

JAB/gh
12/29/09
10125.00
declaration



Doc#: R 2010 500
Bk&Pg: RB 3625 250-264
Filed: 01-11-2010 DKC
12:49:02 PM RT
Canadian County, OK

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
WAGNER LAKE ESTATES PHASE I AND PHASE II
A RESIDENTIAL SUBDIVISION TO THE
CITY OF YUKON, OKLAHOMA**

THIS DECLARATION, made as of the date hereinafter set forth by WAGNER LAKE DEVELOPMENT COMPANY, L.L.C., an Oklahoma limited liability company, as Declarant, and hereinafter referred to as "Developer".

WITNESSETH

WHEREAS, Developer is the owner of certain real estate located in the City of Yukon, Canadian County, Oklahoma, more particularly described as set forth on Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Property" or "Wagner Lake Estates", which Property has now been platted, or will be platted into blocks, lots, streets and easements; which plats are recorded or will be recorded in the records of the County Clerk of Canadian County, State of Oklahoma.

WHEREAS, Developer expressly declares its intention to develop the Property as a single family residential development within the provisions of 60 Okla. Stat. §§ 851 through 855, inclusive, as a Real Estate Development in order to insure the management, maintenance, preservation and control of commonly owned areas or any portion of or interest in them and to enforce all mutual, common or reciprocal interests in or restrictions upon all portions of such separately owned lots, parcels or areas, or both.

NOW, THEREFORE, Developer states and hereby declares that the Property, and any additional property as may by subsequent amendment be added to and subjected to these Covenants, Conditions and Restrictions, shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following easements, covenants, conditions, restrictions, rights and powers, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project, and every part thereof, and which shall run with the real property submitted hereto, for the benefit of the Developer and its successors in title and these Covenants, Conditions and Restrictions shall be binding upon, and inure to the benefit of, Developer and its successors in title, and any person or persons, corporation or corporations, hereafter becoming Owner or Owners, of any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and for the benefit of the City of Yukon to the extent these Covenants, Conditions and Restrictions pertain to location of uses, height of structures, setbacks, screening, maintenance of common areas and access to the Property. It is understood that all of the area in Wagner Lake Estates, as reflected in the Plats filed or to be filed, which is not a separately owned lot, parcel or area shall be owned in common by the owners of the separately owned lots, parcels or areas.

ARTICLE I

DEFINITIONS

1.1 "Assessments" shall mean that portion of the cost of maintaining, improving, repairing, insuring, operating and managing the Property which is to be paid by each separate Owner as determined by the Owners' Association.

1.2 "Board" or "Board of Managers" shall mean and refer to the Board of Managers specified in the "By-Laws".

1.3 "Building Committee" shall mean Ken Wagner, as long as he desires to serve as the Building Committee, provided, that on or before the date that the Developer no longer owns a Lot in the Addition, Ken Wagner shall assign the powers and duties of the Building Committee to the Owners' Association.

1.4 "By-Laws" shall mean and refer to the By-Laws of the "Owners' Association", as such By-Laws may be amended from time to time.

1.5 --"Common Elements"--mean and include:

1.5.1 All area on the Plats not included in the numerically identified lots to be separately owned, including all fences and improvements associated therewith and all areas designated on the Plat as Common Area.

1.5.2 Items agreed upon as common by all the separate Owners.

1.6 "Common Expenses" means and includes:

1.6.1 Expenses of administration, maintenance, repair, or replacement of all the Common Elements;

1.6.2 Expenses agreed upon as common by all the separate Owners;

1.6.3 Expenses declared common by the provisions of the By-Laws;

1.7 "Common Profit" means the balance of all income, rents, profits and revenues from the Common Elements and facilities remaining after the deduction of the common expenses.

1.8 "Lots" shall mean any one of the separately identified parcels of real property, numerically described and designated as Lots on the Plats.

1.9 "Majority of Owners" Means the Owners of more than fifty percent (50%) of the total Lots in Wagner Lake Estates.

1.10 "Member" shall mean and refer to an Owner of a Lot.

1.11 "Owner(s)" shall mean the record owner, whether one or more persons or entities, of legal title to any Lot. The foregoing does not include persons or entities having any interest merely as a security for the performance of any obligation. Each Owner shall be a member of the Owners' Association.

