

43
Amend
10.50
p

AMENDMENT TO MEMORIAL GLEN RESTRICTIONS

(Increase in Annual Maintenance Charge)

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL PERSONS BY THESE PRESENTS:

RECITALS

WHEREAS, by instrument entitled "Memorial Glen Restrictions" dated July 19, 1961, and recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number B364820 (the "Section One Restrictions") and executed by First Memorial Glen Corporation, a Texas corporation, Second Memorial Glen Corporation, a Texas corporation, and Third Memorial Glen Corporation, a Texas corporation (collectively referred to herein as the "Declarants"), the Declarants did impose upon certain lots in Section One of the Memorial Glen Subdivision, as more particularly described therein (the "Memorial Glen Section One Subdivision"), all of those certain covenants, conditions, restrictions and easements set forth therein; and

WHEREAS, by instrument entitled "Memorial Glen Restrictions" dated October 2, 1961, and recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number B399259 (the "Section Two Restrictions") and executed by Second Memorial Glen Corporation, a Texas corporation and Third Memorial Glen Corporation, a Texas corporation (collectively referred to herein as the "Section Two Declarant"), the Section Two Declarant did impose upon certain lots situated in Section Two of the Memorial Glen Subdivision, as more particularly described therein (the "Memorial Glen Section Two Subdivision"), all of those certain covenants, conditions, restrictions and easements set forth therein; and

WHEREAS, by instrument entitled "Memorial Glen Restrictions" dated December 13, 1961, and recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number B432030 (the "Section Three Restrictions") and executed by the Declarants, the Declarants did impose on certain lots situated in Section Three of the Memorial Glen Subdivision, as more particularly described therein (the "Memorial Glen Section Three Subdivision"), all of those certain covenants, conditions, restrictions and easements set forth therein (the Memorial Glen Section One Subdivision, the Memorial Glen Section Two Subdivision and the Memorial Glen Section Three Subdivision being collectively called herein the "Subdivision" and the Section One Restrictions, the Section Two Restrictions and the Section Three Restrictions and any amendments to any of said documents being collectively called herein the "Restrictions"); and

WHEREAS, by instrument entitled "Memorial Glen Subdivision Amendments to Restrictions" dated February 19, 1965, and recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number C051399 (the "First Amendment"), the Restrictions were amended as more fully set forth in the First Amendment; and

WHEREAS, by instrument entitled "Assignment of Memorial Glen Maintenance Funds to Memorial Glen Property Owners, Inc. and Amendment to Restrictions" dated March 28, 1966,

REC-064-62-1698

and recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number C274222, the annual maintenance charges were assigned to Memorial Glen Property Owners, Inc., a Texas non-profit corporation (the "Association"); and

WHEREAS, pursuant to deed from Third Memorial Glen Corporation, a Texas corporation to the Association, dated October 25, 1967, and recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number C598039, the Association became the record owner of Lots 123, 124 and 125 in Memorial Glen, Section 3, Block 2 (the "Association Property"); and

WHEREAS, the First Amendment provides that in the event the Association Property is acquired by the Association, the Association Property would be exempted from any and all restrictions and covenants applicable to the use of the Association Property and to structures to be erected thereon as set forth in the Section Three Restrictions paragraphs "(a)" to "(t)", inclusive, and that the Association Property would be exempted from the annual charge as set forth in amended paragraph "(u)" of the Section Three Restrictions; and

WHEREAS, by instrument entitled "Memorial Glen Subdivision Section One (1) Amendment to Deed Restrictions" dated February 21, 2003, and being recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number W450562, and by instrument entitled "Memorial Glen Subdivision Section One (1) Amendment to Deed Restrictions" dated May 8, 2003, and being recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number W686940, and by instrument entitled "Amendment to Deed Restrictions Memorial Glen Subdivision Section One (1)" dated November 13, 2008, and being recorded in the Real Property Records of Harris County, Texas, under Clerk's File Number 20080560600, the Section One Restrictions were amended regarding, among other items, the height of structures in the Memorial Glen Section One Subdivision; and

WHEREAS, the Section One Restrictions, the Section Two Restrictions, and the Section Three Restrictions each provide that they may be modified in whole or in part by a recorded instrument signed by a majority of the owners in each respective Subdivision; and

WHEREAS, Section 204.005 of the Texas Property Code provides that if a subdivision consisting of multiple sections, each with its own restrictions, is represented by a single property owners' association, the approval requirement for amending restrictions may be satisfied by obtaining the approval of owners of at least seventy-five percent (75%) of the total number of properties in the property owner's association's jurisdiction.

