

*Amended*  
L446766

FIRST AMENDMENT OF DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR GREENBRIAR COLONY TOWNHOUSES  
AND GREENBRIAR COLONY PATIO HOMES

199-24-2307

THE STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS       §

12/02/87 00094716 L446766 \$ 27.00

THIS FIRST AMENDMENT is made this 25 day of November,  
1987, by GREENBRIAR COLONY TENNIS AND SWIM ASSOCIATION, INC., a  
Texas non-profit corporation, by and through its duly authorized  
Board of Directors, hereinafter called "the Association".

W I T N E S S E T H:

*27*  
WHEREAS, heretofore on October 7, 1980, a Declaration of  
Covenants, Conditions and Restrictions was filed of record in the  
Official Public Records of Real Property of Harris County, Texas  
under Clerk's File No. G705640 and refiled of record on October  
28, 1980 in the Official Public Records of Real Property of  
Harris County, Texas under Clerk's File No. G733581, said  
Declaration of Covenants, Conditions and Restrictions being  
hereinafter called "said Declaration" and covering the following  
described land and premises located in Harris County, Texas, to-  
wit:

All of those certain tracts of land known as  
GREENBRIAR COLONY TOWNHOUSES, a subdivision  
as set forth on the map or plat thereof  
recorded in Volume 295, Page 79 of the Map  
Records of Harris County, Texas and  
GREENBRIAR COLONY PATIO HOMES, a subdivision  
as set forth on the map or plat thereof  
recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the  
Map Records of Harris County, Texas; and,

WHEREAS, under Article IX, Section 2 of said Declaration,  
said Declaration may be amended by the owners of not less than  
two-thirds (2/3rds) of the total number of tracts within the  
subdivision; and,

WHEREAS, more than two-thirds (2/3rds) of the owners of the

total number of tracts within the subdivision have authorized the Board of directors of the Association to amend said Declaration as hereinafter provided.

NOW, THEREFORE, the Board of Directors of the Association hereby amend that certain Declaration of Covenants, Conditions and Restrictions for Greenbriar Colony Townhouses and Greenbriar Colony Patio Homes, recorded under Clerk's File No. G705640 and G733581, as follows:

I.

Article III is hereby deleted in its entirety and replaced with the following:

Article III

MEMBERSHIP AND VOTING RIGHTS

Section 1.     Membership:     Every person or entity who is a record owner of a fee or undivided fee interest in a Living Unit, Tract or Lot which is a part of the Subdivisions, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Living Unit, Tract or Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Living Unit, Tract or Lot. Ownership of a Living Unit, Tract or Lot shall be the sole qualification for membership. Any Mortgagee or Lien Holder who acquires title to any Living Unit, Tract or Lot which is a part of the Subdivisions through judicial or non-judicial foreclosure, shall be a Member of the Association.

Section 2.     Voting Rights: There shall be one class of

membership entitled to voting rights in the Association and it shall be as follows:

- (a) Class "A" All Members in the Association, shall be considered Class A Members, and for each Living Unit, Tract or Lot owned shall be entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Living Unit, Tract or Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Living Unit, Tract or Lot shall be considered Class A Members, however, for that particular Living Unit, Tract or Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Living Unit, Tract or Lot shall be exercised as they among themselves determine.

## II.

Article IV is hereby deleted in its entirety and replaced with the following:

### ARTICLE IV COST AND EXPENSE

Commencing upon initial occupancy of the improvements located upon the Recreational Facilities Tract and continuing thereafter, the owners of each Living Unit, Tract or Lot within the Subdivision are hereby subjected to (by means of a maintenance assessment hereinafter described) and shall be liable for, the cost, expense and charges paid or incurred in operating (including all real estate taxes), administering, insuring, repairing and maintaining the Recreational Facilities Tract (including the equipment used in connection therewith) and the lighting of the Common Area; and, subject to the consent provision hereof, the costs, expenses and charges paid or incurred in constructing any additional, replacements, or improvements upon the Recreational Facilities Tract.

