

# THE BLACK AND WHITE OF GREENWAY

RACIALLY RESTRICTIVE COVENANTS IN  
MANCHESTER, CONNECTICUT

David K. Ware  
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Professor Bethany Berger

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## Racially Restrictive Covenants in Manchester, Connecticut

In February of 1950, Fred and Vivian Ware, a young couple with a six-month-old baby, purchased their very first home in Manchester, Connecticut. Fred had served in the Navy during World War II; had attended college with U.S. Government assistance; had married his college sweetheart; and had landed a teaching job in Manchester.

Having determined that the attractive mortgage interest rates available under VA financing could make home ownership more affordable than renting an apartment, the couple had learned about an appropriately priced new home, had been shown that new house by a local realtor, and had decided that this house was just right for them. It was a modest, new construction cape cod style house on one of 98 lots within the “Greenway” subdivision near the north end of the town. Greenway had been mapped out by a local developer and approved by the Town of Manchester ten years earlier,<sup>1</sup> and many of the lots in the subdivision had already been built upon. The builder who had constructed and was selling the house was the fourth owner of the subdivision lot on which it was located.

Greenway appeared to be a vibrant, family-oriented neighborhood. A brand new elementary school had been built just two blocks away from the house, providing the prospect that, as Fred and Vivian’s children attained school age, a good-quality, safe and convenient education would

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<sup>1</sup> See Manchester Land Records, Old File Plan, Book 5, Page 110.

be available. It was the perfect place for young couples such as the Wares to start and raise their families.

As Fred Ware remembers it<sup>2</sup>, when he and Vivian decided to make an offer for the house, the realtor, before proceeding, asked whether they were Jewish (a question that struck them as so odd that they would remember, decades later, having been asked). The Wares answered the realtor's question in the negative, and the transaction proceeded. The realtor never inquired about the Wares' attitudes toward black people or their preferences regarding racially segregated or integrated neighborhoods. The Wares did not ask about the racial makeup of the neighborhood, and neither was the house marketed to them on the basis of the current or anticipated all-white demographics of Greenway. Other than the brief inquiry about Jewishness (which may or may not be considered a question about "race"<sup>3</sup>), the general subject of race just never came up – until nearly seventy years later, when Fred, while looking back through some family records and researching the history of his house, discovered that the building lot on which his house stands was subject to the following restrictive covenant:

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<sup>2</sup> Fred's recollections of purchasing the house are as related in conversations with his son, David, in the Fall of 2019.

<sup>3</sup> When the Greenway restrictive covenants were written in 1940 (see p. 3, below), some Americans would have considered Jews to comprise a race. At that time, "Hebrews" were considered to be a race for certain U.S. immigration purposes. The U.S. Supreme Court has stated that the determination of the existence of a race must be made by examining the meaning of the word "race" at the time that the statute including that term was enacted, and that "race" was not understood to include Jews as of 1964, when the Civil Rights statutes were enacted. *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987). As recently as August of 2019, the U.S. District Court for the Western District of Louisiana, relied upon *Shaare Tefila Congregation* to assert that Jews were not considered a race when Title VII was enacted in 1964, and granted a Motion for Summary Judgment, dismissing a Title VII claim of discrimination in hiring on the basis of Jewish race. Regardless of what courts might say about the Jewish people comprising a "race" as a matter of *law*, if parties to Greenway transactions were uncertain enough about the racial status of Jews to make them hesitant to sell to Jews for fear of breaching their covenant, then sales to Jews would have been "chilled", and the homogenizing purpose of the restrictive covenant would have been accomplished. Fred Ware does not recall knowing Jewish families in his Greenway neighborhood, although he was friendly with Jews in other parts of town. Since he has never contemplated selling his house, he has never had to resolve the question of whether Jews comprise a race for the purpose of identifying an "appropriate" buyer within Greenway. Were he to sell his house today, he would be inclined to do so without regard to "race", however that term might be defined.

“No persons of any race other than the white race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.”<sup>4</sup>

This was one of thirteen covenants, lettered A-M, that were included in **every** deed originally granted by Greenway Incorporated to the purchasers of properties within the subdivision.<sup>5</sup>

Placed smack in the middle of the thirteen common covenants, at letter F, this racially restrictive provision was fundamentally different from the other twelve that surrounded it. The others pertained to practical and common concerns such as limits on the size of structures, set-back requirements, prohibitions on “noxious” or unsafe industrial uses, the minimal value of homes to be built on the lots, etc. Covenant F, on the other hand, was a blatant expression of racist attitude and intent. It was textually located deep within a collection of other relatively uncontroversial restrictions, and it almost appeared to be seeking an inconspicuous situs – a place where its message, albeit unambiguous, might be muted by its less provocative neighbors. The covenant was also temporally camouflaged. That is, the exact wording of the covenant was never explicitly repeated after its first inclusion in the original deed out from Greenway in 1942. For the five conveyances that followed the first full expression of the covenant, including the conveyance to the Wares, sellers of the lot recited only that the property was “subject to

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<sup>4</sup> Deed in Fred Ware’s chain of title, from Greenway Incorporated to Robert J. Gorman, Manchester Land Records Vol. 147, Page 463, July 30, 1942

<sup>5</sup> See Exhibit A for a copy of the set of restrictions that appeared in every recording of a deed from Greenway to an initial purchaser of a Greenway lot. Until the middle of 1950, when photo-imaging of original deeds became technically feasible, deeds were “recorded” in the land records by way of typewriting the essential information contained in the original deeds onto a form that was then placed into the land record books or volumes. In the land record form pages used for Greenway transactions, it is apparent from the difference between the type font used for the A-M restrictions, and the type font of the typewriter used for inserting the rest of the deeds’ information, that the A-M set of restrictions pertaining to Greenway lots was pre-printed onto a certain supply of land record form pages to be used specifically for recording the sales of the Greenway lots. Manchester’s Town Clerk’s office agrees with this observation. The pre-printing of the A-M restrictions assured that every Greenway deed had exactly the same set of restrictions – there were no variations, and there was no chance of error when transferring information about the restrictions from the original deeds into the land records. The Clerk’s office is not aware of any records or personal recollections indicating whether the printing of these specific Greenway page forms was paid for by the developer or by the town.

restrictions of record”, a sort of short-hand expression which served only to obscure the existence of all of the A-M covenants, and in particular the textually buried racial restriction of covenant F.

Fred’s surprise and curiosity about that troubling old covenant sparked an exploration of racially restrictive covenants within Greenway, and more broadly within the Town of Manchester. This paper will describe the existence, prevalence and content of such covenants in Manchester, the environment in which they arose, their legal status, their persistence in the land records, and possibilities for nullifying them.

### **Manchester’s History**

Like hundreds of towns across New England, Manchester grew and developed in synchrony with the industrial mills situated there. It comprises 27.6 square miles of lands east of, and across the Connecticut river from, Hartford – lands that were occupied by the Podunk Indians when Hartford was first settled in 1636. Hartford formally acquired the land from the Podunks in 1682, and the area, which thereafter became known as Orford Parish, fell under the administration of East Hartford until it was incorporated as a separate town in 1823. From its earliest days, the town sported small mills that manufactured products ranging from cotton and woolen goods, to glass, snuff, and paper products. By far, the single most important and defining industry for the growth and prosperity of Manchester was the silk industry; and the single company that exerted this dominating influence was Cheney Brothers, Inc. From its humble inception in 1838, this company grew into a national leader in producing a variety of silk threads, ribbons and fabrics until, in 1954, the then struggling company was sold and, by 1956, essentially dismantled in surrender to changing markets, international competition, changing fashion trends, and the advent of synthetic fabrics like rayon and nylon that disrupted the

company's otherwise stable position in the fabric industry. For the many decades during which Cheney Brothers prospered, its successes were reflected in the general and economic growth of Manchester, including, of course, the town's ever-increasing population, since the company's employment rolls represented out-sized percentages of the town's total employment. As the beneficiary of post-civil war protective tariffs, the company's business had expanded greatly during the second half of the 19<sup>th</sup> century – an expansion that brought with it the construction of additional mill buildings in Manchester and the need for more and more workers. To some extent, Cheney brought their work to their workers where they lived, by opening a Hartford mill in 1854; but to a greater extent, the company filled its ever-increasing open positions in Manchester from the large waves of European immigrants that were arriving in America in the latter half of the 19<sup>th</sup> century and the early years of the 20<sup>th</sup> century, simultaneously with the so-called “great migration” of black Americans from the South to the industrialized cities of the North. Indeed, by around 1920, when nearly one quarter of the town's population was employed by the company<sup>6</sup>, more than 60 percent of Cheney employees were foreign born<sup>7</sup>. These employees needed housing, and the company helped to address this need through a combination of (1) providing company-owned and leased tenements and (2) encouraging pursuit of the “American Dream” of owning one's own home. In its recruiting pamphlet of 1916, which was meant to appeal in particular to the European audience, the company addressed the matter of housing, in part, as follows:

“Although Cheney Brothers own 275 tenements which they rent to employees at from \$6 to \$50 a month each, they encourage their employees to build their own homes... After a person has saved enough money to buy a building lot he can borrow from the Building & Loan Association enough money to put up a house. Usually he builds a double house and occupies half of it himself... Hundreds of dwellings have been built this way by Cheney Brothers' employees, each of whom now owns property worth from three to five thousand dollars...In the

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<sup>6</sup> William E. Buckley, *A New England Pattern, The History of Manchester, Connecticut* (Pequot Press 1973), 159.

<sup>7</sup> *Ibid*, p. 147

last three years 241 dwellings – most of them double houses, have been built through the aid of the Building and Loan Association.”<sup>8</sup>

The town and the company continued to grow after the First World War, and in 1923, the Town’s centennial year, Cheney Brothers recorded its highest revenues ever – coincidentally, \$23 million. However, in the depression years that followed, the company’s fortunes faltered, and by 1935, it sought protection through reorganization under federal bankruptcy provisions. Cheney Brothers was forced to sell certain assets, including the “tenements” mentioned in its 1916 recruiting pamphlet.<sup>9</sup> By 1937, the company represented that, partly because many employees actually bought the company-owned homes they had rented, “...relatively few ...employees live in Company-owned houses.”<sup>10</sup>

Following its bankruptcy reorganization, and as the country emerged from the hardships of the depression years, Cheney Brothers’ business stabilized. During the Second World War, virtually all of Manchester’s industries and residents turned their attention to supporting the war effort. Cheney Brothers devoted its energy and capacity to the fulfillment of government orders (including substantial orders at Pioneer Parachute Co., the subsidiary it had created in 1938 to manufacture parachutes from the recently developed synthetic fabric -- nylon, and the company for which Fred Ware worked for more than 35 years). At the same time, the Pratt & Whitney Division of United Aircraft, in the neighboring town of East Hartford, was bustling with war-time orders for military aircraft engines – activity that also kept Manchester residents well employed. The demands for war-time production employees at Pratt & Whitney, Cheney Brothers and other area businesses in turn created a housing demand that was met, in substantial part, through the construction by Manchester builders of federally funded housing projects.

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<sup>8</sup> Cheney Silks, *The Miracle Workers*, fourth printing of book edition originally printed in 1916, pp. 44-46.

<sup>9</sup> Buckley, *A New England Pattern*, 247-249.

<sup>10</sup> Buckley, *A New England Pattern*, 148.

Thus, during the war years of 1941-- 1945, the building of private homes in Manchester slowed considerably while efforts were directed toward the federal projects. Following the war, the private development of single-family home neighborhoods resumed in Manchester, alongside the construction of government-funded “veterans villages” – both of these in response to the demand surge created by returning veterans.

Apartment buildings were rare in Manchester, with only a few such complexes having been built prior to the 1960s.<sup>11</sup>

Such is the context for the creation of subdivisions in Manchester during the first half of the 20<sup>th</sup> century, and for the presence or absence of racially restrictive covenants in those subdivisions.

### **Background -- Racially Restrictive Covenants**

Covenants like the one in Fred Ware’s chain of title are, of course, neither unique to Manchester, nor a modern invention. Nearly 100 years before the 1942 recording of the racially restrictive covenant by Fred’s predecessor in title, white land owners in Brookline, Massachusetts had employed restrictive deed covenants as a strategy to deny ownership to black people, and to keep them segregated from whites.<sup>12</sup> The practice was adopted widely throughout the U.S. after the Civil War, and was particularly acute in and around the major northern cities as increasing numbers of African Americans left the south for greater opportunity in the more industrialized north. By the first two decades of the 20<sup>th</sup> century, race-based covenants were

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<sup>11</sup> Whether the paucity of apartment buildings in Manchester for most of its history results from a business-model preference by developers for single/double home building projects – a model with which they were familiar and comfortable; or from a distaste by either developers or town officials, or both, for denser and more affordable housing – a distaste that may or may not arise from racial presumptions; or from a desire to follow the established and seemingly successful model adopted by the Cheneys; or in part from all three, is difficult to divine.

