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Restrictions and Homes Associations

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In the year 1906, in placing restrictions upon the first ten acres of the Country Club District, a ten-year period was used. The restrictions covered largely the cost of the houses, the set back from streets and single-family residential use.

It soon became apparent that the ten-year restriction period provided practically no permanent protection. After they had run three or four years, buyers became concerned about what would happen at the end of the original ten-year period and hesitated to buy and build a home. When the restrictions would expire, regardless of the strenuous efforts put forth, it was impossible to get all owners to join in setting up new restrictions and consequently, the restrictions were abandoned. The owners became scattered all over the country, many properties were under guardianship and trusts and some one or two strategic corners had added values as business properties and of course these owners would not join in the extension of the original restrictions or the setting up of new similar restrictions, which really proved that a mere ten year restrictive period was detrimental instead of valuable.

We immediately extended our periods to twenty and twenty-five years in the other properties which we had begun to develop and included a few more items in the restrictions themselves and felt that we were making considerable progress. Here again, we found after these restrictions had run a few years, buyers become concerned as to what would happen at the end of the twenty or twenty-five year period and hesitated to buy and build a home on such property.

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Again, we felt the necessity of providing some kind of extension of the restrictions and set up a plan placing the power in the majority of the owners of the front feet of the land covered by those restrictions, to extend all or part of the restrictions to the end of the original restrictive period, provided that such extension was made at least five years before the expiration date.

It was a Herculean task to go back and get several hundred owners to voluntarily agree to such additional extensions of the restrictions on their property. A large part of a year was consumed in trying to correct the deficiency in our restrictions. A few owners refused to sign, endeavoring to hold up the whole matter, and we expended some \$50,000.00 in buying up title to such property in order to get largely a unanimous extension. The establishment of this majority power to extend restrictions was regarded by us as quite an advance in the protecting of residential property. However, we soon again found that we were confronted with difficulties. It proved very difficult to get a majority of the owners to take a positive action and sign up for the extension of the restrictions five years before the expiration date. We found property in our subdivision owned by people all the way from China to India and it was very difficult to explain to these owners at such great distances the wisdom of our request. We found a great many of the lots in the hands of guardians for minors many properties were in trust. We also found many properties subject to mortgages and deeds of trust which would take priority over any new restriction agreement, making it necessary to get the owners of such mortgages and deeds of trust to join in the formation of a restriction agreement. This lead us into the offices of lending agencies and Insurance Companies all over the United States, where we found a lack of interest on the part of such agencies and companies to take positive action. Again we were confronted with the necessity of

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buying up the property of many owners, who were unwilling to sign up, to give us the needed majority of the owners of the front feet in that particular subdivision to extend the restrictions.

We began to study some plan by which the restrictions would automatically extend themselves unless there was a positive action by some majority of the owners to abandon the restrictions, and for the first time in the United States, so far as we know, a plan was evolved by which restrictions automatically extended themselves at the end of the original restrictive period, whether it be twenty, thirty or forty years, unless the owners of a majority of the front feet or two-thirds or three-fourths of the front feet, whichever majority was decided upon, signed, acknowledged and recorded an agreement canceling all or part of said restrictions.

Realizing that you cannot legally perpetuate restrictions as to the use of property for long periods of time, this granted a voice to the property owners at certain periods to change or cancel the restrictions, thereby protecting the solidity and character of our residential property. During several years, which it required, we went back over our old subdivisions and was largely able to get almost an unanimous consent to such change, although, here again, it necessitated the purchase on the part of our company of many properties where the owners refused to sign.

For the past fifteen years or more, each new plat filed by us had been immediately followed by the filing of these self-perpetuating restrictions. Several of the old plats have reached the end of the period for which a majority could cancel all or a part of the restrictions, and in no instance has such action been taken. We believe that except in very unusual cases, there will not be a majority who wish to cancel the restrictions or at least take positive action to do so. This puts the burden on the owners who wish to break the chain of restrictions and those owners are confronted with a great difficulty of locating and finally persuading certain majorities to join in such action.

