

Unofficial
Document

HELEN PURCELL
93-0664351 09/30/93 10:33

TAMIE 3 OF 3

When recorded return to:
Clare H. Abel, Esq.
Burch & Cracchiolo, P.A.
P. O. Box 16882
Phoenix, Arizona 85011

FIRST DECLARATION OF ANNEXATION
AND
TRACT DECLARATION

SAN MARCOS COUNTRY CLUB ESTATES

PHASE II

THIS FIRST DECLARATION OF ANNEXATION AND TRACT
DECLARATION is made this 29th day of SEPTEMBER, 1993, by
FOCUS DEVELOPMENT CORPORATION, an Arizona corporation
("Declarant").

W I T N E S S E T H :

WHEREAS, Declarant executed and caused to be recorded
the Third Amended and Restated Declaration of Covenants,
Conditions and Restrictions for San Marcos Country Club Estates
on ~~APRIL 30, 1993~~, as Instrument No. 93-0664349, Official Records
of Maricopa County, Arizona, as may be amended from time to time
(collectively, the "Declaration"), which covers property known as
San Marcos Country Club Estates; and

WHEREAS, the following described real property is
hereby made a part of the San Marcos Country Club Estates and is
hereafter subject to the Declaration:

Lots 1 through 29, inclusive and Tract B, of
San Marcos Country Club Estates II, according
to the plat recorded in Book 355 of Maps,
Page 28 thereof, Official Records of Maricopa
County, Arizona (hereinafter "PHASE II").

WHEREAS, Article XIV of the Declaration contemplates
that additional property may be annexed into the San Marcos
Country Club Estates and Paragraph 4.1 of the Declaration
provides that Tract Declarations for the Annexation Property

would be executed and recorded periodically as the development of San Marcos Country Club Estates proceeds; and

WHEREAS, Declarant, as holder of legal title to the property described herein, now wishes to record the First Declaration of Annexation and Tract Declaration for the property described herein;

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

Declaration of Annexation for Phase II

1.1 Description of the Covered Property. Declarant has previously recorded the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions for San Marcos Country Club Estates recorded on Sept. 30, 1993, 1993, at Instrument No. 93-064349, Official Records of Maricopa County, Arizona, and the Tract Declaration recorded on September 30, 1992, at Instrument No. 93-064350, Official Records of Maricopa County, Arizona, as the record owner of the property described therein (hereinafter "Phase I"), which is known as the "Covered Property").

1.2 Description of the Annexation Property. In addition to the Property described in Section 1.1 above, the Covered Property shall now include the following:

Lots 1 through 29, inclusive and Tract B, of San Marcos Country Club Estates II, according to the plat recorded in Book 355 of Maps, Page 28 thereof, Official Records of Maricopa County, Arizona (hereinafter "PHASE II").

1.3 Declaration. Pursuant to Article XIV, and, specifically, Paragraph 14.1 thereof, Declarant does hereby submit the property described in Section 1.2 hereinabove, including the improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto, all of which hereafter may be referred to as the "Property" or the "Covered Property," to the Declaration and said Declarant hereby does further declare that all of such Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are declared to be in furtherance of the plan for the improvement, development and sale of said Property and are established for the purpose of enhancing and perfecting the value and desirability of said Property and every part thereof. No property other than that brought within the Covered Property by the Declaration and this First

Declaration of Annexation is deemed subject to the Declaration unless and until specifically made subject thereto as provided in the Declaration.

1.4 All Other Provisions. Except as otherwise provided herein, all other provisions of the Declaration shall remain and are the same and shall apply to all of the Property set forth in Section 1.2 as though fully set forth herein.

ARTICLE II

Tract Declaration

2.1 Definitions. Capitalized terms used in this First Declaration of Annexation and Tract Declaration shall have the meaning set forth for such terms in the Declaration.

2.2 Additional Covenants, Conditions, Restrictions, Reservations and Easements Applicable to the Parcel. The following covenants, conditions, restrictions, reservations and easements shall apply to the property described herein:

(a) Compliance with Law. No improvement shall be constructed or allowed to remain on the property described herein and no activity shall be engaged in on the property described herein that would violate any applicable law, ordinance or regulation.

Unofficial Document

(b) Restriction on Further Subdivision, Property Restrictions and Rezoning. Except with respect to property owned by the Declarant, there shall be no resubdivision affecting the property described herein except as set forth on the plat described in Section 1.2 hereinabove, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board, which approval must be evidenced on the recorded plat, a declaration or other instrument evidencing such subdivision or transfer. No portion of a Lot by the entire Lot, together with all improvements thereon, may be rented. No further covenants, conditions, restrictions, reservations or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument, and without such approval, such covenants, conditions, restrictions, reservations and easements shall be null and void. No applications for rezoning, variances or use permits shall be filed without the prior written approval of the Board.

(c) Residential Use. The property described herein shall be used only for single-family residential use and no Resident shall conduct any gainful trade or occupation on any Lot. No structure whatsoever, other than one private, single-

family dwelling unit, together with a private garage, a guest house or servant quarters and other facilities reasonably related to residential use (all of which must be approved in advance by the Architectural Committee), shall be placed, erected or permitted on any Lot.

(d) Minimum Sizes. The minimum interior square footage for Dwelling Units on the Lots, excluding garages, porches, patios and detached buildings, shall be 2,400 square feet.

(e) Height of Buildings. No building or structure constructed upon any Lot shall exceed twenty-four (24) feet in height and in no event shall said elevation of said building or structure be such as to unreasonably obstruct the view of Owners of adjoining Lots or from the fairways located on the golf course commonly referred to as the San Marcos Golf Course in Chandler, Arizona.

