

Amend 23391-97

BK11893 PG0053

SWEETBRIAR CROSSING

UNIT I

DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

1995 OCT 25 PM 1:14

GARY R. YATES, CLERK

THIS DECLARATION made this 15th day of September, 19 95, by PATE ROAD PARTNERS, INC., GATEWOOD COMMUNITIES, INC., AND HOMES BY KEN BUTERA, INC., hereinafter called "Developer".

WITNESSETH:

WHEREAS, Developer desires to provide for the preservation of the values and amenities of the Property and to assure the best use and most appropriate development and improvement of the Property; and

WHEREAS, the Developer is the owner of the following real property (hereafter sometimes called "the Property"):

ALL THAT TRACT OR PARCEL OF LAND being in Land Lot 2, of the 5th District of Gwinnett County, Georgia, and being Lots 1 through 47 inclusive, in Block "A", and Lots 1 through 21, inclusive, in Block "B". Unit One of SWEETBRIAR CROSSING Subdivision as per plat prepared by Hannon, Meeks, & Bagwell, Surveyors & Engineers, Inc., dated April 24, 1995, and recorded in Plat Book 66, Page 185, on May 18, 1995, of the Gwinnett County records, which recorded plat is incorporated herein and by reference made a part hereof for a more complete description of the property hereby described.

WHEREAS, to this end, Developer desires to subject the Property to the covenants, conditions, restrictions and easements hereinafter set forth (sometimes referred to herein collectively as "covenants and restrictions"), each and all of which is and are for the benefit of the Property and each owner thereof; and

WHEREAS, Developer has deemed it desirable for the efficient preservation of the values and amenities in **SWEETBRIAR CROSSING** to create covenants and restrictions for the overall benefit of this development;

NOW, THEREFORE, in consideration of said benefits to be derived by Developer and subsequent owners of said Lots, the undersigned does hereby establish, publish and declare that the covenants and restrictions hereinafter set forth shall apply to all of said Lots shown on the aforesaid plat, and only to such Lots and to no other property of the Developer, except as hereinafter set forth, becoming effective immediately and running with the land, to be binding upon all persons claiming under the undersigned.

ARTICLE I
Definitions

Section 1. "Lot" means any numbered plot of land comprising a single dwelling site designated on any plat of survey recorded in the office of the Clerk of the Superior Court of Gwinnett County, Georgia, now or hereafter made subject to this Declaration.

Section 2. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, specifically including, but not by way of limitation, contract sellers, and excluding, however, those persons who shall have such interest merely as security for the performance of any obligation.

Section 3. "Person" means an individual, corporation, partnership, trust or any other legal entity.

Section 4. "Developer" means PATE ROAD PARTNERS, INC., GATEWOOD COMMUNITIES, INC., AND HOMES BY KEN BUTERA, INC., or any successor-in-title to the said PATE ROAD PARTNERS, INC., GATEWOOD COMMUNITIES, INC., AND HOMES BY KEN BUTERA, INC., to all or some portion of the property then subjected to this Declaration, provided in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Developer" hereunder by the grantor of such conveyance, which grantor shall be the "Developer" hereunder at the time of such conveyance.

Section 5. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as the same may be amended, renewed or extended from time to time in the manner herein prescribed.

Section 6. "**SWEETBRIAR CROSSING**" means that certain residential community known as **SWEETBRIAR CROSSING**, which is being developed on real property now owned by Developer in Gwinnett County, Georgia, together with such additions thereto as may from time to time be designated by Developer.

Section 7. "Mortgage" means chattel mortgage, bill of sale to secure debt, deed to secure debt, deed of trust and any and all other similar instruments given to secure the payment of an indebtedness.

ARTICLE II
Restrictions and Covenants

The following covenants, conditions, restrictions and easements are herewith imposed on the Property:

1. **Residential Use of Property.** All Lots shall be used for residential purposes and no business or business activity shall be carried on upon any Lot at any time, except with the written approval of the Architectural Control Committee; provided, however, that nothing herein shall prevent Developer or any builder of homes in **SWEETBRIAR CROSSING** from using any Lot owned by Developer or such builder of homes for the purpose of carrying on business related to the development, improvements and sale of property in **SWEETBRIAR CROSSING**; provided, further, private offices may be maintained in dwellings located on

any of the Lots so long as such use is incidental to the primary residential use of the dwellings.

