

DECLARATION OF COVENANTS, RESERVATIONS AND RESTRICTIONS

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VOL 278 PAGE 265

THE STATE OF TEXAS

COUNTY OF POLK

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KNOW ALL MEN BY THESE PRESENTS:

THAT THIS DECLARATION, made on the date hereinafter set forth by STARNES GROUP INC., a Texas corporation, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Polk, State of Texas, which has been subdivided into townhouse lots according to the plat ("Said Plat") thereof recorded in Volume 5, page 44 of the Plat Records in the office of the County Clerk of Polk County, Texas, the subdivision shown on Said Plat being therein designated as MEMORIAL POINT TOWNHOUSE DEVELOPMENT, Section Two reference being here made to Said Plat and the record thereof for more particular description of the property covered thereby and of each of the townhouse lots into which such property is thereby subdivided;

WHEREAS, Declarant will convey the townhouse lots shown on Said Plat, subject to certain protective covenants, restrictions, reservations, easements, assessments, charges and liens as hereinafter set forth:

NOW, THEREFORE, Declarant hereby declares that all of the townhouse lots shown on Said Plat and any additional property annexed thereto and made a part of such Memorial Point Townhouse Development, Section Two pursuant to Article II hereof, shall be held, used, sold and conveyed subject to the following easements, restrictions, covenants, easements, charges, assessments and liens, all of which are for the purpose of providing a substantially uniform plan for the development of the land shown on Said Plat and enhancing and protecting the value, desirability and attractiveness of the land included within such Memorial Point Townhouse Development, Section Two. These easements, covenants, restrictions, and reservations shall be binding on all parties having or acquiring any right, title or interest in the above described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

In this instrument each of the following terms shall have the meanings hereinafter indicated:

Section 1. "Association" shall mean and refer to MEMORIAL POINT TOWNHOUSE, INC., a Texas non-profit corporation, and its successors and assigns.

Section 2. "Property" shall mean and refer to that certain tract of real property comprising the Memorial Point Townhouse Development, Section Two and such additions as may hereafter be made thereto and brought within the jurisdiction of the Association pursuant to Article II hereof.

Section 3. "Lot" shall mean and refer to any of the 25 building locations shown upon Said Plat (and therein designated as Lots 22 through 46 respectively) and any amendments thereto on which there is or will be constructed a single family townhouse. Should additional land be annexed pursuant to Article II hereof, the number of Lots shall be increased by the number of single family townhouses erected or to be erected on such additional property when so annexed. Declarant shall be the owner of all of 25 Lots SAVE AND EXCEPT only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof.

Section 4. "Townhouse" shall mean a single family residence unit constructed on a Lot.

Section 5. "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 a part of the Property, including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation.

Section 6. "Declarant" shall mean and refer to STARNES GROUP INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

ADDITIONAL LAND

If within five years of the date of incorporation of the Association, the Declarant should acquire record title to and desire to develop additional land or lands comprising all or any part of Lots 35, 36 and 37 of Block 6 of Memorial Point Subdivision, as shown on the map or plat thereof recorded in Volume 4, page 14 of the Map Records of Polk County, Texas, such additional lands may be annexed to and made a part of the said Property without the assent of any other Owners of Lots in the Property by instrument executed by Declarant and filed in the Deed Records of Polk County, Texas, describing the land to be so annexed, identifying the plat or map of such additional land by reference to the recording thereof in the map or plat records of Polk County, Texas, and adopting all of the terms and provisions hereof as being applicable to such additional land to the full extent as though such additional land had been included in the Property to which these covenants, reservations and restrictions apply, under the terms hereof and as of the date hereof. Upon the execution and filing of such instrument and the map or plat of such additional land, such additional land so annexed shall be and become a part of the Property to the full extent as though such additional land had been included in the Property to which these covenants, reservations and restrictions apply and the subsequent Owners of any part thereof shall be thereafter bound by the terms and provisions of this instrument and entitled to all of the rights, privileges and benefits of Owners of Lots in the Property, as hereinafter described.

ARTICLE III

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Annual Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association the annual assessments or charges which shall be hereafter from time to time fixed, established, and collected by the Association as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land affected thereby and shall be secured by a continuing lien which is hereby reserved in favor of the Association and its successors and assigns, upon each Lot against which each such assessment is made, to the same extent as if retained by Declarant and expressly assigned to the Association without recourse to any extent unto Declarant. Each such annual assessment, together with such 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 each such assessment becomes due and payable. Such personal obligation shall not pass to the successors in title to such Lot unless expressly assumed by them.

