

GREENBRIAR VILLAGE

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR "Z" LOTS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made by JOYAL ENTERPRISES, INC., a Florida corporation, hereinafter referred to as "Developer."

WITNESSETH:

WHEREAS, Developer is the owner of certain property in the County of Brevard, State of Florida hereinafter referred to as "Z" lots in this declaration and more specifically described as:

Lots 53 through 164, according to the plat thereof for Greenbriar Village recorded in Plat Book 34, Pages 73 through 74, Official Records of Brevard County, Florida.

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

ARTICLE I

APPLICATION

This Declaration of Covenants and Restrictions shall apply only to the above described "Z" lots within the recorded plat of Greenbriar Village according to the plat thereof, as recorded in the public records of Brevard County.

This instrument was prepared by:
Wayne L. Allen, Attorney
410 N. Wickham Road, #202
Melbourne, Florida 32935
(305) 254-7550.

PROS. <u>10</u>	CHARGES <u>2</u>
TRUST FUND \$ <u>5.50</u>	REG. PAYMENT AS
INTELS. <u>41.00</u>	DELEGATED FOR PLATS
USCGI. \$ _____	5. THAT THE FEE FOR
INT. TAX \$ _____	STATE PLATS BEING
SER. CHG. \$ _____	1.00 PER PLAT
REFUND \$ _____	FOR THE REG.

*Paul M. Joyal
2800 Aurland
Melbourne, FL 32935*

7

REC'D

ARTICLE II

INCORPORATION OF GENERAL RESTRICTIONS

The Greenbriar Village General Declaration of Covenants and Restrictions recorded at OR Book 2916, Pages 0294 through 0322, of the Public Records of Brevard County, Florida are expressly incorporated herein as fully as if set forth in this "Z" Lot Declaration of Covenants and Restrictions, and the properties described in this Declaration are hereby declared to also be subject to said General Declaration of Covenants and Restrictions of Greenbriar Village as set forth in said General Declaration of Covenants and Restrictions.

ARTICLE III

DEFINITIONS

Section 1. "Z Lots" shall mean and refer to those parcels of land described as Lots 53 through 164 Greenbriar Village, according to the plat thereof, as recorded in the Official Records of Brevard County, Florida.

Section 2. "Developer" shall mean and refer to Joyal Enterprises, Inc., its successors and assigns. Joyal Enterprises, Inc. shall at all times have the right to assign its interest herein to any successor or assigns.

Section 3. "Dominant Estate" shall mean the property utilizing an easement.

Section 4. "Servient Estate" shall mean the property subject to an easement.

ARTICLE IV

LANDSCAPING/ MAINTENANCE

(1) The landscape and lawn area forward of the fence and gate between each unit shall be initially landscaped by the developer and maintained by the Greenbriar Village Homeowners Association of Brevard, Inc. The gate and fence connecting adjacent units, "Z" Lots Maintenance Designated Fencing and the sprinkler system covering the entire lot shall also be maintained by the Association.

(2) No planting, tree, shrub, birdbath, equipment, structure or other thing shall be constructed or erected in the area between the "Z" Lot residence front building line and the residential access street without the express written approval and consent of the Architectural Review Committee.

(3) The Board of Directors of the Greenbriar Village Homeowners Association of Brevard, Inc. their successors, assigns, agents contractors and employees may remove any unauthorized planting, tree, shrub, birdbath, structure or other thing constructed or erected in violation of these restrictions, without notice and without liability for any cost, damage, or liability to any person, persons or entity.

(4) Any changes to the sprinkler system will be performed by the Homeowners Association's contractor at the Owner's expense.

(5) Maintenance of the rear lot area behind the fence and gate between each "Z" Lot residence, except for the sprinkler system, shall be the property owner's responsibility. Any replacement of plants on the entire lot, shall be the Owner's responsibility.

(6) Areas behind the fence and gate between each "Z" Lot residence may be landscaped by the owner subject to the following provisions:

(a) no installed trees or tree limbs shall overhang the adjoining property, however, trees existing prior to building the residence may have overhanging limbs.

(b) a 12" open space shall be maintained at all times between plants and structures from any wall or fence which forms a common boundary with adjacent property.

(c) sprinklers shall be installed and maintained so that water will not directly strike any wall or fence forming a common boundary with adjacent property.

(8) Right-of-way plantings in front of each "Z" Lot residence shall be maintained by the Homeowners Association.

(9) Nothing shall be attached to any wall or fence

forming a common boundary with adjacent property and said wall or fence shall not be defaced in any manner.