1.12 "Owners' Association" shall mean Wagner Lake Estates Owners' Association, Inc., an Oklahoma non-profit corporation, its successors and assigns, sometimes referred to herein as "Association".

1.13 "Normal Waterline" shall have the meaning set out herein.

1.14 "Plat" shall mean each and every Plat filed by the Developer and recorded in the records of the County Clerk of Canadian County, Oklahoma, which covers all or any portion of the Property.

1.15 "Property" or "Wagner Lake Estates" means and includes all the real property described above which is or will become the subject of the Plat or Plats recorded or to be recorded by Developer in conjunction with the development of said Property, and any property which by declaration of the Developer and/or Owners' Association is subjected to these Covenants.

1.16 "Residence" shall mean an improvement constructed for occupancy by a single family located on one Lot. Each Residence shall be constructed in conformity with the architectural and design standards set forth herein or in the By-Laws appended hereto.

1.17 "Residential Use" shall mean the occupation or use of a Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.18 "Single Family" shall mean one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a Residence. Single Family shall also include domestic servants who maintain a common household in a Residence.

ARTICLE 2

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 Division of Property. The Property is hereby divided into the following separate freehold estates:

2.1.1 Lots. The Lot designations and the statement of location and the immediate area to which any Lot has access and any other data necessary for its proper identification are graphically shown on the Plat.

2.1.2 Common Elements. The remaining portion of the Property, referred to herein as "Common Elements" or "Common Area" as described on the Plat.

2.1.3 Conveyance of Common Elements and Dedication of Easements. Developer hereby grants, bargains, sells and conveys to Wagner Lake Estates Owners' Association, Inc., its successors and assigns, all of its right, title and interest in and to the Common Elements of Wagner Lake Estates, a subdivision to the City of Yukon, Canadian County, Oklahoma.

2.2 Lots Subject to Restrictions. All Lots in Wagner Lake Estates Phase I and Phase II shall be acquired, transferred, assigned or conveyed subject to the easements, conditions, restrictions and covenants of ownership set forth herein and in the By-Laws appended hereto, as same may be amended from time to time.

ARTICLE 3

OWNERS' ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Owners' Association to Manage Property. The administration of the Property shall be governed by the By-Laws of Wagner Lake Estates, a true copy of which shall be annexed hereto as Exhibit "B". Each Owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the Covenants, Conditions and Restrictions set forth either herein or in the deed to his/her Lot. The Association may hire one or more persons or entities to conduct the management to the Association and to carry out the terms and provisions of this document.

3.2 Membership. The Owners' Association shall be composed of all of the Owners of separate Lots as same are hereinabove described. Membership in said Owners' Association shall be deemed conveyed with, or an encumbrance upon, ownership of the Lot, even though such interest and membership is not expressly mentioned in the deed or other instrument of conveyance.

3.3 Voting. The proportionate representation for voting purposes in meetings of the Owners' Association shall be one (1) vote per Lot.

3.4 Membership Meetings. Regular and special meetings of the Owners' Association shall be held in accordance with the provisions of the By-Laws appended hereto and incorporated herein.

3.5 Board of Managers. The affairs of the Owners' Association shall be managed by a Board of Managers, which is hereby established by the appended By-Laws, and which shall conduct regular and special meetings according to the provisions of the By-Laws.

3.6 Effective Date of Subsequent Membership. When some or all of The Property which is not platted as part of Wagner Lake Estates Phase I and Phase II is platted, and if Declarant subjects that property to this Declaration, each Lot Owner with respect to each Lot therein shall become a Member of the Association. Such membership shall become effective on the day an individual or entity becomes a Lot Owner. The Declarant's membership shall become effective upon the final plat of any such area being filed.

ARTICLE 4

MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. Upon the sale by Developer of any Lot, the Purchaser thereof, and any subsequent Purchaser of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Owners' Association, or a duly authorized agent thereof, an assessment in the amount of Two Hundred Dollars (\$200.00) and any and all further assessments as may become applicable to their Lots, including: (1) regular annual assessments or charges and (2) special assessments for capital improvements and unexpected expenses, such assessments to be established and collected as provided herein and in the By-Laws. The purchase assessment shall be due and payable to the Owners' Association upon the date of the transfer of ownership of the Lot. The purchase assessment, and any annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorney(s) fees shall also be a personal obligation of the person who is the Owner of such separate Lot at the time when the assessment fell due.