Section 2. Purpose of Assessments. The annual assessments levied by the Association shall be used exclusively for the purpose of providing a fund for the recreation, health, safety, and welfare of the residents in the Property, for the improvement and maintenance of Property, the Townhouses situated upon the Property, and of any common areas or facilities which may be hereafter established by the Declarant or the Association for the benefit of the residents. They shall include, but are not limited to, funds for the actual cost to the Association of providing (i) repair, replacement and maintenance of the Lots and the exteriors of the Townhouses which may from time to time be constructed thereon, including, but not limited to, mowing grass, caring for the grounds, sprinkler system, landscaping, roofs and exterior walls of the Townhouses, purchasing any and all equipment necessary to provide such services and obtaining and maintaining storage and service facilities for such equipment

(ii) water utility service for the residents of such Townhouses, (iii) sanitary sewer service to the Property, (iv) periodic garbage and trash pick-up and disposal services, (v) maintenance and repair of all concrete bulkheads and bulkhead lights, (vi) maintenance and repair of any breakwater or pier that may be hereafter constructed by Declarant or the Association for the use and benefit of the residents of the Property, (vii) payment of any charges and assessments which shall from time to time be payable to the Trinity River Authority of Texas by the Owners of the Lots within the Property, (viii) fire and extended insurance coverage for any improvements constructed within the Property, (ix) payment of the monthly assessments against the Lots within the Property which are payable to Memorial Point Yacht Club, Inc. and its successors or assigns under and pursuant to the terms of that certain instrument entitled "Restrictions for Memorial Point" which is filed for record in Volume 253 page 545 of the Deed Records of Polk County, Texas, and (x) other charges required to be paid by this Declaration of Covenants, Reservations and Restrictions or that the Association shall determine to be necessary to meet the purposes of the Association, including the establishment and maintenance of a reserve for repair, maintenance and other charges as may be specified herein.

Section 3. Amount of Assessment. The amount of the annual assessment against all Lots in the Property for each year shall be fixed, determined and established by the Association at least sixty days prior to January 1 of such year and such amount shall be based on the judgment of the Association as to its anticipated financial requirements during the ensuing year in order to fulfill its purposes as set forth herein and in its Articles of Incorporation. The determination of the Association as to the amount of the annual assessment against such Lots shall be final and conclusive as to all Owners of Lots in the Property. The total amount of the assessment against all Lots shall be allocated to each Lot based on the number of square feet contained within the townhouse residence situated on each such Lot, as calculated by the Association. The Owners of each Lot shall be notified of the amount of the annual assessment against his Lot for the next succeeding year at least ten days prior to January 1 of such year and such amount shall be due and payable by January 15 of the year for which such assessment is made. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month immediately following the month in which the fee simple title to such Lot is transferred by Declarant to an Owner. The first annual assessment shall be prorated according to the number of months remaining in the calendar year during which the initial assessment is made.

Section 5. Special Assessments. The Association shall also have the right, at its option, to make special assessments against any Lot of such amount or amounts as may be necessary to reimburse the Association for all costs and expenses incurred by it as a result of any misuse or abuse of or damage to any property or facilities of the Association or any misuse or abuse of any of the services provided by the Association, by the Owner of such Lot, members of his family or his guests or other invitees. The Owner of any Lot shall be notified in writing of any such special assessment and the amount of such assessment shall be due and payable within 30 days after the date such notice is given. Any such special assessment shall be secured by lien in favor of the Association in the same manner that the annual assessments are so secured.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments, whether annual or special, which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 9 per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a 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 charges as a debt and to enforce the aforesaid lien by all methods available for

the enforcement of such liens, including foreclosure thereof by an action brought in the name of the Association in the same manner as a mortgage lien on real property. The lien provided for in this Article III shall be in favor of the Association and shall be for the benefit of all other Lot owners. The Association acting on behalf of the Lot Owners shall have the power to bid in the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of or abandonment of his Lot or the improvements situated thereon.

Section 7. Subordination of the Lien to Mortgages. The lien securing the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages which the Owner of any Lot may hereafter from time to time impose upon his Lot for the purpose of securing payment of indebtedness incurred by such Owner to purchase such Lot or construct improvements thereon. Otherwise, the lien hereinabove provided for in favor of the Association as to each Lot shall be a first and prior lien as to each such Lot. No sale or transfer of any Lot shall affect the lien securing the annual assessment against such Lot, except that the sale or transfer of a Lot pursuant to a decree of foreclosure under any mortgage which is superior to such lien securing the assessment, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer and none other. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien securing payment thereof.

