

DECLARATION
of
TRUST
and
AGREEMENT

UNIVERSITY HEIGHTS
Subdivision No. 1

Annotated with Amendments through
November 1, 2006

By
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Note:

References herein to “First Amendment”, “Second Amendment”, etc., are keyed to the “Chronology and Summary of Known Documents Affecting the Trust and Agreement of University Heights Subdivision No. 1 as of November 1, 2006, a copy of which is available from the University Heights Association, Inc.

INTRODUCTION AND SYLLABUS

Introduction

Development of University Heights Subdivision No. 1 (“University Heights”) commenced with the filing of a plat (the “Plat”) of the area in 1904. With filing, in 1905, of a Trust and Agreement (the “Original Trust”) setting forth rules and regulations for use and governance of University Heights, the stage was set for sale of lots and construction of houses in the subdivision.

Since the filing of the Plat and the Original Trust, a number of changes have been made to the developer’s original plan. Some of those changes were made by way of amendments to the Original Trust. Other changes were made as a result of litigation. All such changes are herein, for ease of reference, denominated “Amendments” or an “Amendment”.

Sometime in or shortly after 1957, an annotated version of the Original Trust was published showing Amendments which had been made to date. The author of that booklet (the “1957 Booklet”) is unknown to us.

The document following (the “2006 Booklet”) is intended to update and supercede the 1957 Booklet, showing Amendments made to the Original trust through 2005.

Preparation of this 2006 Booklet has, of course, involved some amount of research. That effort should be considered “thorough” but not necessarily “exhaustive”. In the course of our research, we have fortuitously discovered Amendments unknown to the author of the 1957 Booklet. We have also discovered circumstances which “don’t add up”. The former are included herein. The latter have been pursued (and hopefully resolved) unless their impact in the great scale of things is considered de minimus. Thus the cautionary distinction taken above between “thorough” and “exhaustive” research. Any reader of this 2006 Booklet who might find interstices in its content is implored to come forth.

The intent of this 2006 Booklet is to display the evolution of Amendments to the Original Trust, only. Materials collected and reviewed include not only those Amendments we found, but also a lot of history of University Heights. This is only a collection of Amendments, i.e. an exposition of what the Original Trust, as amended, says as of 2006. We leave to others the fascinating job of tracing the history contained in the materials which we have reviewed.

SOME CAUTIONARY AND INFORMATIVE WORDS

- Some of the annotations herein are only summaries of Amendments. Don't trust these summaries if you have a specific question. Get a copy of the relevant Amendment from a Board Member of your neighborhood association (University Heights Association, Inc.), or one of your Trustees if you are into specifics.
- The plat of University Heights included in this 2006 Booklet is for reference purposes only. We have reason to believe that (besides being somewhat illegible), this plat has been amended in de minimus particulars and is not the same as the original Plat.
- And speaking of these "de minimus particulars" and the aforesaid "history" neglected by this 2006 Booklet, be advised that those subjects are noted in a "Chronology and Summary of Known Documents Affecting the Trust and Agreement of University Heights Subdivision No. 1 as of November 1, 2006" prepared in connection with research for this 2006 Booklet. If you're really into those subjects, ask a Board Member of your neighborhood association or one of your Trustees for a copy of the "Chronology and Summary, etc.". The "Chronology and Summary, etc." is, essentially, a review of and commentary on (where relevant) the documents listed in the Syllabus below.
- Finally, note that the Original Trust, as appearing in the records of the St. Louis County Recorder of Deeds, as well as several Amendments, are handwritten documents. They were, in places, difficult to read. For example, the copy of the Original Trust (unlike the 1957 Booklet and this 2006 Booklet) had no paragraphing. The substance of the "Chronology and Summary, etc." and the text of the Original Trust following is correct but the punctuation and other niceties may not be.

Syllabus

Following is a listing of all documents procured and reviewed in connection with preparation of this 2006 Booklet. They are listed in chronological order in this Syllabus and referred to as “First Amendment”, “Second Amendment”, etc., here and in the following annotations to the Original Trust in order to keep the text of the annotations coherent.