2. Architectural Control Committee. The "Architectural Control Committee" shall mean as follows: Until all the Lots in **SWEETBRIAR CROSSING** have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Control Committee shall mean the Developer. At such time as all of the Lots in **SWEETBRIAR CROSSING** have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Developer's rights and obligations as the Architectural Control Committee shall forthwith terminate; and, thereafter, the record owners of a majority of the Lots in **SWEETBRIAR CROSSING** shall have the right, power and authority, through a duly recorded written instrument, to establish a successor architectural control committee and prescribe rules and regulations pursuant to which such Committee shall act.

3. Review and Approval of Plans. No building, fence, wall or other structure shall be commenced, erected or maintained on any Lot, nor shall any exterior addition to or alteration 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 the Architectural Control Committee and approved, in writing, as to harmony of external design and location in relation to surrounding structures and topography, by the Architectural Control Committee. This condition applies in each individual case even though a certain plan has been previously reviewed and approved by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted in writing, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to completion thereof, approval by the Architectural Control Committee will not be required. Neither Developer, nor any member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, neither Developer, nor any member of the Architectural Control Committee shall be liable in damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Developer, or any member of the Architectural Control Committee, to recover for any such damage.

4. Approval of Exterior Colors. All exterior colors, including but not limited to roofing, siding, trim, doors, shutters, brick, etc., must have the approval of the Architectural Control Committee.

5. Building Construction. Not more than one single-family dwelling, not to exceed two and one-half (2-1/2) stories in height, excluding basement, shall be erected on any Lot unless otherwise approved, in writing, by the Architectural Control Committee.

6. Setbacks and Building Lines.

(a) Setback Lines. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines shown on the recorded plat thereof. With the approval of the Architectural Control Committee, owner may change or reduce building setback lines provided it complies with the local Planning & Zoning Resolution. Any variance must be approved by the local authority.

(b) Retainer Walls. No wall shall be erected on any Lot nearer to any street than said minimum building setback lines unless the same be retaining walls of masonry construction which do not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to walls which have been approved by the Architectural Control Committee under the architectural controls appearing above in Article II, Paragraph 3. The exposed part of retaining walls shall be made of clay, brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone.

(c) Subdivision of Lots. One or more Lots or parts thereof may be subdivided or combined to form one single building Lot when approved, in writing, by the Architectural Control Committee, and, in such event, the building line requirements provided herein shall apply to such Lots as re-subdivided or combined.

(d) Terraces, Eaves and Detached Garages. For the purpose of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure, shall not be considered as a part of the structure. A five foot (5') side and/or rear yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the Architectural Control Committee; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon the property of an adjacent owner.

7. Building Requirements. The living areas of the main structures, exclusive of open porches, porte-cocheres, garages, carports and breezeways, shall not be less than 1600 square feet on Ranch and 1600 square feet on Two-Story.

8. Obstructions to View at Intersections. The lower branches of trees or other vegetation shall not be permitted to obstruct the view at intersections.

9. Delivery Receptacles and Property Identification Markers. The Architectural Control Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as property identification markers.

10. Use of Outbuildings and Similar Structures. No structure of a temporary nature unless approved in writing by the Architectural Control Committee shall be erected or

allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently; provided, this paragraph shall not be construed to prevent the Developer and those engaged in construction from using sheds or other temporary structures during construction.

11. Completion of Construction. The Architectural Control Committee shall have the right to take appropriate Court action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction of the foundation, or at the discretion of the Architectural Control Committee, this time period may be extended for a period not to exceed one (1) year.

12. Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions.

13. Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the owners of other Lots in the subdivision.

14. Signs. No advertising signs or billboards shall be erected on any Lot or displayed to the public on any Lot or within the right of way, except a professional sign one square foot in size and a sign of not more than 5 square feet in area may be used to advertise the property for sale or rent. Any sign placed on any lot must meet the standards & approval of the Architectural Control Committee at its sole discretion. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling lots and/or houses during the development and construction period, provided such signs are approved by the Architectural Control Committee. This restriction shall not apply to the permanent subdivision sign to be erected on entrance lots.

15. Aesthetics, Nature Growth, Screening, Underground Utility Service. Trees which have a diameter in excess of six inches (6") measured two feet (2') above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior approval, in writing, of the Architectural Control Committee. Clotheslines, garbage cans and equipment, shall be screened to conceal them from view of neighboring Lots and streets. All fuel tanks must be buried.

16. Antennae. No radio, television transmission, television satellite dish, or reception towers or antennae shall be erected on the Property other than customary antennae which do not exceed ten feet (10') in height above the roof-ridge line of any house. Any exceptions must be reviewed and approved in writing in advance by the Architectural Control Committee.

