

MOD RTH
5800017

111261370150
12613/150

FOURTH AMENDED DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That HILLCREST IMPROVEMENT ASSOCIATION, an Arizona non-profit corporation, as Trustee, being the owner of all the following Described premises situated within the City of Phoenix, County of Maricopa, State of Arizona, to wit:

The Southwest quarter (SW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$) of Section Eight (8), Township Three (3) North, Range Three (3) East of the Gila and Salt River Base and Meridian, including Lots One (1) through One Hundred Seventeen (117), and Tracts A, B, C, D, E, F, G, and H inclusive, HILLCREST ONE, TWO, THREE and FOUR, a subdivision of Maricopa County, Arizona, according to the plat of record thereof in the office of the County Recorder of Maricopa County, Arizona, in Book 115 of Maps, page 23 thereof; Book 119 of Maps, page 26 thereof; Book 117 of Maps, page 26 thereof; and Book 149, page 44 thereof,

and desiring to establish the nature of the use and enjoyment of said parcel, lots and tracts, hereby declares that the following covenants, conditions, restrictions and reservations shall attach to the said real property, and every lot thereof, and shall constitute covenants running with the land.

1. The owners of Lots One (1) through One Hundred Seventeen (117), inclusive, of HILLCREST shall own an undivided One-One Hundred Seventeenth (1/117th) interest of all common areas delineated as tracts and as set forth in the respective plats of record covering said lots.
2. All residents of HILLCREST must be eighteen (18) years of age or older. A resident shall be defined as an individual residing at any Hillcrest address for more than thirty (30) days.
3. Said premises shall be for residential use only, and construction thereon is restricted to high-class, single-family dwellings and no business uses or activities of any kind whatsoever shall be permitted or conducted upon said lots.
4. All improvements erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said lots.
5. That no part of any dwelling shall be used for living purposes until the entire structure is nearing completion, nor shall any structure of a temporary nature be used as a dwelling on any lot in HILLCREST, 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 from outside the subdivision, except that a construction shed, used for the storage of tools and equipment, may be maintained by the builder on any unsold lot during the period of construction of the subdivision. All dwellings shall be construed to mean single-family dwellings and only one such dwelling shall be allowed on each lot.
6. No animals, livestock or poultry shall be kept on the premises other than household pets, and no signs of a commercial nature (except for one "For Rent" or "For Sale" sign per parcel) shall be allowed, and no billboard, store, office, or other place of business of any kind, and no institution or other place for the care or treatment of the sick or disabled, sickly or mentally, shall be placed or permitted to remain on any of said lots, nor shall any theatre, bar, restaurant, saloon or other place of entertainment ever be erected or permitted upon the premises or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence, nor shall any unsightly object or nuisance be erected, placed or maintained on any of said lots, nor shall any use or thing be permitted which may endanger the health or unreasonably disturb the holder of any parcel in the subdivision.

"Restrictions herein, if any, based on race, color, religion, sex, handicap, familial status or national origin are deleted."

7. Each lot shall be maintained free of rubbish, trash or garbage, and the same shall be removed from the premises and not allowed to accumulate thereon, and garbage cans, incinerators, clotheslines and areas for the storage of equipment or woodpiles shall be kept screened by an adequate planting or fencing so as to conceal the same from adjacent parcels and streets.
8. All carports shall be kept free of debris or storage items. All garages shall be subject to the same restrictions if garage doors are to be left open for periods other than those needed for the entering or exiting of vehicles.
9. All screening areas, whether fences, hedges or walls, shall be erected or maintained upon the lots in said subdivision in accordance with the original construction of the buildings located on said premises, or as approved by HILLCREST IMPROVEMENT ASSOCIATION, as hereinafter set forth.
10. HILLCREST IMPROVEMENT ASSOCIATION shall do all things necessary for the general benefit and welfare of the property owners in the HILLCREST subdivision, and shall manage and maintain the private drives, walks, parks, recreation areas, including swimming pool, and all other commonly owned lands in said subdivision and do all other necessary things as set forth in the Articles of Incorporation of HILLCREST IMPROVEMENT ASSOCIATION.
11. The record owner of each lot in HILLCREST Subdivision shall pay to the HILLCREST IMPROVEMENT ASSOCIATION within ten (10) days from receipt of notice and invoice a sum equal to the total of the following: (1) the pro rata share of the actual cost to HILLCREST IMPROVEMENT ASSOCIATION of all maintenance, improvement and payment of taxes required by paragraph 12 hereof; (2) the pro rata share of the actual cost to the Improvement Association of the recreational facilities as may be constructed and/or approved from time to time by said Association; and (3) the pro rata share of the cost as determined by the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION for the establishment and maintenance of a reserve for repair, maintenance, improvement and the payment of taxes as required by paragraph 12 hereof.

