

INDIAN FIELDS HOMES ASSOCIATION DECLARATION

THIS DECLARATION, Made on this *3rd* day of *October*, 19*51* *Page 362*

by J. C. Nichols Company, a corporation of Kansas City, Jackson County, Missouri, which corporation is the owner of all of the lots shown on the recorded plat of Lots 1 to 14, both inclusive, in Block 1, Block 2, Block 3, Lots 1 to 6, both inclusive, in Block 4, Lots 1 to 10, both inclusive, in Block 5 and Lots 1 to 9, both inclusive, in Block 12, of Indian Fields, which plat was recorded on October 1, 1951, in the office of the Register of Deeds of Johnson County, Kansas, in Plat Book 15, at Page 15,

WITNESSETH: THAT WHEREAS, J. C. Nichols Company is now developing said Indian Fields for high-class residence purposes, and it is its desire to continue the development of certain parts of such land and other land in this vicinity for such purposes, and for the creation and maintenance of a residence neighborhood possessing features of more than ordinary value to a residence community; and

WHEREAS, In order to assist it and its grantees in providing the necessary means to better enable it and its grantees to bring this about, J. C. Nichols Company does now and hereby subject all of the lots shown on the aforesaid plats of Indian Fields to the following covenants, charges and assessments, subject to limitations hereinafter set forth.

DEFINITIONS OF TERMS USED.

The term "district" as used in this agreement shall mean, unless and until extended as hereinafter provided, all of the lots shown on said plat of Indian Fields. If or when, other land shall, in the manner hereinafter provided for, be added to that described above, then the term "district" shall thereafter mean all land which shall from time to time be subjected to the terms of this agreement, including any future modification thereof. The term "improved property" as used herein shall be deemed to mean a single tract under a single ownership and use and on which tract a residence has been erected or is in the process of erection or on which any other building not in violation of the restrictions then of record thereon is erected or is in the process of erection thereon. Any such tract may consist of one or more contiguous lots or parts thereof. Any other land covered by this agreement shall be deemed to be vacant and unimproved.

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

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

#### PUBLIC IMPROVEMENTS UNDER MANAGEMENT OF COMPANY OR ASSOCIATION.

All public improvements upon and to the land in the district, or improvements in public places shall be under the management and control of the Homes Association by whatever name it may be designated as hereinafter provided, as trustee; an association to be composed of the owners of the real estate in said District, which Association may or may not be incorporated as the members thereof may hereafter provide. But whether it is incorporated or not, it is understood and agreed that the members of the Association shall be limited to the owners of the land within the boundaries of the district as it exists from time to time. It is provided, however, that such management and control of said improvements shall at all time be subject to that had and exercised by Mission Township, by Johnson County, and by the State of Kansas, or any of them. And in addition thereto, it shall have such further powers and duties as are hereinafter set forth, all of which may be exercised or assumed at the discretion of the Association.

The Association shall be the sole judge of the qualifications of its members and of their rights to participate in its meeting and proceedings.

#### POWERS AND DUTIES OF THE ASSOCIATION AS TRUSTEE.

The Association shall have the following powers and duties whenever in the exercise of its discretion it may deem them necessary or advisable, provided that nothing herein contained shall be deemed to prevent any owner having the contractual right to do so, from enforcing any building restrictions in his own name.

FIRST: To enforce, either in its own name or in the name of any owner within the district, any or all building restrictions which may have been heretofore, or may hereafter be imposed upon any of the land in said

district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any such proceedings shall, however, be paid out of the general fund of the Association as herein provided for.

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

THIRD: To care for, spray, trim and protect and replant trees on all streets and in other public places where trees have once been planted, except where otherwise provided for; to care for, protect and replant shrubbery and resow grass in the parks which are in the streets or in the parks set aside for the general use of the owners of the district, or to which such owners have access and the use thereof.

FOURTH: To mow, care for and maintain parkings in front of vacant and other property; to cut and remove weeds and grass from such parkings or other places, and to cut and remove weeds and grass from other vacant property; to pick up and remove therefrom, loose material, trash and rubbish of all kinds, and to do any other things necessary or desirable in the judgment of the officers of said Association to keep such vacant and unimproved property neat in appearance and in good order.

FIFTH: To provide such lights as the Association may deem advisable on streets, parks, parkings, gateways, entrances or other features, and in other public or semi-public places.

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

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

and the use thereof; and also to provide for the maintenance of natural water courses within the district.

