

WALNUT CREEK SOUTH  
HOMES ASSOCIATION DECLARATION

Filed in the  
Office of the Recorder of Deeds - Platte County, Missouri  
on August 1, 1973 at Page 92 of Book 422.

THIS DECLARATION, made on the 27th day of July, 1973, by the undersigned, WALNUT CREEK DEVELOPMENT, INC., a Missouri corporation, and the owner of lots, tracts of land and living units in Walnut Creek Acres, a subdivision in Platte County, Missouri;

WITNESSETH: That

WHEREAS, Walnut Creek Development, Inc., the developer of Walnut Creek Acres is now developing said subdivision for high class residential purposes and it is the desire of the undersigned owner of the land in said subdivision to continue the development of such land for such purposes and for the creation and maintenance of a residential community, and

WHEREAS, in order to assist the undersigned owner and its grantees in providing the necessary means to bring this about, said owner does hereby subject all of the lots, tracts of land and living units in Walnut Creek Acres to the following covenants, charges and assessments.

SECTION 1. DEFINITION OF TERMS USED

The term "district" as used in this Declaration shall mean, unless and until extended as hereinafter provided, all of the land now platted as Walnut Creek Acres, Fourth and Fifth Plats (consisting of all those lots located in Blocks 1 through 8 inclusive in Walnut Creek Acres No. Four and all those lots located in Blocks 1 through 18 inclusive in Walnut Creek Acres No. Five), a subdivision in Platte County, Missouri, according to the recorded plats thereof.

The terms "improved property" or "improvements" as used herein shall be deemed to mean a lot or tract under single ownership. Any other lands covered by this Declaration shall be deemed to be vacant and unimproved.

The term "homes association property" as used herein shall be deemed to mean all private streets, alleys and drives, private sidewalks, private parking lots, private recreational areas, private parks, private lakes, private gardens and private ornamental areas, the use of which is dedicated to, set aside for the use of, or leased to, all of the owners within the district who are members in good standing of the homes association.

The term "owners" as used herein shall mean those persons or corporations who may, from time to time, own the lots, tracts or living units within the district.

The term "living unit" shall mean and refer to any portion of a building designed and intended for use and occupancy as a residence by a single family whether in a building designed as a single family dwelling, duplex, or apartment.

SECTION 2. IMPROVEMENTS UNDER MANAGEMENT OF ASSOCIATION

All improvements upon and to the land in the district and homes association property shall be under the management and control of Walnut Creek South Homes Association, Inc., a Missouri not-for-profit corporation (hereinafter referred to as "Association"), as hereinafter provided. It is understood that the membership of the Association shall be limited to persons or entities qualified for such membership in accordance with the By-laws of the Association and the provisions of this declaration. Such management and control of said improvements shall at all times be subject to that had and exercised by Platte County, the State of Missouri, or other government bodies. In addition thereto, the Association shall have such powers and duties as may be hereinafter set forth, all of which may be exercised, assumed or relinquished at its discretion.

WALNUT CREEK SOUTH  
HOMES ASSOCIATION DECLARATION

The Association shall be the sole judge of the qualifications of its members and of their right to participate in its meetings and proceedings, except as herein provided.

SECTION 3. POWERS AND DUTIES OF THE ASSOCIATION AS TRUSTEE

The Association shall have the following powers and duties, provided that nothing herein contained shall be deemed to prevent any owner having the contractual right to do so from enforcing any one or more building to use restriction in his own name:

1. To enforce either in its own name or the name of any owner within the district, any or all building or use restrictions which may have been heretofore or may hereafter be imposed upon any of the land in said district, either in the form as originally placed thereon, or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, whenever and wherever such right of assignment exists. The expense and cost of any such proceedings shall be paid out of the general fund of the Association as provided for herein.
2. Provide for the plowing and removal of snow from sidewalks, alleys, driveways, parking areas, and private streets.
3. To care for, spray, trim and protect and replant trees on all streets and in other public places; to care for, protect and replant shrubbery and resow grass in the areas or tracts set aside for the general use of the owners of the district.
4. To mow lawns, pick up and remove loose material, trash and rubbish of all kinds, and to do any other thing necessary or desirable in the judgment of the officers of said Association, to keep the lawns and vacant property in the district neat in appearance and in good order, all as set out more particularly in Section 4 hereof.
5. To provide such lights as the Association may deem advisable on streets, parks, parkings, gateways, entrances or other features on homes association property.
6. To provide for the maintenance and operation of clubhouse facilities, playgrounds, lakes, swimming pools, tennis courts, recreational areas or facilities, gateways, entrances, gardens and other ornamental features now existing or which may hereafter be erected or created in said district in any street or on any land set aside for the general use of the members of the Association or to which all such members have access and the use thereof.
7. To provide for the suspension of the rights and privileges of any member to use the aforesaid clubhouse facilities, playgrounds, lakes, swimming pools, tennis courts, recreational areas or facilities and any other privileges as a member of the homes association for any period during which any dues or assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
8. To provide for reasonable admission and other fees for the use of the clubhouse facilities, playgrounds, lakes, swimming pools, tennis courts, recreational areas for facilities maintained and operated by it.
9. To exercise such control over easements as it may require from time to time.
10. To repair or maintain, repave and reconstruct paved streets, driveways, apartment parking lots, lanes and pedestrian ways, except those streets and sidewalks which are dedicated to public use.

