

13/34 W/C Kearns + Benedict RR.

Deed Book 12067 Pg 175
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1999-0002390
Jay C. Stephenson
Clerk of Superior Court
Cobb County, Georgia

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

KEARNS, Benedict, HARP LAKE PARK, UNIT VII

THIS DECLARATION made on the date hereinafter set forth, by GES Development, Inc. (hereinafter referred to as the "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of certain property located in Cobb County, Georgia, which is more particularly described in Exhibit "A" attached hereto and made a part hereof for a more complete description.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Homeowners Association, its successors and assigns. !

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described in Exhibit "B" attached hereto and made a part hereof.
* and Exhibit "B-1" and Exhibit "B-2"

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to GES Development, Inc. its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on June 01, 1999

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a semi-annual basis, unless otherwise determined by the Board.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) percent per annum. The Association may begin an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, mailbox or other structure shall be commenced, erected or, maintained upon the Properties, nor shall any exterior addition to or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, 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 the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded. Declarant may amend or rerecord this Declaration to correct clerical errors.

Section 4. Annexation. Additional land within the area described in Deed Book 9773, Page 1**, Cobb County, Georgia Records, may be annexed by the Declarant without the consent of members within 6 years of this instrument provided that the FHA and VA determine that annexation is in accord with the general plan heretofore approved by them, and the subsequent lot owners shall be entitled to membership in the Lake Park Homeowners Association, subject to the terms and conditions of the Association and as set forth herein.

** Deed Book 9109, Page 271; Deed Book 9109, page 265; Deed Book 9773, Page 001.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE VII

ADDITIONAL PROVISIONS

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars.

Section 2. House Color. The color of outside paint of all homes shall be subject to harmony of external design with the prior approval and the review of the architectural control committee. Any subsequent change of the existing color of home must be approved by the architectural control committee. Approval shall be as provided in Section 19 below.

Section 3. Dwelling, Cost, Quality and Size. No dwelling shall be permitted on any lot at a cost of less than cost levels prevailing on the date these covenants were recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1,300 square feet for a one-story dwelling, nor less than 1300 square feet for a dwelling of more than one-story.

be submitted to the architectural control committee for approval. If a chain link fence is approved, it must be painted black or dark green and cannot be located from the house to a side property line.

Section 14. Sign Distance at Intersection. No fence, wall hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting them at points twenty-five feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distance of such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 15. Mailboxes. Any mailbox must be approved by the architectural control committee prior to installation.

Section 16. Grounds. The grounds of each lot (whether vacant or occupied) shall be maintained in a neat and attractive condition. Upon the failure of any owner to maintain his lot (whether vacant or occupied) in a neat and attractive condition, Declarant or the authorized agents or successors and assigns, may after ten (10) days notice to such owner, enter upon such lot and have the grass, woods, and other vegetation cut when, and as often as, the same is necessary in its judgement and may have dead trees, shrubs and other plants removed therefrom. Such owner shall be personally liable to Declarant for the cost or cutting, clearing and maintenance described above the liability for amounts expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such lot, enforceable by Declarant by any appropriate proceedings at law or in equity. All costs incurred by Declarant on behalf of such owner shall be reasonable. Although notice given hereinabove provided shall be sufficient to give Declarant or its designated committee, or its successors and assigns, the right to enter upon any such lot and perform the work required, entry for the purpose of performing the work required shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday.

Section 17. Garbage Containers. Garbage containers shall be buried or shall be located inside garages or abutting the rear of each house.

Section 18. Architectural Control Committee:

(a) MEMBERSHIP. The architectural control committee is composed of three persons appointed by the Board.

A majority of the committee may designate a representative to act for it. In the event of a death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the member of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The aforesaid individuals shall constitute the Architectural Control Committee until either of the contingencies in Article III, Section 2, Subparagraphs (A) or (B) are met. After the said contingencies are satisfied, the architectural control committee shall be comprised of three (3) members to be appointed by the Board of Directors of the Association.

The majority of the committee may designate a representative to act for it. In the event of resignation of any member of the committee, the Board shall have full authority to designate for the unexpired term a replacement member who must be a resident owner. Neither the

committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At the time that all the lots are sold and residences are constructed thereon, the then record owners of a majority of the lots shall have the power, through the membership of the committee or otherwise, to withdraw from the committee any powers and duties or to restore to the committee any of its powers and duties. All plans which are required to be submitted to and approved by the said committee must receive a majority vote for approval.