NOW, THEREFORE, the owners listed in Exhibit "A", attached hereto and incorporated herein, being at least a majority of the owners in each of the Memorial Glen Section One Subdivision, the Memorial Glen Section Two Subdivision and the Memorial Glen Section Three Subdivision, all wishing to amend their respective Restrictions, do hereby amend Paragraph (u) of their respective Restrictions to read as follows:

(u) Annual Maintenance Charge

(i) Lien and Personal Obligation. Each lot shall be subject to an annual maintenance

charge. Each lot owner is deemed to covenant and agree to pay to the Memorial Glen Property Owners, Inc. a Texas non-profit corporation (the "Association") annual maintenance charges which shall be payable as hereinafter set forth. Each such annual maintenance charge, together with any penalties, interest, court costs and reasonable legal fees shall be the personal obligation of the person, persons or entity who was the lot owner of such lot at the time when the annual maintenance charges fell due. The personal obligation for delinquent annual maintenance charge shall not pass to the owner's successors in title unless expressly assumed by such successors. Additionally, each lot is hereby encumbered with a lien securing the annual maintenance charges as well as all other costs or amounts owed the Association by the lot owner and interest, penalties, collection costs, court costs, and reasonable legal fees. Notwithstanding anything contained herein to the contrary, lots which have not contained a dwelling unit since the Association was incorporated on February 19, 1965, through the Secretary of State of Texas (ie. original vacant lots) shall not be obligated to pay annual maintenance charges until a dwelling unit has been substantially completed (as determined by the Board of Directors of the Association (the "Board"), in its sole discretion) upon such lot; at which time the prorated annual maintenance charges, if any, for such year shall become due and owing to the Association and such lot shall thereafter always be subject to the annual maintenance charges hereunder. Lots upon which a dwelling unit has been constructed since February 19, 1965 and subsequently torn down will continue to be obligated to pay annual maintenance charges.

(ii) Purpose. The annual maintenance charges levied by the Association shall be used to benefit all residents of the lots under the jurisdiction of the Association and to promote the property value of each lot. Such uses and benefits to be provided by the Association may include, but are not limited to the following: maintaining any property owned by the Association and the improvements thereon, including but not limited to the Lots 123, 124 & 125 in Memorial Glen, Section 3, Block 2 (the "Association Property") (and the swimming pool and tennis courts thereon), collecting and disposing of garbage and refuse; mosquito control; courtesy patrol; caring of vacant lots; maintenance of entrance ways and similar facilities; costs of enforcing the restrictions, covenants and conditions provided for herein; business or other administrative costs of the Association; and doing any other thing or things necessary or desirable which the Board deems appropriate. Upon payment of the annual maintenance charge for a particular year, each member of the Association ("Member"), the Member's family, guests and invitees shall have the right to use the swimming pool and tennis courts located on the Association Property until the due date for the annual maintenance charge for the next year. EACH RESIDENT, THEIR GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY. IT SHALL NOT BE ONE OF THE PURPOSES OF THE ASSOCIATION TO PROVIDE SECURITY TO THE RESIDENTS OR THEIR GUESTS AND INVITEES. NEITHER THE ASSOCIATION, ITS BOARD, NOR ITS OFFICERS OR DIRECTORS SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR ALLEGED FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY.

(iii) Determination of Rate. The rate of the annual maintenance charges will be determined annually by the Board and may be adjusted from year to year by the Board, as the needs of the Association require, in the judgment of the Board. To determine such needs, the Board shall prepare an operating budget covering the estimated costs and expenses to operate the

Association during the coming year. The annual maintenance charges may not be increased by the Board more than five percent (5%) above the annual maintenance charges for the previous year without the affirmative vote of fifty-one percent (51%) of those members of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose. Notwithstanding the foregoing, and except for the annual maintenance charges for the year 2009 as set forth below, any increase in the annual maintenance charges in excess of fifty percent (50%) above the annual maintenance charges for the previous year must have the approval of two-thirds (2/3rds) of those members of the Association who are voting, in person or by proxy, at a meeting of the members of the Association duly called for such purpose.

(iv) Due Date. The annual maintenance charges shall be billed to each lot owner on an annual basis and shall be payable on or before May 1 of each year. The amount of the annual maintenance charges for the calendar year 2009 will be \$550.00, and upon the recordation of this Amendment, notice of the amount of the annual maintenance charges for the calendar year 2009 shall be sent to each lot owner. Lot owners who have tendered to the Association the annual maintenance charge for the year 2009 based upon these covenants and restrictions (without this Amendment) will be given credit for such payment, if any. This constitutes notice to each lot owner of the due date when payment is to be made. The Association shall, upon demand and for a reasonable charge, furnish a certificate setting forth whether the annual maintenance charges on a specified lot have been paid.

(v) Financial Hardship. A lot owner who is experiencing financial hardship may request a temporary (one calendar year) deferral of a portion of the annual maintenance charges assessed to his or her lot by the Association by making a written request to the Board and providing the Board with documents, reasonably sufficient in the Board's determination, evidencing the financial hardship of the lot owner. The Board, in its sole discretion, may agree to defer the amount of a lot owner's annual maintenance charges from year to year by an amount not to exceed fifty (50%) percent of the amount of the annual maintenance charge for such calendar year. This temporary deferral, if granted by the Board, is only valid for the calendar year indicated by the Board. Thereafter, the owner will be obligated to pay the full amount of the annual maintenance charges for the applicable year unless a subsequent hardship application is made by the owner and granted by the Board as set forth above. Any deferred annual maintenance charges approved by the Board ("Deferred Maintenance Charge") shall continue to be owing to the Association, shall continue to constitute the personal obligation of the owner and shall continue to constitute a lien on such owner's lot as set forth in this Paragraph (u). However, such Deferred Maintenance Charge shall not become due and payable to the Association until the earlier of: (i) the date the lot for which the Deferred Maintenance Charge applies is sold, conveyed or transferred by the owner who requested the deferral; or (ii) the date any debt secured by a lien encumbering the lot for which the Deferred Maintenance Charge applies is refinanced, in whole or in part; or (iii) the date any lien encumbering the lot for which the Deferred Maintenance Charge applies is released.