Section 8. Exempt Property. No Lot shall be exempt from said assessments and the lien securing payment thereof unless the Association shall, in its sole discretion, determine to (and the Association shall have the right to) exempt one or more Lots from the payment of all or any part of the assessment provided for herein for one or more years for such cause or reason as it may select.

Section 9. Insurance. The Association, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all Townhouses hereafter situated on any Lot, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any necessary repair or reconstruction work to such buildings in the event of damage or destruction from any hazard. The Association shall also obtain a broad form public liability policy covering all of the Property and the Common Area, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. All such insurance coverage, including insurance on individual Townhouses, obtained by the Association, shall be written in the name of the Association as Trustee for each of the Townhouse Owners. In addition to the aforesaid insurance required to be carried by the Association, any Owner may, if he wishes, at his own expense, carry any and all additional insurance he deems advisable. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering damage to or loss of his personal property. In the event of damage to or destruction, by fire or other casualty, of any property covered by insurance written in the name of the Association, the Association shall, with concurrence of the holder of any mortgage covering such damaged property, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as existed prior to such damage or destruction. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by the Federal Deposit Insurance Corporation or other appropriate governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by signature of an agent duly authorized by the Association. The Association shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who may, at the option of the Association, be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay the costs of repairing and/or rebuilding to the same condition as formerly existed, the Association may, in its discretion, levy a special assessment against the Owner or Owners of the damaged Townhouses in such proportions as the Association shall deem fair and equitable in the light of the damage sustained by such Townhouses to make up any deficiency. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners of the damaged Townhouses as their interests may then appear. In the event of damage or destruction to any Townhouse, storage area or other property not covered by insurance written in the name of the Association, the Owner thereof shall promptly contract to repair or rebuild such damaged or destroyed

portions of the storage area and exterior of the Townhouse in a good workmanlike manner in conformance with the original plans and specifications of said Townhouse. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the Townhouse or storage area within thirty (30) days, the Association is hereby irrevocably authorized by such Owner to repair and rebuild any such Townhouse and storage area in a good and workmanlike manner in conformance with their original plans and specifications. The Owner shall then repay the Association for the amount actually expended for such repairs. The Association shall have a lien securing the payment of any amounts payable by the Owner of any Lot to the same extent as that provided for above in this Article III securing the payment of annual assessments and same shall be subject to foreclosure as above provided.

ARTICLE IV

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhouse upon the Property and placed on the dividing line between the Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The owner of a Townhouse shall not cut through or make any penetration through a party wall for any purpose whatsoever without prior consent of the adjoining Owner and the Association.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions, except as provided for in Section 3 of this Article IV.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten days after written request therefor, the Association shall select an arbitrator for the refusing party.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, pier, dock or other structure of any kind shall be commenced, erected or maintained upon any Lot (or in the lake adjoining any such Lot) after the purchase of any Lot from Declarant, its successors or assigns, nor shall any exterior addition to or change 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 and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, by the Association, or by

an architectural control committee composed of three (3) or more representatives appointed by the Association. In the event said Association or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will be presumed and this Article will be deemed to have been fully complied with. In no event shall any Townhouse unit or any Lot be altered, remodeled or in any way divided or converted into more than a single dwelling unit.

All draperies and any other interior or exterior window coverings, prepared to be installed in each Townhouse, shall likewise be subject to review by the Association or an architectural control committee so as to provide an attractive exterior appearance for all of the Townhouse units in the Property.

No exterior aerial antenna, of any kind or other structure (except chimney) shall project above the uppermost roof line of the Townhouse on any Lot.

Mail box location is also subject to architectural control.

ARTICLE VI

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include any glass surfaces, patios, windows, door fixtures or other hardware.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, and not covered or paid for by insurance on such Lot, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the Lot owned by such Owner is subject.

Maintenance, upkeep and repairs of the patio of each Townhouse shall be the sole responsibility of the Individual Owner thereof and shall not in any manner be the responsibility of the Declarant or the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and all exteriors and roofs of the Townhouses, including but not limited to, parking areas, drives and walks, shall be taken by the Association or by its duly delegated representative.