The listing of documents which follows refers to Amendments rendered by the Circuit Court for St. Louis County, Missouri and recorded in the Office of the Recorder of Deeds from St. Louis County, Missouri, except as the context otherwise indicates. If you refer to this Syllabus, keep in mind that an “Amendment” to the Original Trust was (i) prior to Biggs vs. Scott (see Fifteenth Amendment), to be by voluntary action of the residents, then followed by a court case, or (ii) a court case involving a dispute among University Heights neighbors, or (iii) a court case not involving University Heights or its neighbors but which laid down a rule of general application affecting the Original Trust.

1. Plat of Subdivision (“Plat”) titled “University Heights Lot Data” dated 2/20/1904, recorded Plat Book 6 pp. 14-15, 2/23/1904
2. Trust and Agreement (“Original Trust”), University Heights Subdivision No. 1, untitled, dated 1/19/1905, recorded Book 161 pp. 37-42, 3/14/1905
3. First Amendment – Bub vs. McFarland, 196 S.W. 373 (St. L. Ct. App. 1917) (unrecorded)
4. Second Amendment – Reed vs. McFarland, Cause No. 36273, 6/21/1921, recorded Book 518 p. 9, 7/21/1921
5. Third Amendment – In the Matter of University Heights Realty and Development Company, Cause No. 42981, 7/5/1923, recorded Book 599 p. 503, 7/14/1923
6. Fourth Amendment – Indenture dated 12/29/1926, recorded Book 824 p. 279, 4/5/1927
7. Fifth Amendment – Britton vs. School District of University City, 328 Mo. 1185; 44 S.W. 2d 33 (1931) (unrecorded)
8. Sixth Amendment – In re Buckles, 331 Mo. 405; 53 S.W. 2d 1055 (1932) (unrecorded)
9. Seventh Amendment – State ex rel. Britton vs. Mulloy, 332 Mo. 1107; 61 S.W. 2d 741 (1933) (unrecorded)
10. Eighth Amendment – Shelley vs. Kraemer, 334 U.S. 1 (1948) (unrecorded)
11. Ninth Amendment – Wishaar vs. Gissler, Cause No. 215900, 11/10/1957, recorded Book 5121 p. 278, 6/25/1963
12. Declaration of Trust and Agreement University Heights Subdivision No. 1, circa 1957 (unrecorded) (this is referred to as the “1957 Booklet” in the text above)

13. Tenth Amendment – Barnes vs. Anchor Temple Association, 369 S.W. 2d 893 (St. L. Ct. App. 1963) (unrecorded)
14. Eleventh Amendment – Jones vs. Alfred H. Mayer Co., 392 U.S. 409 (1968) (unrecorded)
15. Twelfth Amendment – Hellan vs. Riles, Cause No. 397031, 8/25/1977, recorded Book 7018 p. 1958, 12/16/1977
16. Thirteenth Amendment – Lang vs. Gers, Cause No. 415024, 1/5/1979, recorded Book 7131 p. 628, 1/25/1979
17. Fourteenth Amendment – Wesley vs. Chulick, Cause No. 652042, 7/22/1993, recorded Book 9811 p. 2299, 7/26/1993
18. Fifteenth Amendment – Biggs vs. Scott, Cause No. 01CC-0003742, 11/5/2001, recorded Book 15631 p. 1997, 2/10/2004
19. Sixteenth Amendment – 2005 Amendments to the Declaration of Trust and Agreement of University Heights, dated as of June 7, 2005, recorded Book 16897 p. 1374, 11/8/2005

DECLARATION OF
TRUST AND AGREEMENT

UNIVERSITY HEIGHTS
Subdivision No. 1

THIS DECLARATION OF TRUST AND AGREEMENT, Made this Nineteenth day of January, 1905, by the University Heights Realty & Development Company, a corporation organized under the laws of the State of Missouri (hereinafter called the "Company") with, to and for the benefit of all those persons who have already purchased and those who may hereafter purchase, and from time to time hold and own any of the several lots in University Heights, as designated and laid down on a certain plat of said University Heights, filed by said Company in the office of the Recorder of Deeds of St. Louis County, Missouri, on the 23rd day of February, 1904, and recorded in said office in Plat book No. Six (6) at pages fourteen and fifteen (14 and 15) :

