

**AN AMENDMENT TO THE
DECLARATION OF PROTECTIVE COVENANTS FOR
STERLING GATE , SECTOR 1**

**AS RECORDED IN
INSTRUMENT NO. 1995-03878**

THIS AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR STERLING GATE, SECTOR 1, is made and entered into as of the 19th day of May, 1997, by Farris Management Co., Inc. as General Managing Partner of Greenbriar, Ltd. (which, together with their successors and assigns, are hereinafter referred to as "Developer").

RECITALS:

Developer has heretofore executed and filed for record the Declaration of Protective Covenants for Sterling Gate, Sector 1, dated February 13, 1995, and recorded as Instrument No. 1995-03878 in the Office of the Judge of Probate of Shelby County, Alabama (the "Original Covenants").

ARTICLE I

Pursuant to Item 26 in the Original Covenants the Developer hereby amends Item 28d to read as follows:

28 d.01 Each Owner of a Lot within the Property, by acceptance of a deed to such Lot, agrees to pay to the Association: (a) annual assessments or charges levied each year by the Association; (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (c) individual assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's failure to comply with the terms of these Protective Covenants. The annual, special and individual assessments, together with interest, late charges, costs and reasonable attorney's fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such assessment is made, which lien may be enforced in the manner hereinafter provided. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due or was due.

28 d.02 The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Development, for the improvement and maintenance of the Common Area within the Development and the payment of any and all costs and expenses incurred from time to time by the Association, including, without limitation, any "Common Expenses", as defined in the Bylaws of the Association.

28 d.03 Any expenses incurred by the Committee or the Association in enforcing any of the provision of these Protective Covenants against a specific Owner shall be deemed an individual assessment against the owner and the respective Lot owned by such Owner. Such individual assessment shall be levied by the Association and shall be specified to the Owner, which notice shall also specify the due date for the payment of same. The Association is solely responsible for and shall assume all maintenance responsibilities with respect to all Common Area within the Property.

28 d.04 The annual assessment for the Property shall commence on July 1 of each year, and shall be paid in advance. The annual assessment shall be established by the Association in accordance with its rules, regulation and Bylaws. Lots owned by the Developer shall not be subject to any assessment by the Association, be it annual, special or individual. The initial annual assessment will be Twenty-five and no/100 Dollars (\$25.00) due and payable July 1 of each year to be paid for the maintenance of the entrance way, landscaping and any other common area maintenance within the subdivision. The assessment will be due and payable at the closing of each home in the subdivision prorated from July 1. The annual assessment of Twenty-five and no/100 dollars (\$25.00) shall be made payable to Greenbriar, Ltd. (Developer) until the Developer has sold all of the lots in the subdivision (all sectors) or until Developer elects to turn control over

05/19/1997-15578
Page 1
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to the Sterling Gate Homewowner's Association, Inc. After control and responsibility for the common areas has been assumed by the Sterling Gate Homeowner's Association, Inc. all payments of the assessment shall be made to the Sterling Gate Homeowner's Association, Inc.

28 d.05 In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, provided that any such assessment must have the assent and approval of (a) at least fifty-one percent (51%) of the total votes in the Association, whether voted in person or by proxy, at a meeting called for this purpose and (b) for so long as Developer owns any portion of the Development, the approval of the Developer.

28 d.06 Written notice of any meeting called for the purpose of taking any action authorized under Section above shall be sent to all Owner not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence, either in person or by proxy, of the holders of at least fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called the subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

28 d.07 Both annual and special assessments for all Lots within the Property shall be fixed at a uniform rate; provided, however, that the Board of Directors of the Association shall have the right, in their sole and absolute discretion, to levy, assess and collect different amounts as the annual and/or special assessment payable by each "Residential Lot", as hereinafter defined, within the Development based on the zoning classification of such Residential Lot. As used herein, the term "Residential Lot" or "Residential Lots" shall mean and refer to any real property within the Development which has been or will be developed for single-family residential purposes, including, without limitation, attached or detached residential dwellings, townhouses, condominiums, cooperatives, duplexes, garden homes, patio homes, zero-lot-line homes, cluster homes, or any other types of single-family dwellings. As used herein and in the Article of Incorporation and Bylaws of the Association, the term "Residential Lots", whether used in the singular or plural tense, shall include all Lots within the Property. Annual and special assessments shall commence as to each Lot on the day on which such Lot is conveyed to any Owner (other than Developer) with a home on it and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due date for the payment of annual assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum thirty (30) days from the date of such notice).

28 d.08 The association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a Lot has been paid. A properly executed certification of the Association as the status of the assessment on a Lot is binding upon the Association as of the date of its issuance.

28 d.09 Any assessments (whether annual, special or individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of 18% per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any assessments not paid by the due date for the same shall be subject to a late charge which the Board of Directors of the Association may from time to time establish. In the event any assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided by law or in equity, the Association, acting through the Board of Directors or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

(a) The Association may commence and maintain a suit at law against the Owner for a personal money judgment to enforce all such charges and obligations for assessments and other amounts due to the Association, which amounts shall include the late charge and interest specified above as well as all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in connection therewith; and/or

(b) The Association may enforce the lien created pursuant to Section 28 d.05 above as hereinafter provided. The lien created pursuant to Section 4.01 above shall secure payment of any and all assessments (annual, special and individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the assessments and in

maintaining any legal action in connection therewith. If any assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within the (10) days after the giving of such demand notice, then the Association may file a claim of a lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Directors of the Association or any officer of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid to any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (iii) Expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner (other than Developer and Builders) may waive or otherwise be exempt from the liability to pay the assessments provided herein.

28 d.10 The lien for assessments and other charges provided herein with respect to any Lot shall be subordinate to the lien of any first mortgage encumbering such Lot. The sale or transfer of any Lot shall not affect any lien retained by the Association on a Lot; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

28 d.11 In addition to the rights and remedies set forth above, if any Owner (or his contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the Committee, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association or the Committee, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 28 d.09 above. The failure of Developer, the Association or the Committee to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

ARTICLE II

Pursuant to Item 26 in the Original Covenants the Developer hereby amends **Item 8** with the following addition:

8.A Any retaining walls visible from the street must be approved in writing by the Developer or, if the Developer Control Period has ended, by the Architectural Committee of the Sterling Gate Homeowner's Association, Inc. as to design and materials.

ARTICLE III

Pursuant to Item 26 in the Original Covenants the Developer hereby amends the Original Covenants as follows:

Any reference to the Sterling Gate Homeowners Association in the Original Covenants shall mean the Sterling Gate Homeowner's Association, Inc. whose Articles of Incorporation are filed in the Probate Office of Shelby County as Instrument No. 1995-09507.

WITNESS my hand this the 19th day of May, 1997.

FARRIS MANAGEMENT CO. INC.
as Managing Partner of
GREENBRIAR, LTD.

By Mary F. Roensch
Mary F. Roensch
President, Farris Management Co. Inc.

STATE OF ALABAMA
SHELBY COUNTY

[Signature], a Notary Public in and for said County, in said State, hereby certify that Mary F. Roensch, whose name as President of Farris Management Co. Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day that being informed of the contents of such conveyance, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 19 day of May, 1997.

[Signature] (5-3-99)
Notary Public

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