<sup>12</sup> “How Prevalent Were Racially Restrictive Covenants in 20th Century Philadelphia? A New Spatial Data Set Provides Answers,” Discussion Papers (Federal Reserve Bank of Philadelphia) (Federal Reserve Bank of Philadelphia, November 2019), pp.7-8 <https://doi.org/10.21799/frbp.dp.2019.05>.



common, and in 1926, the Supreme Court decision in *Corrigan v. Buckley*, 271 U.S. 323 (1926) expressly legitimized this practice by holding that racially exclusive agreements between parties other than the government – e.g. between or among individual property owners -- do not run afoul of the equal protection provision of the Fourteenth Amendment.

So widespread was the use of these covenants, and so pervasive was the underlying belief in the social correctness of segregation, that when the New Deal housing finance agencies – first the Home Owners’ Loan Corporation (“HOLC”), and then the Federal Housing Administration (“FHA”) – began insuring home mortgages after 1934, they adopted practices and procedures expressly declaring the segregation of neighborhoods and the use of restrictive covenants (including racially restrictive covenants) to be desirable risk-reducing practices. The FHA’s Underwriting Manual of 1938<sup>13</sup> instructed its users that one of the “adverse influences” on the value of a property was “the infiltration of business or industrial uses, lower class occupancy and inharmonious racial groups.” (Paragraph 935 of the Manual). At Paragraph 980 of the Manual, the FHA actually recommended the recording of restrictions that “should”, among other things, provide for “prohibition of the occupancy of properties except by the race for which they are intended.”<sup>14</sup> As a result, properties that were subject to racially restrictive covenants were looked upon with favor, and lenders were encouraged to provide their loans for property purchases in

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<sup>13</sup> Federal Housing Administration, *Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act* (Washington, D.C.: US Government Printing Office, 1938)

<sup>14</sup> Paragraph 980(3) went so far as to provide a specific list of 8 recommended covenants – all of which appear, in one form or another, in the A-M restrictions used in Fred Ware’s Greenway deed, in Bowers Farms deeds, in the deed restrictions for homes in Manchester’s Lakewood Circle development (see p. 11, *infra*) and in restrictions for several developments in West Hartford, Connecticut. For the text of restrictions in several West Hartford neighborhoods, see Jack Dougherty and contributors, *On The Line: How Schooling, Housing and Civil Rights Shaped Hartford and its Suburbs*, an open access book-in-progress for Amherst College Press, [ontheonline.trincoll.edu](http://ontheonline.trincoll.edu), footnotes to Section 3.2. While there are some tailoring variations in the language used among these developments, one gets the overwhelming impression that the developers’ lawyers simply used the FHA manual as a checklist for the kinds of restrictions that would best assure the availability of FHA financing for their clients’ properties.

exclusively white neighborhoods, or in neighborhoods where non-whites would be unlikely to encroach or “infiltrate”. This practice of identifying high-risk lending areas, commonly called “red-lining”, resulted in the creation or cementing of racially segregated neighborhoods across the country, especially in and around major urban centers.

Following the Second World War, when the Veterans Administration (VA) began offering mortgage assistance to returning veterans, the VA adopted these same FHA policies and practices. It was not until 1948 that the legal landscape surrounding racially restrictive covenants changed, albeit not instantly, when the U.S. Supreme Court, in *Shelley v. Kraemer*, 334 U.S. 1 (1948), held the enforcement of such covenants by a judicial process to be state action in violation of the equal protection clause of the 14<sup>th</sup> Amendment. The Court stopped short of declaring these covenants themselves to be illegal, suggesting that because the 14<sup>th</sup> Amendment constrains state action and not individual action, the covenants themselves retain some validity as between the parties affected by them. Notwithstanding this nagging bit of judicial circumscription, the *Shelley* decision effectively defanged the *Corrigan* decision of 1926, rendering racially restrictive covenants legally impotent thereafter.

But the hegemony represented by *Corrigan* sentiments and FHA practices was in full force during the pre-*Shelley* years when Manchester’s housing developers were at their busiest. Thus, the town’s developers in these years had ample opportunity to socially engineer its neighborhoods through the use of racially restrictive covenants.

### **Subdivision Activity in Manchester in the Early to Mid 20<sup>th</sup> Century**

In 1900, the population of Manchester was 10,601.<sup>15</sup> The town grew steadily in the early decades of the century, increasing to 13,641 by 1910; to 21,973 by 1930; to 25,799 by 1940; and

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<sup>15</sup> All population figures are from the U.S. Census Bureau

to 34,116 by 1950, the year in which the Wares bought their Greenway home. In response to the growing demand for housing, many real estate developers undertook subdivision and building projects in the town, dividing formerly larger tracts of farm lands and open spaces into hundreds of smaller parcels to be used mostly for single family or two-family homes. Between roughly 1910 and 1950, approximately 100 subdivision plans were approved by the town, representing the creation of more than 7,100 residential building lots by approximately thirty different developers.

### **Was all of that Subdivision Activity Racially Restrictive?**

If all of the Greenway lots had been so blatantly racially restricted, were many or all of the lots in the other subdivisions throughout Manchester likewise restricted to the white race? Were black people blocked by such covenants virtually everywhere they turned in Manchester? The question is reasonable, since the number of black people living in the town was tiny throughout the first half of the century and beyond. The Federal Census data for 1910 indicates that only 22 of Manchester's residents – a mere .2% -- were black in that year. By 1930, out of a total population of 21,973, only 52 were non-white. The data for 1940 and 1950 shows a similar state of affairs: only about .2% of the town's population were black in both of those years. The trend continued. As late as the late 1960s, only a small handful of black families lived in Manchester. In 1969, the graduating class at Manchester High School numbered 696, and there was only one black student among them.<sup>16</sup> Had the town been so completely blanketed with subdivision

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<sup>16</sup> Similarly, regarding the Manchester High School class of 1968, see the 2002 interview with Harry Maidment, at [http://www.manchesterhistory.org/reprints/MH55\\_HarryMaidment.html](http://www.manchesterhistory.org/reprints/MH55_HarryMaidment.html). Mr. Maidment was the high school guidance counselor in the 1960s, and he recalls providing a statistic to the federal government regarding the percentage of the school's black graduates enrolling in college. Since the school had graduated only one black student in 1968, and since that student went on to college, the school's statistic was a staggering 100%.

restrictive covenants that blacks were effectively and totally excluded? Were all of the developers using the tactics and covenants employed by Greenway, Incorporated?

An examination of the town's land records indicates that, in fact, the use of racially restrictive covenants such as those found in Greenway was quite limited. Of all of the 100 or so subdivisions reviewed, only two other subdivisions -- the 71-lot Lakewood Circle development, and the 83-lot Bowers Farm development -- contained a racially restrictive covenant similar to Greenway's. In Lakewood, every lot in the subdivision was subject to the exact same race-based restriction used in Greenway; in Bowers Farm, people other than "whites or Caucasians" were excluded in the deeds for 79 of the subdivision's 83 lots.

The Lakewood Circle subdivision map was filed on September 16, 1940, within days of the Greenway map filing, and its final revision was approved by the town in April of 1941.<sup>17</sup> The first deeds for Lakewood properties began to appear of record in August of 1940, even before the subdivision map was filed at town hall.<sup>18</sup> The Bowers subdivision map was filed with the town in 1935, and from April of 1940 onward, Bowers deeds contained the restriction. As with all of the Greenway lots, the Lakewood and Bowers deeds contained a standard set of restrictive covenants, mostly pertaining to the relatively neutral and non-controversial subjects such as setbacks, etc. Like Greenway, the Lakewood records<sup>19</sup> are typed on forms having a set of standard, pre-printed provisions, mirroring almost word-for-word the provisions used by the Greenway developer -- with one exception: Lakewood deeds contained one additional provision. While Greenway deeds contained 13 covenants, (letters A-M), the Lakewood covenants numbered 14,

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<sup>17</sup> Manchester Land Records, Old File Plan Book 5, Page 114.

<sup>18</sup> Manchester Land Records, Volume 140, page 92.

<sup>19</sup> Beginning with the second Lakewood deed granted, Manchester Land Records Volume 141, Page 57

with letter designations of A through N.<sup>20</sup> Just as with Greenway, the blatant racially restrictive covenant was placed among the first 13 covenants, at covenant F, buried among the other more standard covenants.<sup>21</sup> The one additional covenant in the Lakewood deeds – covenant N -- provides that if owners of a Lakewood lot wish to sell their property, they must offer a 30-day right of first refusal to the other owners of Lakewood properties. Appearing as it does in deeds that carry an obvious prejudice toward non-white property owners, this right of first refusal is almost certainly intended as “belt and suspenders” protection against the sale of Lakewood properties to unwelcome “others”. Presumably, if a proposed sale to undesirable people could not be thwarted by Covenant F, Lakewood property owners could use Covenant N to defeat such a transaction – they could simply snatch the property for themselves.

It is worth noting that Covenant K in both the Greenway and Lakewood restrictions is a “sunset” clause which defines the duration of all of the covenants. For both subdivisions, the covenants lasted until May 1, 1966. Provisions such as these were adopted by attorneys who wanted both to provide their pro-segregation developer clients with long-term “protection” against non-white use or ownership, and to address a risk that covenants having an indefinite duration into the future might either (1) run afoul of the perennially troublesome Rule Against Perpetuities, pertaining to restraints on *alienability*, or (2) fail to meet the general requirement for “reasonableness” of covenants restricting *use*<sup>22</sup>, as opposed to *alienability*. Regarding the Rule

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<sup>20</sup> See Exhibit B for a copy of the set of restrictions that appeared in every initial deed for a Lakewood Circle property. Apart from differing building sizes and values, the only substantive difference between the Greenway and Lakewood restrictions is in Covenant B, where Greenway uses a committee process to approve new house designs, while Lakewood approvals reside with a single person – the developer.

<sup>21</sup> In the Bowers set of covenants, the race restriction was covenant 5 out of 11 – similarly buried in the middle.

<sup>22</sup> See *Dick v. Sears-Roebuck & Co.*, 160 A.2d 432 (1932), which would have been a relatively current reiteration of the Connecticut law when Greenway, Bowers and Lakewood were established. A restriction on use was considered valid as long as it was (1) not itself illegal, and (2) reasonable. It could be enforced if it “touched and concerned the land” – a test that is met in Connecticut if the restriction “might very likely effect” the value of the land. *Dick v. Sears*, p. 433.

Against Perpetuities, that common law concept could defeat restrictions on the *alienability* of land if those restrictions lasted for an unreasonable period of time – commonly understood to be longer than “lives in being plus 21 years”. The Greenway and Lakewood Circle restrictions were, on their face, primarily related to *use*<sup>23</sup>, but when they were created, lawyers seeking comfort about their validity might well have wondered whether the courts would view the length of use restrictions in the same manner as they viewed alienation restrictions. After all, it was not until 1948 that a Connecticut decision explicitly explained that it is permissible for a restraint on use to last longer than would be allowed under the alienation-focused Rule Against Perpetuities.<sup>24</sup> To address the “reasonableness” element of restrictions on *use*, it would have been prudent in 1940 for lawyers advising their developer clients to recognize that, at some point, courts might not accept perpetual limitations on use as being reasonable, and to handle that risk by inserting a time limitation that courts might find comfortable – e.g. something like the time period allowed under the Rule Against Perpetuities. The two considerations would have merged, perhaps prompting different lawyers to make different judgments about the question “how long is too long for the covenants to last”. While we know that Greenway and Lakewood were mapped and clothed with restrictive covenants at almost exactly the same time, we do not know whether the same lawyer created the set of restrictions for both subdivisions, so we cannot say for sure whether the approximately 26-year period used in both developments’ Covenant K was the same by coincidence or as a result of a law office simply re-using an existing template of language.<sup>25</sup> In both cases the sunset clause contained its own mechanism for renewal, stating

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<sup>23</sup> In Lakewood Circle, the last covenant – Covenant N – was at least arguably a restriction on alienability, but the others were use restrictions. The Bowers restriction explicitly forbade *ownership* by non-whites/Caucasians – a restriction on alienability

<sup>24</sup> *Harris v. Peace*, 16 Conn. Supp. 13 (1948).

