

2004-011659-0

Recording Dist: 302 - Kenai
11/15/2004 11:17 AM Pages: 1 of 7

A
L
A
S
K
A



Return to *
404-1482

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
WILD ROSE SUBDIVISION KENAI RIVER ADDITION
PLAT NO. 2004-65**

THIS DECLARATION, is made this 8th day of November, 2004, by the undersigned, *Kenneth Jerome Merkes, P.O. Box 572, Sterling, AK 99672 and John Stevens, P.O.Box 3171, Erina N.S.W. Australia 2250, upon their behalf and of their heirs, successors and assigns, all of who shall be hereinafter referred to as "Declarant". This declaration shall be binding upon, for the benefit of, and enforceable against each Declarant and all of their heirs, successors, and assigns. As used herein, the term Declarant shall be read in the plural as and where appropriate to refer to all of the persons signing this declaration and of their heirs, successors and assigns.

RECITALS

- A. Declarants are the owner of the certain real property in the Kenai Recording District, Third Judicial District, State of Alaska described as Lots 1-13 inclusive, Wild Rose Subdivision, Kenai River Addition, filed under Plat No. 2004-65
- B. Declarants have deemed it desirable to establish covenants, conditions, restrictions upon the covered property, and each and every lot and portion thereof, which will constitute a general scheme for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.
- C. Declarants will convey title to all the covered property subject to certain protective covenants, conditions and restrictions hereafter set forth.

THEREFORE, Declarants hereby covenant, agree and declare that all of their interests as the same may from time to time appear in the covered property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interest in the covered property and the owners of said interests, and their assigns. These covenants, conditions and restrictions and easements shall run with said interests and shall be binding upon all parties having or acquiring any right or title in said interests or any part thereof and shall insure to the benefit of each owner thereof and are imposed upon said interest and every part thereof as a servitude in favor of each and every owner of said interests and the dominant tenement or tenements.

ARTICLE I
DEFINITIONS

Section 1. Covered Property or Project shall mean and refer to that real property known as Lots 1-13 inclusive, Wild Rose Subdivision, Kenai River Addition, filed under Plat No. 2004-65; Kenai Recording District, Third Judicial District, State of Alaska and particularly described in said Plat.

Section 2. Lot shall mean the lots of the Wild Rose Subdivision, Kenai River Addition.

Section 3. Owner shall mean and refer to one or more persons or entities who alone or are collectively the record owner of fee simple title to a lot, including Declarant, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. Mortgage, Mortgagee, Mortgagor. Reference in this Declaration to the "mortgage" shall be deemed to include a deed of trust; reference to a "mortgagee" shall be deemed to include the beneficiary of a deed of trust; reference to a "mortgagor" shall be deemed to include the trustor of a deed of trust.

ARTICLE II
USE RESTRICTIONS

Section 1. General Provisions.

- (A) All restrictive covenants listed and/or contained herein are in addition to and subject to compliance with state, federal or local authorities zoning ordinances and pertinent restrictions.
- (B) Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants; whether to restrain such violation(s) or to recover damages. These covenants and restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent. Should enforcement be effected by civil proceedings and the court find a violation of these covenants, then the owner shall pay any damages, which may have been established in the proceedings.
- (C) Easements for installation and maintenance of utilities are reserved as shown on the subdivision plat. Within these easements, no structures, planting, other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities.

Section 2. Residences. No lot shall be used except for residential purposes. Lodging or Bed and Breakfast shall be allowed only within the single-family residence. No building shall be erected, placed, altered, or permitted to remain on any lot other than one single-family dwelling. Other non-residential buildings may be built in accordance with Section 7.

Section 3. Business or Commercial Activity. No business or commercial activity shall be maintained or conducted on any lot, except that professional and administrative occupations may be carried on within the residence so long as they do not become obnoxious or offensive to other property owners. Specifically excluding, but not limited to, no guiding business, no air-taxi service, no outfitter service, no automotive supply/service or no industrial, light or heavy business shall be allowed at any time. Lodging or Bed and Breakfast will be allowed within the single-family residence

Section 4. Dwelling Quality and Size.

(A) Each single-family residence to be constructed/placed in Lots 1-13 Wild Rose Subdivision, Kenai River Addition, filed under Plat No. 2004-65 Kenai Recording District, third Judicial District, State of Alaska, shall contain a minimum of one thousand two hundred (1,200) square feet of living area on the first floor, shall not exceed 3 stories or maximum of 35 feet in height, and be constructed on a permanent foundation.

(B) A garage attached to or detached from main structure of the residence is not to be construed as a living area within the minimums established above.

Section 5. Nuisances. No obnoxious or offensive activity may be carried out on or upon any lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to adjacent lot owners. Specifically, no junkyards or gravel pits are permitted on the above-described real property. No abandoned or unlicensed vehicles will be allowed to be kept on the above-described lots. Specifically, prohibited are parking of junk vehicles, partially dismantled vehicles, and storage of vehicles or parts of vehicles where they may be viewed or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots. The storage of materials, in excess of the amount needed for construction in progress of buildings on the premises, is prohibited, including materials such as scrap metal, building supplies and wood other than for heating. Uses creating noises, smells, smokes, vibrations or excessive light off the property, which interferes with the use of reasonable expectations of peace and quiet enjoyment of other property owners, are prohibited.

Section 6. Temporary Structures. No temporary structure, boat, truck, trailer, camper or recreational vehicle of any kind shall be used as a living area, except for temporary guests.