4.2 Purpose of Assessments. The assessments, including the purchase assessment and any regular or special assessments which may be levied by the Owners' Association, shall be used exclusively to provide for the maintenance of the Common Elements for the common good of the Property. Annual assessments shall include an adequate reserve fund to insure, maintain and repair the said Common Elements.

4.3 Annual Assessments. Annual assessments shall commence one year from Owner's payment of purchase assessment at the rate of Two Hundred Dollars (\$200.00) per year, unless otherwise established by the Board of the Association, prorated to the end of that calendar year and thereafter on January 1 of each year.

4.4 Special Assessments. The Board may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement related to Common Elements, including fixtures and personal property or fences related thereto, or to defray any unanticipated or underestimated expense normally covered

by the purchase assessment or any regular assessment (and, where necessary, for taxes assessed against the Common Elements). Special assessments may also be levied against any individual Lot and its Owner to reimburse the Owners' Association for costs incurred in bringing that Owner and his/her Lot into compliance with the provisions of this document and the By-Laws, including but not limited to costs incurred to repair/maintain perimeter fencing as provided for in ¶ 6.19 below.

4.5 Allocation of Assessments. Each Lot shall bear an equal share of any aggregate regular and special assessment other than special assessments levied against an individual Owner pursuant to ¶ 4.4.

4.6 Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Owner from liability for any assessments thereafter becoming due or from the lien thereof. In a voluntary conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid assessments by the Owners' Association against the latter for his/her share of the common expenses up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore; however, any such grantee shall be entitled to a statement from the Owners' Association setting forth the amount of the unpaid assessments, other than the purchase assessment, due the Owners' Association and such grantee shall not be liable for, nor shall the Lot be subject to a lien for, any unpaid assessments made by the Owners' Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

4.7 Enforcement of Assessment Obligation; Priorities; Discipline. Any part of any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. Such lien, when delinquent, may be enforced by sale by the Owners' Association, its attorney or other person authorized by this document or by law to make the sale, after failure of the Owner to pay such assessment and/or by seeking and collecting a personal judgment against the Owner. The Owners' Association, acting on behalf of the Owners, shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties, which penalties may include attorney fees and expenses of litigation or collection, against an Owner who is in default in payment of any assessment, after notice and hearing according to the By-Laws.

4.8 Exemption from Assessments: The Developer/Declarant is exempt from the payment of any and all assessments set forth herein.

ARTICLE 5

DUTIES AND POWERS OF THE OWNERS' ASSOCIATION AND BOARD

5.1 Statutory Duties and Powers of Owners' Association. The duties and powers of the Owners' Association shall be as required, implied or necessary by 60 Okla. Stat. §§851 through 855, inclusive, as same presently exist or may be hereafter amended relative to Real Estate Developments.

5.2 Other Duties and Powers of Owners' Association. In addition to the duties and powers enumerated in the By-Laws or elsewhere provided for herein, the Owners' Association, acting through the Board, may enforce the covenants and restrictions specified herein and shall:

5.2.1 Maintenance and Repairs. Maintain, insure, repair, replace, restore, operate and manage all of the Common Elements.

5.2.2 Enforcement. Enforce the provisions of this Declaration by appropriate means including, without limitation, the expenditures of funds of the Owners' Association, the employment of legal counsel and the commencement of actions.

5.2.3 Insurance. Maintain such policy or policies of insurance as are required by this document or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Owners' Association.

ARTICLE 6

USE RESTRICTIONS AND ARCHITECTURAL CONTROL

In addition to all of the covenants contained herein, the use of the Property and each Lot therein is subject to the following use restrictions and architectural controls and limitations:

6.1 Nuisances. No noxious, illegal or offensive activities shall be carried on in any Lot, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment by an Owner of his/her respective Lot, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building. The Board shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

6.2 Use of Lots. Except as may be provided herein below, each Lot shall be used for single family residence purposes only, and no trade or business of any kind may be carried on therein. Lease or rental of a Lot for residential purposes shall not be considered to be a violation of this covenant. Any lessee or tenant shall in all respects be subject to the terms and conditions of these Covenants, Conditions and Restrictions, By-Laws and the rules and regulations adopted hereunder. Without the prior written consent of the Owners' Association's Board, nothing shall be

done or kept on any Lot or in the Common Elements or any part thereof to increase the rate of insurance on the Property or any part thereof over what the Owners' Association, but for such activity, would pay.