<sup>25</sup> The same question is open with respect to West Hartford, Connecticut, where the same expiration or “sunset” date is established for the similar restrictions of several different developments. See Dougherty and contributors,

that, upon expiration, the validity period would be automatically extended for successive 10-year periods unless a majority of owners in the subdivision decided otherwise. This clever bit of risk-hedging – the creation anew of successive 10-year periods that could be argued to fall safely within both the Rule Against Perpetuities and the “reasonableness” requirement with each re-setting of the clock – was never put to the test, due to the Supreme Court’s 1948 decision in *Shelley v. Kraemer*, which held racially restrictive covenants unenforceable. Nonetheless, it demonstrates that at least some lawyers, for at least some Manchester developers, had given more-than-passing thought to the creation and long-term effectiveness of race restrictions.<sup>26</sup>

The Greenway, Lakewood Circle and Bowers subdivisions notwithstanding, the vast majority of Manchester’s developers did NOT use racially restrictive covenants. Data collected from the town’s land records is telling: Out of approximately 100 subdivisions approved in Manchester between roughly 1910 and 1950, only the three mentioned above (i.e. only about 3% of the subdivisions) used such covenants. Out of approximately 7,100 residential building lots represented by those 100 subdivisions, only the 248 lots within Greenway, Lakewood Circle and Bowers (i.e. only about 3.5%) were burdened with covenants that required the exclusion of non-whites. For the remainder of Manchester’s residential real estate growth in the first half of the century, the documentary record is untainted by such restrictions. Witness:

The single largest residential real estate developer in the town was Edward J. Holl, who began his prolific real estate development career in the ‘teens, and was still actively creating subdivisions as late as the mid-1950s. Holl created no less than seventeen subdivisions<sup>27</sup>, for a

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Footnotes to Section 3.2. The FHA’s Handbook, discussed *supra*, recommended that restrictions should last at least 20 years, in order to foster the neighborhood “stability” that was deemed so essential for good mortgage credit risk.

<sup>26</sup> The “sunset” provision in the Bowers set of restrictions was for a longer period (through January 1, 1975), and it did not contain the automatic renewal mechanism contained in Covenant K of the Greenway and Lakewood provisions.

<sup>27</sup> See Exhibit C for a list of Holl’s many subdivision developments.

total of more than 1,870 building lots. Other very substantial developers included Alexander Jarvis, Robert J. Smith, and Elman and Rolston. Mr. Jarvis laid out 22 subdivisions, comprising 654 lots – most of them in the 1940s. Mr. Smith created 6 subdivisions, totaling 639 building lots. And, Elman and Rolston added another 6 subdivisions, having a total of 254 lots. None of these four major developers included racially restrictive covenants in their deeds.

In most of Holl's subdivisions, his deeds contained literally no restrictive covenants whatsoever, racially directed or otherwise. The deeds he granted for lots in only a few of his subdivisions included some time-limited restrictions<sup>28</sup> pertaining to matters such as set-back requirements, the minimum value of houses to be built on the lots, and the requirement that only single-family homes would be permitted. However, a comprehensive (if not literally exhaustive) examination of Holl's deeds finds them to be so uniformly worded across all of his subdivisions as to suggest that in no instance did his deeds contain explicit restrictions relating to race.

The same can be said of Robert J. Smith. The deeds conveying Smith's lots in Colonial Gardens, Green Ridge, Green Hill Terrace, Pleasant View, West Side Heights, and Elizabeth Park, contained only race-neutral restrictions of the type used by Holl in some of his projects, and had no hint of overt racial animus or intent to exclude non-white buyers or users.<sup>29</sup>

Elman and Rolston, developers of the Marvingreen, Middle Heights and other subdivisions, likewise eschewed racially restrictive covenants in their many deeds for their many subdivision lots. Their conveyances were straightforward and uncluttered by restrictions – racial or

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<sup>28</sup> In a few of Holl's subdivisions, the restrictive covenants were to expire at some future date, e.g. the Greenacres Development of 1921 had restrictions that lasted until 1950. An example is at Manchester Land Records vol. 72, Page 66. These "sunset" provisions illustrate that lawyers advising their real estate development clients were mindful of the "Rule Against Perpetuities" and the requirement for "reasonableness" in use restrictions, even in the context of deed restrictions that did NOT pertain to the exclusion of non-whites.

<sup>29</sup> See, e.g., deeds recorded in Manchester Land Records at Vol. 86, Page 263; Vol. 147, Page 441; Vol. 84, Page 348; Vol. 130, Page 142; Vol. 86, Page 545; and Vol. 136, Page 77.



otherwise.<sup>30</sup> Similarly, Alexander Jarvis sold his properties with no racially restrictive covenants.<sup>31</sup> And so it was with most of the rest of the residential real estate developers in the town. Racially restrictive covenants were clearly **not** the norm. The Greenway, Bowers and Lakewood Circle subdivisions, discussed above, were the exceptions – not the rule.

The fact that the vast majority of Manchester developers in the early 20<sup>th</sup> century chose not to restrict the ownership, use or occupancy of their properties to the white race cannot be attributed to legal prohibitions against such a practice. Throughout the entire first half of the century, Connecticut courts had entertained no cases challenging the validity of restrictive covenants specifically related to race, so there were no judicial decisions to deter the use of such covenants. The state’s case law had long affirmed the enforceability of restrictive covenants *in general* (e.g. covenants against certain kinds of buildings, uses, etc.), and that long-held judicial support for restrictions on use (including explicit judicial recognition that substantially uniform restrictions in all of a subdivision’s deeds could be enforced among the grantees) had been reiterated frequently enough that developers and their lawyers would have known them to be legally acceptable.<sup>32</sup> Thus, it was not for lack of judicial support that most of Manchester’s developers abstained from using racial restrictions in their subdivision deeds. Nor were there state statutes standing in the way, as it was not until 1990 (!) that Connecticut finally enacted its fair housing law specifically prohibiting this practice, in conformance with the federal Fair Housing Act of 1968. The absence of on-point Connecticut law regarding racial restrictions, the many court decisions in other states across the country validating racially restrictive covenants, and the favorable common law generally supporting “reasonable” restrictive covenants had all left the

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<sup>30</sup> See, e.g., deeds recorded in Manchester Land Records at Vol. 86, Page 394; and Vol. 76, Page 567.

<sup>31</sup> See, e.g., deeds recorded in Manchester Land Records at Vol. 157, Page 99 ; and vol. 162, Page 24.

<sup>32</sup> See, e.g. *Whitton v. Clark*, 112 Conn. 28 (1930), *Baker v. Lunde*, 96 Conn. 530 (1921), and the cases cited therein.

door open for Manchester's developers to attach race-based restrictions to their conveyances. For reasons that evade discovery, only the Greenway, Bowers and Lakewood Circle developers entered through that door.

And yet, with only a tiny slice of Manchester's housing pie explicitly off-limits due to seemingly valid and officially recorded deed restrictions, black people remained virtually absent from the town for decades. Were there other mechanisms at play to discourage blacks from coming to Manchester in the first half of the century? For example, was the town, or were the developers or the town's realtors sending messages by other means -- such as through zoning practices, in advertising, or through real estate brokering practices -- that blacks were not welcome in Manchester?

### **Possible Alternative Reasons for Few Black People in Manchester**

#### **Zoning**

Manchester adopted its first zoning ordinance in 1938. By this time, the blatant use of local zoning regulations for racial segregation had been employed in many U.S. cities, and had been scrutinized in the courts. In 1910, Baltimore had infamously pioneered this practice by enacting an ordinance that explicitly prohibited blacks from living on majority white blocks, and vice versa. Legal challenges to this and similar ordinances eventually culminated in the 1917 case of *Buchanan v. Warley*, 245 U.S. 60 (1917) in which the Supreme Court held that such explicit ordinances violated the 14<sup>th</sup> Amendment – not because they violated the rights of people to be treated fairly in housing matters, but because they unfairly restricted the rights of property owners to sell their properties as they wished. In a country that was apparently and stubbornly reluctant to accept the integration of black people into its institutions and populace, the *Buchanan* decision struggled to retain its legitimacy; and it did not stop racial zoning in its

tracks. Rather, in cities where a belief in the correctness of racial segregation retained its foothold, variations of the ordinance invalidated by *Buchanan* continued to be implemented and used for the government-approved separation of blacks and whites. In 1926, the Supreme Court considered a Cleveland-area zoning code that prohibited apartment buildings in areas zoned for single-family homes.<sup>33</sup> Rather than strictly following *Buchanan* and finding such a restriction unconstitutional as a violation of property alienation rights, the Court upheld it as a legitimate exercise of police power. In doing so, the Court seemed to recognize the legitimacy of protecting another sort of property right –i.e. the community’s right to protect itself against the downward influence on surrounding property values caused by these population-dense projects (projects that, although not judicially recognized as such by the Supreme Court, attract the less affluent, non-white races). It is not surprising, then, that a dozen years later, when Manchester adopted its first zoning code, the practices of separating various uses and of keeping apartment buildings out of single-family neighborhoods were already common. Manchester’s ordinance contained no explicit requirements for the separation of the races, but, like numerous other zoning codes, it did establish a sort of hierarchy of land uses, not only separating residential uses from industrial and commercial uses, but also creating a variety of separate residential zones within which multi-family structures could or could not be built.

The motivations behind the number, size, shape and requirements of the zones contained in Manchester’s original zoning map may never be fully known. Concerns about race-mixing might have contributed to the creation of the various zones; legitimate concerns about the general health, safety, security, beauty and livability of the various neighborhoods in the town might also have been at play. Whatever the mix of motivations may have been, single-family home

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<sup>33</sup> Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365

developers continued to pursue development projects after the adoption of Manchester's new zoning ordinance. Some subdivisions won approval, while others met with stiff opposition in the face of the property use restrictions applied to the various zones depicted on the zoning map.

At a Town Planning Commission public hearing on June 12, 1950, a local attorney advocated in favor of a proposal to change the zoning designation applicable to a sizeable tract of undeveloped land in the southern part of Manchester from "Rural Residence" to "Residential A" – a change that would have made that land available for denser housing development. In an impassioned manner (bordering on melodramatic), the attorney sought to distinguish Manchester from other towns in the region, essentially arguing that Manchester should recognize and accommodate the growing demand for affordable housing, that the town's tax revenue sources should reflect that housing demand, and that the zoning ordinance should not be used to exclusionary effect:

"No the answer is not to stop a development for housing. That isn't the answer. That is a negative approach to this tax problem. The answer is to bring into the Town, as the Town grows, business and industry that is commensurate with the size of the community. That is the answer. You cannot approach it negatively and say, "We will have no more housing. Manchester is large enough." People are coming from out of town and moving in to Manchester. There is nothing wrong with that. We cannot be isolationists in Manchester and expect to be internationalists in our nation. We have got to build to satisfy the demands of the people. These housing developments, say what you will about them, it is because the demand is there, the people need the houses, that is why we are coming to Manchester. Look at over in Glastonbury, they say, "No, we'll not have any more of these homes. You have got to have a home of 1778 or you can't live in Glastonbury", or in West Hartford. "You've got to have a home that has 12 rooms or you can't build". We can't have that in Manchester. Thank God we aren't a Glastonbury or West Hartford or Wethersfield. We are Manchester because we want to furnish homes for the people who need them."<sup>34</sup>

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<sup>34</sup> Remarks of Manchester Attorney John Labelle, contained in the minutes of the Town Planning Commission Hearing, June 12, 1950, Town Planning Volume 1, Page 233. At the Town Planning Commission Meeting on July 7, 1950, the requested change to the zoning ordinance was denied.

Comments such as these reflect a recognition that zoning ordinances can have exclusionary effects, and a belief by at least some members of the bar that such ordinances should be employed not as an excuse to ignore the housing needs of the community, but in furtherance of those needs. The sentiments expressed here, in 1950, are prescient – they portend the current and continuing debates and controversies regarding “exclusionary zoning” that animate housing policy discussions today.<sup>35</sup> We cannot determine from this 1950 transcript whether the question of racial exclusion was at play when the proposal for changing to denser zoning was raised. Nor can we tell whether that subject factored into the fate of the proposed change as the Planning Commission members mulled over their decision . We do know that the Planning Commission denied the proposal at its next monthly meeting.

