



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2004-0633101 06/04/04 09:47
1 OF 1

DELROSSA

When recorded, mail to:
Donald E. Dyekman, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FOOTHILLS 80**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Foothills 80 (this "First Amendment") is made as of this 2nd day of June, 2004, by Calabrea Homeowners Association, an Arizona nonprofit corporation (the "Association").

RECITALS

A. A Declaration of Covenants, Conditions and Restrictions for Foothills 80 was recorded on January 22, 2004 at Recording No. 2004-0065559 in the records of the County Recorder of Maricopa County, Arizona (the "Declaration"), to establish a general plan for the development, construction, sale, lease and use of the real property, together with improvements to be constructed thereon, within the subdivision known as Foothills 80.

B. Unless otherwise defined in this First Amendment, each capitalized term used in this First Amendment shall have the meaning given to such term in the Declaration.

C. Section 11.3 of the Declaration provides that the Declaration may be amended at any time by the affirmative vote of Owners of not less than two-thirds (2/3) of the Lots. Section 11.3 further provides that so long as the Declarant owns one or more Lots, any amendment to the Declaration must be approved in writing by the Declarant.

D. This First Amendment has been approved by the Owners of not less than two-thirds (2/3) of the Lots. As evidenced by the Consent of Declarant attached hereto, Declarant has consented to this First Amendment.

AMENDMENT

NOW THEREFORE, the Declaration is amended as follows:

1. The following Section 1.38 is added at the end of Article 1 of the Declaration:

1.38 "Map of Easements" means the Map of Easements for Foothills 80 recorded in Book 685, Page 50, in the records of the County Recorder of Maricopa County, Arizona, as amended from time to time.

2. The following Section 2.4 is added at the end of Article 2 of the Declaration:

2.3 Access Gates.

The Declarant intends to construct an electronically activated access gate at one or more entrances to the Project in order to limit access and provide more privacy for the Owners and the other Residents and Lessees of the Lots. The access gates shall be part of the Common Area and shall be maintained, repaired and replaced by the Association. Each Owner, Lessee and Resident acknowledges and agrees that the access gates do not guarantee the safety or security of the Owners, Lessees or Residents or their guests or guarantee that no unauthorized person will gain access to the Project. Each Owner, Lessee and Resident, and their families, guests and invitees, acknowledge that the access gates may restrict or delay entry into, or access within, certain areas by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner, Lessee and Resident and their families, guests and invitees agree to assume the risk that the access gates will restrict or delay entry into, or access within such areas by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant, the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner, Lessee or Resident or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of the access gates. So long as the Declarant owns any Lot or is constructing any Residence or other Improvement in the Project, the Declarant shall have the right to determine the hours when the access gate will be open in order to provide access to contractors, subcontractors and suppliers providing labor and/or materials for the construction of Improvements in the Project.

3. The second paragraph of Section 3.2 of the Declaration is deleted in its entirety.

4. Section 3.9 of the Declaration is amended to read as follows:

3.9 Compliance Deposit.

An Owner submitting to the Design Review Committee plans and specifications for any Construction or Modification shall furnish to the Association at the time of the submittal of the plans and specifications a

deposit in an amount set by the Design Review Committee (the "Compliance Deposit") to: (a) assure the completion of the proposed Improvements in accordance with the plans and specifications approved by the Design Review Committee, (b) assure the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (c) repair any damage which might be caused to any Area of Association Responsibility as a result of such work. The Compliance Deposit may be used by the Association to pay any costs incurred by the Association or the Design Review Committee in connection with the inspection of the construction or modification of any Improvements approved by the Design Review Committee to ascertain that such Improvements have been, or are being, built in compliance with the Declaration, the Design Guidelines and the plans and specifications for such Improvements approved by the Design Review Committee and to pay any costs incurred by the Association to repair any damage to any Area of Association Responsibility caused by the Owner or its agents or contractors. Provided there is no damage to any Area of Association Responsibility caused by the Owner or its agents or contractors, and provided the Improvements have been completed in accordance with this Declaration, the Design Guidelines and the plans and specifications approved by the Design Review Committee, the unused portion of the Compliance Deposit shall be refunded to the Owner. The Compliance Deposit shall be in addition to any fee charged by the Design Review Committee pursuant to Section 3.6. The Design Review Committee may waive or reduce the amount of the Compliance Deposit if the Design Review Committee determines in its sole discretion, that considering the nature and extent of the Construction or Modification, the Compliance Deposit is unnecessary or can be reduced in amount.

5. The following Sections are added at the end of Article 3 of the Declaration:

3.12 Square Footage of Residences.

All Residences shall contain a minimum livable area of 3,000 square feet exclusive of basements, garages, patios or entries.

3.13 Single Story Limitation.

The Residences on Lots 1 through 24, inclusive, 32 through 55, inclusive, 58 through 71, inclusive, 79 and 82 through 87, inclusive, shall be single story. A multi-level Residence may be constructed on Lots 25 through 31, inclusive, 56, 57, 72 through 78, inclusive, 80, 81 and 88 through 94, inclusive, provided the Residence complies with the Design Guidelines, and is approved in writing by the Design Review Committee.