6.3 Architectural Standards. No residence shall be erected or altered on any Lot except as is installed or approved by the Developer in connection with the initial construction of buildings or until the building plans and specifications and plot plan showing the location of such building have been approved in writing as to the conformity and harmony of external design with existing structures in Wagner Lake Estates and as to the location of the building with respect to topography and finished ground elevation by a Building Committee selected by the Developer, initially to be Ken Wagner, provided the Developer may transfer the authority of the Building Committee to the Association at any time. In the event of death or resignation of any member of said committee, the remaining member or members shall have full authority to approve or disapprove such design and location. In the event the Building Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications shall have been submitted to it, approval will not be required and the owner submitting such plans and specifications shall be deemed to have complied with this provision.

The Building Committee may act upon its own or upon the written request of any owner. The Building Committee or its representatives may institute suit to enjoin or to remove such additions, alterations or improvements, which have not been approved as provided herein, at any time, and all costs and attorney fees shall be the responsibility of the owner whose actions caused such suit to be instituted. No permission or approval shall be required to rebuild in accordance with the original plans and specifications or to rebuild in accordance with the original specifications previously approved by the Building Committee. Neither the members of the committee nor its designated representatives shall be entitled to any compensation or services performed pursuant to this covenant.

6.4 Structural Size Restriction. The floor area of the main structure, exclusive of porches, basements and garage(s), shall not be less than 1,000 square feet.

6.5 Brick or Stone Construction. Unless otherwise approved by the Building Committee, the principal exterior of the first floor of any residence, excluding the roof, shall be at least eighty percent (80%) brick or stone, and twenty percent (20%) may be frame wood, shingles or other materials which will blend together with the brick or stone. It is the intent of this restriction to allow panels or other materials other than brick or stone to be used, but in no event shall a continuing wall consisting of twenty percent (20%) of the width of the residence be built of any material other than brick or stone. This restriction is intended to restrict the principal exterior of the first floor of residences to masonry in their construction, but may be modified to allow use of other materials to blend with the masonry to eliminate repetition of design, provided such modification must be approved in writing, in advance, by the Building Committee. All fireplace chimney or chases which protrude from an interior location of the structure must be constructed of masonry or masonry veneer if the chimney or chase protrudes through the front roof span of the structure.

6.6 Roof Construction. Unless otherwise approved by the Building Committee in writing, the roof of each residential structure in Wagner Lake Estates, including garages and detached structures, shall be constructed with 25 year shingles, or an equivalent or superior shingle approved by the Building Committee, which shingles shall be of gray weathered wood color, brown, gray, white or black, with a minimum pitch of 6/12.

6.7 Setback and Side Building Limits. No building structure or part thereof shall be erected or maintained on any of the Lots nearer to the front street or the side street than the front building limit or the side building limit line as shown on the Plat. No building structure or any part thereof shall be located, placed or maintained within five feet (5') of the side Lot line of any Lot.

6.8 Garbage, Trash and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. Containers shall not be kept in the front of residences and shall be hidden from view except on the day of pickup.

6.9 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

6.10 Signs. No signs or billboards shall be displayed to the public view on any Lot except signs placed by builders or licensed realtors for the sale or rental of property and such signs as are approved by the Owners' Association or committee appointed by the Owners' Association. Provided, that an owner's "For Sale" or "For Rent" sign, approved by the Owners Association as to size and content, and may be displayed.

6.11 Radio and Television Antennas. No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, shall be permitted and no owner may be permitted to construct, use or operate his own external radio or television antenna, including satellite dish receivers, without the written consent and approval of the Building Committee.

6.12 Liability of Owners for Damage to Common Area. The owner of each lot shall be liable to the Owners' Association for all damages to the Common Elements or improvements thereon caused by such owner or any occupant or guest of such owner.