### **Advertising and Public Messaging**

The major Hartford-area newspapers in the first half of the twentieth century were The Hartford Courant (“The Courant”) and The Hartford Times, both of which had wide circulations throughout central Connecticut.<sup>36</sup> These newspapers were likely vehicles for the publication of advertisements to market the sale of Manchester’s subdivisions; and such advertisements were possible carriers or harbingers of racial messaging – subtle or blatant.

A review of advertising in The Courant from 1910 to 1950 suggests that the Manchester developers did, in fact, advertise in that newspaper for the sale of their home-sites or new homes, but that when they did place ads, the language and messaging they used to “puff” their properties was generally neutral with regard to race.

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<sup>35</sup> See, e.g. the recent news coverage of the controversy about affordable housing in Westport, CT, at <https://ctmirror.org/2019/05/22/separated-by-design-how-some-of-americas-richest-towns-fight-affordable-housing/>

<sup>36</sup> Beginning in 1882, Manchester also boasted its own local newspaper – the Manchester Herald. Its circulation of 4,168 by the year 1923, was smaller than The Courant’s, and more narrowly focused on the town itself.

Edward J. Holl's advertising appeared throughout the first half of the century, often in large "display" ads, and always with a focus on the practical and aesthetic value of his properties, such as elevated lots, reasonable prices, proximity to schools, the easy commute westward, garages for cars, insulated walls, etc. Some of his ads touted properties or neighborhoods that would appeal to "discriminating" buyers, but it is difficult to know whether such expressions were either intended or received as referring to *racially* discriminating buyers, rather than to *generally* discriminating buyers – i.e. those who would find the advertised homes or locations preferable to others due to, for example, reasonable price, high quality, convenient location, good re-sale potential and the like. It is worth noting that Mr. Holl was an Englishman, having immigrated to Manchester from England as a teenager<sup>37</sup>, and that he therefore distinguished himself around town by using "the King's English" when communicating – including communications about his properties. The use of the term "discriminating" may well have been Holl's "charming" British way of describing a person who thinks carefully and makes wise choices, rather than a person who bases decisions on racial animus or prejudice.<sup>38</sup> Holl also mentioned "restrictions" in his ads, but the restrictions he referred to were those pertaining to minimum pricing and those requiring that only single-family and two-family homes were permitted.<sup>39</sup>

Two of Holl's largest competitors in the 20s and 30s – Robert J. Smith, and Elman and Rolston, also advertised in The Courant. The headline of the Elman and Rolston ad for their Marvin Green development read "Opening Up a New Residential Section Restricted to Homes of a Better Kind".<sup>40</sup> The text of the ad explains the use of the word "restricted" as follows:

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<sup>37</sup> The Courant, Dec. 23, 1967, p. 4.

<sup>38</sup> Ibid. Holl died in 1967 at the age of 93, and had never lost his English accent.

<sup>39</sup> See, e.g. Holl's ad for his Pinehurst development in the The Hartford Courant, May 9, 1915, page 18. He refers to Pinehurst as "Manchester's Finest Restricted Building Lot Development", and the deeds for Pinehurst lots contain only these non-racial restrictions.

<sup>40</sup> The Hartford Courant, April 19, 1925, page A11.

“Restrictions were to be included in each deed that would assure only the better grade of homes being erected.”<sup>41</sup> The ad seems quite clear that the “restrictions” were related to houses, not to people. It would be difficult to conclude, with no further evidence than the use of a single explained word, that Elman and Rolston intended to exclude people from their developments on the basis of race. Such an inference is even less justified with respect to Robert J. Smith, whose ads tended to focus on features such as beautiful trees, good lot lay-out and low prices.<sup>42</sup>

As the newspaper advertising battle moved into the 1940s, Alexander Jarvis, who would become the most active developer of that particular decade, began placing frequent ads in The Courant. While Holl’s ads may have had greater appeal to buyers of *lots* (e.g. “Excellent opportunity for wide-awake builders”<sup>43</sup>), Jarvis directed his ads toward *home* buyers, using the straightforward approach of touting “Quality Homes”<sup>44</sup> and offering a solution to “housing problems”<sup>45</sup>. No racially-directed messaging is evident in Jarvis’ ads.

There is no reason to suspect that advertising by Manchester’s developers in other Hartford-area publications (e.g. the Hartford Times and The Manchester Herald) would differ in content from the ads found in The Courant. Indeed, the opposite presumption – consistency of messaging – would seem more appropriate. In summary, then, it is fair to say that newspaper advertising by Manchester’s new home developers in the first half of the century, at least on its face, does not appear to have been designed or intended to promote racial segregation. Whether the ads were received that way by potential buyers is open to speculation.

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<sup>41</sup> Ibid

<sup>42</sup> See, e.g., Smith’s ad for his Elizabeth Park development in The Courant, June 5, 1938, p.B5

<sup>43</sup> The Courant, Jan. 17, 1943, p.B8

<sup>44</sup> See The Courant, May 1, 1948, p. 15

<sup>45</sup> The Courant, Nov. 16, 1941, p. B8

Newspapers were not the only medium through which Manchester's real estate developers could advertise their properties. When Manchester celebrated its Centennial year of 1923, it organized a series of special events throughout the town, and published a Centennial Booklet to chronicle the town's growth, prosperity and desirability. Local merchants and businesses sponsored the centennial activities by purchasing advertisements in the Centennial Booklet, and among those advertisers were two of the above-mentioned real estate developers – Holl, and Elman and Rolston. The ad placed by Elman and Rolston<sup>46</sup> was marketing the “Marvin Green” development, and it read as follows:

MARVIN GREEN Manchester's Newest and Best Home Site Development

On East Center Street Manchester Green

This property, in the possession of the Cone family for nearly 200 years, is now being sub-divided into high class residential plots which are offered by the owners on terms advantageous to the purchaser.

Located in the most desirable residential section of the town, on the trolley line and with school within six minutes' walk, it offers most desirable sites for home-builders.

The lots are large and are located on high, well drained ground, many of them requiring no grading. The new streets being cut through the property will be well graded, with concrete sidewalks.

For information regarding these plots inquire at the office on the property, East Center street, opposite Pitkin street.

ELMAN & ROLSTON, Owners

Discounting the possibility that the phrase “high class” refers to people<sup>47</sup>, rather than to parcels of land (a possibility that is refuted both by syntax and by the fact that Elman & Rolston deeds

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<sup>46</sup> Manchester Centennial Official Program, p. Seventy-Five

<sup>47</sup>Although it seems unlikely, it is possible that, notwithstanding (1) Elman & Rolston's other ads not referring to “high class plots” and (2) the absence of explicit race-based restrictions from their deeds, they might have used this phrase to send a message regarding race. After all, in 1923 when they placed this ad, Elman & Rolston could not



do not even remotely address people, per se), racial messaging is absent from this ad. The tone and content of the ad is consistent with Elman and Rolston's newspaper ads, discussed above.

Edward J. Holl placed the following ad in the Centennial Booklet, trumpeting the virtues of his 247-lot "Greenacres" subdivision:

**PROFIT BY THE PAST HUNDRED YEARS**

**OF EXPERIENCE!**

**And lay the foundation for your future welfare by investing in Real Estate in Manchester. We particularly draw your attention to "Greenacres," "In the Heart of the Town," a development of merit that will yield high profits to discriminating investors.**

**Houses and Lots for sale on Easy Terms. Don't fail to pay us a visit during Centennial Week – You'll be surprised.**

**Greenacres is just East of the old Golf Grounds, on East Center Street.**<sup>48</sup>

Note that the focus of Holl's ad is on "investing", "profits", and "easy terms", rather than on factors pertaining to the beauty, comfort, convenience or social desirability of the neighborhood. This suggests that the ad was largely targeting business investors ( "*discriminating* investors" at that) – i.e. builders and real estate buyers who viewed subdivision lots as investment assets, more than as a place to settle into as one's cozy home-sweet-home (as the Wares did in 1950). Yes, that potentially troublesome word, "discriminating", is present in the Centennial Booklet ad, just

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have known that twenty years later, the Michigan Supreme Court, in *Kathan v. Stevenson*, 307 Mich. 485 (1943), would address and reject the argument that advertisements referring to the "high class" nature of a development, when coupled with a set of explicit and recorded physical and minimum price restrictions, could be interpreted as a binding restriction against the sale of a residence to black people. Note also that, in local Manchester usage, the phrase "high class" appears to have been used to describe other things, such as the quality of the "photoplays and vaudeville" acts that could be seen at Manchester's State Theater, as evidenced by an ad in the 1927 Manchester Directory, at p. 71, touting the "high class" of such entertainments. Similarly, The Dewey-Richman Co., a Manchester jeweler and stationer of that time, advertised "high grade correspondence papers" in an ad appearing in the same directory at page 56.

<sup>48</sup> Manchester Centennial Official Program, p. One Hundred and Three

as it was in some of Holl's newspaper ads. But, as discussed above, it's meaning is subject to interpretation, and the absence of racially restrictive covenants in Holl's Greenacres deeds provides some reason to believe that the word was not meant to advertise racial discrimination as a feature of the Greenacres development.

In addition to the special Centennial Booklet, The Town of Manchester also periodically published<sup>49</sup> The Manchester Directory, a book providing comprehensive information about the town's residents, its businesses, industries, public accommodations, civic and cultural life, etc. Edward J. Holl, Robert J. Smith, and Elman and Rolston – three of the town's largest developers, all purchased advertising in the 1927 Manchester Directory. Here is Holl's full page in length, marketing three of his then-current subdivisions:<sup>50</sup>

**MANCHESTER  
A FINE INVESTMENT!**

*"He cuts the Earth  
to suit your taste"*

For more than twenty years we have been selling Manchester to the investing public—and almost without exception everybody who has followed our lead has derived benefit therefrom.

Today Manchester offers more opportunities than ever before to the discriminating purchaser of Real Estate.

We are pleased to offer you the benefit of our experience whether you are looking for a Home,—Building Lot,—Business Site,—Factory Location,—Lakeside Plot, or Farm.

We own and offer you the best home sites obtainable in Manchester at  
**GREENACRES—HOLLYWOOD—AND—NORTHLAND  
TERRACE—All having reasonable restrictions for your  
protection.**

We also Build—Finance—and Insure—

Telephone 560      **EDWARD J. HOLL**  
Suite 22 Orford Building,      Realtor  
and at 36 Pearl Street,      South Manchester, Conn.  
Hartford, Conn.

<sup>49</sup> Through the Price & Lee Company of New Haven, Connecticut, publishers of city directories.

<sup>50</sup> 1927 Manchester Directory, opposite p. 168

The ad makes no direct reference to racial restrictions, but it does mention the “discriminating purchaser” and “reasonable restrictions for your protection”. These phrases, although different from the language used in his Centennial Booklet ad three years earlier, can also be understood as referring to the general, non-racial attributes of the lots being offered, and to considerations other than race that make a purchaser – whether or not an “investor” – a “discriminating” one.

Notably, as mentioned above, when it came down to the documented sale of property, the deeds used by Holl to convey the lots in each of the three subdivisions mentioned in his ad (as well as those used in the rest of his subdivisions) contained only the kind of restrictions that pertain to physical limitations on the placement of buildings, and the minimum value of homes to be built on the lots. It could be argued, of course, that minimum home value restrictions comprised “dog whistles” – subtle messages intended to be interpreted by either white or black buyers – or both – as meaning that blacks need not inquire. And, a minimum house value restriction in Holl’s deeds may in fact have disproportionately kept black buyers away from his developments, simply by pricing the lots and homes above the ability of many black people to pay. On the other hand, as a pure business and investment strategy, minimum house pricing can be seen as a way to have provided assurance to the business-oriented builders purchasing lots that, as long as they kept their building costs under control, they would be able to recoup their investment in the land, plus a reasonable profit, by building and selling homes in the subdivision – to whatever buyer, black or white, could pay the price. While any given builder’s profit margin would be subject to the effects of competitive pricing among all builders, all builders within the subdivision would be assured of a *minimum* price, and could thus manage costs and prices for the homes they built and sold, to meet that competition and achieve profit margins

accordingly. In other words, although the language of this 1927 ad varies from the language of the ad placed in the Centennial Booklet three years earlier, the intent may very well have been the same – i.e. a message to the effect that the profitability for builders (i.e. for *investment-minded* purchasers) buying lots in the subdivision would be rendered more certain by the presence of a minimum house-price restriction. Again, as with his 1923 ad in the Centennial Booklet, Holl’s ad – from its capitalized bold-typed headline to its opening recognition of the “investing public” as its audience -- seems to be directed toward *investors* more than toward home buyers.