WITNESSETH--THAT WHEREAS, said Company is desirous of developing the certain tract or parcel of ground owned by it, known as University Heights, situated in St. Louis County, Missouri, described as follows, to-wit:

All of lot number ten (10) and the western twelve and twenty-eight one-hundredths (12 and 28/100) acres of lot number nine (9) of the subdivision of Eliza Clemens Estate, in United States Survey number three hundred and seventy-eight (378): also all of lot number sixteen (16) of Clemens extension of Olive Street Addition in said United States Survey number three hundred and seventy-eight (378): containing in all eighty-four and eighty-one one hundredths (84 and 81/100) acres; more or less; for the purpose of selling the same in lots for use as high grade residence property, and

WHEREAS, To that end said Company has caused said tract of land to be laid out and subdivided in to blocks numbered from 1 to 12 both inclusive, and each of said blocks, except Block No. 4, to be further subdivided into lots, and the lots in each block respectively to be designated by numbers from one upward, and has caused private streets to be laid out upon said property, and water pipes to be laid out in said streets, and has caused a map or plat of said tract of land, showing the number, dimensions and exact location of each of said several blocks and lots, and the name, dimensions, and exact location of each of said streets, to be recorded in the office of the Recorder of Deeds of said County of St. Louis, in plat book No. 6, at pages 14 and 15; and

WHEREAS, it is the intention of said Company to cause said private streets to be paved and sidewalks to be laid thereon, and to set apart said streets to the use of the persons who may hereafter, from time to time, purchase and own or hold said lots, and every and any one of them; and

WHEREAS, it is also the purpose and intention of said Company to create, in respect of each and every of said lots (except certain lots reserved for retail business purposes, and for school and church purposes, as hereinafter specifically set forth in Article III hereof) certain restrictions, conditions and easements, in order that the character of the lots in said University Heights as high grade residence property may be established and maintained for the benefit of the persons who may hereafter own or occupy said several lots; and

WHEREAS, the Company has already agreed to sell certain of the lots in said University Heights, and has agreed with the purchasers thereof to execute this declaration of trust imposing the restrictions and conferring the rights hereinafter specified.

NOW, THEREFORE, in consideration of the premises, and as a consideration and inducement to persons to purchase lots in said University Heights and for other good and valuable consideration, the Company does hereby covenant, jointly and severally with each and all and every person or persons who may hereafter purchase, own or hold any of said lots, as designated and laid down on said plat, and to and with their several heirs, grantees, assigns, and legal representatives, that it will hold as herein described, and it does for the benefit of said persons, their heirs, grantees and assigns, the said property known as "University Heights" and each and every lot and parcel hereof, as shown on said plat and is hereinafter defined, under and subject to the following covenants, conditions, restrictions, easements and trusts (running with the title to said lots and each respectively) which are hereby impressed upon said property, and upon every lot and part thereof that is to say:

ARTICLE I

The Company declares that, subject to the reservations hereinafter expressed, it holds and will hold as herein stated, the legal title to the private streets, as laid down and designated upon said plat of University Heights, to-wit: Harvard Avenue, Bryn Mawr Avenue, Amherst Avenue, Columbia Avenue, Cornell Avenue, Oberlin Avenue, and Princeton Avenue, impressed with an easement for the common benefit of all persons who may hereafter own or occupy any of the said lots, as designated and laid down on said plat, to be used by them freely and without obstruction as private streets and private rights-of-way forever. The Company, subject to the reservations hereinafter expressed, also holds the strip of ground ten (10) feet in width extending along the northern line of Delmar Avenue on the southern side of the tract of land first hereinabove described, for the benefit of the owners of the several lots abutting thereon, to be used by them freely and without obstruction, for the purpose of ingress and egress to and from Delmar Avenue, with the rights to construct the necessary foot-walks and drive-ways across that part of said strip on which their respective lots abut to connect said lots with Delmar Avenue.