## III.

Section I of Article V is hereby deleted in its entirety and replaced with the following:

## ARTICLE V

## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments: The Declarant, for each Tract within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Living Unit, Tract or Lot which shall be or thereafter become assessable by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument. Such assessment charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing Vendor's Lien upon the Living Unit, Tract or Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs, and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who own the particular Living Unit, Tract or Lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Living Unit, Tract or Lot. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

## IV

Sections 3,4,5,6,7,8,9 and 10, inclusive, of Article V are hereby deleted in its entirety and replaced with the following:

Section 3. Basis and Maximum Level of Annual Assessments: Until January 1 of the year immediately following the conveyance of the first tract to an Owner, the maximum annual assessment shall be \$102.00 per Living Unit, Tract or Lot. From and after January 1 of the year immediately following the conveyance of the first tract or Living Unit, Tract or Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors of the Association, effective January 1 of each year, in conformance with the rise, if any, in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July, without a vote of the Members of the Association. From and after January 1 of the year immediately following the conveyance of the first Living Unit, Tract or Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula only by approval a majority of the members of the Association. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed with the County Clerk of Harris County, Texas, for recordation in the Deed Records of Harris County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the members.

Section 4. Special Assessments for Capital Improvements: In addition to the annual assessment authorized above, 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, or unexpected repair or replacement of a particular capital improvement located upon the Recreational Facilities Tract, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of the Owners of a majority of the members of the Association.

Section 5. Notice of Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting of the Members of the Association called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members and shall be posted at a public place within the Subdivision not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of the Members holding a majority of all membership votes entitled to be cast in each membership class or their proxies shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice and quorum requirements. In lieu of such a meeting and notice, a door-to-door canvas may be used to get the required written approval of the Owners as hereinafter provided.

Section 6. Rates of Assessment: Both annual and special assessments on all Living Units, Tracts or Lots, must be fixed at uniform rates as follows:

- (a) Occupied Tracts: Those tracts containing an occupied Living Unit, Tract or Lot shall be assessed the full assessment for each Living Unit, Tract or Lot as set by the Board of Directors of the Association;
- (b) Vacant Tracts: Those tracts which are vacant or upon which a residence is under construction shall not be assessed.

Section 7. Date of Commencement and Determination of Annual Assessment: The annual assessment provided for herein shall commence as to all assessable Living Units, Tracts or Lots on the first day of the month following the conveyance of the Recreational Facilities Tract to the Association. As and when vacant tracts within the Subdivision are built upon and occupied, the owners of each Living Unit, Tract or Lot thereon shall become subject to the annual assessment on the first day of the month following the attainment of such status. The first annual assessment for any assessable Living Unit, Tract or Lot shall be adjusted according to the number of months remaining in the calendar year in which such Living Unit, Tract or Lot becomes

199-24-2313

assessable. On or before the 30th day of November in each year, the Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each assessable Living Unit, Tract or Lot in the next calendar year. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Living Unit, Tract or Lot is subject to the payment thereof. Assessments shall be due and payable monthly or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Living Unit, Tract or Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Living Unit, Tract or 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 assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty days (30) after the due date, it shall bear interest from the due date at the maximum rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein retained against the Living Unit, Tract or Lot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a Deed to a Living Unit, Tract or Lot hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien foreclosure on real property,

and such Owner expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien. 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 Living Unit, Tract or Lot.

Section 9. Subordination of the Lien to Mortgages: As hereinabove provided, the title to each Living Unit, Tract or Lot shall be subject to the Vendor's Lien securing the payment of all assessments and charges due the Association, but this Vendor's Lien shall be subordinate to any valid purchase money lien or mortgage covering the Living Unit, Tract or Lot. Sale or transfer of any Living Unit, Tract or Lot shall not affect this Vendor's Lien. However, the sale or transfer of any Living Unit, Tract or Lot which is subject to any valid purchase money lien or mortgage, pursuant to a judicial or non-judicial foreclosure under such lien or mortgage shall extinguish the Vendor's Lien securing such assessment or charge as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Living Unit, Tract or Lot or the Owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

Section 10. Exempt Property: All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Living Unit, Tract or Lot which is used as a residence shall be exempt from said assessments and charges.



## V.

Article VI is hereby deleted in its entirety and replaced with the following:

ARTICLE VI  
INSURANCE

The Association, through the Board of Directors, or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

(a) Property insurance covering the Recreational Facilities Tract and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Recreational Facilities Tract Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building law endorsement" or the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and any such other risk as shall customarily be covered with respect to projects similar in construction, location and use;

(b) A comprehensive policy of public liability insurance covering all of the Recreational Facilities Tract and insuring the Association, within such limits as it may consider acceptable (but with coverage of not less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location, and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners;

(d) A policy of liability coverage for all directors and officers of the Association for any liability asserted against the directors and officers while serving the Association in such capacity; and

(e) Any and all other insurance deemed necessary by the Board of Directors for the operation of the Association or its properties.

