

BELL CANYON ASSOCIATION

Resolution of Board of Directors to Ratify Agreement to Repair BCA Easement

WHEREAS, in 1969 the Association granted a Non-Exclusive Easement through Lot 599 (35 Saddlebow) for Lots 600 (37 Saddlebow) and 601 (39 Saddlebow) (collectively the “Easement”) for the purposes of a shared driveway for those properties. The Easement did not include in its term’s arrangements for the maintenance, repair and/or replacement of the shared driveway within the grant of Easement, nor did it create a separate maintenance agreement for the Easement’s shared driveway. The Easement through Lot 599, the burdened property, was utilized to create a driveway for the two properties, Lots 600 and 601; and

WHEREAS, the current owner of Lot 599 lodged complaints with the Association that the residents of his property, 35 Saddlebow, were disturbed by the noise and shaking of his residence caused by the residents and visitors of and to Lots 600 and 601, respectively 37 and 39 Saddlebow, driving past his home on the broken concrete of the shared driveway serving only their two properties; and

WHEREAS, the owner of Lot 599 sought assistance from the Association through its Architectural Committee to have the owners of Lots 600 and 601 repair the damaged concrete shared driveway serving their properties; and

WHEREAS, the owners of Lots 600 and 601 first insisted that the owner of Lot 599 pay for one-third of the driveway repairs and then when they accessed the recorded grant of Easement, they learned it did not specify who was responsible to repair, maintain and/or replace the Easement, making it, for all intents and purposes, the Association’s responsibility to maintain, repair and replace, and demand was made by both owners for the Association to cause same to be repaired at its cost and expense; and

WHEREAS, the owner of Lot 599 sought advice from his personal attorney regarding his responsibility to pay for a shared driveway on the Easement area for which his property was burdened which he did not use and did not service his Lot 599; and

WHEREAS, the attorney for the owner of Lot 599 advised such owner that such repairs were not his responsibility and that he could sue the owners of Lots 600, 601 and the Association for failing to make such repairs as their failure to do so was interfering with his right to the quiet enjoyment of his property on Lot 599; and

WHEREAS, the owner of Lot 599 informed Eric Wolf, Association Board President, that if such repairs were not made to the shared driveway on the Easement, he would bring a lawsuit against the owners of Lots 600 and 601, and if advised to do so by his attorney, against the Association, for their collective failures to make the repairs to the shared driveway on the Easement to alleviate the disturbance suffered by his household robbing him and his other household occupants of their right to Quiet Enjoyment of his property because of Lot 600’s and 601’s use of the damaged driveway on the Easement and;

WHEREAS, the Association has recently been involved in several lawsuits brought by owners and/or residents against the Association (and others), and such litigation is a financial and time burden on the Association, its Board of Directors and management, depleting its resources and would, in kind, be a burden on the owners of Lots 600 and 601.

WHEREAS, the Board President having certain authorities and responsibilities assigned to him, including being the legal liaison and having a spending authority of up to five thousand dollars (\$5,000) without needing prior Board approval, Eric Wolf, after review of the existing Easement and discussion with the owners of the Lots referenced above, undertook negotiations with the owners of Lots 599, 600, and 601 to prevent the threatened lawsuit from being filed, resolve the long-outstanding disturbance complaint of the Lot 599 owner, and have the owners of Lots 600 and 601 accept responsibility for the shared driveway they used; and

WHEREAS, the negotiations resulted in an agreement that the Association would replace the damaged section of the shared driveway on the Easement area for Lots 600 and 601 (146' x 12' of concrete), and the two owners of Lots 600 and 601 would reimburse, in equal shares, the Association's estimated out-of-pocket expenses through a payment plan agreement so that the Association would be reimbursed for each owners' share of the out-of-pocket expenses, and the owner of Lot 599 agreed, in conciliation, that he would replace a section of damaged fencing alongside the Easement area adjacent to the shared driveway; and

WHEREAS, the Association then undertook the replacement of the damaged concrete driveway section on the Easement and a payment plan was prepared based on the estimated out-of-pocket repair costs to the concrete obligating the owners of Lots 600 and 601 to repay the Association their share of the repair costs over a twenty-four (24) month period, commencing in August of 2020 with the final payment plan payment to be made in July of 2022.

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors hereby ratifies the agreement arranged by Eric Wolf, on behalf of the Board of Directors for the Association between the Association and the three owners of Lots 599, 600, and 601 to replace the damaged portion of the shared driveway on the Easement serving Lots 600 and 601, a damaged section of fencing to be replaced by the owner of Lot 599, and the repayment plan entered into by the owners of Lots 600 and 601 to defray most of the Association's costs and expenses incurred in replacing the section of concrete on the shared driveway Easement serving their properties.

By: Geoffrey Shadler
Association's Secretary

Date: 8/14/2020