

53
Q

AMENDMENT TO RESTRICTIVE AGREEMENT OF
DOUGHERTY RIDGE SUBDIVISION

This instrument executed this 8th day of October,
1986, by James Marek, Joel R. Beaudean
and John R. Betzold, the duly elected subdivision
Trustees of Dougherty Ridge Subdivision according to Restrictive
Agreement of Dougherty Ridge Subdivision recorded in Book 6764
Page 2188 of the St. Louis County Records (the "Trustees").

WITNESSETH:

1986 NOV 20 AM 9:49

WHEREAS, by an instrument entitled Restrictive Agreement
of Dougherty Ridge Subdivision (the "Restrictive Agreement")
recorded in Book 6764 Page 2188 of the St. Louis County Records,
certain restrictive agreements were imposed upon the property
described on Exhibit "A" attached hereto and made a part hereof,
and, 103

WHEREAS, the Restrictive Agreement was subsequently
amended by instruments recorded in Book 7030 Page 2012 and Book
7075 Page 2032 of the St. Louis County Records (the
"Amendments"), and,

WHEREAS, Paragraph 18 of the Restrictive Agreement
provides that the Restrictive Agreement may be amended "all or in
part" by a majority of lot owners present and voting at a meeting
called for the purpose of amending the Restrictive Agreement,
and,

WHEREAS, at a meeting duly called under the provisions of
Paragraph 18 of the Restrictive Agreement the amendments set
forth in this instrument were submitted to the lot owners and
adopted by a vote of 28 For and 0 Against.

NOW, THEREFORE, effective this date, the Restrictive
Agreement recorded as aforesaid and amended by instruments
recorded as aforesaid is hereby further amended by deleting
Paragraphs 1 through 17 and Paragraphs 19 through 29 of the
Restrictive Agreement and by deleting the provisions contained in
the Amendments and substituting therefor the provisions that
follow.

I.

AREA OF APPLICABILITY

The real property described on Exhibit "A" shall be held, sold, leased, occupied and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

II.

TERM AND ELECTION OF TRUSTEES

The three individuals named in the preamble of this instrument shall continue to serve as Trustees as follows:

The term of JACK Betzold shall expire July 1, 1986.

The term of JOEL Beaudry shall expire July 1, 1987.

The term of JAMES MAREK shall expire July 1, 1988.

Successor Trustees shall hold office for a term of three years from the date of expiration of the term of the Trustee succeeded or in the event of the resignation of a Trustee, or should a Trustee refuse to act, be unable to act, or be disqualified, then the term of the Successor Trustee shall be for the unexpired term of the Trustee succeeded. All Trustees shall serve without compensation.

Prior to June 1 of each year, or should any of said Trustees, or any successor or successors, die or cease to reside in Dougherty Ridge Subdivision, or decline to act, or become incompetent by reason of sickness or expiration of term, or other cause, to discharge the duties or avail of or exercise the rights or powers hereby granted or bestowed on them as Trustees under this instrument, it shall be the duty of the survivor or

remaining Trustees, within thirty (30) days following the vacating of said office in the case of an unexpired term, to call a meeting of all of the then owners of said lots, to be held at a convenient place in the County of St. Louis, first giving ten (10) days' written or printed notice of the time and place of such meeting, the said notice to be served by any of the methods hereinafter provided for in the giving of notice of levies and assessments. and such of the owners as attend said meeting shall select a chairman who in turn shall appoint tellers and proceed by vote or ballot to elect a successor or successors to fill such vacancy or vacancies the owner or owners of said lots being entitled to one vote for each full lot owned, which vote may be cast in person or by proxy, the form of the proxies shall be determined by the Trustees and the person or persons receiving the highest number of votes or ballots shall, upon his or their oral acceptance, be deemed elected and, in the case of a Trustee elected to fill an unexpired term, shall at once and by force of this instrument, subject to all the duties and restriction of this instrument imposed, succeed to, be vested with, and possess and enjoy with the remaining Trustee or Trustees, all rights, interest, privileges, and powers by this instrument granted to his or their predecessor or predecessors. And such a selection (at a meeting to be called, organized and conducted in the manner aforesaid) shall be made as often as a vacancy, from any cause, occurs, until the expiration of this agreement. Should such survivor or remaining Trustee or Trustees refuse or neglect to call such meeting within thirty (30) days after the occurrence of such vacancy, or should all the Trusteeships be vacant at the time, then such meeting may be called by the owner or owners of any three (3) said lots, who shall give a like notice thereof served as aforesaid.