NOTE: The Sixteenth Amendment (2005 Amendments) did not change the text italicized above but added the following:

2.1 “According to the Trust, the Trustees of University Heights (the ‘Trustees’) hold legal title to certain elements of University Heights including the private streets. The Trustees are required to maintain, repair and improve same together with all curbing, guttering, roadways, sewers, water mains, sidewalks and tree lawns. The Trustees, in connection with their said duties of maintenance, repair and improvement are given certain powers and authority. Hereinafter, the elements to which those duties of ownership, maintenance, repair and improvement pertain are referred to as the ‘Common Areas’ or a ‘Common Area’.

2.2 By deed dated December 8, 2004, from University Heights Association, Inc., a Missouri not-for-profit corporation (the ‘Neighborhood Association’) which was recorded December 17, 2004, in Book 16266 at Page 199 of the

Recorder's Office, the Trustees acquired title to Lot 14 in Block 7 of University Heights. (Said Lot is hereinafter referred to as the 'Vacant Lot'.) The action of the Trustees subject to the terms of the aforesaid deed is ratified confirmed and approved and the Vacant Lot shall be considered part of the Common Area as of the date of the Trustees acquisition thereof.

2.3 Lot 1 and the northern parts of Lots 2 and 3 all in Block 10 of University Heights (together, the 'Utility Lots') which have been owned by the Trustees for some time, should be and hereby are declared to be part of the Common Area as of the date of the Trustees acquisition thereof.

2.4 Additional Common Areas may be acquired by the Trustees but only pursuant to an amendment to the Trust duly recorded in the Recorder's Office.

2.5 All or any part of the Common Areas may be sold, leased, mortgaged or vacated (as the case may be) but only pursuant to an amendment to the Trust duly recorded in the Recorder's Office.

2.6 All powers, authority and limitations on the powers and authority of the Trustees specified in the Trust shall pertain to all of the Common Areas."

The Company, however, its successors in trust and its assigns shall have, and it expressly reserves, the right (if in its opinion such action will be for the benefit of the owners of said lots in University Heights) at any time to dedicate said ten (10) foot strip and any one or all of said private streets for public use, and to grant to any person or corporation engaged in the business of furnishing electricity, heat, light, power or gas, the right to place the necessary poles upon or pipes or conduits or other adjuncts in, under or upon said streets for supplying the occupants of said lots with such conveniences.

At the expiration of the time fixed by the present charter as the period of the existence of said company, the legal title to said private streets and said ten (10) foot strip unless previously divested as provided herein shall be held by said Company or by its board of directors for the time being, in trust for the then legal owners of the several lots in said University Heights for the purpose of use, repair, maintenance, and improvement as hereinafter provided by these presents, and said Company furthermore *shall in its discretion have the right and power, at any time after January 1, 1906, to transfer its right, title and estate in said streets, and in said ten (10) foot strip, as also its duties and powers as trustee (herein defined) to a board of three trustees* (who shall be at the time be owners of lots in said University Heights) who shall thereby be invested with the legal title to said streets, avenues and strip subject to the trusts herein defined and with all the powers hereby conferred on and reserved, to said Company or its successors and assigns, respecting repair, maintenance and improvement of said avenues, streets and strip, and other subjects of the trusts defined by these presents, under the terms and provisions hereof. Said transfer shall be evidenced by a deed duly executed by said Company and recorded in the office of the Recorder of Deeds of the jurisdiction wherein said University Heights at that time may be situated; and after said Board shall have been so appointed it (or a majority thereof) shall be fully invested with all the powers and trusts hereby conferred in respect to the repair, maintenance and

improvement of said streets, avenues and strip, and all other powers and trusts herein and hereby given or created. *And in case of death, resignation or refusal to and of any member of said Board of Trustees, the survivor or survivors of said Board shall have the power, by like instrument, to designate and appoint a successor or successors in said Board from time to time, so that said Board may be completed to its proper number of three members; and if by death, resignation or for any cause, the membership of said Board shall become extinct, then the Circuit Court of the said locality shall have power to appoint a like board from among the lot owners of said University Heights, to have, fulfill and perform said trust and to hold the legal title to said streets, avenues and said strip, subject to the trusts herein defined, and with all the powers in that behalf hereby vested in said Company.*