All fixtures and equipment installed for each Townhouse, commencing at a point where the utility lines, pipes, wires, conduits or systems commence to serve each single Townhouse, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhouse or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.

ARTICLE VII

USE RESTRICTIONS

Section 1. Each of the Lots in the Property shall be used for single family residential purposes only. All buildings or structures erected upon said Property shall be of new construction and no buildings or structures shall be moved from other locations onto said Property and no subsequent buildings or structures other than townhouse buildings, being single family townhouses joined together by a common exterior roof and foundation, shall be constructed on any Lot. No structures of a temporary character, mobile home, boat, camper, trailer, tent, shack, garage, barn or other outbuilding shall ever be used on any portion of said Property at any time as a residence, either temporarily or permanently.

Section 2. Each Lot shall be conveyed by Declarant and by all subsequent Owners as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 3. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant or any builder of said Townhouses or any other persons so authorized by Declarant, to maintain in or upon such portion of the Property or in any Townhouse thereon, as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of said Townhouses, including, but without limitation, a business office, storage area, construction yard, signs, model units, sales office or rental office.

Section 4. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other domestic household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No pets may run at large in the Property and any pets that, in the opinion of Declarant, constitute a nuisance or health hazard to the residents shall be promptly removed from the Property.

Section 5. No sign, advertisement, billboard or advertising structures of any kind shall be erected, placed or permitted to remain on said Property, without written consent of Declarant or the Association. No business activities of any kind whatever shall be conducted in any building or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities authorized by Section 3 above, or to signs and billboards, if any, of Declarant, its agents and assigns during the construction and sale of the Lots. Declarant or his agents shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any residential lot without such consent, and, in so doing, shall not be liable and is expressly relieved from any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 6. No action shall at any time be taken by the Association which in any manner would discriminate against any Owner or Owners in favor of any other Owner or Owners.

Section 7. No structure shall be used or occupied until the exterior thereof, as approved pursuant to Article V above, is finished and water and sanitary sewerage disposal facilities are completely installed and operable.

Section 8. No noxious or offensive activity shall be carried on or maintained on any Lot nor shall anything be done or permitted to be done thereon which may be or become a nuisance or health hazard to the other residents of the Property. Motor bikes will not be permitted if by reason of noise or manner of use they are considered by Declarant to be a nuisance. No outside clothes drying lines shall be permitted to be erected or used on any Lot.

Section 9. The use or discharge of firearms is expressly prohibited within the Property.

Section 10. No Lot shall be used as a dumping ground for garbage, trash, or rubbish. Any and all trash, garbage, and other waste shall be kept in sanitary containers. Any incinerator or other equipment for the storage or disposal of such waste material must be kept in a clean, sanitary and slightly condition at all times.

Section 11. No building material of any kind shall be placed or stored upon any Lot except during construction; and then such material shall be placed within the property lines of the Lot on which the improvements are to be erected.

Section 12. If open carports are used, no storage shall be permitted therein that is visible from the street or from any other Lot. No boats, campers, mobile homes, trailers, trucks or other vehicles of any kind shall be stored (or kept for the purpose of repair) on any Lot.

Section 13. Declarant has designed the subdivision and development of the Property in such manner as to provide appropriate off-the-street parking areas. Accordingly, the parking of vehicles,

Including boat trailers, on road shoulders except directly adjacent to Owner's Lot for a period longer than two (2) hours is prohibited. The maximum period for parking vehicles directly adjacent to Owner's Lot shall be twelve (12) hours. If any vehicles shall be parked for a longer time than permitted above, the Association or Declarant shall have the right to remove and store such vehicles at the Lot Owner's expense.

Section 14. No outside toilets or septic tanks will be permitted on any Lot. No installation of any kind for disposal of sewage shall be allowed which would result in raw or untreated sewage being carried into the waters of Lake Livingston.

ARTICLE VIII

EASEMENTS

Section 1. Each Lot shall be subject to a perpetual easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid, perpetual easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event any structure is partially or totally destroyed, and then rebuilt, the Owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouse unit due to construction shall be permitted and that a valid, perpetual easement for said encroachment and the maintenance thereof shall exist.

Section 2. There is hereby created a blanket easement upon, across, over and under all of said Property for ingress and egress for installing replacing, repairing, maintaining and using all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said Property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said Townhouses. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles and all similar persons to enter upon the Property in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over any Lot to perform the duties of maintenance and repair of the Townhouse provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof.