17. Trailers, Trucks, School Buses, Boats, Boat Trailers. No house trailers or mobile homes, or other habitable motor vehicles of any kind, school buses, trucks or commercial vehicles over one (1) ton capacity, shall be kept stored or parked overnight either on any street or on any Lot, except within enclosed garages. Pleasure boats or boat trailers and campers only up to 28 feet must be kept in the rear yard, but must not be lived in.

18. Mailboxes. All mailboxes shall be of a similar style approved by the Architectural Control Committee.

19. Clotheslines. All clotheslines, garbage cans, and woodpiles shall be screened and shall not be visible from street.

20. Swimming Pools. All above ground swimming pools, hot tubs, and spas must be approved by the Architectural Control Committee.

21. Exterior Sculpture. Exterior sculpture, bird baths, fountains, flags, and similar items must be approved by the Architectural Control Committee. No artificial vegetation shall be allowed on the exterior of any lot.

22. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators, or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot owner of such Lot, at the Lot owner's expense, upon written request of the Architectural Control Committee.

23. Changing Elevations. No Lot owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

24. Sewage System. Sewage disposal shall be through municipal system or type approved by appropriate State agencies.

25. Water System. Water shall be supplied through municipal system or type approved by appropriate State agencies.

26. Utility Facilities. Developer reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including, but not limited to water, telephone and sewerage systems, within this proposed area, which may be in variance with these restrictions.

27. Model Homes. Developer, as well as any builder of homes in SWEETBRIAR CROSSING, shall have the right to construct and maintain model homes on any of the Lots, all said model homes to be approved by the Architectural Control Committee.

28. Easements. Lots subjected to this Declaration shall be subject to those easements, if any, shown as set forth on any recorded plat thereof. Also, easements for installation and maintenance of utilities and drainage facilities are hereby reserved over six feet (6') of each side line of each Lot and over the rear ten feet (10') of each Lot subjected to this Declaration. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except of those improvements for which a public authority or utility company is responsible.

29. Driveways and Entrance to Garage. All driveways and entrances to garages shall be concrete or a substance approved in writing by the Architectural Control Committee and of a uniform quality.

30. Other Property. Without further assent or permit, Developer, for itself, its successors and assigns, hereby reserves the right, exercisable from time to time, to extend the scheme of this Declaration to other real property developed as a part of **SWEETBRIAR CROSSING** by filing for record a supplemental declaration in respect to the property to be then subjected to this Declaration, or such other Declaration as Developer may desire.

31. 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 owner of any land subject to this Declaration, their respective heirs, legal representatives, successors and assigns, for a term of twenty (20) years from the date this Declaration is filed for record in the office of the Clerk of the Superior Court of Gwinnett County, Georgia, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an Instrument signed by the then record owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

32. Amendment. This Declaration may be amended at any time and from time to time by an agreement signed by at least ninety percent (90%) of the owners of record, other than Developer, of Lots within **SWEETBRIAR CROSSING** and also by Developer, if Developer then owns any Lots in **SWEETBRIAR CROSSING** during the initial 20-year period of this Declaration, or thereafter by at least the owners of at least seventy-five percent (75%) of the Lots in **SWEETBRIAR CROSSING**. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become effective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or thereafter subjected to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

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33. Enforcement. Each Lot owner shall comply strictly with the covenants, conditions, restrictions and easements set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Developer, the Architectural Control Committee or any aggrieved Lot owner, jointly and severally, shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both.

IN WITNESS WHEREOF, the Developer, PATE ROAD PARTNERS, INC., GATEWOOD COMMUNITIES, INC., AND HOMES BY KEN BUTERA, INC., has caused these presents to be executed this 15th day of September, 1995.

Executed and declared
in the presence of:

PATE ROAD PARTNERS, INC.



By: 

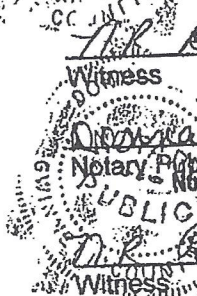

GATEWOOD COMMUNITIES, INC.


By: 

HOMES BY KEN BUTERA, INC.

By: 


Witness: 
Notary Public, Gwinnett County, GA
My Commission Expires
August 19, 1996


Witness: 
Notary Public, Gwinnett County, GA
My Commission Expires
August 19, 1996


Notary Public, Gwinnett County, GA
My Commission Expires
August 19, 1996