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

NINTH: To exercise such control over streets as may be within its powers and as it may deem necessary or desirable. To issue permits for plumbers or other parties to make, cut or excavate in streets when necessary for installation of utilities and to accept bonds or deposits for the repairing of such cuts. Said Trustee shall have full authority to prevent any excavation or cuts in streets without first requiring a reasonable deposit to insure the repair and future maintenance of such repairs. It being further understood that the Trustee may reserve the full right to make any or all excavations in streets; or the right to refill any excavation; or the right to repave any cuts, or the right to repair any damages, in its opinion, to any improvements in the streets, and pay the cost of the same out of the deposits made as above provided; subject at all times to such control of county or other proper officials as may have jurisdiction over streets.

TENTH: To repair, oil, maintain, repave and reconstruct paved streets or roads, lanes and pedestrian ways, and to clean streets, gutters, and sidewalks and pedestrian ways.

ELEVENTH: To erect and maintain signs for marking of streets.

TWELFTH: To provide means for furnishing water, gas and electricity for the purposes of heating, power and lighting, and other utilities to the owners within said district, and for such purposes to purchase water, gas, electricity or heat or power from other cities, or from other corporations, or private individuals and to distribute the same to the owners of the property within said district, and to provide means for furnishing transportation to the owners in said district, and to fix the charges to said owners for such services rendered and to collect for the same from such owners.

THIRTEENTH: To acquire or construct sewers or other methods of the disposal of sewage, and reconstruct, maintain or repair them after they have been once acquired or constructed, and to accept and exercise such rights in or authority over same and rights-of-way for the same within or without the district as it may hereafter acquire and as may be reasonably necessary to

properly serve and protect the real estate in the district. It is expressly understood and agreed that no part of the money in the general fund shall be used to construct lateral sewers or connections with the sewers which shall not be for the general use of all of the property in the district draining into such sewers unless such sewers or connections be built for the purpose of supplementing, or increasing the capacity of or replacing those sewers and connections previously built.

FIFTEENTH: To reimburse the State, County or Township for expense of furnishing police service for the district, or to employ duly qualified peace officers for such purpose.

SIXTEENTH: To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be so used by it, and such taxes as may be assessed against land in public or semi-public places.

#### LAND ENTITLED TO BENEFITS.

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

#### METHOD OF PROVIDING GENERAL FUNDS.

For the purpose of providing a general fund to enable the said Association to perform the duties, and to maintain the improvements herein provided for, all land within the boundaries of the district above described, shall be subject to an annual improvement assessment to be paid to the Association annually in advance by the respective owners of the assessable land subject thereto, which assessable land shall be deemed to be all of the land in the aforesaid plat of Indian Fields lying within three hundred feet of any paved street, open to vehicle travel, exclusive, however, of all land contained in street, parks, playgrounds or other public places open to the public, for the common use of the owners or residents of the land within the district, or all of the owners of one or more entire block. The amount of such assessment shall be fixed by the Association from year to year, but shall be in the proportion of one mill per annum for each square foot of all of the

assessable land within one hundred fifty feet of any paved street open to vehicle travel and one-half of one mill per square foot per annum for all assessable land more than one hundred fifty feet and less than three hundred feet from any such paved street.

The rate of assessment may be increased to two mills per square foot per annum on all of the assessable land within one hundred fifty feet of any paved street open to vehicle travel and one mill per square foot per annum for all assessable land more than one hundred fifty feet and less than three hundred feet from any such paved street, provided that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is due for the year for which such increase is proposed, a majority of the members present at such meeting vote for such an increase; and provided further, that the assessment may be increased to three mills per square foot per annum for all assessable land within one hundred fifty feet of any paved street open to vehicle travel and one and one-half mills per square foot per annum for all assessable land more than one hundred fifty feet and less than three hundred feet from any such paved street, provided, that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is due for the year for which such increase is proposed, two-thirds of the members present at such meeting vote for such an increase. Whenever the Association may deem it advisable to submit to the members a proposal for increasing the rate of the assessment for any particular year, then it shall notify members of the Association by mailing to such members at the last known address with United States postage thereon prepaid, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase in the rate of assessment is to be voted upon at such meeting. No increase in the rate of assessment may be made for more than one year at a time.

#### ASSESSMENTS DUE MAY FIRST OF EACH YEAR.

The first assessment shall be for the fiscal year beginning May 1, 1952, and it shall be fixed and levied prior to May 1, 1952, and shall be payable on that date, and thereafter it shall be due and payable in the first day of May of each year. It will be the duty of the Association to notify all owners whose address is listed with the Association on or before that date,

giving the amount of the assessment, when due, and the amount on each tract of land owned by them. Failure of the Association to make the assessment prior to May first of each year for the next succeeding fiscal year beginning on May first, shall not invalidate any such assessment made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to May first of any year, then it shall become due and payable not later than thirty days from the date of levying the assessment. Prior to the first assessment hereinabove provided for, if the Trustee shall deem it necessary for the purpose of carrying out the terms of this agreement, it shall have the right to make a partial assessment within the limits herein provided for and on a pro rata basis for the period of time ending April 30, 1952. Thereafter all assessments shall be made annually as herein provided.