The ads placed in the 1927 Directory by Robert J. Smith, and by Elman and Rolston, were both much less wordy than Holl’s. Their ads actually shared the same page in the Directory<sup>51</sup>, and they were relatively simple. The Elman and Rolston ad sparingly displayed the bullet-style phrase “Restricted Home Sites”; Smith made no mention of restrictions at all, but offered a marketing slogan that was in keeping with the general home ownership sentiment that was prevalent in the early decades of the century: “If You Intend To Live On Earth, Own A Slice Of It.”<sup>52</sup> The Smith ad clearly carried no racial messaging at all, while the possible racial segregating intent of the “bullet-like” phrase in the Elman and Rolston ad can be debated in the same manner as can Holl’s mention of “reasonable restrictions”. The deed-writing practice of Elman and Rolston, similar to that of Holl in some of his subdivisions, was to include a minimum house price restriction in the deeds conveying the subdivision’s lots – but no racial restrictions. Smith also followed that deed-writing practice, and yet he made no effort to mention “restrictions” as a

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<sup>51</sup> The ads for these two firms can be found at page 69 of the Directory.

<sup>52</sup> This message is consistent with the federal government’s 1917 campaign encouraging single home ownership as an expression of support for capitalism, and disdain toward communism, in the wake of the Russian revolution. See Rothstein, p. 60. However, since Smith’s ad follows that federal government campaign by some 10 years, it is perhaps more likely that Smith’s allusion to owning a “slice” is a direct counter-punch to Holl, whose motto was “He cuts the Earth to suit your taste”.

desirable feature of his properties in his advertising. It is perhaps impossible to determine whether there was race-based intent or effect in the advertising and conveyancing practices of these developers in the 1920s. Operating within the same markets, they seem to have used approaches that were in some respects similar, but in other respects different. This lack of uniformity in 1927 leaves us certain only about the disparity of practices, and uncertain about their reasons or impacts.

By the time the 1946 Manchester Directory was published, none of the three developers featured in the 1927 Directory were using the advertising space available in that medium. In their place, however, was Alexander Jarvis, AKA Jarvis Realty – another large developer and a rival for home and building lot sales – who placed an ad for three subdivisions: Stonehaven, Pine Forest and Sunnyside. Combined, these three developments represented about 290 residential building lots. The Jarvis ad contained no hint whatsoever of racial considerations. There were no references to any kind of restrictions pertaining to these subdivisions. Rather, they were described as “beautiful”, “delightful” and “desirable”. Who wouldn’t want to check them out? And if buyers indeed found the lots or homes in these developments to be “desirable” enough to purchase, the deeds conveying the properties in all three of these subdivisions (as well as in every other Jarvis development) did NOT contain the unsettling language that Fred Ware discovered in his chain of title at the age of 94. Current owners of Jarvis homes are not troubled by old racist provisions in their properties’ histories.

The real estate developers were not alone in their ability to influence the thinking of potential purchasers of Manchester homes. Among the other possible purveyors of race-messaging was the Manchester Chamber of Commerce.

The Chamber of Commerce described Manchester in 1927 as a place with “...clean living conditions and wide open spaces, where slums and poverty do not exist ...”<sup>53</sup>, an obvious attempt to distinguish the town from other locations burdened by such problems – most probably nearby Hartford. While not explicitly referring to non-white people as those who would be more likely to live in “slums” and suffer under “poverty”, it is likely that the readers of this description would have understood this passage to mean, essentially, that black people did not live in Manchester. According to the 1930 census data for Manchester, that is essentially accurate.<sup>54</sup> The Chamber, given its mission of promoting the town as a good place to live and do business, would not have published this message unless they had deemed it to be a positive one. In both the 1934 and 1946 Manchester Directories, the Chamber, in its description of the town, provided this rather awkward characterization: “Its people, an amalgam of many races and some still apart racially, are imbued with a real civic spirit and devotion to the town.”<sup>55</sup> With the black population of the town having increased to a whopping total of 60 people in 1940<sup>56</sup>, the chamber appears to have deemed it appropriate to recognize the presence of “many races”, and to report that, although the population contained such races, they were segregated.

The difference between Chamber of Commerce messaging and developer messaging is striking. The later (but for some ambiguous references to “restrictions” and “discriminating” buyers) apparently saw no reason for, or profit from, segregated housing messages. The former made explicit references to race, slums and poverty – all in a manner designed to distinguish Manchester from other, less desirable places such as Hartford. The Chamber was unabashed in

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<sup>53</sup> Manchester Directory 1927, following p. 9.

<sup>54</sup> The 1930 Census reports that, out of a total population of 21,973, there were 52 “negro” people in town

<sup>55</sup> Manchester Directory 1934 at p. 12; and Manchester Directory 1946 at p. 14.

<sup>56</sup> United States Census for 1940

its racial messaging; the developers, who undoubtedly were members in the Chamber, were either of a different mind, or content to let the Chamber speak for them.

### **Realtor “Steering”**

In 1924, the National Association of Real Estate Boards (today called the National Association of Realtors) adopted a new version of its Code of Ethics, updating and expanding upon the version originally adopted upon the formation of the organization in 1913. Article 34 of the new Code of Ethics provided:

“A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, **members of any race or nationality**, or any individual whose presence would clearly be **detrimental to property values** in that neighborhood.” (emphasis added)

This unabashed reference – in a Code of Ethics, of all places -- to race and nationality as “clear” influencers of property value, is perhaps the strongest of evidence that under broadly held American social standards of the 1920’s, the segregation of the races was considered to be a correct, defensible and desirable practice. It would, perhaps, be too kind to observe that Article 34’s focus on property values subjugated the civil and human rights of black Americans to the financial interests of real estate buyers and sellers – too kind because Article 34 did not give *less* weight to the rights of racial minorities; it gave those rights *no* weight at all. And, while this Code provision can be defended as appropriate guidance for realtors regarding their duty of loyalty to clients, it can also be viewed as providing ethical cover for the practice called “racial steering” – the guiding of prospective buyers toward or away from certain neighborhoods on the basis of race. Article 34 explicitly condoned and reinforced racial steering, and remained a part of the NAREB’s Code of Ethics from 1934 through 1950. Given the seemingly wide latitude afforded by Article 34 to realtors in this timeframe, it is entirely possible that non-whites looking for a home in Manchester may have been encouraged by the town’s realtors – steered – to look

only in specific, small areas of the town (perhaps nearby the other very few non-whites living in Manchester), or to look outside of Manchester altogether. Without documentary evidence to substantiate the presence and degree of steering, we are left only with (1) evidence that it may well have occurred in Manchester (witness the de minimus number of non-whites among the town's population throughout the entire first half of the century); and (2) an occasional anecdotal report of realtor conversations like the one that Fred Ware recalls, in which he was asked by the realtor about "Jewishness" in a subdivision that restricted use or occupancy by "non-whites" – a question that may have led to "steering" if the Wares had been Jews.

### **What is to be done about racially restrictive covenants?**

As a matter of Federal law, racially restrictive covenants have been addressed forcefully by both the *judiciary* and the *legislature*. *Shelley v. Kraemer* rendered racially restrictive covenants unenforceable, and the Fair Housing Act declared the new creation of such covenants to be illegal. However, because laws concerning land conveyances and the recording of deeds are largely the domain of the states, the federal law has not firmly or comprehensively addressed the *administrative* aspects of dealing with these expressions of racial prejudice and tools of racial segregation -- neither the Supreme Court nor Congress have removed or erased those offensive covenants from the local land records where they reside.<sup>57</sup> Neither have these covenants been effectively and uniformly addressed at the state (as opposed to federal) level. Throughout the country, they remain in our town and city records as an uncomfortable reminder that for many decades, the law validated and supported race-based segregation in housing. And, although they are no longer judicially upheld as a formal means of expressing and implementing the attitudes

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<sup>57</sup>However, in cases like *Mayers v. Ridley*, 465 F.2d 630 (Court of Appeals, Dist. Of Columbia Cir. 1972), the Federal courts have validated requests for equitable remedies in the form of detailed administrative procedures designed to blunt the effectiveness of racially restrictive covenants, despite complaints about the cost and complexity of those measures.



and prejudices from which they were born, they can nonetheless occasionally flash upon the present-day screen, demanding our thought, attention and (perhaps most importantly) action. Apart from feeling a moral and social remorse about the history of racially restrictive covenants, should we care about the physical presence, in old and obscure deeds, of language that seemingly has no current legal effect? Does it matter that -- notwithstanding the Supreme Court's condemnation and Congress's legislative proscription -- within the land records themselves, so many of these expressions of racism stand and endure, unchanged, unchallenged and unrefuted by the people to whose land they attach?

In their book, *Saving the Neighborhood, Racially Restrictive Covenants, Law and Social Norms* (Harvard University Press, 2013), Richard Brooks and Carol Rose begin and conclude their discussion of these racist provisions by recounting the 1986 discovery by the U.S. Senate that Supreme Court Justice William Rehnquist, who was being vetted for confirmation as Chief Justice, owned properties in Arizona and Vermont that were subject to racially restrictive covenants similar to the ones used by the developers of Greenway, Bowers Farm and Lakewood Circle in Manchester.<sup>58</sup> It was a discovery for Justice Rehnquist as well -- he never knew his properties were so burdened until the detailed background check during his confirmation process brought these unsettling restrictions to light. Although the presence of these provisions in Justice Rehnquist's chain of title was embarrassing -- especially so because of Rehnquist's pending confirmation as Chief Justice -- Rehnquist himself had not created them, was unaware of them,

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<sup>58</sup> Rehnquist is not the only Supreme Court justice to have dealt with the presence of racially restrictive covenants in his chain of title. In *Shelley v. Kraemer*, 334 US 1 (1948), the case holding that enforcement of racially restrictive covenants is a violation of the Fourteenth Amendment, Justices Jackson, Reed and Rutledge recused themselves from participation in the decision because they all had such covenants in the chains of title for their homes. For the same reason, Justices Reed and Jackson also recused themselves in *Barrows v. Jackson*, 346 US 249 (1953), the case which extended the *Shelley* decision by holding that the maintenance of a suit for damages by a co-covenantor for breach of such a covenant is likewise unconstitutional. (Justice Rutledge died in 1949, and had been succeeded on the Court by Justice Minton, who authored the Court's 1953 opinion in *Barrows v. Jackson*.)

had not acted on them, and considered them to have no practical meaning or importance. For purposes of his confirmation as Chief Justice, it would appear that the Senate was likewise undisturbed – there was nothing outrageous or disqualifying about the existence of old and legally unenforceable covenants about which Rehnquist had been unaware.

Unlike Rehnquist, many home owners, buyers and sellers will never even become aware of racially restrictive covenants in their chains of title. When the Wares, for example, bought their home in 1950, the covenant affecting their property was only eight years old, but it was already obscured by mere short-hand and obfuscating references to it, both in the deed granted to the Wares, and in the several preceding conveyances of the property. After its initial creation and full-throated appearance in the developer's deed, the blatantly racist prohibition on use by non-whites had been reduced to the unassuming phrase "subject to restrictions of record". When the Wares bought the house, they didn't know about the covenant, and they likewise did not know about the U.S. Supreme Court case, *Shelley v. Kraemer*, 334 U.S.1 (1948), which had, 21 months before they bought the home, held such provisions to be unenforceable. If Fred Ware had not researched his own chain of title nearly 70 years later, he (and his putative successors in title)<sup>59</sup> might never have known about the racist stamp that had stained the creation of their otherwise attractive subdivision. And, with no-one the wiser, nobody might have cared. After all, like Rehnquist, the Wares (and likely many others in Greenway, Bowers and Lakewood Circle) had not created the covenant, had not acted on it, and did not even know it existed. To the extent that any of them so situated might have held racist attitudes or prejudices, any acts or behaviors consistent with those attitudes could not reasonably have been attributed to the virtually invisible and unenforceable covenants in the land records. For these reasons, in the

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<sup>59</sup> See *infra* page 41 et seq. for a discussion of how Fred Ware's successors in title can be made aware of the existence and legal impotency of these covenants.

post-Shelley world, covenants like these can be seen as nothing but legal curiosities that just don't matter. They are a mere relic of the past – of no moment today. Or are they?

### WHY DO WE CARE?

The continued existence of racially restrictive covenants in our land records is an irritant that cannot escape the attention of groups and individuals that care about equality, fairness and inclusion. Like chewing gum stuck on our shoe soles, these covenants stick and click with each step taken toward social justice –an embarrassing and maddening reminder of America's failure to come to grips with the racism that has shaped and permeated much of our history. To put it succinctly, “[A]s a matter of public record, covenants announce[d] a formal legal norm reinforcing social norms of racial exclusion.”<sup>60</sup> That is why it is important to come to grips with these old expressions of racial exclusion and inequality. If we hope to ever achieve the ideals that inform our best aspirations for human fairness, we must begin by examining both our informal practices and behaviors and, importantly for present purposes, the government-sanctioned receptacles of our *formal* acts and deeds – i.e. the statements contained in the local land records themselves.

