

Oak-Meyer Gardens Homes Association Declaration

Dated June 23, 1927

Filed June 23, 1927

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No. A-345074

THIS DECLARATION, Made on this 23rd day of June, 1927 by The J. C. Nichols Investment Company, a corporation, the owner of all of the lots in Oak-Meyer Gardens, an addition in Kansas City, Jackson County, Missouri.

WITNESSETH: That whereas, The J. C. Nichols Investment Company is now developing Oak-Meyer Gardens for high class residence and business purposes, and it is its desire to continue the development of such land for such purposes, and for the creation and maintenance of a residence and business neighborhood possessing features of more than ordinary value to such a community, and

WHEREAS, In order to assist it and its grantees in providing the necessary means to better enable it and its grantees to bring this about, The J. C. Nichols Investment Company, does now and hereby subject all of the lots in Oak-Meyer Gardens to the following conditions, charges and assessments:

Definition of Terms Used.

The term "district" as used in this agreement shall mean unless and until extended as hereinafter provided, all of the land included in the plat of Oak-Meyer Gardens above mentioned if or when other land, shall in the manner hereinafter provided for, be added to the land above described, then the term "district" shall thereafter mean all land which shall from time to time be subjected to the terms of this agreement, or any future modification thereof.

The term "Improved property" as used herein, shall be deemed to mean a single tract of land, under a single ownership and use, and on which tract of land a residence has been erected or is in process of erection or on which any other building not in violation of the restrictions then of record thereon is erected, or is in the process of erection thereon. And any such tract of land may consist of one or more contiguous lots, or parts thereof. Any other land covered by this agreement shall be deemed to be vacant and unimproved.

The term "public places" as used herein shall be deemed to be all parks at street intersections or elsewhere, and all similar places, the use of which is dedicated or is set aside for the use of the general public or the general use of all of the owners within the district, or the general use of all of the owners within any one or more blocks or which may with appropriate consent be used by all of the owners of the district.

The term "owners" as used herein, shall mean those persons, or corporations, who may from time to time own all of the land within the district.

Public Improvements Under Management of Association.

All public improvements upon and to the land in the district, or improvements in public places shall be under the management and control of the Oak-Meyer Gardens Home Association, as Trustee, an Association to be composed of the owners of the real estate in said district, which Association may or may not be incorporated as the members thereof may hereafter provide, but whether it is incorporated or not, it is understood and agreed that the members of said Association shall be limited to the owners of land within the boundaries of said District as it may exist from time to time. It is provided however that such management and control of said improvements shall at all times be subject to that had and exercised by Kansas City, by Jackson County, and by the State of Missouri, or any of them. And in addition thereto, it shall have such further powers and duties as are hereinafter set forth, all of which may be exercised or assumed at the discretion of the Association.

The Association shall be the sole judge of the qualifications of its Members and of their right to participate in its meetings.

Powers and Duties of the Association as Trustee.

The Association shall have the following powers and duties, whenever it may deem them necessary or advisable; provided, however, that nothing herein contained shall be deemed to prevent any owner from enforcing any building or restriction in its own name.

FIRST: To enforce, either in its own name, or in the name of any owner within the district, any or all building 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 subsequent 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 wherever, and whenever, such right or assignment exists. The expenses and costs of any such proceedings shall however, be paid out of the general fund of the Association, as hereinafter provided for.

SECOND: To provide for the plowing or removal of snow from the sidewalks and from the streets.

THIRD: To care for, spray, trim, protect, and replant trees on all streets and in other public places where trees have once been planted except where otherwise provided for; to care for, protect and replant shrubbery and resow grass in the

parks which are in the streets, or in the parks set aside for the general use of the owners in the district, or to which such owners have access and the use thereof.

FOURTH: To mow, care for, and maintain parkings in front of vacant and other property, and remove weeds and grass from such parkings or other public places, and to cut and remove weeds and grass from other vacant property; to pick up and remove therefrom 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 such vacant and unimproved property neat in appearance and in good order.

FIFTH: To provide such lights as the Association may deem advisable on streets, parks, parkings, pedestrian ways, tennis courts, playgrounds, gateways, entrances or other features, and in other public or semi-public places, in addition to any such lights as may be furnished therefor by Kansas City, Missouri.

SIXTH: To provide at suitable locations, receptacles for the collection of rubbish and for the disposal of such rubbish as collected.

SEVENTH: To provide for the maintenance of tennis courts, playgrounds, gateways, entrances, drinking fountains and other ornamental features now existing or which may be hereafter erected or created in said district in any public street or park, or on any land set aside for the general use of the owners in the district, or to which all of such owners have access and the use thereof.

EIGHTH: To exercise such control over easements as it may acquire from time to time.

NINTH: The Association shall have the right to expend the money hereinafter referred to belonging to it for any of the above purposes, and also for such other purposes not herein specifically mentioned as said Association acting through its Board of Directors may deem advisable for the general welfare of the district.

Land Entitled to Benefits.

No real estate shall be entitled to any of the benefits or improvements or services provided for by this Association unless the owner or owners thereof shall have subjected their land to the terms of this agreement and to the assessments herein provided for.

Method of Providing General Funds.