WHAT CONSTITUTES NOTICE.

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

LIEN ON REAL ESTATE.

The assessment shall become a lien on said real estate as soon as it is due and payable as above set forth. In the event of failure of any of the owners to pay the assessment on or before the first day of June following the making of such assessment, then such assessment shall bear interest at the rate of ten percent per annum from the first day of May, but if the assessment is paid before the first day of June, or within thirty days from the date of the assessment, if the assessment is made subsequent to April 1st for the fiscal year beginning May 1st, then no interest shall be charged.

WHEN DELINQUENT.

On or after the first day of June of each year, beginning June 1, 1952, or within thirty days from the date of levying the assessment for the fiscal year during which and for which the assessment is made, the assessment shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Johnson County,

Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may at its discretion file certificates of non-payment of assessments in the Register of Deed's Office whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property described therein a fee of \$2.00, which fee is hereby declared to be a lien upon the real estate so described in said certificates and shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

#### TERMINATION OF LIENS.

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

#### EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR.

The Association shall at no time expend more money within any one year than the total amount of the assessment for that particular year, or any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatever, binding the assessment of any future year to pay for any such obligation and no such contract shall be valid or enforceable against the Association except for contracts for utilities; it being the intention that the assessment for each year shall be applied as far as practicable toward the payment of the obligations of that year, and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

#### OTHER LANDS - HOW THEY MAY BE ADDED.

J. C. Nichols Company may from time to time add such land to the district, as is now or hereafter owned or approved for addition by it; provided that the land be added to the district shall at that time be bound by all of the terms of this agreement and any future modifications thereof, The Association may also unite or combine with any other association similarly organized, operating on a similar basis having jurisdiction of land lying



wholly within Mission Township, Johnson County, Kansas.

ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

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

NEW POWER TO BE GIVEN.

By written consent of the owners of two-thirds of the members, evidenced by an agreement duly executed and acknowledged and recorded in the office of the Register of Deeds of Johnson County, Kansas, the Association may be given such additional powers as may be desired by said members, or may otherwise amend this instrument, provided, however, that no right to change the proportion of the assessment rate may be given.

TEMPORARY TRUSTEE.

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

Prior to the actual incorporation of an association contemplated by the terms of this Declaration, J. C. Nichols Company shall have the right, which it may exercise, at its option or discretion, by an appropriate agreement in writing, duly executed, acknowledged and recorded in the office of the Register of Deeds of Johnson County, Kansas, to subject the land described in this Declaration together with any other land which may hereafter be added to the District, to the terms and provisions of any other Homes Company or Homes Association by and with its consent, and having within its jurisdiction, land situated solely within Mission Township, Johnson County, Kansas; provided such other association or company, by whatever name known, shall have no greater

powers than are set out in this Declaration, and that it be at that time duly incorporated under the laws of the State of Kansas; and, provided, further, that all members or owners of land within the District as it exists from time to time shall have equal rights and privileges of membership. No association contemplated under the terms of this Declaration may be incorporated or assume any of the rights hereunder without the consent of J. C. Nichols Company and its relinquishment of its rights as temporary Trustees.

TO OBSERVE ALL LAWS.

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

HOW TERMINATED.

This agreement may be terminated and all of the land now or hereafter affected may be released from all of the terms and provisions thereof by the owners of two-thirds of the area subject thereto at the time it is proposed to terminate this agreement, executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas.

COVENANTS RUNNING WITH THE LAND.

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

IN WITNESS WHEREOF, J. C. Nichols Company, has, by authority of its Board of Directors, caused this instrument to be executed by its President, and its corporate seal to be hereto affixed, the day and year first above written.

J. C. NICHOLS COMPANY

(SEAL)

BY *Miller Nichols* /s/  
President

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

BE IT REMEMBERED, That on this 3rd day of October, 1951, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Miller Nichols, President of J. G. Nichols Company, a corporation, duly organized, incorporated and existing under and by virtue of the laws of Missouri, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal, the day and year last above written.

J. E. Herman  
Notary Public within and for said  
County and State.

My commission expires: October 17<sup>th</sup> 1951

(Seal)