6.13 Power Equipment and Car Maintenance. No power equipment, workshops or car maintenance shall be permitted on any lot as a commercial venture. Car maintenance, other than routine servicing of vehicles (oil change, car wash, etc.) shall not be conducted on the Property except wholly within the garage of a residence.

6.14 Outbuildings. No outbuildings, sheds or storage structures shall be constructed or located on any Lot without the prior written approval of the Building Committee.

6.15 Warranty of Enforceability. While the Developer has no reason to believe that any of the restrictive covenants of this Article 6 or elsewhere in these Covenants, Conditions and Restrictions are or may be invalid or unenforceable for any reason or to any extent, it makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agree to hold the maker hereof harmless therefrom.

6.16 Prohibition of Alteration and Improvement. No building, structure, shed, fence, wall, obstruction, balcony, screen, patio, patio cover, tent, awning, sheds, carport, carport cover, improvement or structure of any kind shall be commenced, erected, or maintained upon the Property, nor shall any alteration or improvement of any kind be made to any previously constructed structure, until the same has been approved in writing by the Building Committee.

6.17 Enforcement and Access by Directors. The Board of the Owners' Association shall have the power to make and to enforce reasonable rules and regulations in furtherance of this Article. During reasonable hours, Developer, any member of the Building Committee, any member of the Board, or any authorized representative or any of them, shall have the right to come upon and inspect any Lot within the Project and the improvements thereon (except for the interior portions of any Residence) for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

6.18 Maintenance of Easements. Each Owner shall be required to maintain any easement area lying within or upon that Owner's Lot; provided, if the Owner fails to properly maintain the easement area, the Owners' Association shall have the right to enter and maintain the same and assess the owner of that Lot in accordance with the provisions for Special Assessments set forth above.

6.19 Perimeter Fences. Perimeter security fences that separate Wagner Lake Estates Phase I and Phase II from adjoining property are required and shall consist of a 6 foot stockade fence of the same material with steel posts to face the inside of the Lots, with the posts to be placed a maximum of 8 feet apart. Each homeowner, no later than upon completion of construction on the homeowner's Lot, shall cause to be constructed a perimeter fence consistent with the terms of this ¶. Perimeter fences shall be maintained by the Owners' Association, provided pursuant to ¶ 4.4, the homeowner shall be assessed the costs of any maintenance or repairs performed by the Owners' Association to any portion of a perimeter fence which abuts the homeowner's property.

ARTICLE 7

Lake Provisions

7.1 **General Provisions Regarding Lake.** A portion of the Common Area, platted property and unplatted property is covered by a lake area. The normal waterline of such lake area is referred to as the "Normal Waterline". The actual body of water itself will at times exceed the Normal Waterline, and at other times will recede from the Normal Waterline. The actual area covered by water at a given time and constituting the referenced body of water is herein called a "Lake". The boundaries of the Lake will fluctuate, while the limits of the Normal Waterline will remain constant.

7.2 **General Regulation of Lake.** Neither the Association nor any Lot Owner shall take any action or permit any action to be taken which has as its result any significant alteration of the Lake. No fill dirt or fill of any sort shall be placed so as to alter these. Additionally, no retaining walls shall be constructed along or adjacent to the Normal Waterline, except with permission of the Building Committee. Notwithstanding the foregoing, the Declarant is authorized to add fill dirt or fill of other sorts and to construct retaining walls along or adjacent to the Drainage Easement(s) and/or Normal Waterline.

7.3 **Fluctuating of Lake with Respect to Normal Waterline.** Phenomenon existing in nature will result in a fluctuation of the level of the Creek to levels above and below the Normal Waterline. To the extent that the water exceeds the boundaries of the Normal Waterline so that the water covers portions of Lots, a license and easement shall automatically come into existence in favor of the Association permitting the presence of such water on individual Lots, and the presence of such water shall not constitute a trespass. However, this license permitting water on Lots shall not permit the Association, any Member of the Association, or any third party to trespass, by vessel or otherwise, upon such portion of a Lot covered with water. In no case shall the Declarant or the Association be liable for damages caused by fluctuations in the level of the Lakes and, in no case shall either Lot Owners or the Association be required to pay any additional compensation for the license granted based on such fluctuation in the level of the Lake.

