

PROTECTIVE COVENANTS AND RESTRICTIONS
AFFECTING
BROOKCLIFF SUBDIVISION



STATE OF GEORGIA
COUNTY OF COBB

GEORGIA, Cobb County, Office of Superior Court Clerk
Filed January 17, 1979 Recorded January 17, 1979

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS, made and published this 17th day of January, 1979, by Investors Services, Inc., a corporation chartered under the laws of the State of Georgia, and having its principal office in Cobb County, Georgia.

W I T N E S S E T H :

WHEREAS, the party is the owner of a certain tract of land situated in the County of Cobb, State of Georgia, described as follows:

All that tract or parcel of land lying and being in Land Lots 839, 840, 889 and 890 of the 16th District, 2nd Section, Cobb County, Georgia, and being more particularly:

Block	Lots	Block	Lots
D	1	E	5
D	2	E	6
D	3	E	7
D	31	E	8
D	32	E	9
D	33	E	10
D	34	E	11
D	35	E	12
D	36	E	13
D	37	E	14
D	38	E	15
D	39	E	16
D	40	E	17
D	46	E	18
D	49	E	19
D	50	E	20
D	51	E	21
D	52	E	22
D	53		
D	54		
D	55		
D	56		
D	57		
D	63		

Unit III in Brookcliff Subdivision, as per plat recorded in Plat Book 72, Page 124, Cobb County, Georgia records which plat is incorporated herein and made a part hereof by reference.

WHEREAS, it is to the interest, benefit and advantage of Investors Services, Inc, and to each and every person who shall hereafter purchase any lot in said subdivision that certain protective covenants governing and regulating the use and occupancy of the same be established, set forth and declared to be covenants and restrictions running with the land:

NOW, THEREFORE, for and in consideration of the premises and of the benefits to be derived by Investors Services, Inc., and each and every subsequent owner of any of the lots in Brookcliff Subdivision - Unit III, said Investors Services, Inc., does hereby set up, establish, promulgate, and declare that the real property above-described is hereby subjected to the following protective covenants and restrictions and is and shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the protective covenants, conditions, restrictions, easements, assessments and liens (sometimes referred to collectively herein as "covenants and restrictions") hereinafter set forth. Every Grantee of any interest in such real property hereby made subject to this Declaration, by acceptance of a warranty deed or other conveyance of such interest, whether or not it shall be so expressed in any such warranty deed or other conveyance, whether or not such warranty deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing shall take subject to this Declaration and to the terms and conditions hereof and shall be deemed to have assented to said terms and conditions. These protective covenants shall become effective immediately and run with the land and apply to and bind the Grantor and any Grantees, their heirs, executors, administrators, successors and assigns and shall be effective until midnight, December 31, 1999, at which time said covenants and restrictions may be extended or terminated in whole or in part as hereinafter provided, to wit:

ARTICLE I

DEFINITIONS

SECTION 1 "Property" shall mean and refer to the real property hereby made subject to these protective covenants.

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 part of the property, excluding, however, those having such interest merely as security for the performance of an obligation.

SECTION 3 "Lot" shall mean and refer to a numbered building site intended for the construction of a single dwelling unit, being residential lots designated as Phase IV, Brookcliff Subdivision, as designated on plat thereof, recorded in Plat Book 72, Page 124, Cobb County, Georgia Records.

SECTION 4 "Mortgage" shall include chattel mortgage, bill of sale to secure debt, deed to secure debt, deed of trust and any and all similar instruments given to secure payment of indebtedness.

ARTICLE II

PURPOSE OF DECLARATION

Investors Services, Inc. contemplates the sales of all lots in Phase IV of Brookcliff Subdivision either as building sites of a nature and for the purposes hereinafter defined, or as improved real property, subject to the conditions as set forth herein.

ARTICLE III

LAND USE AND BUILDING SITES

SECTION 1 **Land Use and Building Type**

No lot shall be used except for residential purposes unless approved by the architectural control committee, hereinafter defined. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed 44 feet in height above finished grade at front of dwelling, and a private garage for not more than three cars.

SECTION 2 **Building Sites**

A building site shall be a lot as shown on the plats of said subdivision recorded in the Cobb County, Georgia Records.