Section 3. Easements shown on Said Plat. The utility easements shown on Said Plat are dedicated for the use and benefit of any bona fide utility company operating in Polk County, Texas, as well as for the benefit of Declarant, the Association, and the Owners of all Lots in the Property to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, gas, water, sanitary sewer, storm sewer and any other utility service which may from time to time become available to the Property.

All of the lots in the Property are subject to flowage easements granted to the Trinity River Authority of Texas (herein called "TRA") the location of which is shown on said plat. The instruments granting such flowage easements provide that no construction of any kind may be commenced within the area covered thereby without the written consent of TRA, and reference is here made to the instruments granting such flowage easement and the record thereof in the office of the County Clerk of Polk County, Texas, for all relevant purposes.

Declarant reserves the right to make minor changes or variations in the location or arrangement of any of the utility, drainage or access easements shown on Said Plat in order to provide for the more efficient service and operation of the Property or any Lot thereon.

The conveyance by Declarant of title to any Lot in the Subdivision shall not be held or construed to include title to the water, gas, electric, telephone, sewer lines, poles, pipes, conduits or other facilities constructed by Declarant or any public utility company or organization on the Property. Declarant reserves for itself, its successors, assigns, and any public utility company or organization the right and authority to construct, repair, maintain, replace and otherwise operate any such properties, systems and facilities, it being expressly understood that the reservation of such authority shall in no way be deemed to impose any obligation or duty to exercise same.

Neither Declarant, the Association or any public utility company using any of such dedicated easements shall be liable for any damage done by any party, or their respective agents or employees, to any shrubbery, trees, flowers, grass or any other property situated on the area covered by any such dedicated easements so long as its activities thereon and use thereof shall be conducted and carried on in a reasonably prudent manner.

ARTICLE IX

WAIVER OF LIABILITY

Neither Declarant nor the Association shall be held liable for any personal injury or damage to property resulting from any acts or omissions by Declarant or the Association or their respective agents or employees in connection with the carrying out of any of their duties or obligations under the terms of this instrument or in otherwise developing this townhouse project.

ARTICLE X

RULES AND REGULATIONS

The Association shall have the right at any time and from time to time hereafter to promulgate and impose such rules and regulations, and to vary or amend same as may be necessary, relating to the use and occupancy of the Lots, the Property and any piers, docks, breakwaters or other common facilities which may hereafter from time to time be constructed by Declarant or the Association or by the Owner of any Lot so as to provide for the safe and orderly use of such Property and facilities.

ARTICLE XI

COMMON AREA

Although the Declarant shall be under no duty or obligation whatsoever to do so, in the event the Declarant shall hereafter elect to construct a breakwater across that portion of Lake Livingston on which the Property abuts, same shall thereafter constitute a common area to be used jointly by the Owners and residents of Lots in the Property, such use to be subject to such rules and

regulations as the Declarant or the Association may hereafter from time to time establish, and if such breakwater shall be so constructed, the Association shall be entitled to use the funds paid to it and the assessment provided for herein in order to maintain, repair and operate such breakwater and any swimming, boating or other recreational facilities attendant thereto.

ARTICLE XII

CLUB MEMBERSHIP

Each person who acquires title to a Lot in the Property must first apply for and be accepted for membership in the Memorial Point Yacht Club (herein referred to as the "Club") and must thereafter remain a member of such Club so long as they continue to own title to such Lot; provided, however, that such requirement shall not be applicable to any person, firm, association or corporation engaged primarily in a building or construction business which has acquired title to any one or more of the Lots for the sole purpose of constructing improvements thereon and thereafter selling such Lots. Any contract to purchase one or more of the Lots in the Property shall be subject to the requirements of this Article XIII and shall be automatically terminated and canceled if such purchasing party does not become a member of the Club. Any Owner of a Lot in the Property shall be entitled to all of the rights, privileges and benefits of membership in the Club and subject to the same duties and obligations as members of the Club to the same extent as if they owned a Lot in the Subdivision referred to in said abovementioned instrument entitled "Restrictions for Memorial Point," reference being here made to such instrument for all relevant purposes.