7.4 **Drainage Easements.** There is hereby granted in favor of all Owners of Lots within the properties easements for drainage purposes as shown on the recorded plat and any subsequently recorded plat. Nothing shall be done by an Owner, or any person on the Owner's behalf, to change or modify the flow and/or drainage of water within said easement as the same crosses any Lot or Common Area of the properties.

ARTICLE 8

GENERAL PROVISIONS

8.1 Enforcement. The Owners' Association, any Owner and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this document and, in such action, shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court; provided, however, that an individual Owner shall have no right to enforce the collection of any assessment levied against any other Owner under Article 4 above. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

8.2 Invalidity of Any Provision. Should any provision of this document be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

8.3 Amendments. To the extent not inconsistent with 60 Okla. Stat. §§851, et seq., as same is now or may hereafter be amended, an amendment of the Covenants, Conditions and Restrictions herein may be enacted by the vote or written assent of a majority of the Owners; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for an action to be taken under that clause. Any amendment must be recorded and shall become effective upon being recorded in the office of the County Clerk of Canadian County, Oklahoma. Provided, any Amendment shall be consented to by the Developer as long as the Developer owns any Lot.

8.4 Mortgage Protection Clause.

8.4.1 Rights of First Mortgagees. No breach of any of the Covenants, Conditions and Restrictions contained in this document, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgager with first priority over any other mortgage) on any Lot made in good faith and for value, but all of said Covenants, Conditions and Restrictions shall be binding upon and be effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise.

8.4.2 Mortgage Priority: Right to Inspect Records. Notwithstanding any language contained in this document to the contrary, no Owner and no other party shall have prior over any rights of institutional lenders pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots and/or any portion or element of the Common Elements. Institutional lenders shall have the right to examine the books and records of the Owners' Association.

8.5 Insurance. The Owners' Association shall obtain and continue in effect, comprehensive public liability insurance insuring the Owners' Association, the Developer and the agents and employees of each and the Owners and employees, guests and invitees of the Owners against any liability incident to the ownership or use of the Common Elements and facilities in the Common Elements and including, if reasonably obtainable, a cross-liability endorsement insuring against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other owners or to the Owners' Association.

8.5.1 Insurance Premiums. Insurance premiums on policies purchased by the Owners' Association shall be a common expense to be paid from the assessments provided for herein or as levied by the Owners' Association. The acquisition of insurance by the Owners' Association shall be without prejudice to the right of any Owners to obtain additional individual insurance.

8.6 Owners' Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of the Project documents and all decisions and resolutions of the Owners' Association or its duly authorized representative, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages (including costs and attorneys fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Owners' Association in accordance with the voting percentage established in this document or in the By-Laws shall be deemed to be binding on all Owners of Lots, their successors and assigns.

8.7 Conflict of Project Documents. If there is any conflict among or between the Project documents, the provisions of these Covenants, Conditions and Restrictions shall prevail; thereafter, priority shall be given to Project documents in the following order: Plat, By-Laws and rules and regulations of the Owners' Association.

8.8 Service of Process. The name of the person to receive service of process for the Association together with the residence or place of business of such person in Canadian County is Tim Wagner, 426 Poplar Avenue, Yukon, Oklahoma 73099, or such other person as the Board may designate by an appropriate document filed with the Secretary of State of the State of Oklahoma.

8.9 Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, devisees, personal representatives, trustees, successors and assigns, for a term of twenty-one (21) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of a majority of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided that no such agreement to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

IN WITNESS WHEREOF, the undersigned has executed this document this 11 day of JAN, 2010

WAGNER LAKE DEVELOPMENT
COMPANY, L.L.C.

By: 
Kenneth Wagner, Manager

STATE OF OKLAHOMA |
COUNTY OF CANADIAN | ss.

Before me, a Notary Public in and for said County and State, on this 11 day of Jan, 2010, personally appeared Kenneth Wagner, Manager of Wagner Lake Development Company, L.L.C., to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed and the voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Malissa Boydston
Notary Public

(SEAL)

My Commission Expires:

9/23/10