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It does give a certain flexibility to meet new modes of living if some part of our original restriction agreement was found detrimental in meeting modern automobile garage needs, or airplane needs or some other new features of living activity. The particular phase in the restrictions that prohibited the necessary adaptation to these

changes could be permitted by positive action of some certain specified majority.

This type of restriction agreement precludes the occasional owner from allowing his property to become a nuisance value to the whole neighborhood and put business commodity values above the value of some one individual property. If some one outstanding corner has taken on certain commercial value, it prevents that owner from capitalizing that value at the loss of all surrounding owners. Each owner has originally purchased his property under the same conditions and it prevents the sacrifice of general home values through the years, simply to make an unjustifiable – perhaps monopoly value for some otherwise lucky owner of some particular site in the subdivision, which, through no effort on the part of the owner, may have taken on certain values beyond the general residential value of the neighborhood.

This type of restrictions has been copied by subdividers generally throughout the country during the past few years. It is felt that out of the experience of the Country Club District, this contribution has been given to residential planning throughout America.

Another very important salient plan of our restrictions is the recording of our restrictions prior to any mortgage on the land and in the purchase of our acreage holdings, we always stipulate at the time, that when we are ready to file a plat and restriction declaration that we have the right to demand that the original mortgage be released as to the land so platted and restricted, to permit the filing of the plats and restriction agreements from time to time, and then have the original mortgage again recorded upon the property and made subject to the plat and restrictions.

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Failure of many developers to make their original land mortgage subject to the restrictions has brought grief to many subdivisions and an immense loss to the homeowners in such subdivisions.

Another feature of our restrictions, which we have always found to be very important, was the value of restricting the property deed by deed as the land was sold. This was subject to change of mind on the part of the developer himself to the

disadvantage of his first purchasers and set up restrictions in any particular deed which would prove very unfair to surrounding owners, consequently, the past fifteen or twenty years, we have made a practice of filing certain base minimum restrictions on all of the property at the time a plat was filed subject to specified reservations of any areas retained for churches, schools, shops or other use. In this way, we, as the original owner of the land, immediately become obligated to all of the purchasers in the subdivision in retaining no right to lower any of the restrictions without the consent of all those who purchased in that particular subdivision. We feel that this is absolutely essential to the creation of stable values in any residential area. As a result, no lower restrictions will be made in any specified plat without the unanimous consent of all the owners in that particular subdivision, and does not prevent our company in selling future lots in said subdivision to place certain higher or more extended restrictions which become an agreement between that particular purchaser and the company and such additional restrictions can be changed by the mutual consent of the buyer and seller.

This given a certain flexibility which is needed where restrictions for larger lots and larger homes are contemplated in the development of the property, and we are able and should add certain additional restrictions in that immediate area in order to create a fairly harmonious development correspondent to the type of improvements that have already been built.

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Another feature that has been found very valuable is the retaining of certain rights of changing front building lines, side building lines, and the approval of certain projections. It is very easy for restrictions to be so rigid as to prevent their best use. In all of our late restriction agreements, we have retained the right to modify building lines and set backs, free space required, and similar restrictions, within certain reasonable limits in order to create certain flexibility and a greater adaptation of particular sites to their best uses. We find it extremely valuable in saving a beautiful tree on a lot, or affording a better view and maintaining an open stream, avoiding the destruction of a

beautiful old ledge of stone or better ornamentation of the house, or better relations to frontage, porches, rear doors etc. to the development that has taken place next door.

We feel that there is danger in giving too much right to make minor changes, yet we strictly advise certain flexibility. In extremely rough topography, greater flexibility of front and side building lines could, of course, be retained.

We strongly believe that any and all areas reserved in the general restriction agreement and plat should be so specified on the plats and in the abstracts and an effort should be made to keep signs on such properties advising all prospective buyers of the fact that that particular area is not covered by the restrictions. This will avoid much difficulty, complaints, and misunderstandings with future owners.

