

HILLOREST IMPROVEMENT ASSOCIATION

MOD RSTR

FIFTH AMENDED DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That HILLOREST 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 (G&SRB&M), including Lots One (1) through One Hundred Seventeen (117), and Tracts A, B, C, D, E, F, G and H inclusive, HILLOREST 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 28 thereof; Book 119 of Maps, page 26 thereof; Book 137 of Maps, page 26 thereof; and Book 149, page 44 thereof,

and declaring 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 with all improvements thereon, and shall constitute covenants running with the land.

1. The owners of Lots One (1) through One Hundred Seventeen (117), inclusive, of HILLOREST 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 HILLOREST must be eighteen (18) years of age or older. A resident shall be defined as an individual residing at any HILLOREST address for more than thirty (30) days.
3. Said premises shall be for residential use only and are restricted to single-family dwellings. 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. No animals, livestock or poultry shall be kept on the premises other than household pets. No signs of a commercial nature (except for one "For Rent" or one "For Sale" sign per lot) 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 and/or disabled shall be placed or permitted to remain on any of said lots; nor shall any theater, bar, restaurant, saloon or other place of entertainment 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 of or unreasonably disturb the owner of any lot in the subdivision.
6. 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 same from adjacent lots and streets.
7. All carports shall be kept free of debris and 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.

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

8. All screening, whether fences, hedges or walls, shall be erected or maintained upon the lots in HILLOREST Subdivision in accordance with the original construction or as approved by HILLOREST IMPROVEMENT ASSOCIATION, as hereinafter set forth.

9. HILLOREST IMPROVEMENT ASSOCIATION shall do all things necessary for the general benefit and welfare of the property owners in HILLOREST Subdivision, and shall manage and maintain the private drives, walks, parks, recreation areas (including swimming pool), and all other commonly owned lands in HILLOREST Subdivision and do all other necessary things as set forth in the Articles of Incorporation of HILLOREST IMPROVEMENT ASSOCIATION.

10. The owner of record of each lot in HILLOREST Subdivision shall pay to the HILLOREST 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 HILLOREST IMPROVEMENT ASSOCIATION of all maintenance, improvements and payment of taxes;
- (2) The pro rata share of the actual cost to HILLOREST IMPROVEMENT ASSOCIATION of recreational facilities as may be constructed and/or approved from time to time by said Association;
- (3) The pro rata share of the cost, as determined by the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION, for the establishment and maintenance of a reserve for repair, maintenance, improvement, and payment of taxes.

The total amount of items in the previous paragraph shall not exceed the amount of money levied in the previous year, except by the written consent of the owners of record of fifty one per cent (51%) of the lots in HILLOREST Subdivision. Notices and Invoices for payment of any-kind all assessments may be submitted monthly or at any other regular interval as may be fixed by the Board of Directors. In 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 to the delinquent lot owner(s). 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 HILLOREST IMPROVEMENT ASSOCIATION. Such lien(s) shall be foreclosed in the manner provided by the statute for the foreclosure of materialmen's liens. All costs incurred by HILLOREST IMPROVEMENT ASSOCIATION in regard to lien filing and collection shall be paid by the delinquent lot owner(s) before the lien is released by the Association.

11. Upon the failure of any owner(s) of a lot to maintain the premises and improvements thereon in a manner satisfactory to the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION, the Association is herewith granted the right for its agents and/or employees 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(s) of said lot by invoice in the manner set forth in paragraph 10 above and made a lien on said lot; and may be foreclosed, if necessary, as set forth above.

12. The Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION shall have, in addition to the other powers set forth in the Articles of Incorporation of HILLOREST IMPROVEMENT ASSOCIATION, the authority to approve or disapprove any and all changes in occupancy or ownership of lots in HILLOREST Subdivision and the sale, transfer, lease or conveyance of such lots in the subdivision.