NOTE: Concerning the language first italicized in the paragraph above: No document was found effecting the contemplated transfer. However, text in the legal decision which is the First Amendment (Bub vs. McFarland) reflects that the original developer of University Heights (the “Company” referred to in the Trust) was placed in receivership and that the Receiver made the transfer to the Trustees.

Concerning the language second italicized in the paragraph above: This language was deleted by the Sixteenth Amendment (2005 Amendments) and the following added:

3. **“The last sentence of Article I of the Trust contains provisions relative to succession in the event of death, resignation or refusal to act on the part of any of the Trustees. That sentence is deleted in its entirety and the following substituted in lieu thereof:**
 - A. **Annually, and prior to May 1, of each year, the Trustees shall call a meeting (the ‘Annual Meeting’) of the residents of University Heights for the purposes of (i) electing Trustees (if such an election is necessary), and (ii) presenting a financial report of the Trustees affairs for the preceding calendar year, and (iii) transacting such other business as may be stated in the notice of the Annual Meeting.**
 - B. **The Trustees may also call special meetings (‘Special Meetings’ or a ‘Special Meeting’) at any time or from time to time. The calling of any Special Meeting shall be at the discretion of the Trustees. Business at any Special Meeting shall be limited to that stated in the notice of the relevant Special Meeting.**
 - C. **A vote of the residents of University Heights which is required by the terms of the Trust may be made:**
 - i. **In person at any Annual Meeting or Special Meeting, or**
 - ii. **By a proxy duly named in writing, or**
 - iii. **By ballot returned prior to the deadline established therefor, if any, or**
 - iv. **By execution of an amendment to the Trust, or**
 - v. **Any combination of the foregoing.**

- D. Except as hereinafter provided, each Trustee shall serve for a term of 6 years or until their respective successors are elected. There is no limit on the number of terms a Trustee may serve.**
- E. Should any Trustee die, resign, refuse to act, become incapacitated or no longer maintain that Trustee's permanent residence in University Heights, a successor Trustee shall be appointed for that Trustee by the other Trustees to serve until the next Annual Meeting. At such Annual Meeting, a successor Trustee shall be elected as herein provided for the remainder of the term of the Trustee who died, resigned, refused to act, became incapacitated or no longer maintained permanent residence in University Heights.**
- F. If, at any time, there are fewer than two incumbent Trustees, successor Trustees in a number necessary to cause three Trustees to be incumbent shall be appointed by the Board of Directors of the Neighborhood Association. Trustees so appointed shall serve until the next Annual Meeting. At such Annual Meeting, Trustees succeeding them shall be elected as herein provided for the remainder of the terms of the Trustees for whom interim appointments were made by the Board of Directors of the Neighborhood Association.**
- G. One Trustee shall be elected in each even numbered year by a majority of the residents from a slate of not more than four (4) residents of University Heights. Not more than two candidates shall be proposed by the Trustees and not more than two shall be proposed by the Neighborhood Association. Except that if the Neighborhood Association has dissolved or forfeited its charter, the candidates which might have been proposed by it may be proposed by petition of not fewer than 25 residential lot owners counted in accordance with Article VI, Section 6.1 (B) of this Amendment.**
- H. The three presently incumbent Trustees have served for terms of varying years. For the purposes of this Amendment, those Trustees are herein referred to as 'First Senior Trustee' (the Trustee serving the most number of years), 'Second Senior Trustee' (the Trustee serving the second most number of years), and 'Third Senior Trustee' (the Trustee serving the least number of years).**
- i. The terms of the presently incumbent Trustees shall end as of the Annual Meeting held in the years specified as follows:**
- | | |
|------------------------------|--------------|
| First Senior Trustee | 2006 |
| Second Senior Trustee | 2008 |
| Third Senior Trustee | 2010" |