The reactions of some people, when learning about racially restrictive covenants, are telling evidence that the covenants evoke emotions ranging from shock and surprise to anger or sadness. Professor Jack Donahue of Trinity College and his students have interviewed several West Hartford residents whose properties were made subject to racially restrictive covenants many decades ago. Upon learning about these old covenants, the unanimous reaction of unsuspecting

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<sup>60</sup> Brooks and Rose, *Saving the Neighborhood*, 114

property owners was revulsion. When shown the text of the 1940 covenant that had been created and recorded for her neighborhood, and when asked how it made her feel, one interviewee responded – viscerally and simply – “Pissed off.”<sup>61</sup> Another interviewee, responding to the same question, said “I’m shocked ... I mean I ... This doesn’t even ... I can’t even comprehend it right now. It’s not something I would have expected in Connecticut at all at that time... And it’s kind of appalling to think it’s my neighborhood.”<sup>62</sup> Both interviewees agreed that covenants such as these should NOT be deleted from the public record. Rather they should be retained as reminders of the prejudices that have shaped our history. Said one: “... people should see this, it should be stuck right in their faces really, like, ‘Look at this.’”<sup>63</sup> Ever the pragmatist, Fred Ware himself simply felt that something should be done about these covenants to avoid the potential for confusion, expense and delay in home sales transactions where these covenants show up in the chain of title.

State-level legislative history provides another indication that we cannot ignore the covenants – that we should indeed “look at this”. When state law-makers have proposed laws to condemn, delegitimize or erase the covenants, socially conscious groups are quick to recognize that dealing with our past is an important and positive aspect of affirming fairness principles in the present. Such groups therefore support legislative efforts to nullify the covenants, providing further

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<sup>61</sup> Walsh, Debra. Oral history interview on West Hartford CT by Candace Simpson for the Cities, Suburbs, and Schools Project, July 21, 2011. Available from the Trinity College Digital Repository, Hartford, Connecticut ([http://digitalrepository.trincoll.edu/cssp\\_ohistory/](http://digitalrepository.trincoll.edu/cssp_ohistory/))

<sup>62</sup> Hansen, Susan. Oral history interview on West Hartford, CT and restrictive covenants (with video), by Candace Simpson for the Cities, Suburbs, and Schools Project, July 22, 2011. Available from Trinity College Digital Repository, Hartford Connecticut (<http://digitalrepository.trincoll.edu/cssp/>)

<sup>63</sup> Ibid

evidence that forgetting about or disregarding the old covenants, while perhaps tempting, is not the right thing to do.<sup>64</sup>

## **STATE APPROACHES FOR DEALING WITH RACIALLY RESTRICTIVE COVENANTS**

For all of these reasons, several states have found racially restrictive covenants to be sufficiently troublesome to warrant legislation aimed at their erasure, nullification or repudiation. A few examples illustrate the various approaches toward this objective:

**Oregon** has both a statutory prohibition against the use of racially restrictive language in real estate contracts, deeds or planned community declarations (ORS 93.270(1)(a))<sup>65</sup>, and a statutory process for removing any such language from a property's record title (ORS 93.272). The removal process involves a (no fee) petition by an owner to the county circuit court; a notice to all owners of record; a court hearing, if requested; a finding by the court that the identified language actually violates ORS 93.270(1)(a); and, finally, the entry of a judgment by the court removing that racially restrictive language from the title (presumably by way of recording the court's judgment in the county land records). In 2018, Oregon's legislature revised the law to substitute the use of certified mail in place of the more costly requirement for traditional personal

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<sup>64</sup> See letters from Hacienda Community Development Corp., Fair Housing Council of Oregon, and Coalition of Communities of Color, submitted in support of the recent Oregon law (HB4134), as reflected on Oregon's legislative history website: <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/HB4134>.

<sup>65</sup> ORS 93.270(1)(a) provides: "A person conveying or contracting to convey fee title to real property, or recording a declaration under ORS 94.580, may not include in an instrument for that purpose a provision: (a) Restricting the use of the real property by any person or group of persons by reason of race, color, religion, sex, sexual orientation, national origin or disability."

service of process, hoping to make the notice-giving provision of an already somewhat cumbersome procedure less burdensome for those wishing to rid themselves of racially restrictive covenants in their chains of title.<sup>66</sup> The revision was accomplished with relatively little fanfare – letters of support from three non-government organizations were filed with the legislature, and nobody appeared in opposition.<sup>67</sup> The revised law has been in effect since March 16, 2018, and a recent check-in with Oregon Rep. Julie Fahey, the bill’s sponsor, reveals that she has no data regarding the extent to which the new process is being used, and no good way to track its use.<sup>68</sup> The statute is well-intended, but procedurally burdensome, so it is no surprise that officials from Multnomah County (home of Portland) say that the process “... has never happened here before so there is no process yet on our part.”<sup>69</sup>

**California** statutes also forbid racially restrictive covenants<sup>70</sup> and they provide a procedure for recording in the local land records a “Restrictive Covenant Modification” document<sup>71</sup>, to which is attached a complete copy of the original deed or other document containing the unlawful language, but with the unlawful language stricken.<sup>72</sup> If the County Attorney approves the Restrictive Covenant Modification, it is recorded by the county recorder.<sup>73</sup> In addition to this procedure, organizations and professionals involved in real estate transactions must include either a stamp or a cover page message on all deeds to the effect that any racially restrictive covenants in those documents violate state and federal law, and are void.<sup>74</sup> This two-pronged

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<sup>66</sup> Oregon’s HB4134

<sup>67</sup> See <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/HB4134>

<sup>68</sup> Email from Rep. Fahey to David K. Ware, November 25, 2019

<sup>69</sup> Email from Mike Brown of Multnomah County Recording Department to David K. Ware, December 12, 2019

<sup>70</sup> Cal. Gov. Code Section 12955, the CA Fair Employment and Housing Act

<sup>71</sup> See Exhibit D for a copy of the Restrictive Covenant Modification form used in Sacramento County

<sup>72</sup> Cal. Gov. Code Section 12956.2(a).

<sup>73</sup> Cal. Gov. Code Section 12956.2(b).

<sup>74</sup> Cal. Gov. Code Section 12956.1(b). See Exhibit E, which is the form of cover page notice used in Sacramento County

approach provides intervention both as a matter of general, present-day, daily, routine recording practices, and in a more targeted and individual manner, at the initiative of a specific party wishing to literally strike a blow to specifically identified language already in the record. Unlike the Oregon approach, no judicial procedure is required. Documentary requirements for present-day transactions reside with real estate professionals, and, after relatively straightforward initiation by an interested individual, the administrative responsibility for “correcting the record” rests firmly with the County Records Office and the County Attorney.

Pursuant to legislation in 2018<sup>75</sup>, the State of **Washington** has significantly reduced the complexity of repudiating racially restrictive covenants. In Washington, land owners themselves may record a simple, 1-2 page form with the County Recorder’s office, identifying the racially restrictive language in the chain of title as void.<sup>76</sup> In the words of Spokane County:

“Recording a modification document will provide notice in the land title records that the racially restrictive covenant is void and unenforceable. It will not delete the historic record. The modification document legally strikes, but does not physically erase, the void and illegal discriminatory provisions from the original document.”<sup>77</sup>

This approach nicely addresses several of the difficulties that can hinder efforts to deal with the covenants – it leaves the offending language physically in place so as not to “white-wash” our history; it avoids legal opinions about the particular language at issue, obviating the need for legal review; it states what is already legally correct about the offensive language – i.e. that it is unenforceable; it goes further to state that the offending language is also **VOID**; and it provides the imprimatur of a sanctioned and officially recorded statement so that land owners (and all who

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<sup>75</sup> State of Washington, 65<sup>th</sup> Legislature, Regular Session, Substitute House Bill 2514

<sup>76</sup> RCW 49.60.227(2)

<sup>77</sup> <https://www.spokanecounty.org/4272/Restrictive-Covenant-Modification>

may take an interest in their properties) can take social satisfaction in recognizing and repudiating the sentiments reflected in the covenants, as well as their effectiveness. If this approach has a weakness, it is that any landowner – skilled or unskilled – can make their own judgment about a given set of words in an old deed, and there is no apparent “check and balance” or “quality control” review to assure that landowners have properly identified void and unenforceable language in their chains of title. This may be a risk that is simply worth taking, given that (1) the procedure “strikes” (not physically, but by operation of the statute) only language which indeed is void and unenforceable, and (2) it is hard to imagine serious claims or disputes arising from less-than-perfect use of the procedure.

### **Setting the Record Straight – A Proposed Solution for Denouncing Racially Restrictive Covenants in Connecticut**

Like the other states discussed above, **Connecticut** has fair housing statutes that currently forbid statements such as the racially restrictive covenants of the past.<sup>78</sup> But, unlike those states, Connecticut does not have a statutory process specifically aimed at invalidating, removing or repudiating old, racially restrictive covenants, and no attempts appear to have been made to pass such a law. Nevertheless, because the vast majority of these covenants are, by now, so old, there is a way to use two existing statutes: (1) Connecticut’s “Marketable Title” statute, together with (2) a Connecticut statute authorizing the recording of affidavits, to identify these odious covenants in the land records and -- for many of them -- to label any claims based on them as NULL and VOID. The coupling of these statutes for this purpose may be unusual<sup>79</sup>, but in the absence of a statutory process aimed directly at these covenants, this approach may provide

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<sup>78</sup> See Conn. Gen. Stat. Section 46a-64(a)(3) and (7)

<sup>79</sup> The author believes, but, without literally searching the land records of all 169 Connecticut towns, cannot confirm, that the approach described herein is a novel approach for dealing with racially restrictive covenants in Connecticut.



Connecticut property owners with a tool for doing what the supporters of Oregon's recent legislation find to be so important – i.e. identifying and refuting the formal expression of historic social norms that we today reject. In Connecticut, here is how it would work:

The first statute at play is 47-33e, part of Connecticut's "marketable title" statute. Marketable title statutes establish a backward-looking period in the ownership history of lands, beyond which the claims of other parties are not recognized. This cutting off of older claims provides assurance that a current owner has a clear right to sell their property free of concerns that some ancient or dormant claim might surface now or later to interfere with the quiet enjoyment of the land. Those long-ago and tenuous claims are deemed so old as to predate the "root of title" – the foundation for establishing good title -- and they are thus accorded no legal weight or importance.

In Connecticut, the look-back period is 40 years. The "root of title" for any given property is a transaction that occurred at least 40 years ago – a transaction on which the current owner of the property bases their present day claim of good ownership of that property. Unless certain statutorily enumerated events<sup>80</sup> have occurred since that "root of title" transaction, a present owner with an unbroken chain of title for at least 40 years is said to have "marketable title" – i.e. title that is good against the claims of others. To effectuate this blissful position of certainty

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<sup>80</sup> Connecticut General Statutes Section 44-33d lists several circumstances that comprise exceptions to the marketable title status conferred by 47-33e. The most relevant of these circumstances for the purposes of this paper is the repeating of a racially restrictive covenant in a later deed. (See 44-33d(1)). If the old racially restrictive covenant is repeated in detail during the 40-year "look-back" period, it is rescued from the nullifying effect of the statute. However, as a sort of "exception to the exception", in order for the covenant to escape nullification, the mentioning of the covenant must indeed be specific or detailed – i.e. it must refer to the volume and page number where the old covenant resides, and must not merely refer in general to "restrictions of record". Note that the reference in Fred Ware's 1950 deed was of the later type – i.e. it was a general reference to "restrictions of record", which would not suffice to resurrect the original, detailed restrictive covenant contained in the 1942 deed from Greenway, Incorporated. For a comprehensive discussion of the marketable title statute, including the requirement that references to older transactions must be made explicitly by volume and page number in order to qualify as an exception under 44-33d(1), see the article by Jonathan M. Starble in Volume 81 of The Connecticut Bar Journal, 2007, Page 369, especially page 384, et seq.

about the strength of one's title, Connecticut General Statute Sec. 47-33e provides that claims or interests arising out of transactions pre-dating the date of the "root of title" are NULL and VOID. (not just "unenforceable", but "null and void" – a more forceful and mortal blow!)