For the purpose of providing a general fund to enable the said Association to perform the duties and to maintain the improvements herein provided for, all land within the boundaries of the district above described, that is within the plat of blocks one to four, both inclusive in Oak-Meyer Gardens, shall be subject to an annual improvement assessment to be paid to the Association annually in advance by the respective owners of the assessable land subject thereto, which assessable land shall be deemed to be all of the land in

Oak-Meyer Gardens lying within 300 feet of any paved street, open to vehicle travel, exclusive however, of all land contained in streets, parks, playgrounds, or other public places, open to the public or for the common use of the owners or residents of the land within the district, or all of the owners of one or more entire block. The amount of such assessments shall be fixed by the Association from year to year, but shall be in the proportion of, but at no time in excess of one mill per annum for each square foot of all of the assessable land within 150 feet of any paved street open to vehicle travel and one-half of one mill per square foot per annum for all assessable land more than 150 feet and less than 300 feet from any such paved street.

Assessments Due October First of Each Year.

The first assessment shall be for the fiscal year beginning October 1st, 1927 and it shall be levied prior to October 1st, 1927 and shall be payable on October 1st, 1927, and thereafter the annual assessment shall be due and payable on the first day of October of each year. It will be the duty of the association to notify all owners whose address is listed with the Association on or before that date, giving the amount of the assessment, when due and the amount due on each tract of land owned by them. Failure of the Association to make the assessment prior to October 1st of each year or the next succeeding year shall not invalidate any such assessment subsequently made for that particular year, nor shall failure to levy an assessment for any one year, affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to October 1st of any year, then it shall become due and payable not later than thirty days from date of levying the assessment.

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 a sufficient and proper notice for this purpose, or for any other purpose of this contract where notices are required. Failure to give such notice to said owners, shall not however, make the lien of such assessment invalid.

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 the assessment on or before the first day of November, then such assessment shall bear interest at the rate of 8% per annum from the first day of October, but if the assessment is paid on or before the first day of November, or within thirty days from the date of assessment, if the assessment is made subsequent to October 1st, for the calendar year beginning October 1st then no interest shall be charged.

When Delinquent.

On or after the first day of November of each

year beginning November 1st, 1927 or within thirty days from the date of levying the assessment for the fiscal year for which the assessment is made, the assessment shall become delinquent, and payment of both principal and interest may be enforced as a lien on said real estate in proceedings in any court in Jackson County, Missouri, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suit to enforce such liens as soon as they become delinquent, or as soon thereafter as said Association may deem advisable.

Termination of Liens.

Such liens shall continue for a period of one 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 the termination of the suit, and until the sale of the property under execution of the judgment establishing same.

Expenditures Limited to Assessments for Current Years.

The Trustees shall at no time expend more money within any one year than the total amount of the assessment for that particular year, or any surplus which it may have on hand from the previous assessments, nor shall said trustee enter into any contract whatever, binding the assessment of any future year to pay for any such obligations and no such contract shall be valid or enforceable against the Association it being the intention that the assessment for each year shall be applied as far as is practicable toward the paying of the obligations of that year, and that neither the trustee nor any other person shall have the power to make a contract affecting the assessment of any future or subsequent year.

Other Lands How They May Be Added

The J. C. Nichols Investment Company, may from time to time, add to the district as above defined, any other land that it now owns or that it may hereafter own, provided that the land to be added to the district shall at that time be subjected and bound by all of the terms of this agreement, or any future modification thereof, with further provision that any land which may be added from time to time to such district shall be contiguous to the district as theretofore constituted, and an intervening street shall not have the effect of breaking such contiguity within the meaning of this agreement.

Association to Notify Members of Address.

The Association shall notify all owners of land in the district as it may exist from time to time insofar as the address of such owners are listed with the said Association, of the official address

of said Association, as to what place and time regular meetings of the Association shall be held, designating the place where payments of money shall be made, and any other business in connection with said Association may be transacted, and in case of any change of such address, the Association shall notify all of the owners of the land in the district insofar as their addresses are listed with the Association of the change, notifying them of its new address.

New Powers May Be Given.

By written consent of the owners of two-thirds of the area of the district as it may exist from time to time, exclusive of area in streets, evidenced by an agreement duly executed and acknowledged and recorded in the office of the Recorder of Deeds of Jackson County, Missouri, the Association may be given such additional power as may be desired by said owners, or to otherwise amend this instrument, provided, however, that no right to increase the rate of assessment may be so given.

Temporary Trustee.

Prior to the actual organization or incorporation of the Association contemplated by the terms of this declaration, The J. C. Nichols Investment Company shall have the right at its option to perform all duties, assume the obligations, levy and collect the assessments, expend the money and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were herein given direct to The J. C. Nichols Investment Company.

To Observe All Laws.

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

How Terminated.

This agreement may be terminated, and all of the land now, or hereafter affected, may be released from all of the terms and provisions hereof, by the owners of two-thirds of the area subject thereto, exclusive of area in streets, 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 of Jackson County, Missouri.

Covenants Running With Title to Land.

All of the provisions of this declaration shall be deemed to be covenants running with the land, and shall be binding upon The J. C. Nichols Investment Company, and upon its successors, grantees, and assigns.

IN WITNESS WHEREOF, The J. C. Nichols Investment Company has by authority of its Board of Directors, caused this instrument to be executed by its President, and its corporate seal to be hereto affixed this 23rd day of June 1927.

(Corporate Seal)

THE J. C. NICHOLS INVESTMENT COMPANY

By J. C. Nichols, President

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This agreement may be terminated, and all of the fund now or hereafter collected may be retained from all of the terms and provisions hereof, by the owners of two-thirds of the area subject thereto, exclusive of area in streets, executing and acknowledging an appropriate agreement or

Termination of Lien.
Such lien shall continue for a period of one year from the date of delinquency and no longer unless within such time said lien has been introduced for the collection of the assessment in which case the lien shall continue until the termination of the suit, and until the sale of the property under execution of the judgment establishing same.

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