(b) PROCEDURES. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative fails to approve or disapprove within thirty days after the plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 19. Enforcement. In addition to the terms of Article VI, Section 1, enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Violation of these covenants shall be subject to the penalty of a stipulated liquidated damage sum of \$50.00 for each day during which such violation continues. The recovery of such damages shall be available to the undersigned or to any owner of lots or parcels subject to these covenants, except that the violator shall not be required to pay damages to more than one plaintiff or complainant. In addition to the foregoing, if anyone bound to observe and comply with these protective covenants shall violate or attempt to violate any covenant while the same is in force, it shall be lawful for any other person owning an interest in land subject to these covenants to prosecute any proceeding at law, or in equity, against such violator, or to recover damages for such attempt or violation.

Section 20. Satellite Dishes. No television satellite dishes shall be permitted on any lot.

Section 21. The Restrictions and Covenants set forth shall not limit or prohibit the Developer, its successors or assigns from using a lot or lots as a road, street, or driveway to another property. Provided that any owner of a lot, other than the original Developer herein shall obtain the written permission of Developer herein before any lot may be used as a street, driveway, or road to any other property. Such written consent is in the sole discretion of the Developer herein and may be granted upon such terms as Developer herein deems appropriate.

Section 22. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any lot or parcel of land, nor shall any nuisance or odors be permitted to exist or operate upon or arise from any such parcel of land, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to the neighborhood. No garbage containers shall be visible from the street, except on garbage pick-up days. Any owner who dumps or places any trash or debris upon any lot or parcel of land shall be liable to the Architectural Control Committee which in its sole discretion shall have the work performed and charge the owner for the actual cost of removal thereof, plus twenty percent (20%) of said costs.


Section 23. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades or window boxes shall be attached to, or hung or used on the exterior of any window or door of any house; and no railings, fences, walls, antennas, or satellite dishes shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee which consent shall not be unreasonably withheld. Further, no foil or other reflective materials shall be used on any windows or sun screens, blinds,

shades or for any other purpose, nor shall any window-mounted heating, air-conditioning or fan units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained upon any lot or parcel of land, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall. Further, no fences shall be located in the front yard.


Section 24. The Builder has the discretion to place houses on corner lots facing either street or at an angle.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal, this 21st day of November, ~~1995~~ 1998.

Signed, sealed and delivered
in the presence of:



Witness

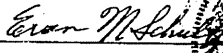


Notary Public

[SEAL] My Commission Expires
October 17, 1998

"DECLARANT"

GES DEVELOPMENT, INC.

BY: 

President

[CORPORATE SEAL]



EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 27 and 50, 20th District, 2nd Section, Cobb County, Georgia, being all the land comprising Lake Park Subdivision, Unit VII, as per plat recorded in Plat Book 175, Page 49, Cobb County Records, which plat is incorporated herein by reference.

EXHIBIT "B"

All that tract or parcel of land lying and being in Land Lot 12, 20th District, 2nd Section, Cobb County, Georgia, and being the "Recreation Area," Lake Park Subdivision, Unit 1, as per plat recorded in Plat Book 162, Page 39, Cobb County Records, said plat by this reference being incorporated herein and made a part hereof.

EXHIBIT "B-1"

All that tract or parcel of land lying and being in Land Lots 12 and 27, 20th District, 2nd Section, Cobb County, Georgia, being the "Recreation Area" of Lake Park Subdivision, Unit 2, as per plat recorded in Plat Book 163, Page 97, Cobb County Records, said plat by this reference being incorporated herein and made a part hereof.

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Jay C. Stephenson
Clerk of Superior Court
Cobb County, Georgia

EXHIBIT "B-2"

I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS FILED IN MY OFFICE.

All that tract or parcel of land lying and being in Land Lot 27, 20th District, 2nd Section, Cobb County, Georgia, and being the "Recreation Area," Lake Park Subdivision, Unit VI, as per plat recorded in Plat Book 174, Pages 34-35, Cobb County Records, which plat is incorporated herein by reference.