We strongly feel that every effort should be made by the first restrictions to give the future design and character of the property being developed. There is frequently just as much tendency to put on too high minimum building costs, as there is too low building costs. Of course, it is extremely important to maintain the approval of all plans as to architectural design, color scheme, elevation, grade of first floor

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level, etc. On the other hand, we have not become convinced that it is wise to eliminate all minimum cost restrictions and depend solely upon the approval of plans. I do realize, of course, the consideration that must be given in setting up minimum cost restrictions as to the possible changes in the cost of labor and material over the years. This is a further reason that we establish a base cost and set up additional cost restrictions etc. in the various deeds, which are, of course, subject to change.

We strongly believe that restrictions should create a gradual transition as to lot sizes, minimum costs, set backs and height of houses throughout any large development so that there is no shocking line of demarcation in the property.

We do not believe in having tall two story houses among one-story bungalows, nor do we allow a one-story house to be built among tall houses, unless the topography

is so varied that it may overcome this disrelation of things. If a certain portion of our property is given over to a minimum of 50 foot frontage, and we move from such small frontage to larger frontages, this change should be so gradual there is no disparity of lot sizes or the size of the houses as you move from one part of this property to another.

Here again certain flexibility and elasticity must be maintained in order to preserve the proper adaptation of the size of lots and the size and elevation of homes best fitted to the particular lay of the ground.

We have not found it practical to base our cost restrictions upon any changing commodity price index from year to year, which might create a burden upon our development.

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In maintaining our restricted residential property through a third of a century, our experience in the development of the Country Club District has been both revolutionary and evolutionary. Our early mistakes have caused us an immense amount of money. Perhaps there will be other future changes in the modes of living and natural habits of our population which will make it necessary to make further changes to take care of some isolated instances. We believe that there is no part of any developer's activity more important than the creation of the perpetuation of property values and the character of the restrictions than the method of enforcement established by the developer himself. We feel that it is a very grave responsibility on the developer to set up some kind of restriction enforcement or control for his subdivisions after he may be finished with his own development and scale of the land. He may have died, he may have gone out of business or changed his activities to another part of the city or even into a distant city; consequently years ago, we set up Homes Associations in our various properties with Charters from the State with the specified legal right to levy taxes for certain maintenance activities beyond that given by public authorities, but particularly empowered to use funds to enforce the building restrictions. The success of the Associations, which have now grown to eighteen in number, is described in another

article in this story.

APPROVAL OF PLANS

We have given much consideration to the setting up an architectural jury to pass on plans. However, we follow the practice of maintaining this approval by the officers of our organization. Having our own

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architectural staff we have available their expert knowledge, and feel that it has been much cheaper than setting up an outside architectural jury; we get much more prompt action and feel that our own staff is better able to interpret the character of a neighborhood and pass upon the type of home desirable rather than to depend upon the opinion of an outside jury unfamiliar with the ideals and standards of our property.

We also believe it is possible to endeavor to go entirely too far in minuteness of restrictions. We feel that restrictions should leave a certain individuality and spirit of independence to the homeowners themselves. While from the standpoint of safety we endeavor to exercise certain control of high planting of shrubbery on the fronts of lawns, we have not endeavored to exercise control over the planting of premises.

We have given certain liberty to certain architectural house projections.

We have not resisted further setback on any homes; that is, we have not insisted upon a uniform building line providing it did not come nearer to the street than certain specified limits.

We have been fairly liberal in the control of the exterior color scheme of the house providing it was not too clashing with its neighbors.

While we require any outbuildings to harmonize in design and color with the house itself, here again, we have permitted certain slight variations where it seemed a desirable economy with regard to appearance.

We feel that a developer must endeavor to lead people to better development of

his property through his restrictions rather than to try to dominate too completely his property in its earlier stages. A developer should constantly endeavor to make his property a little better every year,

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but he should avoid the up building of his property by being too arbitrary or strict in his initial stages. I believe the American people can be lead gradually to higher standards but they cannot necessarily be forced to immediate acceptance of any developers particular ideas before any time has been given for a demonstration of the value of neighborhood regard and constant harmony which can be effected through the years by careful evolution and development of restriction control.

HOMES ASSOCIATIONS.

In the early history of the Country Club District it soon became evident that some kind of community control should be set up in our various neighborhoods as they became occupied by homes. At first, an effort was made to get voluntary contributions from a community fund to supply certain conveniences not available through the city or county authorities. The first year or two this worked very well, but soon the ownerships became scattered and the owners of property became non residents and it was found that many owners of property were getting these benefits and still refusing to pay their parts.