6. Section 4.19 of the Declaration is amended in its entirety to read as follows:

No portable basketball goal or backboard shall be constructed, installed or maintained on any Lot without the prior written approval of the Design Review Committee. Permanent basketball goals or backboards may be kept on a Lot provided they are kept and used in accordance with the Association Rules which govern their size, design, color, material, location and hours of use. All permanent goals must be approved by the Design Review Committee prior to installation.

7. The following paragraph is added at the end of Section 5.3 of the Declaration:

The Declarant hereby reserves to itself and its contractors, subcontractors, agents and employees a temporary easement over, under, upon and across the portions of the Lots located within the slope easements shown on the Plat or on the Map of Easements for the purpose of performing such cut and fill as may be required in connection with the construction of the private streets shown on the Plat. All cut and fill within the slope easements shall be performed in accordance with the plans approved by the City of Phoenix. The easement reserved by the Declarant pursuant to this paragraph shall terminate upon the completion of the required cut and fill in accordance with the plans approved by the City of Phoenix. After completion of the cut and fill, the areas within the slope easements shall be maintained, repaired and replaced by the Lot Owner, except for any revegetation of such areas by the Declarant which is required by the City of Phoenix.

8. Section 6.7 of the Declaration is amended in its entirety to read as follows:

The Association shall have the following two classes of voting membership:

Class A. Class A members are all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A member so long as the Declarant owns any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (a) when the votes held by Class A members exceed the votes held by the Declarant or (b) five (5) years after the Recording of this Declaration. The Declarant may at any time relinquish its Class B membership by giving written notice thereof to the Association.

9. The first paragraph of Section 8.1 of the Declaration is amended in its entirety to read as follows:

The Association shall be responsible for the management and Maintenance of the following portions of the Project: (a) the Common Area, together with all Improvements located thereon; (b) all landscaping, walls, entrance gates and other Improvements located on those portions of the Lots that are within the sidewalk, landscaping, wall and gate easements and sidewalk and landscaping easements shown on the Plat or on the Map of Easements; and (c) all underground drainage pipes located under those portions of the Lots which are within the drainage easements shown on the Plat or on the Map of Easements. The street lights located within the public utility easements shown on the Plat will be leased to the Association by the Salt River Project, and the Association shall be responsible for the installation, operation, maintenance and electrical cost of the street lights.

10. Section 8.5 of the Declaration is amended to read as follows:

As used in this Section, the term "Boundary Wall" means a wall or fence which is located astride or abutting the boundary line between two adjoining Lots. Any retaining wall constructed on Lots 72 through 78, inclusive, 80, 81, 88, 89 or 90 shall not be a "Boundary Wall" for purposes of this Section unless such retaining wall connects to the wall or fence which is located astride or abutting the boundary line between two adjoining Lots. To the extent not inconsistent with this Section, the general rules of law regarding Boundary Walls shall apply.

Any Owner may construct a Boundary Wall. Any Owner who constructs a Boundary Wall shall only be obligated to stucco and paint the side of the Boundary Wall which faces the Owner's Lot. The side of the Boundary Wall facing the adjoining Lot or Lots shall be left in an unfinished condition until each adjoining Owner constructs a Residence on its respective Lot, at which time the adjoining Owner will be responsible for stuccoing and painting its side of the Boundary Wall.

Any Owner who constructs a Boundary Wall (the "Reimbursable Owner") shall be entitled to reimbursement from each adjoining Lot Owner who commences construction of a Residence on his Lot (the "Owing Owner") of an amount equal to one-half of the lesser of the reasonable cost (at the time of construction) of a six feet high, six inch CMU Boundary Wall located between the adjoining Lots and any retaining wall attached to the Boundary Wall or the actual cost of construction of the portion of the Boundary Wall between the adjoining Lots and any retaining wall attached to the Boundary Wall. Reimbursement shall be due when construction of a Residence is commenced on the Lot adjoining the Lot owned by the Reimbursable

Owner. The reimbursement obligation of an Owing Owner under this Section shall be the personal obligation of the Owing Owner and shall not pass to or be binding upon the Owing Owner's successors in title. The conveyance of the Lot by the Owing Owner before reimbursement is made to the Reimbursable Owner shall not relieve such Owing Owner of responsibility for such reimbursement. No Owing Owner shall stucco or paint the side of the Boundary Wall facing its Lot or attach any wall or fence to the Boundary Wall until the such time as the Reimbursable Owner has been paid all amounts due under this Section.

The Owners of contiguous Lots who share a Boundary Wall shall both equally have the right to use such Boundary Wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of contiguous Lots who share a Boundary Wall shall each pay one-half (1/2) of the cost of any maintenance, repair or replacement of the Boundary Wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the Boundary Wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of such cost. In the event that any Boundary Wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the Boundary Wall without cost to the other Owner or Owners who share the Boundary Wall.

The right of any Owner to contribution or reimbursement from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a Boundary Wall shall first obtain the written consent of the adjoining Owners.

In the event any Boundary Wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the Boundary Wall shall and does exist in favor of the Owners of the Lots which share such Boundary Wall.

11. Except as expressly amended by this First Amendment, the Declaration shall remain in full force and effect. In the event of any conflict between this First Amendment and the Declaration, this First Amendment shall control.

12. The Association certifies that this First Amendment has been approved as required by Section 11.3 of the Declaration.