(10) Each homeowner shall be responsible for the reasonable uninterrupted drainage of his lot.

(11) The Homeowners Association is responsible for maintenance of all fencing as described in the General Covenants and Restrictions for Greenbriar Village. No painting of fencing is allowed unless approved by the Architectural Review Committee.

ARTICLE V

ASSESSMENT

Section 1. "Z" Lot Assessment. Each purchaser of a "Z" Lot unit, shall pay a "Z" Lot Assessment which shall be comprised of a Sprinkler System Assessment, a General Maintenance Assessment applicable to all lots within Greenbriar Village, and a "Z" Lot Maintenance Assessment. The "Z" Lot Assessment shall commence upon issuance of a certificate of occupancy. The initial "Z" Lots Assessment shall be \$552.00 per year and is due and payable at \$138.00 per quarter.

Section 2. Date of Assessment. The Board of Directors of the Greenbriar Village Homeowner's Association of Brevard, Inc. shall set the annual "Z" Lot Assessment no later than June 1 of each year and shall communicate said amount together with a budget for "Z" Lots showing a breakdown for each component of budgeted costs and expenses and the entity, which may be an independent contractor, who will be responsible for such maintenance as may be necessary.

Section 3. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each lot owner within the Property, hereby covenants, and each Owner of any lot by acceptance of a deed to any lot within the properties, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments, and (2) special assessments for capital

improvements, such assessments to be established and collected as provided herein. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 4. Applicability of General Declaration of Covenants and Restrictions. The effective date of the lien, collection and foreclosure, purpose of assessments and other provisions of the General Declaration of Covenants and Restrictions for Greenbriar Village are expressly incorporated herein to the extent not inconsistent with these restrictions and are fully applicable to the "Z" lots described in this declaration.

ARTICLE VI

EASEMENTS

Each owner of property described herein does hereby grant and there is hereby created over, above, across and under said property (herein called the servient estate) an easement to the adjacent property (herein called the dominant estate) owner, its agents, contractors and the Developer for the access, maintenance, repair, construction and reconstruction, together with necessary ingress and egress, into, over, upon, under and across servient property (servient estate) for the purpose of the maintenance, repair, improvement, construction and reconstruction of the original dwelling, or appurtenant structures thereto, constructed on the adjoining dominant properties (dominant estate) as to lie directly on, or over, (or in close proximity to) the lot line dividing the dominant and servient estates (described herein

as "Z" Lot structures), and which shall include fences and walls as necessary and without limitation thereto.

Each easement shall apply only when reasonably necessary to accomplish the purpose set forth herein and the owner of the dominant property utilizing said easement, his contractors or assigns, shall be liable for any damage to the servient lot or structures or things thereon, arising out of or resulting from the use of said easement.

Each lot subject to the foregoing easement shall also be subject to an easement for lateral and subjacent support, and for encroachments, for unwillful placement, settling or shifting of the improvements constructed, reconstructed or altered on the lot benefited by such easement to a distance of not more than one (1) foot as measured from any point on the common boundary at such point: provided, however that in no event shall an easement or encroachment exist if such encroachment was caused by willful misconduct on the part of the owner of any lot benefited by such easement.

Each and every "Z" Lot easement shall be perpetual and shall be appurtenant to, and shall run with the land.

The owner of each servient lot subject to such easement, shall not construct, erect or place any fencing, structure, improvement, plantings or other materials which may interfere with the exercise of such easement, but shall otherwise maintain their property.

The owner of the dominant lot shall not be unreasonably denied access to the servient lot easement to inspect, maintain and repair his property.

Access of maintenance and material persons to the rear yard through the access gate between adjacent lots shall not be unreasonably denied. The access gate will not be used for regular pedestrian traffic.

In the event of any dispute arising concerning any provisions of this Article, each party shall choose one arbitrator, and the two arbitrators selected shall choose a

third arbitrator. The decision on any dispute shall be by majority vote of the three arbitrators and the decision shall be legally binding upon the parties and enforceable in any Court of competent jurisdiction. Should any party fail to appoint an arbitrator within 10 days after written request therefore, or if the two arbitrators cannot agree upon a third arbitrator, the Greenbriar Village Homeowners Association of Brevard, Inc., or its successor, shall select an arbitrator.

Article VII

EASEMENTS ON DEED

Easements may be described on deeds to "Z" Lots but such described easements shall be without limitation as to required access for maintenance, construction and reconstruction on adjacent lots as set forth in this declaration.