ARTICLE IV

QUALITY AND SIZE OF DWELLINGS

SECTION 1 **Dwelling Size**

Each single-level dwelling erected on a lot shall have a minimum of 1800 square feet of floor space with a ceiling height of not less than eight feet in all enclosed, heated, habitable areas. Each two-story dwelling shall have a minimum of 2000 square feet of floor space in habitable areas, with the first floor having a minimum of 1000 square feet of heated, habitable space, exclusive of storage and garage. In dwellings designed as "story and half", usually consisting of a main floor level and a finished upper level, the main floor shall have a minimum of 1100 square feet of heated, habitable area and the total habitable space shall be a minimum of 2000 square feet. In dwellings designed as "split level", being one on which the floor levels of habitable space are separated so that ground levels are on different elevations with part of said building being two stories in height, the habitable area requirements shall be a minimum of 1000 square feet in the aggregate of two such floor levels, and the total dwelling shall have a minimum of 2000 square feet of habitable area. In dwellings designed as "multi-level", such as a split foyer style, the habitable area requirements shall be a minimum of 1925 square feet.

SECTION 2 **Quality of Construction**

No building, any part of which is designed for dwelling purposes, shall be in any manner occupied while in the course of original construction, or until made to comply with all the conditions set forth herein and referred to, or with any further restrictions established and applicable thereto.

The work of construction of any building or structure shall be pursued with reasonable diligence continuously from the time of commencement until the same shall be fully completed. No tent, shack, mobile home, house-trailer, barn, garage or other similar outbuilding shall be used at any time as a residence, either temporarily or permanently, nor shall any residence of a

temporary character be permitted on any building site. However, temporary structures may be used for office and security purposes by any person or entity constructing a residence on the lot upon which said temporary structure is placed, during the period of construction, and upon written approval from Investors Services, Inc.

ARTICLE V

LOT AREA, SETBACKS AND LOCATION OF DWELLING

SECTION 1 Dwelling Location

No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. No dwelling may be located nearer than ten (10) feet to any side lot line for an interior lot, or nearer than ten (10) feet to a rear lot line. For the purpose of this covenant, eaves, steps, carports and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

SECTION 2 Lot Area and Width

No dwelling shall be erected or placed on a lot having a width of less than 100 feet at the building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than 20,000 square feet, except that a dwelling may be erected or placed on any lot shown on the recorded plat.

ARTICLE VI

ARCHITECTURAL CONTROL

SECTION 1 Architectural Control

No dwelling or any other structure shall be erected, placed, altered or permitted to remain on any lot until the building plans, elevations, specifications of materials, exterior finishes, including roofing, and construction methods with plot plans showing the location of such improvements, have been approved in writing by the architectural control committee, as hereinafter defined, as to conformity and harmony of external finishes, colors, design, and general quality with the existing standards of the neighborhood, and as to the location of the building with respect to topography and finished ground elevations.

SECTION 2 Authority

Architectural control shall be exercised by a committee comprised of two members from Tharpe & Brooks Incorporated and one member from Investors Services, Inc., to assure development of a high quality living and recreation area and compliance with good construction standards and practices. The decision of the architectural control committee shall be final and in

writing. Anyone buying a lot, with or without improvements, in Brookcliff Subdivision (Phase III), agrees to be bound by such decisions.

A majority of the committee may bind the entire committee and may designate a representative to act for it. In the event of the death or resignation of any member of the committee, the remaining members of the committee shall have full authority to designate a successor, which successor must represent the same entity i.e, Tharpe & Brooks Incorporated or Investors Services, Inc., which the committee member he or she is replacing represented; neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time after Tharpe & Brooks Incorporated and Investors Services, Inc. have divested themselves of any interest whatsoever in all the lots in the subdivision, the then record owners of a majority of the lots in the subdivision, shall have the power through a written instrument duly recorded in the Office of the Clerk of Superior Court of Cobb County, Georgia, to change the membership of the committee or to withdraw from the committee or restores to it any of its powers and duties.