ARTICLE II

The Company agrees and covenants that neither it nor its successors or assigns will or shall any of them have power to convey, demise or otherwise dispose of any of the said lots or any part thereof, except expressly subject to the conditions, restrictions and easements in these presents set forth and defined, and that every conveyance by said Company, or its successors or assigns of any of said lots or parts thereof shall expressly refer to this declaration of trust and agreement, and by such reference or otherwise make the provisions hereof a part of such conveyance. The burden of, and obligation to observe and perform, the covenants, restrictions, conditions and easements herein expressed in respect of each lot, shall run with land and shall bind the owner or owners of such lot into whomsoever hands it may come, and the corresponding benefit, and the right to compel the observance of such covenants, restrictions, conditions and easements in respect of such lots shall run with the title to all others of said lots, and enure to the benefit of the owners thereof from time to time, and such right may be enforced by the owner of any of said lots, by appropriate proceedings at law or in equity.

And it is further provided that said Company and its successors and assigns as aforesaid as trustees are hereby vested with an active trust and duty to maintain, repair and improve said streets, avenues and said strip, and to that end said trustees may do all necessary and proper sprinkling and cleaning of said thoroughfares and that part of Delmar boulevard which abuts on the University Heights, all necessary collecting and disposing of garbage, and the laying and constructing, ornamenting and repairing of all curbing, guttering, roadways, sewers, water mains, sidewalks and tree lawns, and to pay all general or special taxes levied against the property vested in said Company or in its successors or assigns for streets and avenues and for said ten foot strip as hereinbefore mentioned, and shall have power to assess the cost of all of said items (devolved hereby on said Company and its successors and assigns) as a lien against the several lots of said University Heights and against the owners thereof, in the proportion which the frontage of each of said several lots shall bear to the total frontage area of said University Heights lots within the terms of these presents, *but such assessments for the purpose aforesaid shall not, in any one year, exceed the sum of twenty five cents per front foot (according to said plat) of any lot in said University Heights.*

NOTE: The italicized language provides for assessments to maintain, etc., what are now known as "Common Areas" (see pp. 2-3 above.) Over the years, assessments allowed were increased by the Ninth, Thirteenth and Fifteenth Amendments. The Sixteenth Amendment (2005 Amendments) sought to avoid the necessity of repeated amendments to this provision and, in addition, provided for special assessments as follows:

5.1 "Article II of the Trust provides for annual assessments by the Trustees in order to defray the cost of their duty to maintain, repair and improve the Common Areas. As last amended (Theresa Biggs vs. Ronald Scott et. al., St. Louis County Circuit Court Cause No. 01CC-0003742, November 5, 2001, recorded in the Recorder's Office February 10, 2004, Book 15631 at Page 1997), the relevant provision of the Trust gave the Trustees '...full power and authority to assess lots in the University Heights Subdivision according to plot (sic) thereof, at a rate not to exceed \$3.00 per front foot (according to plot [sic] thereof) on any lot in the University Heights Subdivision in any one year (.)'".

5.2 The phrase quoted in 5.1 of this Article V is deleted in its entirety and the following substituted in lieu thereof:

"full power and authority to assess lots in the University Heights according to the Plat, at a rate not to exceed \$3.00 per front foot (according to the Plat) in any one year (the 'Annual Assessment'), EXCEPT, commencing with the Annual Assessment for the calendar year 2006, the Trustees may increase the amount of the Annual Assessment by up to \$0.25 for any calendar year on a non-cumulative basis. The total amount of the Annual Assessment may be increased or decreased from time to time. Subject to the annual limit prescribed herein, there shall be no limit on the Annual Assessment."