III.

TRUSTEE'S DUTIES AND POWERS

The Trustees and their successors and assigns are hereby invested with the rights, powers and authorities described in this instrument, and with the following rights, powers and authorities:

1) The Trustees may prevent any infringement and compel the performance of any restriction set out in this instrument or established by law. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

2) The Trustees may clean up rubbish and debris and remove grass and weeds from, and trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected lot or property, and the owners thereof may be charged with the reasonable expenses so incurred. The Trustees or their agents or employees shall not be deemed guilty or liable for any matter of trespass or any other act for any such injury, abatement, removal or planting. Before any clean up work shall be performed by said Trustees, said Trustees shall give the lot owner of record ten (10) days notice of the Trustees' intent to clean up said rubbish and debris, and to remove grass and weeds, or to do any of the other items mentioned in this subparagraph. If at the end of the ten (10) day period, the necessary maintenance has not been performed, the Trustees may proceed as mentioned in this subparagraph.

3) The Trustees shall consider, approve or reject any and all plans and specifications for any and all buildings or structures, satellite dishes, fences, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction and erection on said lots, proposed additions to such buildings or alterations in the

external appearance of buildings already constructed, it being provided that no buildings or structures, satellite dishes, fences, detached buildings, outbuildings, accessory buildings, swimming pools, tennis courts or other structures may be erected or structurally altered on any lot unless there shall be first had the written approval of a majority of the Trustees to the plans and specifications therefor and to the grade proposed therefor. In the event the Trustees fail to approve or disapprove within ten (10) days after building plans or other specifications for dwellings, fences, satellite dishes, swimming pools or tennis courts, accessory buildings and other outbuildings have been submitted to them hereunder approval will not be required and the applicable restrictions shall be deemed to have been fully complied with, provided the party alleging submission of the plans can supply written evidence that said plans and specifications were in fact submitted to the Trustees.

4) The Trustees may require a reasonable deposit in connection with the proposed erection of any building or structure, satellite dish, fence, detached buildings, outbuildings, swimming pool, tennis court or other structure on any of said lots in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent lots, and that any and all damages to subdivision improvements shall be repaired.

5) The Trustees in exercising the rights, powers, and privileges granted to them, and in discharging the duties imposed upon them by the provisions of this instrument, may from time to time enter into contracts, employ agents, attorneys, accountants, servants, clerks, other employees and labor as they deem necessary or advisable, and to institute and prosecute such suits as they deem necessary or advisable, and defend suits as they deem necessary or advisable, and defend suits brought against them in their capacity as Trustees, or against their employees.

6) The Trustees shall have power to purchase and maintain in force liability insurance protecting the Trustees and lot owners from any and all claims for personal injury and property damage arising from acts of the Trustees. The Trustees shall have power to purchase and maintain in force insurance protecting the Trustees from any and all claims for damages arising out of any decision, act, or failure to act, of the Trustees acting in their capacity of Trustees.

7) The Trustees shall have the right to procure a bond for individual Trustees and/or any agent acting as treasurer, bookkeeper, accountant, or financial officer under terms of this indenture.

8) The Trustees shall hold the Common Ground previously conveyed to the Trustees by separate instrument, which said Common Ground is set forth and shown on the record plats of Dougherty Ridge. The Trustees shall provide proper and continuous maintenance and supervision of the Common Ground. The Trustees shall deal with any Common Ground so acquired under the provisions hereinafter set forth.

9) The Trustees may exercise such control over the easements, streets, roads and sidewalks (except for easements, streets, roads and sidewalks which are now or may hereafter be dedicated to public bodies or agencies), entrances, street lights, gates, Common Lane, park areas, shrubbery, trees, storm water sewers, and storm water retention areas, as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets, street lights, Common Ground, roads, and sidewalks, etc., by the necessary public utilities and them and others to whom they may grant permission to construct, operate and maintain on, under and over said easements and streets, sewers, pipes, poles, wires and other facilities and public utilities for services to the lots and dwellings in Dougherty Ridge Subdivision.

10) The Trustees may create easements over said Common Ground.

11) The Trustees may abandon an easement or portion thereof by executing and recording a proper and appropriate instrument in the Office of the Recorder of Deeds of St. Louis County, Missouri, but such easement or portion thereof may be abandoned only when the Trustees determine that it is in the best interest of the subdivision that same be abandoned.

