assessment. All payments received by the Association shall be applied first to the then current month's assessment and then to past due assessments in the inverse order of their maturity. The Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his/her Lot.
  - (i) Any assessment, or any installment of an assessment, that is delinquent shall become a continuing lien on the Lot against which such assessment was made. The Association shall have the right to enforce collection of any delinquent assessments in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent assessments, (ii) bringing an action to foreclose its lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage, or (iii) exercising a power of sale in the manner provided by law for a sale under a deed of trust. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.
  - (j) No Owner may waive or otherwise escape liability for the assessments or charges provided for herein by non-use of the Common Areas or abandonment of his or her Lot.
  - (k) The assessments may be used to contribute to the maintenance of the Public Multi-Use Trail Easement (Tract D) parcel 214-47-572 to assist in maintaining Hillcrest Nine property values and ensure access for its Members to the Lookout Mountain Preserve.

**24. 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. The 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) This Declaration may be amended by a vote of a majority of the Lot Owners (61 member households). All amendments and the affirming Members' signature ballots approving such amendments shall be recorded with the County Recorder's Office.

- (c) Any amendment to this Declaration which limits or terminates membership in the Association must be signed by eighty percent (80%) of the Owners in 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.

**25. 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 other such remedy as may be available. In the event the Association incurs attorneys' fees, court costs, costs of investigation and other related expenses in an effort to enforce the terms of this Declaration, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorney's fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including but not limited to the Association's administrative costs and fees, regardless of whether or not a suit was filed.
- (b) The failure by any Owner of 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 of any provision thereof.

- 26. FINES:** The Association shall have the authority to levy monetary fines for any violation of the Declaration or other governing documents after providing notice and opportunity to be heard. The Board of Directors shall have the authority to adopt, amend, and repeal a Fine Policy and Schedule of Fines. This Fine Policy and Schedule of Fines shall be available to Owners on the Association Website or by contacting a member of the Board of Directors.

The Schedule of Fines may be increased each year by not more than twenty percent (20%) without a vote of the Membership and may be increased above twenty percent (20%) by an affirmation vote of two-thirds (2/3) of the Members voting in person, or by absentee ballot, at a meeting duly called for this purpose.

27. **SEVERABILITY**: If any provision of this Declaration or the application of the Declaration to any person or circumstance shall be held invalid, the remainder of this Declaration or the application of the Declaration to persons or circumstances other than those to which it is held invalid shall not be affected thereby.
28. **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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

The President and Secretary of Hillcrest Nine Homeowners' Association, Inc., certify that the provisions contained within this Second Amended and Restated Declaration have been approved by a vote of the required number of Owners.

DATED this 9<sup>th</sup> day of July, 2021.

**Hillcrest Nine Homeowners' Association, Inc.**

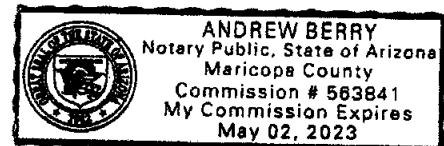
By: Jesse L. Cuijty  
Jesse L. Cuijty, President

STATE OF ARIZONA           )  
  ) ss.  
County of Maricopa        )

On this 9<sup>th</sup> day of July, 2021, before me personally appeared Jesse L. Cuijty, President of Hillcrest Nine Homeowners' Association, Inc., whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

nm        Bz  
Notary Public

My commission expires: May 02, 2023



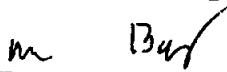
[SIGNATURE ON FOLLOWING PAGE]

**Hillcrest Nine Homeowners' Association, Inc.**

By:   
Daryl Davis-Ferra, Secretary

STATE OF ARIZONA           )  
  ) ss.  
County of Maricopa         )

On this 9 day of JULY, 2021, before me personally appeared Daryl Davis-Ferra, Secretary of Hillcrest Nine Homeowners' Association, Inc., whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

  
Notary Public

My commission expires: MAY 2, 2023