ARTICLE VIII

EXEMPTION OF DEVELOPER

Nothing contained in this Declaration shall be interpreted or construed to prevent Joyal Enterprises, Inc., its successors, agents or assigns, or its contractors, or subcontractors, from doing or performing any work on any part of the "Z" Lots listed in this Declaration, whenever it is determined to be reasonably necessary or advisable to do so by the Developer in connection with the completion of the development, including, but without limitation:

a. Erecting, constructing, and maintaining thereon such structures as may be reasonably necessary for the conduct of Developer's business of completing the development and establishing the "Z" Lots as a residential community and disposing of the same by sale, lease or otherwise; or

b. Conducting thereon its business of completing the development and establishing the property as a residential community and disposal of the property by sale, lease or otherwise; or

c. Erecting and maintaining such signs thereon as may be reasonably necessary in connection with the sale, lease or other transfer of the property.

All provisions of this Declaration in conflict with this Article shall be deemed inoperative as to Joyal Enterprises, Inc., their successors, agents, assigns, contractors or subcontractors.

ARTICLE IX

EXEMPTION OF DEVELOPER AND DESIGNATED BUILDERS

Every person, firm or corporation purchasing a lot recognizes, acknowledges and agrees that Joyal Enterprises, Inc., any successor Developer or a builder designated in writing by Joyal Enterprises, Inc., shall have the right to:

a. Use lots and residences erected thereon for sales offices, field construction offices, storage facilities, general business offices; and

b. Maintain model homes on the lots which are open to the public for inspection 7 days per week and for such hours as are deemed necessary or convenient.

c. Erect and maintain such signs on the lots in connection with the uses permitted in a. and b. above.

Developer's and builder's rights under the preceding sentence shall terminate on December 31, 1999, unless prior thereto Developer has indicated its intention to abandon such rights by a written instrument duly recorded. It is the express intention of this paragraph that the rights granted herein to maintain sales offices, general business offices, model homes and signs shall not be restricted or limited to Developer's or builder's sales activities relating to the "Z" Lots, but shall benefit Developer, or builder in the construction, development and sales of such other property and lots which Developer or builders may own.

All provisions of this Declaration in conflict with this paragraph shall be deemed inoperative as to Developer or a designated builder.

ARTICLE X

EXCULPATION OF DEVELOPER

Developer cannot and shall not be held responsible, nor be liable to any person whosoever, in any manner whatsoever, for any loss or damages arising out of or resulting from the approval, the failure or refusal to approve, or the disapproval of, any plans or specifications and/or site plan, or any other matters determined by the Architectural Review Committee or governmental authorities.

ARTICLE XI

USE EASEMENTS

(1) Gate: The side yard gate provided for "Z" Lot residents shall be locked with a master lock approved by the Homeowners Association so that at all times access shall be available in order to allow maintenance of adjacent properties and emergency access, as may be necessary. The Homeowners Association shall have a master key to all side yard gate locks and no other lock shall be placed upon side yard gates.

(2) Drainage: No obstruction shall be permitted to the engineered drainage plan. Gutters shall be maintained by the owner but the Homeowner's Association may fix any defective gutter if not repaired within five (5) days after notice is sent to owner by regular U.S. mail. Each homeowner shall be responsible for the uninterrupted drainage of his lot.

(3) Overhangs: An easement is hereby created for roof overhangs, over the adjacent property, in conformance with the architectural plans for the "Z" Lot units.

ARTICLE XII

DURATION/ENFORCEMENT/SEVERABILITY

Section 1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive

periods of ten years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, or by an instrument signed by the Developer, as long as there is a Class B membership. Any amendment must be recorded.

Section 2. Enforcement. The Association the Developer, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Developer or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Covenants and Restrictions this 25th day of April, 1988.

JOYAL ENTERPRISES, INC.

BY: Paul M. Joyal
Paul M. Joyal, President

ATTEST:

Ronna J. Joyal
Secretary

STATE OF FLORIDA
COUNTY OF BREVARD

BEFORE ME personally appeared Paul M. Joyal, President and Ronna J. Joyal, Secretary of JOYAL ENTERPRISES, INC., to me well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 25th day of April, A.D., 19 88.

Richard O. Pittman, Jr.
NOTARY PUBLIC
State of Florida

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. OCT. 6, 1991
BONDED THRU GENERAL IRS. UND.

OFF. REC.
Page 10

2916

PAGE

0332