12) A. The Trustees may exercise control over the Common Ground as shown on said plats of Dougherty Ridge. The Trustees may pay real estate taxes and assessments on said Common Ground out of the general assessment hereinafter provided for. The Trustees may maintain and improve the Common Ground with ornamental entrance ways, shrubbery, trees, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of health, welfare, safety, recreation, entertainment, education and general use of the lot owners of said subdivision all in conformity with all applicable laws. The Trustees may prescribe by reasonable rules and regulations the terms and conditions including reasonable fees and charges of the use of said Common Ground and all improvements thereon, all for the benefit and use of the lot owners of Dougherty Ridge and according to the discretion of the said Trustees.

B. Improvement, enhancement and additional maintenance other than mowing, in excess of \$250.00, shall be presented to lot owners for review, discussion and vote at the general meeting for the budget review. The lot owners shall decide if actual enhancements should be made, and in what order, if more than one project is involved. Trustees are required to adopt and implement these recommendations based on a majority vote by the homeowners present and voting at the current meeting.

13) The Trustees shall exercise control over the storm water retention areas located in the subdivision. The Trustees

shall maintain, improve, repair, rebuild, supervise, and insure the proper use of said retention areas.

14) In the event it shall become necessary for any public agency to acquire all or any part of the Common Ground for any public purpose, the Trustees, during the period of Trust as well as the times fixed for the appointment or election of a Trustee, are hereby authorized to negotiate with such public agency for such acquisition and to execute deeds and other instruments necessary to convey the property. Should acquisition by eminent domain become necessary, only the Trustees need be made a party, and in any event the proceeds received shall be held by the Trustees for the benefit of those entitled to the use of the Common Ground.

15) All rights and powers conferred on the Trustees by this instrument shall be exercised by them collectively and not individually. In the event of any difference of opinion among the Trustees as to the exercise of the rights and powers conferred hereby, the decision of a majority of Trustees shall be conclusive.

IV.

ASSESSMENTS

The Trustees and their successors and assigns are hereby authorized, empowered and granted the right to make assessments upon and against the several lots in the subdivision for the purpose herein stated and at the rate hereinafter provided, and in the manner and subject to the provisions of this instrument:

1) (a) The Trustees and their successors and assigns are authorized to make uniform assessments, except as hereinafter provided, of an amount not to exceed One Hundred Fifty Dollars (\$150.00) per lot in each calendar year upon and against the lots on which a residence has been erected in said subdivision for the purpose of carrying out any and all of the general duties and powers of the Trustees as herein described and for the further purpose of enabling the Trustees to defend and enforce restrictions, adequately to maintain streets, if required, to pay

for street light electric current charges, to perform or execute any powers or duties provided for in this instrument, or otherwise properly to protect the health, safety and general welfare of the residents in said subdivision.

(b) Commencing with the sixth annual assessment to be made subsequent to the date hereof, and each five years thereafter, the fixed annual assessment per lot shall not exceed the greater of (i) \$150.00, or (ii) the number of dollars equivalent to the purchasing power of \$150.00 for the month in which this instrument is recorded. Such number of dollars shall be determined by dividing \$150.00 by the index for said month of recording as computed in the Consumers Price Index U.S. City Average made by the Bureau of Labor Statistics of the United States Department of Labor, the All items figure for all Urban Consumers and then multiplying the quotient by the similar index number for the month in which the sixth annual assessment (and each succeeding sixth annual assessment thereafter) commences. If the Bureau of Labor Statistics shall change the base period in effect during the month in which this instrument is recorded, the next index figure applicable as a divisor and multiplier shall be correspondingly changed, in the event such statistics shall no longer be available, the most nearly similar statistics showing the purchasing power of United States Dollars shall be used instead, and the table to be used shall be designated by the Trustees.

(c) In the event the Trustees exercise the right granted them under Article III Paragraph 2 hereof to enter and clean up any lot or property the Trustees may assess against said lot the cost of the work involved plus 20% for overhead and carrying charges.

2) All assessments, made by the Trustees for the purposes hereinabove enumerated, shall be made in the manner and subject to the following procedure, to wit:

(a) The Trustees shall annually prepare a budget in which the anticipated revenue and anticipated expenditures for the ensuing fiscal year are set forth. The fiscal year shall be for the period July 1 through the following June 30. The Trustees shall attempt to limit the anticipated expenditures so that the same do not exceed the anticipated revenues.