It was also soon discovered that there was quite a variance in the representation of neighborhoods and it was thought wise to group various neighborhoods in their own separately controlled groups. Consequently within a period of seven or eight years, with the starting of our developments, we applied to the States of Kansas and Missouri, respectively, for charters under which we could set up neighborhood Homes Associations. These corporations are organized under that provision of law to form nonprofit corporations and when once formed, require no annual reports of any kind,

either to the State or other government for tax purposes.

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There are certain specified powers with a right to levy a land tax on all property in their respective areas; said tax to be a lien upon the property and supply funds to provide the services desired and particularly to supply funds available for any expenses to be incurred in the enforcement of the restrictions affecting the particular property. After considerable consideration it was decided that land could be taxed and not the improvements.

The owner of a vacant lot of a similar size paying the same tax as the owner of a lot of equal size with a home erected upon it.

It was also decided in the very beginning that all of our sold land should be subject to the same tax as unsold land. Unsold land in each particular Homes Association territory should be subject to the same tax per square foot as the land which had been sold. The Board of Directors consisting of five were supplied from the residents in each association area – and were elected by all the owners in such areas, two being elected for a period of one year and three for a period of two years, without compensation. Each Board holds a meeting at least monthly, or every two months. It generally divides up the activities into various groups to serve the neighborhood. There are seldom instances of where any homeowner, regardless of how important a businessman he is, has refused to serve his neighborhood in this capacity.

As our developments of the district expanded and the number of Homes Associations increased, we now have a total of 18 with a total of 90 Directors, of whom are represented by five men in each association area. Every two months a joint meeting is held of all the Presidents of each of the eighteen associations. The minutes of general interest are discussed and committees appointed to work on matters of concern to all,

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or a large part of the associations. Each association holds one annual meeting, as provided in the charter, at which time all of the owners of property in their respective areas are invited. An annual report is given of activities and an account of income and expenditures; election is held to fill the company's expiring directorships and a general discussion is given by any owner on any particular matter which service would be required.

The eighteen Homes Associations have jointly employed a Secretary and an Assistant Secretary who devote all of their time to the activities of these associations. The cost of said salaries being distributed among the various Homes Associations income. In many, many ways this cooperation between the eighteen Homes Associations has affected economies for each association. Our city does not supply trash disposal or the trimming of trees, consequently, all of the associations have gone together and supplied a fleet of trucks and provided trash removal every two weeks from every home in the District.

The same is true of a large snow plowing equipment which plows a total of several hundred miles of streets and sidewalks after each snow. Economy is affected in the universal trimming and banding of trees and the cultivation of trees and the maintenance of parks and playgrounds, entrances, fountains and pools throughout the various associations.

The owner of a vacant lot who pays the same tax as one with a home upon it and who does not get some of the benefits that accrue to actual residents, does, on the other hand, have his vacant lot kept clean and the grass and weeds mowed, which particular service is not given the tract of land upon which a home is built. This tends to equalize the services obtained by vacant owners as compared with homeowners.

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Perhaps the greatest asset of these Homes Associations, however, come from the combining of their total financial resources by common agreement in the injunction of

any violation of restrictions arising in any association area. Inasmuch as these associations represent contiguous lands, it is found that all are merely interested in the upholding of basic restrictions of the Country Club District.

It is understood that if any restriction violation develops in any one association that all other associations agree to pool all of their financial resources, based on their income and the enforcement of any restriction arising in any particular home association. The very fact that enforcement of restrictions has its formidable financial support, the very fact that all of the eighteen Homes Associations stand united in the upholding of restrictions as provided. There has been practically every attempt of restriction violation in the period of some 25 years in the entire time from the organization of the first Homes Association and there has been only three or four restriction violations go into Court and in every case they were won.