The total amount of items in paragraph one above shall not exceed the amount of money levied in the previous year, except by the written consent of the owners of record of a majority of the lots in the subdivision. Notices and invoices for payment of any and all assessments may be submitted monthly or at any other regular interval as may be fixed by the Board of Directors. In the event any such invoice is not paid within thirty (30) days from the date the amount is due, a finance charge of one and one-half per cent (1½%) per month (annual percentage rate of eighteen per cent (18%)) shall be charged the delinquent lot owner. The amount of the invoice plus all finance charges shall become a lien upon the lot or lots against which such assessment was levied. Such liens may be enforced and foreclosed as provided in the Articles of Incorporation of HILLCREST IMPROVEMENT ASSOCIATION. Such lien shall be foreclosed in the manner provided by statute for the foreclosure of materialmen's liens. All costs incurred by the Association in regard to lien filing shall be paid by the delinquent lot owner before the lien is released.

12. Upon the failure of any owner of a lot to maintain the premises and the improvements thereon in a manner satisfactory to the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION, the Association, through its agents and employees, is herewith granted the right to enter upon such lot and to make such reasonable repairs, maintenance, rehabilitation or restoration of the premises and the exterior of any improvements located thereon as may be necessary, and the cost thereof shall be charged against the owner of said lot by invoice in the manner hereinabove set forth in paragraph 11 hereof and made a lien on said lot and foreclosed as hereinabove set forth.
13. The Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION shall have, in addition to the other powers set forth in the Articles of Incorporation of HILLCREST IMPROVEMENT, the authority to approve or disapprove any and all changes in occupancy or ownership of parcels in the HILLCREST subdivision and the sale, transfer, conveyance, lease or sublease of such lots in said subdivision.

The owner or owners of said lots shall give the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION notice in writing of any intended sale, transfer, conveyance, lease or sublease, together with application on a form prescribed by any Board and completed by the proposed transferee or lessee. The Board of Directors shall have fifteen (15) days after receipt of such application and notice to approve or disapprove the same, and within said fifteen (15) day period the Board of Directors, on behalf of the Improvement Association, shall have the option to purchase, lease or sublease said lots, as the case may be, upon the same terms as those upon which the owner of said lots proposes to sell, lease, sublease or convey. The Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION may, at its option, assign to HILLCREST IMPROVEMENT ASSOCIATION, or to the owner of record of any lot in HILLCREST subdivision, such parcel hereinabove referred to, but not otherwise. In the event the Board of Directors shall neither approve or disapprove the proposed conveyance within the said fifteen (15) day period, the same shall be deemed to be approved. In the event said Board shall disapprove such proposed transfer, lease, sublease or conveyance, but shall fail to exercise the option herein granted within said fifteen (15) day period, the proposed transfer, lease, sublease or conveyance shall be valid only upon compliance with the following provisions hereinbelow set forth:

- (a) No sale, transfer, conveyance, lease or sublease shall be made until there shall be filed in the office of the Recorder of Maricopa County and incorporated in the instrument of sale, transfer, conveyance, lease or sublease, by reference, one of the following:
 - (1) written approval by the Board of Directors of such sale, transfer, conveyance, lease or sublease; or
 - (2) the affidavit of the owner of the lot that the required notice has been given to the Board of Directors of the HILLCREST IMPROVEMENT ASSOCIATION in accordance with paragraph 13 hereinabove set forth, and that said Board has failed to approve or disapprove the proposed sale, transfer, conveyance, lease or sublease within the fifteen (15) day period after receipt of notice; or
 - (3) the written approval for the proposed sale, transfer, lease or sublease, executed by the owners of record of at least one-half of the lots in the subdivision in question.
 - (b) No improvement, whether a building, fence, wall or other structure shall be commenced, erected or maintained on any lot until the plans and specifications for the same showing all construction details, including shape, height, materials, floor plans, location and approximate cost, shall have been submitted to and approved by the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION, and a copy thereof, as finally approved, included in the minutes of said Board of Directors. Said Board shall have the right to deny approval of any plans or specifications which are not, in its opinion, suitable or desirable for aesthetic or any other reasons, and said Board of Directors shall have the right to take into consideration the effect of any proposed structure or building and the materials of which the same is to be built upon the site where the same is proposed to be erected or constructed, the suitability of the same with the surrounding area, and the effect of such structure or building upon adjacent and neighboring properties. All subsequent additions, alterations or improvements on any building, fence, wall or other structure, shall be also subject to the prior approval of the Board of Directors.
 - (c) All structures in HILLCREST shall be painted white. Any change in the original color used on trim work must be approved by the Board of Directors as set forth in paragraph thirteen (13), section (b).
 - (d) All changes to the basic landscaping design of any lot must be approved by the Board as set forth in paragraph thirteen (13), section (b).
14. Each lot owner shall be subject to the following limitations and restrictions with respect to party walls constructed within the subdivision, as follows:

- (a) Every wall which is built as a part of the original construction within the subdivision property of HILLCREST subdivision and placed on the dividing line between separate lots in the subdivision, shall constitute and be considered a party wall, and as to such wall each of the owners immediately adjacent shall assume the obligations and be entitled to the rights and privileges of these restrictive covenants and to the rights, duties and obligations set forth in the Articles of Incorporation of HILLCREST IMPROVEMENT ASSOCIATION and the By-Laws of said corporation and to the extent not inconsistent herewith, the general rules of law regarding party walls.
- (b) If any party wall is damaged or destroyed through the act or acts of any adjoining owner, or his agent, servants, guests or members of his family, whether such act is wilful, negligent or accidental, such owner shall forthwith proceed to rebuild or repair the same to as good a condition as formerly without cost to the other adjoining owner. The failure to forthwith institute rebuilding or repairing of such party wall shall be sufficient reason for the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION to rebuild or repair the same and charge the lot of the responsible owner under the provisions of the Articles of Incorporation of HILLCREST IMPROVEMENT ASSOCIATION and paragraphs 11 and 12 set forth hereinabove.
- (c) Any party wall damaged or destroyed by some act or event other than that produced by one of the adjacent owners, his agents, servants, guests or family, shall be rebuilt or repaired by both adjoining owners to the same good condition as formerly, at their joint and equal expense and as promptly as reasonably possible. The failure of adjoining owners to make such rebuilding or repairs as are reasonably necessary shall be sufficient reason for the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION to rebuild or repair said party wall and charge the lots of both adjoining owners, as provided in the Articles of Incorporation of HILLCREST IMPROVEMENT ASSOCIATION and paragraphs 11 and 12 hereinabove set forth.
- (d) Any owner of a lot who proposes to modify, rebuild, repair or make additions to his own residence or any structure upon his lot in any manner which requires the extension, alteration or modification of any party wall, shall first obtain the written consent of the adjacent owner, in addition to meeting the requirement of these restriction and covenants of the building codes or similar ordinances of any governmental body affected and the requirements of the Articles of Incorporation and By-Laws of HILLCREST IMPROVEMENT ASSOCIATION.
- (e) For the purposes of general maintenance, for reasons other than those set forth in paragraph fourteen (14) section (b), the wall which actually constitutes the residence shall be maintained by the owner of that residence.
- (f) In the event of a disagreement between owners of adjoining lots with respect to the repair, reconstruction or maintenance of a party wall, or with respect to sharing the cost of repairing, rebuilding or maintaining the same, then upon the written request of either of said owners to the Board of Directors of HILLCREST IMPROVEMENT ASSOCIATION, the matter shall be submitted to said Board for arbitration under such rules as may be from time to time adopted by the Board. If no such rules are adopted or the Board refuses to act, then the matter shall be submitted to three arbitrators, one chosen by each of the owners, and the third by the two so chosen, or if they cannot agree within five (5) days, then the third arbitrator shall be any judge of the Maricopa County Superior Court. A determination of matter signed by any two of the three arbitrators shall be binding upon all persons.
- (g) No private agreement of any adjoining property owners shall modify or abrogate any of these restrictive covenants nor the obligations, rights, duties and limitations set forth upon the individual lot owners by reason of the Articles of Incorporation of HILLCREST IMPROVEMENT ASSOCIATION or the By-Laws thereof.