(b) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of a fee simple estate and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the lot or dwelling unit itself. The notice shall be given at least thirty (30) days prior to the due date.

(c) Every such assessment shall become due and payable on July 1 of each calendar year after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of fifteen percent (15%) per annum until paid, and such payment and interest shall constitute a lien upon said lot, and said lien shall continue in full force and effect until said amount is fully paid. Any time after passage of the resolution levying an assessment, the Trustees may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to any one or more lots or dwelling units and cause same to be recorded in the Recorder's Office in the County of St. Louis, State of Missouri, and the Trustees may, upon payment, cancel or release any one or more lots or dwelling units from the liability of assessments (as shown by recorded instrument) by executing, acknowledging, and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or dwelling unit affected.

3) Assessment may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate, except that the lien or liens for assessments

hereunder shall be subordinate and junior to any first mortgage or deed of trust of record insured by the Federal Housing Administration, the Veterans Administration or any other agency of the United States or the State of Missouri and to any other bona fide first mortgage or deed of trust if given for a valid consideration and if not placed on record for the purpose of defeating creditors and evading the assessments provided for herein; provided, however, that the terms and provisions shall be and remain fully applicable to all of the land subject hereto after foreclosure of any deed of trust or mortgage and any and all lot owners subsequent to such foreclosure shall be fully subject to any assessments provided for herein and made subsequently to such foreclosures. Should an owner pay an assessment after the recording of notice thereof, as herein provided, the Trustees shall release said lien.

4) The Trustees shall deposit the funds coming into their hands as Trustees in a State or National Bank, protected by the Federal Deposit Insurance Corporation, or in a savings and loan association protected by the Federal Deposit Insurance Corporation, or in a savings and loan association protected by the Federal Savings and Loan Insurance Corporation, at interest, when deemed feasible by them, in their discretion. The Trustees shall designate the newly elected Trustee in each new fiscal year as "Treasurer" of the subdivision funds collected under this instrument and said funds shall be placed under the custody and control of such Treasurer. The Treasurer may be bonded for the proper performance of his duties in an amount to be fixed by the Trustees.

V.

INDENTURE OF RESTRICTIONS

The Owner hereby imposes on all the lots in the property described on Exhibit "A" the following restrictions:

1) No lot shall be used except as the site of a single family residence not to exceed two stories in height and a private garage for not more than three (3) cars. The word

"family" shall mean an individual or two or more persons related by blood or marriage or a group of not more than three (3) persons who need not be related by blood or marriage living together and subsisting in common as a single nonprofit housekeeping unit utilizing only one kitchen.

2) No lot shall be used except for such purposes as shall be permitted by the applicable zoning ordinances of the jurisdiction in which the lot is located, and no building shall be erected, placed or permitted to remain on any lot unless such building shall meet all applicable building and zoning codes of the jurisdiction in which the lot is located.

3) No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building set back lines shown on the recorded plats of said subdivision. A minimum rear yard of fifteen (15) feet and a minimum side yard of eight (8) feet shall be maintained. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building to encroach upon another lot.

4) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of said subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

5) No nuisances or noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which

may be or may become an annoyance or nuisance or the neighborhood as construed by the Courts of the State of Missouri as an annoyance or nuisance. No building or premises shall be used for purposes prohibited by law or ordinance.

6) Except as hereinafter noted, all partition fences shall be constructed of a material other than chain link fencing; such fences shall not be more than four (4) feet in height and shall not extend in front of the building on any lot. On corner lots the fence shall not extend beyond the front or side of a building. Solid fences built of new material and of a decorative character may be erected to a height of seven (7) feet for the purpose of screening a patio or pool, provided the plans and specifications for said patio fence and a sketch showing the proposed location of the fence has been approved by the Trustees as to the quality of materials, harmony of external design with existing buildings and as to location with respect to the patio to be screened and the homes in close proximity to the proposed fence. No fence, wall hedge or shrub planting higher than three (3) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Fences that border the Common Ground are to be uniform in height and material. Variances from the restrictions set forth in this Paragraph 6 of Article V may be granted by the Trustees.

7) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence temporarily or permanently.

8) No sign of any kind shall be displayed to the public view except one sign of not more than four (4) feet advertising the property for sale or rent.