There has been a great many congestions of restriction violations affecting innocent ones and the mere calling of the attention of the owner to the fact that the change he is making in the plan of his home, or the placing of his garage, or whatever the case might be, is a violation of restriction of his neighborhood, has almost universally resulted in his immediate compliance of restrictions. It is made the enforcement of the restrictions somebody's authorized business. There is eliminated a certain amount of persons in the enforcement of restrictions and a neighborhood homeowner hesitates to get in a neighborhood quarrel doing something regarding his violation of restrictions. He merely has to call it to the attention

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of the Board of Directors of his certain Association, whose official duty it becomes to confer with this home owner without any personal feeling and insist on his living up to the restrictions affecting the property in that certain area.

The home owners, in general, throughout the entire Country Club District have learned to know of this authority placed in the various Boards of Directors and continue

to inform the Homes Association Secretary of anything that is about to occur in the neighborhood which he lives.

The J.C. Nichols Companies itself has provided all parts of its District with sales representatives whose duties it is to watch his neighborhood from time to time and report anything that might be a violation of restrictions. Such occurrences are immediately called to the attention of the Board of Directors in that respective area, who generally have one or two members call upon this particular owner and almost universal immediate compliance of restrictions has been obtained.

The annual meetings of these various Homes Associations are well attended. Generally at the dinner meetings each family pays its share of the cost of the dinner. Some entertainment features are provided as part of the meeting. Some of the associations have held annual picnics, wiener roasts at Halloween time, for the children in their districts in order to encourage them not to destroy property. Home associations have set up bridge tournaments as an example of neighborhood loyalty and enthusiasm. These 18 homes associations are collecting and expending some \$60,000 per year. The Association covering our Kansas side are by charter and are wide in their provisions such as furnishing a Fire Department, the plowing of snow, and the cleaning of streets and many other activities which are supplied by the city of Kansas City on the Missouri side.

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Once a year a joint meeting is held by the 80 Directors representing the various Homes Associations which are invited guests of the Company, city officials and representatives of various public utilities. These annual meetings become rather traditional and beneficial and have proved to be a big help to Greater Kansas City as a whole.

It has been found that about 500 families is a maximum number desirable for any one association and still retain a certain amount of charm and interest. Some associations have very small membership in the early development. Two have a

membership interest as many as 1000 families which have proved quite difficult and unyielding.

It is our opinion that the ideal number of families in any Homes Association should be from 300 to 500 families. It is also our opinion that the activities of these associations draw attention to the great observance and enforcement of restrictions and has been very great in the residential morale, neighborhood pride, and actual maintenance of property. We believe next to the restrictions themselves, that they are the most important feature in the development of residential properties. The charters of these associations permit the abandonment of the associations and assessment of taxation of a vote of two-thirds or three-fourths of the property owners in the association. There has never been a case of the abandonment of any association since it was set up, with the exception of an early part of the district which comes under the control and government of some of the owners. Powers are retained by our company to add certain areas to the associations as we develop neighborhood properties.

It has been our policy to set up an agreement with the early purchasers of property for us to act as Trustee to the districts until such time as we get a sufficient number of families to justify the setting up of an association.

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The general policy is not to set up an association until a property gets from one or two years development and a maximum of from 25 to 50 families living in the property. It has also been the policy of our company to turn over complete management of the facts in the charter to the various Boards of Directors, particularly working out a situation almost every Board has in turn employed. Our Company to look after these facts based upon different authority from time to time by the various Boards and carried out on a unified plan affecting the economies for the entire 18 areas. After all of our undeveloped lands are all used for homes, we probably will have 25 homes Associations. We would not think of developing any new property without setting up this Homes Association agreement as a part of declaration in the filing of the plat and making every buyer in that

subdivision subject to the association and tax provided in such association.

The Board of Directors of the various Homes associations provide a tax invitation bearing from one mill to two mills, which amount is assessed all of the land owners in that property. Each Board, however, makes an annual budget of their needs and the annual assessment has run from 3/4 of a mill to one mill per square foot, which means an ordinary lot 50 x 135 feet – pays approximately 56.00 per year into the association. In 25 years experience we cannot recall more than twelve complaints of all the owners involved in any of the actions of the association, or any claim of unfair basis of taxation. We strongly recommend that every developer set up some such organized corporation to carry on all his ideas and the standing he has set up long after the developer has finished his job and turned his activities in other directions.

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