By operation of Section 47-33e, and without any further process or action, claims based on many of the old racially restrictive covenants are already null and void.<sup>81</sup> Unfortunately, nothing in the local land records explicitly says so. Consider, for example, the covenant in Fred Ware's chain of title. That covenant was created and recorded in the land records in 1942, and nothing appears in the land records subsequent to the creation of the covenant that would change or refute it.

So, what could Fred do? He bought the property in 1950 – more than 40 years ago. That purchase is his "root of title" – i.e. it is the transaction on which he today relies to establish his good title. Any present-day or future claim that only white people may use or occupy Fred's property would be based on the creation of the covenant in 1942. Because the creation of the covenant in 1942 pre-dates the "root of title" in 1950, claims or interests arising from that covenant are NULL and VOID. The statute says so. And yet, absent the recording of some other instrument, the land records themselves do *not* say so -- one must be aware of the marketable title statute to know it.

This is where the second existing statute – Conn. Gen. Stat. Section 47-12a – comes into play. This statute allows the recording of affidavits concerning, *inter alia*, "the happening of any condition or event which may terminate an estate or interest."<sup>82</sup> Certainly the nullification and voiding of interests arising from the old covenants (per Conn. Gen. Statutes Section 47-33e)

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<sup>81</sup> Moreover, courts following Restatement Third, Property (Servitudes) Section 3.1 Com. d, would find the covenant itself to be invalid, because "... a servitude that cannot be enforced by a state court without violation of the Fourteenth Amendment violates public policy".

<sup>82</sup> Section 47-12a(b)

qualifies as such a happening. Therefore, an affidavit stating the facts that support the defeat of those interests is proper, and will serve the purpose of 47-12a, which is, at its core, to help establish title to real estate. Exhibit F is a draft of an affidavit that could be recorded by Fred Ware to put the world on notice that interests and claims created by the old racially restrictive covenant in his chain of title is, in fact, null and void.

Admittedly, the use of marketable title analysis and affidavit filing as a means to address racially restrictive covenants in Connecticut, as described above, is not ideal. First, unlike the effect of California and Washington statutes, the Connecticut affidavit approach would not declare the old covenants *themselves* to be null and void – it would defeat only the claims and interests *arising from* such covenants. This may seem like a difference of form rather than substance, but a nullification of the old covenants themselves is at least arguably a more forceful legal statement than a nullification of claims that may arise from them. Second, each Connecticut person seeking to repudiate the covenants must perform their own “root of title” analysis, making certain, for example, that explicit references to the original covenants within the 40-year look-back period have not rescued claims based on those covenants from the voiding and nullification power of 47-33e.<sup>83</sup> Third, there is a remote risk that hyper-critical readers of such affidavits might contend that a statement to the effect that the old covenants are null and void amounts to a “legal conclusion”, rather than to a statement of “fact”, and that 47-12a authorizes only the later, not the former.<sup>84</sup> Fourth, there is a potential “catch 22” inherent in the recording of an affidavit calling attention to the racially restrictive covenant, in that an explicit repetition of the covenant in the affidavit itself might be seen as the kind of event that removes the covenant

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<sup>83</sup> See Footnote 80, *supra*.

<sup>84</sup> This argument would not only be wrong, but it would be very unlikely to ever arise, since the purpose for raising it would be an attempt to enforce the old covenant, and that attempt would clearly be blocked by *Shelley*.

from the protection of the Marketable Title statute.<sup>85</sup> Finally, affidavits filed under this approach would require greater individual tailoring than forms used in other states, making them less “user-friendly”, and rendering uniformity and simplicity harder to achieve. For all of these reasons, a specific and targeted Connecticut statute addressing racially restrictive covenants would be preferred, and the General Assembly should be encouraged to craft and pass such a law, learning from the legislative efforts of states like California, Oregon and Washington. In the meantime, affidavits such as that shown in Exhibit F can be prepared and recorded as a way to repudiate the covenants “where they live” – in the local land records of any Connecticut town.

### **Viewing History Through the Land Records**

Two pivotal changes were occurring and reflected in Manchester’s land records when the Wares bought their Greenway home in February of 1950. One change was technological, and the other was legal.

The change in technology was the introduction of document imaging. A mere two months after the Wares’ deed was “recorded” at Volume 207, Page 62, Manchester discontinued the practice of transcribing deeds – i.e. making typewritten land record pages to contain the essential information included on original deeds. On April 15, 1950, the very first image of an original deed was recorded in Manchester in Volume 211, Page 1. From that point forward, the Town Clerk’s office was relieved of the painstaking task of accurately capturing each word, number and punctuation mark of sometimes complex deed provisions and property descriptions.

Document-imaging technology has both streamlined the recording process, and eliminated the risk of clerical errors in the transcription of information from the deeds to the land record pages.

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<sup>85</sup> See discussion in Footnote 80, *supra*. The possibility of such an argument is the reason why the sample affidavit at Exhibit F states that the covenant in question was *already* null and void prior to the filing of the affidavit. The theory is that explicit repetitions of the covenant AFTER the statute has taken effect have no impact – the horse is already out of the barn!

The Wares were among the last in Manchester to have their property purchase recorded by transcription.

The legal change that reveals itself in February of 1950 is the introduction by the FHA of new standard language addressing the racially restrictive covenants which are the subject of this paper.<sup>86</sup> When the 1948 *Shelley* decision blocked any further enforcement of existing covenants, it did not erase the covenants from the land records, and it did not specifically instruct the FHA or the VA to discontinue using race as a risk-determinant in lending and insuring practices. A charitable characterization of the FHA's reaction to the ruling is that it caused confusion within the agency about whether and how to respond. As Rothstein points out<sup>87</sup>, the nearly immediate response to *Shelley* by the FHA's commissioner, Franklin D. Richards, was to the effect that the decision would not impact the FHA. Richards averred that *Shelley* "would in no way affect the programs of this agency", and that the agency "would make no change in our basic concepts or procedures".<sup>88</sup> A more damning characterization of FHA's reaction is that it was hostile -- that it rejected the court's decision, believed there were legitimate ways to continue using race as a financial risk factor, and only begrudgingly and belatedly conformed to *Shelley*'s message in December of 1949, by declaring both that FHA would no longer condone racially restrictive covenants, and that this new policy would take effect on February 15, 1950.<sup>89</sup> That date --

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<sup>86</sup> The participation of the FHA in racial profiling and housing segregation practices is briefly described at pages 8-9, *supra*, and is well documented. See, generally, Richard Rothstein, *The Color of Law, A Forgotten History of How Our Government Segregated America* (Liveright Publishing Corporation, 2017).

<sup>87</sup> Rothstein, 86

<sup>88</sup> Rothstein, 86

<sup>89</sup> Rothstein, 87. Rothstein also points out, at p. 88, that it was not until President Kennedy issued Executive Order 11063, in 1962, ostensibly prohibiting discrimination in the sale, leasing, rental, etc. of properties owned, operated by the federal government or provided with federal funds, that the FHA more willingly complied with anti-discrimination mandates. The E.O. was, after all, issued from the very top of the *executive* branch of the government, rather than from the very top of the *judicial* branch. However, for a view of the weaknesses of E.O. 11063 and the FHA's continued reluctance to more fully embrace anti-discrimination in housing programs until the third (*legislative*) branch of government -- Congress -- finally enacted the Fair Housing Act in 1968, see James P. Chandler, *Fair Housing Laws: A Critique*, 24 Hastings L.J. 159 (1973).

February 15, 1950 – happens to fall in the very month when the Wares bought their house and signed their mortgage. The Wares’ VA mortgage from Hartford Federal Savings and Loan Association, signed on February 23, 1950, did not deviate from the thousands of similar standard-form mortgages previously written by FHA/VA lenders. However, on the **very same day** that the Wares took out their *VA-backed* loan, the *FHA* mortgages recorded in Manchester, beginning with a mortgage granted on that day to The Meriden Savings Bank, began for the very first time containing the following provision:

“ The grantors covenants [sic] and agree that so long as this mortgage and the said note secured hereby are insured under the provisions of the National Housing Act, they will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgage property on the basis of race, color or creed. Upon any violation of this undertaking, the grantee may, at its sole option, declare the unpaid balance of the debt secured hereby immediately due and payable”<sup>90</sup>

This new provision began appearing regularly as a typed-in, additional clause on the standard mortgage forms, making it conspicuous to even the casual observer. After nearly two years of considering the *Shelley* decision, the FHA had apparently decided that if race-based deed restrictions were unenforceable under the 14<sup>th</sup> Amendment, they were also sufficiently improper to justify a mortgage default and an acceleration of the mortgage loan, if created by the borrower. This is a stunning reversal of thinking for the government agency that had previously viewed the existence of racially restrictive covenants as a positive factor when evaluating the credit risk for

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<sup>90</sup> See Manchester Land Records, Vol. 205, Page 595, for the very first mortgage in Manchester in which this new provision was type-written onto the standard, pre-printed mortgage form. From that point forward, as each lending institution made new FHA loans, the new provision was added to the standard form. Middletown Savings Bank, for example, began including the provision on February 27, 1950 (Vol. 205, Page 615). It appears that FHA lenders picked up on the practice more quickly than VA lenders. It wasn’t until June of 1950 that VA mortgages with The Savings Bank of Manchester began including the new provision, but at that time VA mortgages with Hartford Federal Savings and Loan Association were still not using the new clause.

its loans. While it is beyond the scope of this paper, it would be interesting to discover whether the adoption of this new mortgage provision was motivated by a social/legal change of heart prompted by *Shelley*, or by a financial analysis arising out of that decision that assigns greater credit risk to borrowers who create unenforceable race-based restrictions. (It would also be interesting to know whether any FHA and VA borrowers defaulted on and suffered acceleration of their loans due to the execution or filing of a racially restrictive instrument in violation of this new mortgage provision.)

Whatever the rationale for the FHA's change of policy, it was manifested in Manchester's Land Records, by chance, on the very same day that the Wares bought their new home in February of 1950. On that day, it never occurred to the Wares that their property had been subject to a race-based restriction formerly encouraged by the FHA and VA; or that those agencies would seemingly reverse their support for such restrictions, even as the Wares signed their names to their mortgage; or that, in a matter of weeks after their own documents were recorded by transcription, a brand new technology would begin to capture the exact content of deeds and mortgages. All of these matters become visible only by examining the day-by-day history documented in the local Land Records.

### **Concluding Thoughts**

At Manchester Town Hall, there are five entire volumes of land records devoted exclusively to the recording of FHA mortgages granted between April 1941 and September 1946.<sup>91</sup> As a rough and conservative estimate, there may be as many as 2700 FHA mortgages represented in these volumes alone, and there are likely more than a thousand more of them among other earlier- and later-dated mortgage volumes (with later-dated volumes also including VA

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<sup>91</sup> Manchester Land Records Volumes 144, 153, 154, 161 and 165.

mortgages). Since the total number of race-restricted building lots in Greenway, Lakewood and Bowers combined is only 248, it is empirically clear that, although the FHA and VA considered the presence of racial restrictions to bode favorably as a lending risk factor, the inclusion of racially restrictive covenants in deeds was not a requirement for obtaining FHA/VA financing. It is also clear that the existence of such covenants did not depend on the relative “fanciness” of the town’s subdivisions, as measured by parameters such as the minimum cost of finished homes, the minimum square footage of house footprints, minimum lot frontages, and uniqueness of architectural features. Indeed, Greenway, Bowers and Lakewood represent a mini-spectrum of “fanciness” illustrating that racially restrictive covenants were used in neighborhoods that were quite modest (Greenway), not quite as modest (Bowers) and relatively “upscale” (Lakewood). Note, for example, that the minimum house value restriction for Lakewood was \$6,000 – twice the \$3,000 value required in Greenwood.

If racially restrictive covenants were not required for obtaining financing, and if their use was not confined to only one end of town or one end of the house value spectrum, why did a few of Manchester’s developers nonetheless use these covenants? An obviously tempting answer is that they were motivated by racism, profit-making, or a combination of the two. That is, developers might have personally harbored racial prejudice or animus, and might have projected those sentiments into their projects. Or, they might have been personally indifferent to questions concerning race, albeit complicit in pro-segregation practices. That is, they might have concluded, as a cold and calculated matter of business risk (even though the majority of developers in town, including the largest of them, did not so conclude) that the best way to assure robust new lot/home sales was to include a covenant that might attract greater numbers of potential buyers at a time in our history when racial segregation was seemingly so widely



accepted. Or, these developers might have been, to one degree or another, of both minds; and their intent to exclude black people from their developments, may have been, accordingly, more or less weighty and specific. Unfortunately, the Land Records contain only the covenants themselves – they reveal nothing about motive or intent.