The following procedures/policies will govern as the Board of Directors carries out its responsibilities in connection with the sale, transfer, lease or conveyance of such lots;

a. The owner(s) of a lot shall give the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION notice in writing within five (5) days after action has been initiated with respect to the intended sale, transfer, lease or conveyance of such lot.

b. The owner(s) of a lot or the owner's agent shall take action to insure that application by the proposed transferee or lessee, on a form prescribed by the Board of Directors, is submitted to the Board of Directors as soon as possible.

c. The Board of Directors shall have fifteen (15) days after receipt of the application to approve or disapprove of same. If said application is approved, a copy of the written approval of the Board of Directors will be filed with the title company handling the transaction.

d. If the application is not favorably considered, the Board of Directors, within the prescribed fifteen (15) days period, on behalf of HILLOREST IMPROVEMENT ASSOCIATION shall have the option to purchase or lease said lot upon the same terms as those upon which the owner(s) of said lot had proposed to sell, lease or convey. In event of such purchase by HILLOREST IMPROVEMENT ASSOCIATION, the Board of Directors shall dispose of said lot in the most advantageous manner as soon as possible.

e. In the event the Board of Directors neither approves nor disapproves the proposed sale, transfer, lease or conveyance within said fifteen (15) days period, the same shall be deemed to be approved.

f. In the event the Board of Directors shall disapprove such proposed sale, transfer, lease or conveyance, but shall fail to exercise the option to purchase or lease said lot within the prescribed fifteen (15) days period, the proposed sale, transfer, lease or conveyance shall be valid only upon compliance with the following provisions:

No sale, transfer, lease or conveyance shall be made until one of the following instruments is filed in the Office of the Recorder of Maricopa County and is incorporated in the instrument of sale, transfer, lease or conveyance by reference:

(1) An affidavit by the owner(s) of record of the lot that the required Notice had been given to the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION as prescribed in paragraph 12a herein; that an application had been submitted, as prescribed in paragraph 12b herein; and that said Board of Directors had disapproved same, but had failed to exercise the option to purchase or lease said lot within the specified fifteen (15) days period.

(2) The written approval of the proposed sale, transfer, lease or conveyance of the owners of record of fifty one per cent (51%) of the lots in HILLOREST Subdivision.

13. The following procedures/policies will obtain with respect to construction, improvements, painting and landscaping on lots in HILLOREST Subdivision:

a. No improvement, whether a building, fence, wall or other structure shall be commenced, erected or maintained on any lot in HILLOREST Subdivision until the plans and specifications for same, showing all details, including shape, height, materials, floor plans, location, color of paint/materials and the approximate cost of same have been submitted to and approved by the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION and a copy thereof, as finally approved, has been returned to the owner(s) of subject lot. A copy of such approval will be included in the Minutes of the Meeting at which the application was approved by the Board of Directors.

b. All subsequent additions, alterations or improvements on any building, fence, wall or other structure also shall be subject to the prior approval of the Board of Directors.

c. The Board of Directors shall have the right to deny approval of any plans or specifications which are not, in the Board's opinion, suitable or desirable for Aesthetic or any other pertinent or cogent reasons.

d. The Board of Directors shall have the right to take into consideration the effect of any proposed structure or building and the materials of which same is to be built, upon the site where the building or structure is proposed to be constructed or erected; the suitability of same with the surrounding area; and the effect of such structure or building upon adjacent and neighboring properties.

e. All structures in HILLOREST Subdivision shall be painted with a non-glossy paint that is either pure white or a shading thereof in which the shading elements shall be limited to either Raw Umber or Raw Sienna/Yellow Oxide. The maximum quantity per gallon of either Raw Umber or Raw Sienna/Yellow Oxide shall be 12/48ths of an ounce if only one shading element is used. Similarly, if both elements are used in a paint formula, the maximum quantity of Raw Umber and of Raw Sienna/Yellow Oxide shall be 12/48ths of an ounce per gallon of each element. In event the owner(s) of a lot desires to use a factory-mixed exterior, flat paint and the formula for the shading elements therein is not available, approval of the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION shall be obtained before such paint is applied.

f. Any change in the color or materials used on trim work must be approved by the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION.

g. Any change(s) in the concept of landscaping of that portion of a lot visible from the street must be approved by the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION.

14. Each lot owner shall be subject to the following provisions, limitations and restrictions with respect to party walls constructed within HILLOREST Subdivision:

a. Every wall built as a part of the original construction within HILLOREST Subdivision and placed on the dividing line between separate lots shall constitute and be considered a party wall. As to such wall, each of the owners immediately adjacent thereto 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 HILLOREST 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 willful, negligent or accidental, such adjoining 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 HILLOREST 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 HILLOREST IMPROVEMENT ASSOCIATION and paragraph 11 herein.