- (h) The covenants and agreements herein contained shall be binding upon the heirs, administrators, successors and assigns of the owners, but no person shall be liable for any act or omission respecting the covenants herein contained, except such as took place while such person was an owner.
15. Vans, campers, trailers, motor homes or other vehicles of a similar category shall not be parked on private streets or on any portion of the said lots, nor shall repairs be performed on any vehicle in the said private streets or lots.
16. All pets, including but not limited to dogs and cats, must when not on their owners' lots, be on a leash at all times. When pets are walked on common property, owners must clean up all waste material immediately.
17. The restrictive covenants, conditions, limitation and agreements herein contained shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any lot or lots entitled to membership in HILLCREST IMPROVEMENT ASSOCIATION after the date upon which this instrument has been duly recorded. The covenants, restrictions, conditions and reservations herein contained may be enforced by the Board of Directors of the HILLCREST IMPROVEMENT ASSOCIATION, by the owner of any lot in said subdivision, or any one or more of said individuals and/or corporations; provided, however, that the violation or breach of any covenant, restriction, reservation and/or condition, or any right of re-entry by reason thereof, shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value upon said lot or lots, and except as hereinafter provided, each and all of said covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustee's sale, or otherwise, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or remedied by appropriate legal proceedings, notwithstanding the existence of any lien, deed of trust or mortgage instrument. Any and all instruments of conveyance of any interest in all or part of the lot or lots of this said HILLCREST subdivision shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein set forth as fully as though said terms and conditions of this instrument were therein set forth in full; provided, however, that the restrictive covenants, terms and conditions of this instrument shall be binding upon all persons affected by the same, whether expressed reference is made to this instrument or not.
18. Notwithstanding any provision of this instrument to the contrary, the provisions of paragraph 11, 12 and 13 shall not apply to nor be enforced by any person with respect to:
- (a) a sale, transfer or conveyance of any parcel in said subdivision to any person pursuant to a judgment of foreclosure of a mortgage of record or by means of a Deed in Lieu of Foreclosure of any such mortgage to an institutional lender upon such lot; or
 - (b) a sale, transfer, conveyance or lease of any parcel in said subdivision to any person by an institutional lender which has acquired title through or by virtue of foreclosure by it of a mortgage of record upon such parcel or by means of a Deed in Lieu of Foreclosure of any such mortgage; or
 - (c) any sale, transfer or conveyance by the Trustee, HILLCREST IMPROVEMENT ASSOCIATION. Each and every lien or charge upon the lots in HILLCREST subdivision provided for in said paragraph 11, 12 and 13 shall be subject and subordinate to and shall not affect the rights of the holder or holders of first realty mortgages upon such lot or lots made in good faith and for value.
19. These presents may be amended at any time by the written consent of a majority of the lot owners entitled to be members of the HILLCREST IMPROVEMENT ASSOCIATION, and such amendment shall be binding upon all such lot owners, their successors and assigns.

20. The invalidity of any one of the agreements, covenants, restrictions, reservations or conditions herein contained by judgment, decree or court order, shall in nowise affect the validity of the remaining provisions of this instrument and the same shall remain in full force and effect.

IN WITNESS WHEREOF, HILLCREST IMPROVEMENT ASSOCIATION, its Trustee, has hereunto caused its corporate name to be signed and its corporate seal to be affixed and the same to be attested by the signature of its authorized officer, this 21 day of December, 1977.

HILLCREST IMPROVEMENT ASSOCIATION,
as Trustee

By: [Signature]
[Signature]

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this the 21st day of December, 1977, before me, the undersigned officer, personally appeared Sandra E. Chakrabarti, who acknowledged herself to be an Officer of HILLCREST IMPROVEMENT ASSOCIATION, and that she being authorized so to do, executed the foregoing instrument for the purpose contained herein, by signing the name of the corporation by herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires:

My Comm. No. 111178

Notary Public
County of Maricopa } ss

I hereby certify that the within instrument was read and recorded at request of

Hilcrest Improv. Assoc. Outback

DEC 21 1977 - 1110

in Booklet 12612

or page 150-155

Witness my hand and official seal the day and year aforesaid.

Notary Public

Coupled Recorder

[Signature]
Deputy Recorder