Recall that the census data for 1950 and earlier decades reflect Manchester as a town where only .2% of the population was non-white. Racially restrictive covenants contributed to this demography by explicitly excluding non-whites from a few developments. But, given the small number of homes/lots subject to those restrictions, other forces must have been at play – forces such as racial steering by the town’s realtors, public messaging that was unwelcoming to blacks, black preferences for housing, zoning code impacts, and the general economic disadvantage of blacks in the housing market. Through some combination of these and other forces, Manchester remained a largely segregated town well beyond the middle of the century.

The 2010 census data paints a picture of Manchester as a much more inclusive place than it was throughout the 20<sup>th</sup> century. As of that year, almost ten years ago now, approximately 29% of the town’s population was non-white <sup>92</sup>, and that percentage is likely to have grown during the past decade. That change was a long time in the making, and it was hindered in part by racially restrictive covenants such as the one in Greenway, where we began this discussion. So, let us return to Greenway:

If the intent of the Greenway covenant was to assure the long-term exclusion of non-whites from the neighborhood, that result, while it may have been initially achieved, has not been sustained. Seventy years after the covenant’s creation, Fred Ware’s current neighbors include two African-American homeowners whose properties abut his to the North; and two Hispanic

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<sup>92</sup> 2010 U.S. Census. Non-white includes African Americans, Asians, Hispanics or Latinos, etc., all of whom would presumably have been excluded under the covenants discussed in this paper.

families living in homes on the two lots to the West. The commercial business next door to Fred on the East was recently owned by a Cambodian family, who also lived in a Greenway home. Fred doesn't know all of the others who currently live in Greenway, but judging by the racial makeup of his immediate neighbors, it would not be surprising to find that the entire neighborhood is racially integrated today. Fred himself is white, and 94 years old at present. He enjoys knowing and interacting with his Greenway neighbors and friends.

Still, the present-day reality of a less segregated Manchester does not give us permission to deny, excuse, justify or forget the racial segregation and inequalities that have shaped our history, or the attitudes and practices that have fueled their stubborn persistence. And it should not deter us from addressing the racially restrictive covenants that continue to haunt our land records.

## EXHIBIT A – Greenway Covenants

- ~~THE FOLLOWING COVENANTS, CONDITIONS AND RESTRICTIONS SHALL APPLY TO ALL LOTS IN THE TRACT OF LAND KNOWN AS GREENWAY PARK, BEING A SUBDIVISION OF LAND IN THE CITY OF CHICAGO, ILLINOIS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:~~
- A. All lots in the tract shall be known and described as residential lots. No structures shall be erected, altered, placed, or permitted to remain on any residential building plot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars.
- B. No building shall be erected, placed, or altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location of such building have been approved in writing by a majority of a committee composed of Lawrence A. Converse, William R. Tinker, Jr., and Lawrence A. Converse, Jr., or their authorized representative, for conformity and harmony of external design with existing structures in the subdivision and as to location of the building with respect to property and building setback lines. In the case of the death of any member or members of said committee, the surviving members or member shall have authority to approve or disapprove such design or location. If the aforesaid committee or their authorized representative fails to approve or disapprove such design and location within 30 days after plans have been submitted to it, or if no suit to enjoin the erection of such building, or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required. Said committee or their authorized representative shall act without compensation. Said committee shall act and serve until January 1, 1946, at which time the then record owners of a majority of the lots which are subject to the covenants herein set forth may designate in writing duly recorded among the land records their authorized representative who thereafter shall have all of the powers, subject to the same limitations, as were previously delegated herein to the aforesaid committee.
- C. No building shall be located nearer to the front lot line or nearer to the side street line than the building setback lines shown on the recorded plat. No building shall be located nearer than 8 feet to any side lot line except that the side line restriction shall not apply to a detached garage or other outbuilding located 75 feet or more from the front lot line.
- D. No residential structure shall be erected or placed on any building plot, which plot has an area of less than 7200 square feet nor a width of less than 60 feet at the front building setback line.
- E. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
- F. No persons of any race other than the white race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.
- G. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- H. No dwelling costing less than \$3000 shall be permitted on any lot in the tract. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 600 square feet in the case of one-story structure nor less than 524 square feet in the case of a one and one-half, two, or two and one-half story structure.
- I. An easement is reserved over the rear five feet of each lot for utility installation and maintenance.
- J. The Seller, for itself, its successors and assigns, covenants with the Buyer herein ~~his~~ heirs and assigns, that it will incorporate the within Protective Covenants, in each deed of a lot conveyed in said tract known as "Greenway Park."
- K. These covenants are to run with the land and shall be binding upon all the parties and all persons claiming under them until May 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.
- L. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein it shall be lawful for any other person or persons owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.
- M. Invalidity of any one of these covenants by judgment or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

## EXHIBIT B – Lakewood Circle Covenants

The above described premises are conveyed subject to the following Protective Covenants:

- A. All lots in the tract shall be known and described as residential lots. No structures shall be erected, altered, placed, or permitted to remain on any residential building plot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars.
- B. No building shall be erected, placed or altered on any building plot in this subdivision until the external design and location thereof have been approved in writing by the owner, her successors or assigns: Provided, however, that if the owner, or her agent, fails to approve or disapprove such design and location within thirty days after such plans have been submitted to her or if no suit to enjoin the erection of such buildings or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required. This covenant shall prevail for ten years from May 1, 1940. After May 1, 1950, approval of the external design and location and all alterations shall be referred to a neighborhood committee, elected by a majority of the owners of lots in Lakewood Circle.
- C. No building shall be located nearer to the front lot line or nearer to the side street line than the building setback lines shown on the recorded plat. No building shall be located nearer than 15 feet to any side lot line except that the side line restriction shall not apply to a detached garage or other outbuilding located 75 feet or more from the front lot line.
- D. No residential structure shall be erected or placed on any building plot, which plot has an area of not less than 12000 square feet nor a width of less than 80 feet at the front building setback line.
- E. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
- F. No persons of any race other than the white race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.
- G. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- H. No dwelling costing less than \$6000 shall be permitted on any lot in the tract. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 750 square feet in the case of a one-story structure nor less than 600 square feet in the case of a one and one-half, two, or two and one-half story structure.
- I. An easement is reserved over the rear five feet of each lot for utility installation and maintenance.
- J. The grantor herein, for heirs and assigns, covenants with the grantee herein, heirs and assigns, that he will incorporate the within Protective Covenants in each deed of a lot conveyed in said tract known as "Lakewood Circle."
- K. These covenants are to run with the land and shall be binding on all the parties and all persons claiming under them until May 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.
- L. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.
- M. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.
- N. If the grantee herein, his heirs or assigns, desires to sell the above described land, he shall first offer the same for sale to all the other owners of lots in said "Lakewood Circle" Tract, who shall have thirty (30) days in which to either accept or reject said offer.

## EXHIBIT C

### MANCHESTER SUBDIVISIONS BY EDWARD J. HOLL

<u>Subdivision Name</u>	<u>Number of Lots</u>
Homestead Park	327 (Includes Add'n No. 2)
Pinehurst	167 (Includes Add'n No. 1)
Fairview	49
Forest Heights	40
Greenhurst	67 (Includes Add'n No. 1)
Homestead Park Addn.	120
Orford Park Tract	105
Clairmont	47
Greenacres	247
Hollywood	98
Bluefields	232 (Includes Add'n No. 1)
Westview Terrace	12
Middle Turnpike & Parker	12
Hemlock, Anderson, Liberty	15
Morningside	6
Rockledge	269
Northland Terrace	65
TOTAL	1,878

## EXHIBIT D

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Restrictive Language.docx revised 01-01-2012

# EXHIBIT E

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO  
NAME

MAILING  
ADDRESS

CITY, STATE  
ZIP CODE

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## Restrictive Covenant Modification

I (We), \_\_\_\_\_ have an ownership  
interest in the property located at, \_\_\_\_\_  
that is covered by the document described below.

The following referenced document contains a restriction based on race, color, religion, sex, gender, gender  
identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information,  
national origin, source of income (as defined in subdivision (p) of Section 12955 of the Government Code), or  
ancestry that violates federal fair housing law and that restriction is void.

Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose  
of eliminating a restrictive covenant as shown on page(s) \_\_\_\_\_ of the document on  
\_\_\_\_\_ in book \_\_\_\_\_ and page \_\_\_\_\_, or as instrument number  
\_\_\_\_\_ of the Official Records of the County of Sacramento. Attached hereto is a complete  
copy of the original document containing the unlawfully restrictive language with the unlawful language  
stricken through.

This modification document shall be indexed in the same manner as the original document pursuant to  
Government Code Section 12956.2(c).

The effective date of the terms and conditions of this modification document shall be the same as the  
effective date of the original document referenced above.

_____ (Signature)	_____ (Date)	_____ (Signature)	_____ (Date)
_____ (Printed Name)		_____ (Printed Name)	

# EXHIBIT F

## DRAFT

### AFFIDAVIT CONCERNING RACIALLY RESTRICTIVE COVENANT

The purpose of this Affidavit is to demonstrate that a restrictive covenant limiting the use or occupancy of the land described herein to members of the white race, recorded in the Manchester Land Records at Volume 147, Page 463, July 30, 1942, is, and prior to the date hereof, has been, NULL and VOID.

1. My name is Frederick D. Ware. I have knowledge of the facts herein.
2. As of this date, I am the person appearing by the record to be the owner of the following described property in Manchester, Connecticut, the title to which may be affected by facts stated herein:

All that certain piece or parcel of land, together with the buildings and other improvements located thereon, situated in the said town of Manchester and known and designated as Lot Number Thirty-five (#35) as shown on a map or plan entitled "Map of "GREENWAY PARK" Manchester, Conn., Greenway Incorporated Owner and Developer, Scale 1"= 100' Aug. 31, 1940, Hayden L. Griswold, C.E." which map or plan is now on file in the Town Clerk's office, in the said Town of Manchester, reference to which is hereby made for further description.

Said Lot #35 is bounded NORTHERLY by Lot #18, as shown on said map or plan, Eighty-two (82) feet, more or less; EASTERLY by Lot #17, as shown on said map or plan, Sixty-two (62) feet, more or less, and by land now or formerly of Edmund L. Matson, Forty-six and 8/10 (46.8) feet; SOUTHERLY by land now or formerly of Edmund L. Matson, Thirty-seven and 2/10 (37.2) feet, and by Green Road, Seventy and 58/100 (70.58) feet; and WESTERLY by lot #34, as shown on said map or plan, One Hundred Twenty (120) feet.

Said land consists of a portion of the same premises conveyed to the grantor herein by Henry E. Nelligan, et al, by Warranty Deed dated August 2, 1949, and recorded in the Manchester Land Records, in Volume 199, Page 223.

3. The effective date of the root of title for the above-described land is February 23, 1950.



4. I make this Affidavit by the authority of Subsection (b) of Connecticut General Statutes Section 47-12a, to state facts relating to the happening of a condition or event which may terminate an estate or interest.

5. The condition or event which may terminate an estate or interest in the above-described property is the enactment of Section 47-33 of the Connecticut General Statutes in 19\_\_.

6. Section 47-33 provides as follows:

“Prior interests void. Subject to the matters stated in section 47-33d, such marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether those interests, claims or charges are asserted by a person sui juris or under a disability, whether that person is within or without the state, whether that person is natural or corporate, or is private or governmental, are hereby declared to be NULL AND VOID.”

7. The following interest, claim or charge pertaining to the above-described property depends upon the conveyance by warranty deed of such property in 1942, prior to the effective date of the root of title for this property: “No person of any race other than the white race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.”

8. The above-quoted interest, claim or charge has therefore been declared null and void by said Section 47-33e.

Witnesses:

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Date:

Signature of Affiant:

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Date:

State of Connecticut

County of \_\_\_\_\_ ss. \_\_\_\_\_ (Town/City)

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_ (name of notary), the undersigned officer, personally appeared \_\_\_\_\_ (name of individual or individuals), known to me (or satisfactorily proven) to be the person(s) whose name(s) \_\_\_\_\_ (is or are) subscribed to the within instrument and acknowledged that \_\_\_\_\_ (he, she or they) executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

\_\_\_\_\_

(Signature of Notary Public)

Date Commission Expires: \_\_\_\_\_

\_\_\_\_\_

(Printed Name of Notary)