9) All garages and carports must be attached to the main house (dwelling) unless otherwise approved by the Trustees. Storage buildings or other outbuildings shall be permitted if approved by the Trustees.

10) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except dogs, cats or other household pets which may be kept, provided they are not kept, bred or maintained for any commercial purposes. Each lot owner shall comply with all ordinances and subdivision regulations of the jurisdiction in which the lot is located, relating to the number, supervision, control, responsibility and maintenance of animals and/or pets in residential areas.

11) Personal property, including but not limited to boats, trailers, trucks, campers, house trailers, mobile homes, recreational vehicles, trucks (over 3/4 ton) shall not be placed or stored in the open on any street or on any lot. This shall not prohibit the parking of passenger automobiles and mini-vans, licensed and in operating condition.

12) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

13) No lot or Common Ground area shall be used or maintained as a dumping ground for rubbish, grass clippings or trash. Garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

14) No lot shall be resubdivided nor shall a fractional part of any lot be sold without the consent of the Trustees. This provision shall not, however, require the consent of the Trustees for the sale of an entire lot as shown on a recorded plat.

15) No water course or finished grade which is once approved and established shall be altered or changed without the express, written approval of the Trustees.

VI.

MISCELLANEOUS PROVISIONS

1) The Trustees are authorized and empowered to cooperate and to contract with the Trustees and homeowners of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.

2) The Trustees are authorized to act through a representative provided, however, that the Trustees shall only be responsible for their wrongful acts and shall not be responsible for wrongful acts of others. Neither the Trustees nor their agents, shall be held liable for injury or damage to persons or property by reason of any act or failure to act of the Trustees, or their agents. The Trustees shall not be entitled to any compensation for services performed pursuant to this instrument.



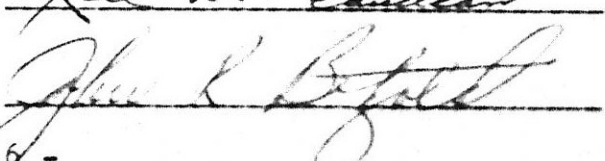
3) All covenants and agreements herein are expressly declared to be independent and not interdependent; nor shall any laches, waiver, estoppel, condemnation or failure of title as to any part or lot of said tract be of any effect or modify, invalidate or annul any grant, covenants or agreements herein, with respect to the remainder of said tract, saving always the right to amendment, as set forth in Paragraph 18 of the Restrictive Agreement.

4) It is further provided, declared and agreed that if the owner or owners of said parcel of land subject hereto or any lot or portion thereof, their heirs, executors, administrators, grantees or assigns, or any one of them, hereinafter owning any

of the parcels of land or part thereof described herein shall infringe or attempt to infringe or omit to perform any covenant or restriction aforesaid which is by its provisions to be kept and be performed by it, or him or them, it shall be lawful for any person owning any parcel of land in the property described on Exhibit "A" or having a legally recognizable interest in said land (by lien, mortgage, deed of trust or contract or option for purchase), or the said Trustees in behalf of or for the benefit of themselves, to proceed in law or in equity against the person or persons infringing or attempting to infringe or omitting to perform such covenant either to prevent it, him or them from doing so or to recover damages, including attorney fees and court costs for such infringement or omission.

5) The provisions of this instrument shall continue for a period of thirty (30) years from the date hereof, and shall automatically be continued thereafter for successive periods of fifteen (15) years each, provided, however, that the owners of the majority of the lots of the subdivision may terminate the trusts or release all of the land hereby restricted from any one or more or all of the said restrictions at the end of this thirty (30) year period or of any successive fifteen (15) year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in St. Louis County, Missouri, at least five (5) years prior to the expiration of this thirty (30) year period or of any fifteen (15) year period thereafter.

IN WITNESS WHEREOF, the Trustees do hereby certify that on the 18th day of June, 1986, the Amendment set forth in this instrument was approved and adopted at a meeting of Dougherty Ridge lot owners called and held in accordance with the provisions of Paragraph 18 of the Restrictive Agreement.

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 8th day of October, 1986, before me personally appeared James Marek, Joel R. Beaudean, and John R. Betzold, to me known to be the persons described in and who executed the foregoing instrument, and who acknowledged that they executed the same as their free act and deed as Trustees.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Francis J. Vatterau
Notary Public

FRANCIS J. VATTERAU

My Commission Expires:

2/3/89