(vi) In addition to the annual maintenance charges authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only. Any such special assessment must have the approval of two-thirds (2/3^{rds}) of those members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

(vii) Notice and Quorum under this Paragraph (u). Written notice of any meeting called for the purpose of taking any action authorized under this Paragraph (u) shall be sent to all members of the Association no less than ten (10) days nor more than fifty (50) days in advance of such meeting. At any meeting of the members called for the purpose of taking any action authorized under this Paragraph (u), the presence of members of the Association, in person or by proxy, representing twenty-five percent (25%) of the votes entitled to be cast, shall constitute a quorum.

(viii) Effect of Non-Payment. Any annual maintenance charges, costs or other assessments charged to a lot owner which is not paid within thirty (30) days after the due date shall bear interest from the due date at the per annum rate (the "Applicable Rate") equal to the greater of (i) ten percent (10%) per annum or (2) a variable per annum rate equal to the Prime Rate (as hereafter defined) plus two percent (2.00%). The term "Prime Rate" shall mean the highest rate of interest, if more than one rate is published, published by the WALL STREET JOURNAL as its "Prime Rate" from day to day. In no event shall any assessments charge to a lot owner ever bear interest at an interest rate above the maximum lawful per annum rate of interest that may be contracted for, charged, taken or received by the Association under applicable laws, including the laws of the State of Texas and, to the extent controlling, federal laws, which rate shall be determined (any may change) from time to time. Any change in the Applicable Rate resulting from a change in the Prime Rate shall be effective at the beginning of the business day on which such change in the Prime Rate is published. The Association may bring an action at law against the owner personally obligated to pay the annual maintenance charges, or judicially foreclose the lien created in this Paragraph (u) against the lot, or take whatever other legal action is necessary to protect the rights of the Association and/or the remaining lot owners. No lot owner may waive or otherwise escape liability for the annual maintenance charges, costs or other assessments provided for herein by abandonment of his or her lot. The Association shall have the power to suspend the voting rights of any member who has not paid all sums due to the Association by the due date. The Association shall further have the power to suspend any member's (and the member's family and guests) right to use the swimming pool and tennis courts located upon the Association Property in the event such member has not paid all sums due the Association by the due date.

(ix) Subordination of Lien. The lien created in this Paragraph (u) shall be subordinate to the lien of any first mortgage or deed of trust and shall be subordinate to any other liens filed prior to the date this Amendment is filed in the Official Public Records of Real Property of Harris County, Texas. Sale or transfer of any lot shall not affect the lien created in this Paragraph (u). The sale or transfer, however, of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien created in this Paragraph (u) as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any annual maintenance charges, costs or other assessments or charges thereafter becoming due or from the lien thereof.

IN WITNESS WHEREOF, the owners of lots listed in Exhibit "A" represent at least the majority of the owners in each of the Memorial Glen Section One Subdivision, the Memorial Glen Section Two Subdivision and the Memorial Glen Section Three Subdivision and have consented to and approved this Amendment to Memorial Glen Restrictions which shall take

effect on the date this instrument is filed of record in the Official Public Records of Real Property of Harris County, Texas. The Association joins in the execution of this instrument to evidence its consent and approval of same.

DATED this 8th day of May, 2009.

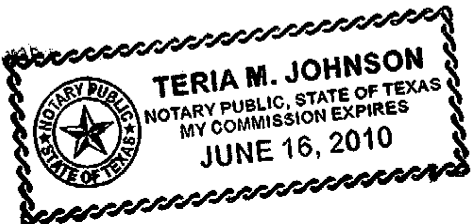
(166)
JOL

MEMORIAL GLEN PROPERTY OWNERS, INC., a Texas non-profit corporation

By: Jim Goolsby
Jim Goolsby, President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on May 8, 2009, by Jim Goolsby, President of **MEMORIAL GLEN PROPERTY OWNERS, INC.**, a Texas non-profit corporation, for and on behalf of said corporation.



Teria M. Johnson
NOTARY PUBLIC STATE OF TEXAS

AFTER RECORDING, RETURN TO:

Mark K. Knop
Hoover Slovacek, LLP
5847 San Felipe, Suite 2200
Houston, Texas 77057
HS File No. 122500-02

///

FILED
2009 MAY 11 PM 4: 07
Notary Public
Teria M. Johnson

MP 064-67-1703