SECTION 3 **Procedure**

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 (30) days after the plans and specifications have been submitted to it, and providing no suit to enjoin the construction has been commenced prior to completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

SECTION 4 **Committee's Responsibility**

Neither the architectural control committee, nor Tharpe & Brooks Incorporated or Investors Services, Inc. shall be responsible for structural defects in said plans and/or specifications, nor in any building or other structure erected in accordance with said plans or specifications, nor shall Tharpe & Brooks Incorporated or Investors Services, Inc. or the architectural control committee by reason of having approved the plans for any building, in accordance with the terms of this article, be responsible for any violations of building codes, county ordinances, restrictions, covenants, conditions, and easements which may affect such building.

ARTICLE VII

USE RESTRICTIONS

SECTION 1 **Landscaping and Occupancy**

Before any dwelling may be occupied it must be completely finished on the exterior in accordance with the plans approved by the architectural control committee. All of the front and side yards and a minimum of 30 feet of the rear yard, measured from the rear of the main body of the house, must be planted with grass or have other suitable groundcover, and the driveway surface must be paved. In the event a dwelling is not occupied upon completion of construction, then all landscaping including lawns, shrubs and

trees of front and other yards open to street view shall be installed within ninety (90) days after completion of. The grounds of each occupied home shall be maintained in a neat and attractive condition.

SECTION 2 **Building Materials**

No lumber, brick, stone, cinder block, or other fabricated masonry block units, concrete, or any other building material, scaffolding, mechanical devices or any other thing used for building purposes, shall be stored on any portion of the property, except for purposes of construction, and shall not be stored for longer than that length of time reasonably necessary for the construction in which same is to be used.

SECTION 3 **Exterior Construction**

Dwellings which are constructed in whole or in part of concrete blocks, cinder block or other fabricated masonry block units must be veneered with brick or stone or stucco or other material approved by the architectural control committee, over the entire surface exposed above finished grade.

SECTION 4 **Trailers, Boats and Motor Vehicles**

No mobile home, motor home, truck, camper, trailer of any kind, tent or similar structure, or boat, shall be kept, placed, stored, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed, or repaired upon any portion of the vacant property; a motor home, truck, camper, trailer or boat may be kept, placed or stored in a completely enclosed garage; provided, however, that the provisions in this paragraph shall not apply to emergency vehicle repairs.

SECTION 5 **Mailboxes and Posts**

No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located on any building plot unless and until the size, location, design, and type of material for said boxes or receptacles and posts shall have been approved by Investors Services, Inc.

SECTION 6 **Air Conditioners**

No window air conditioning units may face any street without prior approval of Investors Services, Inc. Outside window air conditioning units must be screened with shrubbery tall and full enough to hide such unit or with a wood fence, the design of which must be approved by the architectural control committee.

SECTION 7 **Clothes Lines**

No clotheslines and poles, clothes trees or other outside laundry drying devices shall be used.

SECTION 8 **Nuisances**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the property, and no odors shall be permitted to arise therefrom, so as to render the property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity

thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

SECTION 9 **Garbage Containers**

Containers for garbage or other refuse shall be underground or in sanitary enclosures and shall be maintained under sanitary conditions. Incinerators for garbage, trash or other refuse shall not be used. The location of any garbage area must be approved by the architectural control committee.

SECTION 10 **Tanks**

No exposed above ground tanks will be permitted for the storage of fuel, water or any other substance, except during the periods of construction.

SECTION 11 **Signs**

Only such signs as are hereinafter specified may be erected or maintained on any lot. The following signs will be permitted on any lot: professionally lettered builder or realtor signs, or sign of the owner, also professionally lettered, advertising his home and lot for sale or rent; provided, however, that such signs shall not be more than five square feet in size; provided further, however, that no more than one sign shall be placed on any one lot at the same time; provided further that, any and all such signs shall be mounted and/or affixed in a single location separate from the house structure or any other structure such as garage, fence, retaining wall or shed; provided, further, however, that no sign shall be attached to any tree or shrubbery. All such signs shall be approved by the architectural control committee prior to being placed on any lot.