Premiums for all such insurance policies carried by the Association shall be a common expense payable by and included with the assessments on all of the assessable Living Unit, Tract or Lots. Liability and property insurance for Living Unit, Tract or Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by a signature of at least two (2) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds on a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, they shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency. This shall be done only after compliance with all the requirements for imposition of special assessments.

## VI

Article VII is hereby deleted in its entirety and replaced with the following:

## ARTICLE VII

## MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Recreational Facilities Tract and the improvements located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be canceled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type. The Members of the Association may terminate the professional management of the Subdivision and assume self-management by the Association upon the execution of a written agreement executed by the Members holding a majority of the membership votes entitled to be cast at a meeting of the Members or otherwise. This written agreement may be circulated by a door-to-door canvass of the Members and need not be presented for approval at any meeting of the Members or otherwise.

## VII

Section 2 of Article IX is hereby deleted in its entirety and replaced with the following:

Section 2. Duration and Amendment: The covenants, conditions, restrictions, reservations, liens and charges set forth in the Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners and Members, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration of Covenants, Conditions and Restrictions is filed with the County Clerk of Harris County, Texas, for recordation in the Map Records of Harris County, Texas, after which time said covenants, conditions, restrictions, reservations, liens and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than a majority of the total number of Living Unit, Tract or Lots in the Subdivision is filed for record with the County Clerk of Harris County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date.

Except as expressly modified and amended herein, said Declaration is hereby ratified and confirmed, and the changes herein made are made a part thereof for all purposes.

199-24-2319

IN WITNESS WHEREOF, the Board of Directors of the Association, as the authorized representative of more than two-thirds (2/3rds) of the Owners of the total number of tracts within the subdivision, have hereby executed this First Amendment on this the 25 day of November, 1987.

GREENBRIAR COLONY TENNIS AND SWIM ASSOCIATION, INC.

BY: K. R. Bickens Jr.  
NAME: K. R. BICKENS JR.  
TITLE: PRESIDENT

STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me by K. R. Bickens Jr.  
President of GREENBRIAR COLONY TENNIS AND SWIM ASSOCIATION, INC. on the 25<sup>th</sup> day of November, 1987.

Vanessa Beckett  
Notary Public in and for  
State of Texas  
VANESSA BECKETT  
Printed Name

6/3/90  
My Commission expires:

FILED  
DEC 2 11 24 AM '87  
L.B. RYAN JR.  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
THE STATE OF TEXAS }  
COUNTY OF HARRIS }  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

DEC 2 1987



John Holloman  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

RETURN TO:

LORI ELROD JEWETT  
SERVICE MANAGEMENT  
14450 TC JESTER, Suite 100  
Houston Tx 77044

168-87-2352

JOINDER OF MORTGAGEE

The undersigned, BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, being the owner and holder of an existing mortgage and lien upon and against the real property described in the foregoing restrictions and defined as the "Property" in said restrictions, as such mortgagee and lienholder, does hereby consent to and join in said Declaration of Covenants, Conditions and Restrictions.

170-82-0475

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Lots and all appurtenances thereto, and all of the undivided, equitable shares and interests in the Common Area, subject to the restrictions hereby agreed to.

SIGNED AND ATTESTED by the undersigned officers of said BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON hereto authorized, this the 30th day of September, 1980.

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION,  
HOUSTON

ATTEST:

Charles Dunshie  
Charles Dunshie, Loan Officer

BY

H. H. Kuhlmann, III  
H. H. Kuhlmann, III, Vice President

THE STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared

H. H. Kuhlmann, III, known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, a banking corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of September, 1980.

My commission expires:

Wilma M. Griffin  
Notary Public in and for  
Harris County, Texas  
Name

TRANS-AMERICA TITLE INSURANCE COMPANY  
JULIUS MEIERSTATION  
P.O. BOX  
HOUSTON, TEXAS 77027

WILMA M. GRIFFIN  
Notary Public in Harris County, Texas  
My Commission Expires 9-30, 1984