(f) Golf Balls. Owners, resident, tenants, guests and other persons, owning, occupying or using any Lot, Common Area or other area adjacent or in close proximity to a golf course are deemed to have assumed the risks of personal injury or property damage resulting from golf balls unintentionally hit onto such Lot, Common Area or other area by a person playing golf on any adjacent or nearby golf course.

(g) Landscaping and Street Trees. Unofficial Document That portion of the yard of any Lot within the property described herein which is Visible From Neighboring Property or from Common Areas or streets shall be completely landscaped and planted prior to issuance of a certificate of occupancy. All landscaping shall reflect, complement and enhance the character of the neighborhood and shall serve to screen, accent, soften and improve the visual character of the Lots and Commons Areas.

(h) Perimeter and Side Yard Walls Adjacent to Golf Course. Notwithstanding anything contained herein or in the Declaration to the contrary, the Owners of Lots in Phase II adjacent to a golf course shall not erect a solid perimeter wall or berm adjacent to the golf course or within twelve (12) feet along any side yard wall closest to the golf course. Such Owners may erect a solid berm or wall, provided it is no more than twenty-four (24) inches in height. The balance, if any, of such perimeter or side yard wall adjacent to a golf course shall be wrought iron not to exceed a total height of six (6) feet. In any event such perimeter and side yard walls shall be subject to the provision for architectural review set forth in Paragraph 4.1.1 of the Declaration.

(i) Specific Architectural Restrictions. Every Building or structure within the Property shall conform to the

ranges of styles which are within the southwestern spectrum. Southwestern building design styles include:

a. Southwest Pueblo: free-form smooth stucco walls, flat roofs, deeply recessed windows with wood lintels, free-form fireplaces and exterior screen walls.

b. Spanish Colonial: simplified Spanish Baroque with smooth stucco walls, semi-circular arches, round columns, simple cornices, clay tile roofs and octagonal or square towers.

c. Territorial: slump block or mortar washed brick walls, square window openings, and columns, flat roofs, soldier or rowclocked lintels, sills and parapets.

d. Contemporary Southwestern: clay tile low gable or hipped roofs, colonnaded porticos, symmetrical towers, arched windows accented with brick or stucco trim, Spanish style motifs or cornices continuous around perimeter walls.

All new construction modification or alteration of existing construction shall be subject to the review and approval of the Architectural Committee as provided in the Declaration.

(j) Lighting: All exterior lighting shall be diffuse and indirect whereby no light sources are directly visible from any Lot or from any private street or accessway adjoining such Lot. Each Lot within Phase II shall have two (2) exterior "Bollard" style lights installed, one light unit on each side of a driveway to each Lot. Such lighting shall be installed prior to issuance of a certificate of occupancy for any structure constructed on a Lot. "Bollard lighting" and security lighting, which only functions when triggered by a motion detector and stays on only briefly thereafter, may be direct, need not be diffuse and may be visible from any point.

(k) Signs. No signs whatever nature, Visible From Neighboring Property, shall be placed on any Lot except: (i) signs required by legal proceedings; and (ii) signs, including "for sale" and "for lease" signs, builder signs, lender signs and subdivision signs, the nature, number, location, contact and design of which shall be approved in advance and in writing by the Architectural Committee.

(l) Declarant's Exemption. Nothing contained in this First Declaration of Annexation and Tract Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or its agents of improvements or signs

deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the property described herein.

(m) Model Homes. Nothing contained herein or in the Declaration shall prohibit the construction and maintenance of model homes and marketing incidental thereto by persons engaged in the construction or marketing of Dwelling Units within the subject property, so long as the models are open only during reasonable hours and otherwise are in compliance with the provisions of the Declaration, this First Declaration of Annexation and Tract Declaration and ordinances of any applicable governmental entity having jurisdiction over the subject property. All model homes shall cease to be used as such at any time the Owner (or lessee thereof, as the case may be) is not actively engaged in the construction and sale of Dwelling Units within the subject property and no model home shall be used for the sale of residences not located within the subject property.

(n) Special Trash Collection and Containers Provisions and Easement. Notwithstanding any provisions contained herein or in the Declaration to the contrary, where a Lot in Phase II is positioned with respect to the existing and available private streets so that garbage collection using such private streets is inconvenient, such Lot Owner shall make his or her trash container available for emptying into a trash collection vehicle at a point ^{Unofficial Document} on or adjacent to the private streets. The Owners of such Lots are hereby granted an easement to traverse such portions of the other Lots in Phase II as is reasonably necessary to carry out the intent of this within Phase II. Specifically, the Owners of Lots 10 and 15 shall position their trash containers for collection purposes on or near the southern boundaries of their Lots as close as possible to Lots 11 and 14, respectively, in order to allow for placement of the trash containers for Lots 9 and 16 in front of Lots 10 and 15.

2.3 Voting Rights. Article VI of the Declaration provides that the Owner, other than Declarant, of each Lot contained within Phase II shall be entitled to One (1) Class A Membership in the Association. Accordingly, there will be a maximum of twenty-nine (29) Class A Memberships in the Association attributable to Phase II.

2.4 Enforcement. Declarant shall have the right, but not the obligation, to enforce the provision of this First Declaration of Annexation and Tract Declaration and to take corrective action in the event of a breach hereof to the same extent that the Association may enforce this First Declaration of Annexation and Tract Declaration or take corrective action with respect to a breach hereof in accordance with the terms incurred by Declarant in enforcing any provision of this First Declaration of Annexation and Tract Declaration shall be reimbursed to