WALNUT CREEK SOUTH  
HOMES ASSOCIATION DECLARATION

11. To erect and maintain signs for marking of streets.

12. To acquire and own the title to such real estate as may be reasonably necessary to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned by it.

SECTION 4. METHOD OF PROVIDING GENERAL FUNDS

For the purpose of providing a general fund to enable said Association to perform the duties and to operate and maintain the improvements herein provided for, all living units in the district, subject to this Declaration, shall be subject to assessments to be paid to the Association by the respective owners thereof in accordance with the provisions of this SECTION 4.

The amount of assessment of each living unit shall be fixed by the Association from year to year, but until further action of said Association, the assessments shall be:

- a) Single family residences - \$300.00 per year, payable annually in advance. Said annual assessment may be paid, at the option of the member, in equal monthly installments of \$25.00 per months upon the first day of each month in advance.

The services to be provided to the owners of a single family residence shall include:

- i) The care of, spraying, trimming and protecting and replanting of trees on all streets and in other public places; and the care of, protecting and re-planting of shrubbery and re-sowing of grass in the areas or tracts set aside for the general use of the owners of the district.
- ii) The erection and maintenance of such lights as the Association may deem advisable on streets, parks, parkings, gateways, entrances or other features on Homes Association property.
- iii) The periodic collection of rubbish and the disposal of such rubbish as is collected.

The annual assessment set out in subparagraph a) above shall provide for the cost of these and other services, including fees for membership in all recreational facilities.

No exterior structures or entrances in addition to those presently places thereon, shall be added, to any living unity without the prior written consent of the Walnut Creek Development, Inc. or its successors.

The rate of assessment may be increased by action of the directors of the Association at any regular or special meeting of the said directors.

SECTION 5. ASSESSMENTS DUE JANUARY FIRST OF EACH YEAR

The first assessment shall be for the fiscal year beginning January 1, 1974, at it shall be fixed and levied prior to December 31, 1973, and shall be assessed on that date even though optional monthly payments are provided for herein, and thereafter it shall be levied and assessed on the 1st day of January of each year. The member may pay said assessment in one annual payment which shall be due and payable on the 1st day of January each year or, at his option, said member may pay said assessment in equal monthly installments as provided herein which shall be due and payable on the first day of each month. The member shall notify the Association in writing of the method of payment he shall employ on or before January 1st of each year. Said election by the member shall be binding upon him for that year; it shall also be binding upon him for all succeeding years unless a new notification is timely received by the Association. It will be the duty of the Association to notify all owners whose addresses are listed with the Association on or before that date giving the amount of the assessment, when due and the amount on each living unit owned by them. Failure of the Association to make the assessment prior to January 1st shall not invalidate any such assessment subsequently made for that particular year, nor shall failure to levy assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made

WALNUT CREEK SOUTH  
HOMES ASSOCIATION DECLARATION

subsequent to January 1 of any year, then the first installment thereon shall become due and payable not later than thirty (30) days after the date of the levying of the assessment.

SECTION 6. WHAT CONSTITUTES NOTICE

A written or printed notice thereof, deposited in the United States Post Office, with postage thereon prepaid, and addressed to the respective owners at the last address listed with the Association, shall be deemed to be sufficient notice for this purpose or for any other purpose of this contract, where notices are required.

SECTION 7. LIEN ON REAL ESTATE

The assessment shall become a lien on said real estate as soon as it is due and payable as above set forth. In the event of failure of any of the owners to pay any installment of such assessment on or before the first day of the second month following the making of such assessment, or if it becomes one month in arrears under a monthly payment option provided for herein, then the entire unpaid balance of said assessment shall bear interest at the rate of eight per cent (8%) per annum from the assessment day until paid.

SECTION 8. SUBORDINATION OF THE LIEN TO  
MORTGAGE OR DEED OF TRUST

The lien of the assessments provided for herein shall be subordinate to the lien or any mortgages or deeds of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such property pursuant to a foreclosure of any such mortgage or power of sale under any such deed of trust. Such sale shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

SECTION 9. WHEN DELINQUENT

Nonpayment of assessments provided for herein within sixty (60) days from the date of levying the assessment for the fiscal year during which and for which the assessment is made, or sixty (60) days from the installment due date, shall cause the entire assessment to be deemed delinquent as of the date of assessment and payment of both principal and interest for the entire year shall be enforced as a lien on said property through proceedings in any Court in Platte County, Missouri, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens as soon as any such assessment becomes delinquent.