SECTION 12 **Fences**

No fence, hedge or boundary wall situated anywhere upon any lot shall have a height greater than six (6) feet above the graded surface of the ground upon which said wall or fence is situated, provided that a slightly wire fence above tennis courts or other private recreational grounds outside the setback areas shall not be prohibited. All fences must be of brick, stone, wood or "cyclone" steel or any other material approved by Investors Services, Inc. Only fences of "good neighbor" design will be allowed. Fence designs must be approved by the architectural control committee. No fences shall be erected in front of the front setback line of the lot unless approved by the architectural control committee.

SECTION 13 **Driveways**

No material shall be used for construction of driveways except concrete or asphalt. Variances may be approved by the architectural control committee for unusual conditions.

SECTION 14 **Antennas**

All outside radio or TV antennas shall be installed in such a way as not to be offensive from the street. They shall be placed on the back of the side of the roof, of the back side of the chimney, or in a tree in the back yard. All such antennas must be approved by Investors Services, Inc.

SECTION 15 **Off-street Parking**

Adequate off-street parking shall be provided by the owner of any lot for the parking of automobile or other vehicles owned by such owner, and no owner shall park his automobiles or other vehicles on the adjacent roads and streets as a matter of course. Regular parking of vehicles must be on a paved surface, the location of which requires approval of Investors Services, Inc.

SECTION 16 **Horizontal Sight Lines**

No house, garage, carport, playhouse, outbuilding, fence wall or any other above ground structure, or hedges, shrubs, flowers or other vegetation, which obstruct horizontal sight lines, at elevation between two (2) and six (6) feet above the roadways, shall be erected, placed, planted or permitted to remain on any portion of any corner lot within any triangular area formed by the street property lines and line connecting them at points twenty-five (25) feet from the intersection of the street lines. In the case of any rounded lot corner, the twenty-five (25) feet shall be measured from the point formed by the intersection of the street, if extended to form an angle instead of a curve. The same sight line limitations shall apply to that area of every lot within a ten-foot radius emanating from the intersection of any boundary line of any lot with the edge of a driveway or alley pavement. Trees may be planted and maintained within such areas of the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines. The provisions of this covenant may be varied with the written consent of the architectural control committee.

SECTION 17 **Noxious or Offensive Activities**

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood. There shall be no automotive, vehicular or boat repair conducted on the front yard or driveway of any dwelling except minor repairs which are accomplished in one day. Residents shall refrain from any act or use of their property which could reasonable cause embarrassment, discomfort or annoyance to owners, and residents of their property made subject to this Declaration.

SECTION 18 **Unsightly or Unkempt Conditions**

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the property.

SECTION 19 **Play and Recreation Equipment**

All play and recreation equipment requiring what is generally considered to be a permanent installation, such as basketball goals, shall be placed to the rear line of the home or as approved by Investors Services, Inc.

SECTION 20 **Animals and Pets**

No stable, poultry house or yard, rabbit hutch or other similar animal structure shall be constructed or allowed to remain on any lot; no animal or

bird, except of a kind which is customarily kept as a domestic household pet, shall be kept in any residence or on any lot; no animal or pet shall be kept, bred, or maintained for any commercial purposes; and no animal shall be kept so as to endanger the health or unreasonably disturb the owners of any lot subject this Declaration or any resident thereof.

SECTION 21 Restriction on Subdividing

No lot shall be subdivided, or its boundary lines changed.

SECTION 22 Oil and Mining Operations

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot. No derrick or other structure designed for use in boring for oil or natural gas be erected, maintained or permitted upon any lot.

SECTION 23 Easements

Easements for installation and maintenance of utilities and drainage facilities and for pedestrian walkways are reserved as shown on the recorded plat. The right is also reserved by Investors Services, Inc., for an easement over, across and under ten (10) feet along the front, side and rear lot lines of each and every lot for the installation and maintenance of cable serving security, fire and television systems and for maintaining proper drainage. Drainage flow shall not be obstructed nor diverted from any designated easement.

SECTION 24 Sewage Disposal

No individual sewage disposal system shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of all governing bodies authorized to exercise control over such systems. Approval of individual sewage disposal systems as installed shall be obtained from such governing bodies.

SECTION 25 Exterior Redecorating and Re-landscaping

All proposed exterior redecorating and re-landscaping must be submitted for approval by the architectural control committee.