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 condition as formerly at their joint and equal expense and as promptly as reasonably possible. The failure of adjoining owners to effect such rebuilding or repairs as are reasonably necessary shall be sufficient reason for the Board of Directors of HILLOREST 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 HILLOREST IMPROVEMENT ASSOCIATION and paragraph 11 herein.

d. Any owner of a lot who proposes to modify, rebuild, repair or make additions to his residence or to any other structure on 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, said owner must meet the requirements of these restrictions, covenants of the building codes, or similar ordinances of any governmental body having jurisdiction, and the requirements of the Articles of Incorporation and the By-Laws of HILLOREST IMPROVEMENT ASSOCIATION.

e. For the purposes of general maintenance the wall which actually constitutes the residence shall be maintained by the owner of that residence, except in instances falling under the provisions of paragraph 14b herein.

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 same, then upon the written request of either of said owners to the Board of Directors of HILLOREST IMPROVEMENT ASSOCIATION, the matter shall be submitted to the 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 of Directors refuses to act, then the matter shall be submitted to three arbitrators; one chosen by each of the owners and the third selected by the two arbitrators so chosen. If they cannot reach agreement within five (5) days, the dispute shall be referred to the Arbitration Service of the Better Business Bureau of Maricopa County for resolution.

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 HILLOREST 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 in HILLOREST Subdivision.

15. Parking Regulations within HILLOREST Subdivision:

a. Camping/pleasure vans and campers shall not be parked overnight on the private streets, driveways or other exterior portions of private lots; nor shall extensive repairs on such vehicles be performed in said streets, driveways and exterior portions of private lots.

b. Trailers, motor homes (recreation vehicles) and boats shall not be parked overnight on private streets; nor shall they be parked on driveways or other exterior portions of private lots for more than seventy two (72) hours at a time without specific approval in each instance from the Board of Directors; nor shall extensive repairs on such vehicles/boats be performed in said streets, driveways or exterior portions of private lots.

c. Commercial vans, pickup trucks and other types of commercial/industrial vehicles owned by HILLOREST residents or their houseguests shall not be parked overnight on private streets or any exterior portion of private lots, including driveways; nor shall extensive repairs on such vehicles be performed in said private streets, driveways or exterior portions of private lots.

16. All pets, including but not limited to dogs and cats, when not on their owners' lots must 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, limitations and agreements herein contained shall run with the land and shall be binding upon all persons purchasing, leasing or occupying any lot or lots entitled to membership in HILLOREST 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 HILLOREST IMPROVEMENT ASSOCIATION, by the owner of any lot in HILLOREST Subdivision or any one or more of said individuals; provided, however, that the violation or breach of any covenant, restriction, reservation and/or condition, or any right of re-entry or reason therefor, 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 HILLOREST 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 the expressed reference is made to this instrument or not.

18. These presents may be amended at any time by the written consent of fifty one per cent (51%) of the lot owners entitled to be members of the HILLOREST IMPROVEMENT ASSOCIATION, and such amendment shall be binding upon all such lot owners, their successors and assigns.

19. The invalidity of any one of the agreements, covenants, restrictions, reservations or conditions herein contained by judgment, decree or court order shall in no way affect the validity of the remaining provisions of this instrument and the same shall remain in full force and effect.

IN WITNESS WHEREOF, HILLOREST IMPROVEMENT ASSOCIATION, as 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 3rd day of December, 1979.

HILLOREST IMPROVEMENT ASSOCIATION,
as Trustee

By: Mary E. Ankney
President



STATE OF ARIZONA }
COUNTY OF MARICOPA } ss.

On this the 3 day of December, 1979, before me, the undersigned officer, personally appeared Mary E. Ankney, who acknowledged herself to be an Officer of HILLOREST IMPROVEMENT ASSOCIATION, and that she being authorized to do so, 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.

Ray Rowden
Notary Public

My commission expires; My Commission Expires Oct. 29, 1982

DEC 4 - 1979 -2 00

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of Lee Baker

in Doc't 14070
on page 1378-1383

Witness my hand and official seal this day and year aforesaid.
Bill Henry

County Recorder
By William C. ... 3.50
Property Recorder

126 E. Calaveras Rd
Phoenix: 95032