Section 7. Outbuildings. Outbuildings including green houses, storage buildings, garages, etc. shall be permitted only if constructed in a permanent manner, compatible with the architectural design of the main dwelling structure. No outbuildings will be permitted which are not properly sided and roofed (excluding greenhouses) in like manner as the main dwelling, specifically no outbuildings for rentals.

Section 8. Pet Regulations. No animals, livestock, or poultry shall be kept on any lot except that cats, fish and birds (kept inside bird cages), and no more than three (3) domestic dogs (restrained or in a fenced area), may be kept as household pets provided they are not kept, bred, or raised therein for commercial purposes.

Section 9. Rubbish. Trash, garbage or other waste shall be disposed of only by depositing same into designated trash containers maintained and emptied by individual owners. No lot shall be used or maintained as a dumping ground for rubbish. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 10. Parking and Vehicular Restrictions. No vehicle that is in an inoperative condition shall be parked or left on the property subject to this Declaration other than in a garage or fenced area on each lot and must be unobservable. A vehicle will be presumed inoperative if it does not have current registration /license plates. Each owner shall provide adequate off-street parking for all vehicles within the set back restrictions of each private area and no vehicle shall be parked on the streets of the subdivision. All seasonal vehicles, recreational vehicles and boats shall be parked preferably in a garage or fenced area.

Section 11. Resubdivision. The area of lots herein described shall not be reduced in size by resubdivision. However, owners of contiguous lots may combine and/or divide their lots, as may seem proper to them so long as the resulting lots are larger and conform to the requirements of the Kenai Peninsula Borough and the City of Kenai. The resulting lot or lots shall then be treated for all purposes pertinent to these covenants as enlarged single lots.

Section 12. Signs. No sign of any kind shall be displayed to the public view on any lot except for professional signs of not more than one (1) square foot, one sign of not more than ten (10) square feet advertising in-house business, the property for sale or rent, or signs used by owner or builder to advertise the property during the construction and/or construction and/or period for marketing subdivision lots.

Section 13. Antennas. No CB antennas, towers, ham radio antennas, or other antennas will be installed on any lot or building which are visible with the exception of a reasonable and customary television antenna/satellite dish.

Section 14. Trees, Landscaping, and Maintenance. No owner shall be permitted to completely clear a lot on which standing trees of size and beauty exist. Space may be cleared to provide for construction and landscaping. Trees may be thinned so long as natural beauty and aesthetic value of trees is retained. Landscaping of all disturbed areas must be completed within twenty-four (24) months of completion of house.

Section 15. Fences. The placement and type of fences shall enhance, rather than detract from the quality of surrounding neighborhood structures. Chain link type fences are prohibited.

ARTICLE III
OWNERS MAINTENANCE AND INSTALLATION OBLIGATIONS

Section 1. Maintenance and Installation. Every owner shall:

- (A) Maintain the dwelling, patios and fences of said dwelling and all other structures in good condition and repair, and
- (B) Maintain in attractive and viable condition the landscaping and/or the natural flora on the lot.

Section 2. Standards for Maintenance and Installation.

- (A) Maintenance of the exterior of the dwellings, walls and roofs shall be accomplished to maintain an aesthetic appearance.
- (B) Any and all exterior construction work must be completed within two years from date of commencement of construction, which shall be considered the installation of a foundation.

ARTICLE IV
GENERAL PROVISIONS

Section 1. Enforcement. Any owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages for such violation. Failure by the owner or by any owners to enforce any covenant, condition or restriction therein contained, shall in no event be deemed a waiver of right to do so thereafter.



Section 2. Severability. Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way effect other provisions, which shall remain in full force and effect.

Section 3. Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the covered property and shall insure the benefit of and be enforceable by the owners, their respective legal representative, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Amendments. This Declaration of covenants, conditions and restrictions may be amended, following the initial 30 years period, only by the affirmative written assent or vote of not less than fifty-one (51) percent of the owners, and further this amendment provision shall not be amended to allow amendments by the written assent or vote of less than fifty-one (51) percent of the owners.

Section 5. Singular Includes Plural. Whenever the context of the Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine.

Section 6. Notices. In each instance in which notice is to be given to an owner, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice shall be to one or two or more co-owners, or such notice may be delivered by United States mail, certified or registered, postage prepaid, to the owner at the most recent address furnished by such owner, or if no such address shall have been furnished, than to the mailing address on the tax roles, and any notice so deposited in the mail within Alaska shall be considered delivered 48 hours after such deposit.

IN WITNESS THEREOF, Declarants have executed this instrument the day and year first hereinabove written.

DATED THIS 8th DAY November, 2004.

DECLARANTS

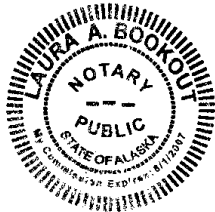
Kenneth Jerome Merkes
KENNETH JEROME MERKES
BOX 572, STERLING, ALASKA 99672

John Stevens by Kenneth Jerome Merkes P.O.A.
JOHN STEVENS, by KENNETH JEROME MERKES, P.O.A.
BOX 3171, ERINA N.S.W. AUSTRALIA 2250

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO certify that on this 8th day of November, 2004, before me the undersigned Notary Public and for the State of Alaska, personally appeared Kenneth J. Merkes, individually and as Power of Attorney for John Stevens, known to me to be the persons named in the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein contained.

IN WITNESS hereof, I here hereunto set my hand and seal the day and year first hereinabove written.



L.A. Bookout

Notary Public, State of Alaska
My Commission expires: 8-1-07