SECTION 26 Government Regulations

All governmental building codes, health regulations, zoning restrictions and the like, applicable to the property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VIII

SCOPE, DURATION, AMEMNDMENT AND CANCELLATION OF CONDITIONS

SECTION 1 **Scope and Term**

All of the restrictions, conditions, covenants and agreements shall affect all of the lots as hereinabove set forth, and are made for the direct and reciprocal benefit thereof, and in furtherance of a general plan for the improvement of said Tract, and the covenants shall attach to and run with the land. Said restrictions, conditions and covenants shall be binding on all parties and all persons claiming under them until midnight December 31, 1999, after which time they shall be automatically extended for successive periods of ten (10) years, provided, however, that such restrictions, conditions, covenants and agreements or any of them may be supplemented, changed or rescinded in any or all particulars at any time after December 31, 1999, by the owners of 51% of the number of lots comprising the area incorporated in this Declaration, exclusive of streets, evidenced by an instrument in writing executed by the said owner in the manner provided by law for the conveyance of real property, and duly recorded in the office of the Clerk of Superior Court, Cobb County, Georgia, and upon such recordation shall be valid and binding upon the sellers and owners of the said lots in said tract, and upon all other persons.

SECTION 2 **Amendment**

This Declaration may be amended by Investors Services, Inc. and Tharpe & Brooks Incorporated, acting by and through their representatives comprising the architectural control committee in the same manner as all other decisions are made by said architectural control committee, without the necessity of approval from any other lot owner, at any time, and from time to time, within the sole discretion of Investors Services, Inc. and Tharpe & Brooks Incorporated until such time as Investors Services, Inc. has sold every lot in said subdivision to bona fide purchasers and/or neither of said entities has any ownership or security interest in the subject real property. Any amendment deemed necessary by said Investor Services, Inc. and Tharpe & Brooks Incorporated must be filed in the Office of the Clerk of Superior Court of Cobb County, Georgia, prior to becoming effective, and the only signature required to affect said amendment shall be that of the architectural control committee's authorized representatives. Upon the sale of every lot in said subdivision to bona fide purchasers and/or the release or termination by said entity of any ownership or security interest in the subject real property, other than a permanent residential loan interest, any amendment thereafter shall require the approval of a majority of the owners of record and must be filed in the Office of the Clerk of Superior Court of Cobb County, Georgia, prior to becoming effective. Said filed amendment must be accompanied by a certification of the majority of the owners that have approved said amendment. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this Section.

ARTICLE IX

GENERAL PROVISIONS

SECTION 1 **Enforceability**

Investors Services, Inc., the architectural control committee, or any owner shall have the right to enforce the covenants and restrictions contained herein and to enforce any other provisions hereof by any appropriate proceeding at law or in equity against any person or persons violating or attempting to violate said covenants, conditions, restriction, or other provisions, either to restrain violation, to enforce personal liability, or to recover damages, or by any appropriate proceeding at law or in equity, against the land, to enforce any change or lien arising by virtue thereof. Any failure by Investors Services, Inc., the architectural control committee, or any other owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2 **Subordination**

It is further provided that under no circumstances shall a breach of these covenants constitute a forfeiture or reversion of title, and any Deed to Secure Debt shall remain valid and retain its lien position.

SECTION 3 **Severability**

Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application hereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

SECTION 4 **Gender**

The masculine gender shall be constructed to include female, or any legal entity where the context so requires, and vice versa.

SECTION 5 **Captions**

The captions of each Section hereof, as to the contents of each Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Sections which they refer.

SECTION 6 **Survivorship**

The aforementioned restrictions, conditions and covenants shall be binding on Investors Services, Inc., its successors, heirs, and assigns.

IN WITNESS WHEREOF, the undersigned being the Declarant, herein hereunto sets it hand and seal, this 17th day of January, 1979.

INVESTORS SERVICES, INC.

BY: **Fred J. Estfan**

Fred J. Estfan
President

Brent T. Savage

Witness

Illegible

Notary Public

Signatures above have been electronically reproduced for the purpose of making a legible copy of this document available on our website. Originals can be viewed on the paper copy of the document provided to you at your closing and on record at the Cobb County Courthouse, Deed Book 1966, Page 871.