ARTICLE XIII

MEMORIAL POINT ASSESSMENTS

Pursuant to the provisions of instrument entitled "Restrictions for Memorial Point" which is recorded in Volume 253, page 545 of the Deed Records of Polk County, Texas, Declarant does hereby declare that all Lots in the Property are and shall be subject to the assessment provided for in Paragraph (21) of said instrument entitled "Restrictions for Memorial Point" and to the vendor's lien therein retained in favor of Southwestern Leisure, Inc., as provided for in Paragraph (22) of such instrument, in the same manner and to the same extent as all of the other Lots in Memorial Point Subdivision are subjected to such assessment and lien. The Lots in the Property are not subject to special assessments provided for in Paragraph (22) of said instrument.

As hereinabove provided, the assessment herein levied in favor of the Association against and charged to each Lot in the Property shall be in such amount as to include the amount payable by the Owner of each Lot in the Property pursuant to the terms of said instrument, and upon receipt of such payment the Association shall be under the duty to promptly remit to Southwestern Leisure, Inc. (or any other party which shall hereafter be entitled to receive such assessments) any and all amounts which shall be payable by virtue of such assessments against each Lot in the Property.

ARTICLE XIV

MINERAL INTERESTS

No interest in the oil, gas or other minerals of any kind or nature whatsoever in or under the Property will be conveyed by Declarant to any purchaser of any Lot, all interest in same being hereby expressly reserved and retained by Declarant for the benefit of itself and its predecessors in title to the Property. No private water wells may be drilled on any Lot in the Property.

ARTICLE XV

APPLICABILITY

Each and every contract, deed, deed of trust or other instrument which may be hereafter from time to time executed with respect to any Lot in the Property shall be deemed and held to have been executed, delivered and accepted subject to all the terms and provisions of this instrument, including

without limitation the restrictions, reservations and covenants herein set forth, regardless whether or not any of such provisions are set forth in any such contract, deed, deed of trust, or other instrument, or whether or not this instrument shall be referred to in any such contract, deed, deed of trust, or other instrument. All of the terms and provisions hereof, including the restrictions and covenants imposed upon the Property and the assessments made and established against each Lot in the Property, shall run with the land and shall be binding upon Declarant, its successors and assigns, and all persons or parties claiming under it or them from and after the effective date of this instrument, and extending until the 31st day of December, A.D. 2000, at which time all of such provisions shall be automatically extended for successive periods of ten (10) years each, unless prior to the expiration of such initial period or any such 10-year extension, the Owners of a majority of the Lots in the Property shall have executed and recorded an instrument amending or altering the provisions hereof, in whole or in part, such instrument to become operative at the expiration of the particular period in which such instrument is executed and recorded, regardless of whether such particular period be the initial period of such restrictions or any successive 10-year extension thereof.

In the event that any portion of the provisions hereof shall become or be held to be invalid, whether by reason of abandonment, waiver, estoppel, judicial decision, or otherwise, such partial invalidity shall not affect, alter, or impair any other provision hereof which was not so declared invalid and such other provisions shall be and remain in full force and effect in accordance with the terms and provisions hereof.

ARTICLE XVI

ENFORCEMENT

In the event of any violation or attempted violation of any of the terms or provisions hereof, including any of the restrictions or covenants set forth herein, enforcement of the terms and provisions hereof shall be authorized by any proceedings at law or in equity against any person or persons so violating or attempting to violate any of the provisions hereof, including by means of actions to restrain or prevent such violation or attempted violation by injunction, prohibitive or mandatory, and it shall not be a prerequisite to the granting of any such injunction that there be inadequate remedy at law or that there be any showing of irreparable harm or damage if such injunction is not granted. In addition, any person entitled to enforce the provisions hereof may recover such damages, either actual or punitive, as such person may show himself justly entitled by reason of such violation of terms and provisions hereof. The terms and provisions hereof may be enforced by Declarant, by the Association (and the Association is hereby expressly authorized to use its funds for the purpose of assisting in the enforcement of the terms and provisions hereof), or by the Owner of any Lot in the Property. Failure by the Association or any Owner to so enforce any covenant or restriction hereof shall not be deemed a waiver of the right to thereafter enforce such provision or any other provision hereof. No violation of any of the terms or provisions hereof, or any portion thereof, shall affect the rights of any mortgagee under any mortgage or deed of trust presently or hereafter placed of record covering the Property or any part thereof.

The singular whenever used herein shall be construed to mean the plural when applicable and necessary grammatical changes required to make any provision hereof apply to either a corporation or an individual, man or woman, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF we have hereunto set our hands this the 18 day of

HAY, 1973

ATTEST:

Clarice B. Steiner
Secretary

STARNES GROUP INC.

By *John H. Starnes*
President