SECTION 10. TERMINATION OF LIENS

Such liens shall continue for a period of one (1) year from the date of delinquency and no longer unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until termination of the suit and until sale of the property under the execution of judgment establishing the same.

SECTION 11. EXEMPT PROPERTY

The following property subject to this Declaration shall be exempted from the assessment charge and lien created herein:

- a) All properties owned by the Association.

WALNUT CREEK SOUTH  
HOMES ASSOCIATION DECLARATION

- b) All properties subject to any easement or other interest dedicated and accepted by the local public authority and devoted to public use.
- c) All properties exempted from taxation by the laws of the State of Missouri upon the terms and to the extent of such legal exemption.
- d) All properties held by a developer or builder for resale.

SECTION 12. BOARD OF DIRECTORS AND POWERS

The Association shall have a Board of Directors, of no less than three (3) in number nor greater than nine (9) in number, elected in accordance with its Articles of Incorporation and By-laws, who shall be charged with the management of the Association in accordance with its Articles of Incorporation and By-laws. The first Board of Directors shall be three (3) in number which shall be increased to five (5) in number on or before January 1, 1975.

SECTION 13. MEMBERSHIP

Every person or entity who is a record owner of a fee interest in any living unit as defined herein, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold interests merely as security for the performance of an obligation. No owner shall have more than one (1) membership. Memberships shall be appurtenant to and may not be separated from ownership of any living unit which is subject to assessment by the Association.

SECTION 14. VOTING RIGHTS

The Association shall have two (2) classes of voting memberships:

Class A - Class A members shall be all of those owners as defined in Section 1 with the exception of the undersigned, Walnut Creek Development, Inc. Each Class A member shall be entitled to one (1) vote for each living unit, as defined herein, in which he holds the interest required for membership by the preceding section and upon which he shall have paid the then current and all prior assessments upon said living unit, as hereinbefore provided. When more than one (1) person holds such interest or interests in any living unit, all such persons shall be members, and the vote for such living unit shall be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast in respect to any such living unit.

Class B - The Class B member shall be the undersigned, Walnut Creek Development, Inc. The Class B member shall be entitled to nine (9) votes for each lot or tract (whether improved or unimproved) in Walnut Creek Acres owned by it as well as nine (9) additional votes for each living unit in excess of one (1) located on a lot or tract owned by it, provided that the Class A membership on the happening or either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 1975

SECTION 15. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS

The Association shall notify all owners of living units in the district at the address of such owners as listed with said Association, as to what place and time regular meetings of the Association shall be held, designating the place where payment of assessments shall be made and other business in connection with said Association may be transacted; and in case of any change of said address, the Association shall notify all the owners of living units in the district at their addresses as listed with the Association of the change, notifying them of its new address.

WALNUT CREEK SOUTH  
HOMES ASSOCIATION DECLARATION

SECTION 16. DISTRICT MAY BE EXTENDED

The district as it is now constituted or, as it may hereafter be constituted, from time to time, may be extended to include any and all lands which may hereafter be added by said Walnut Creek Development, Inc., provided that all of the land or lands to be added to the district shall at the time be subject to a homes association declaration, containing the same terms and provisions as are contained in this Declaration, including any future modifications thereof. The extension of said district shall be accomplished by and take effect on the filing of such a homes association declaration in the Office of the Recorder of Deeds in and for the County in which said land or lands are located.

SECTION 17. AMENDMENTS

By written consent of a seventy percent (70%) majority of the aggregate authorized voting rights at the time (including the votes of both Class A and Class B members) evidenced by an agreement duly executed and acknowledged and recorded in the Office of the Recorder of Deeds in and for Platte County, Missouri, the Association may be given such additional powers as may be granted by said members or to otherwise amend this instrument.

SECTION 18. TO OBSERVE ALL LAWS

Said Association shall at all times observe all applicable state, county or other laws, or regulations, and if at any time any of the provisions of this Declaration shall be found to be in conflict with such laws, such provisions shall become null and void, but no other parts of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations and provide means to enforce such rules and regulations as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitations of its right to contract, as herein provided for.

SECTION 19. HOW TERMINATED

This Declaration may be terminated and all of the land now or hereafter may be released from all the terms and provisions hereof by a seventy percent (70%) majority of the aggregate voting rights at the time (including the votes of both Class A and Class B members) upon their executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the Office of the Recorder of Deeds in and for Platte County, Missouri.

SECTION 20. COVENANTS RUNNING WITH THE LAND

All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon the undersigned, their heirs, successors and assigns.

IN WITNESS WHEREOF, the undersigned has caused these resents to be executed this 27<sup>th</sup> day of July, 1973.

WALNUT CREEK DEVELOPMENT, INC.

By s/s Marvin B. Enochs  
President

ATTEST:

s/s Fay L. Welch