5.3 Assessments in addition to the Annual Assessment ('Special Assessments' or a 'Special Assessment') may be made at any time or from time to time by the Trustees but only upon an affirmative vote of 51% of the residential lots in University Heights. The manner of voting on any Special Assessment shall be as prescribed in Article III above. "

But such cost shall not become a lien until so declared by said Company, its successors or assigns, by instrument of writing, duly acknowledged, and recorded in the office of the Recorder of Deeds of the City or County wherein said University Heights are located at the time, and the recording thereof shall be taken as a demand for payment thereof by said Company and the assessments of said cost shall bear interest at the rate of 6 per cent per annum beginning 30 days thereafter; and said lien (upon due payment) shall be released and discharged by entry to that effect by said Company or its successor or assigns by entry on the margin of the record of said lien or by other written release thereof.

ARTICLE III

Section 1. No building other than a private dwelling house, and the stable and outbuildings appurtenant thereto, shall be erected on any of said lots, nor shall any lot or part thereof be used or occupied for any but private residence purposes, nor by any other person or persons than those of the Caucasian race (except that persons of other race may reside upon any of said lots while employed as servants in the family of the owner or owners of said lot and not otherwise).

NOTE: Concerning the italicized language above commencing with "No building other than..." and ending with "...private residence purposes...": Exceptions to this restriction have been carved out over the years for what is the former Childgrove School Property. Those exceptions commenced with the Third Amendment (Masonic Temple) and ran through the Tenth, Twelfth and Fourteenth Amendments (Barnes vs. Anchor Temple Association), Childgrove School and Scientology, respectively). The Tenth Amendment (Barnes vs. Anchor Temple Association) is not a "carve out" but is part of the history of Article III.

NOTE: In determining the status of the former Childgrove School Property, it is absolutely necessary to review all of these amendments as at least two of them may be in conflict and some of the amendments vest important rights in the Trustees and residents of University Heights.

NOTE: Concerning the italicized language above commencing with "...nor by any other person or persons..." and ending with "...or owners of said lot and not otherwise"”: That language was nullified by the United States Supreme Court in the 1948 decision of Shelley vs. Kraemer (see explanation and discussion of that ruling and the related 1954 Supreme Court case of Jones vs. Alfred H. Mayer Co. in connection with Eighth and Eleventh Amendments). Moreover, to emphasize the point, the Sixteenth Amendment provides as follows:

4.1 “The first sentence of Article III, Section 1 of the Trust contains the following phrase relating to use and occupancy of lots in University Heights, to wit:

‘...nor by any person or persons other than those of the Caucasian race (except that persons of other race may reside upon any of said lots while employed as servants in the family of the owner or owners of said lot and not otherwise).’

The quoted phrase is deleted in its entirety. ”

Not more than one dwelling house shall be erected on any one lot. This section shall not be construed so as to permit to be erected or maintained upon any of said lots, any inn or hotel, flat, apartment-house, boarding house, or lodging house; it being the intention hereby to prohibit the erection or use of any building for any such purposes, subject to the reservations contained in Section 5 of this Article.

Section 2. No building shall be erected upon any of the said several lots in University Heights nearer to the present line of any private or public street upon which said lot abuts than as specified, respectively as follows:

Lots	Distance Of Building Line from Street Line
All lots in Block No. 2.....	30 feet
All lots in Block No. 3.....	30 feet
All lots in Block No.5 (from Delmar).....	60 feet
(from private streets).....	35 feet
All lots in Block No. 6.....	35 feet
All lots in Block No. 7.....	30 feet
All lots in Block No. 8.....	30 feet
All lots in Block No. 9.....	20 feet
All lots in Block No. 10.....	20 feet
All lots in Block No. 11.....	30 feet

All lots in Block No. 12.....30 feet
 Lot No.1 in Block No. 12, (from
 Delmar Avenue)60 feet

The several lots, abutting upon the ten (10) foot strip lying along the northern line of Delmar Avenue, shall be considered as abutting upon said Delmar Avenue, for the purpose of this Section and of Section 4 of this Article, and for all the purposes of these presents.

Section 3. No dwelling house shall be erected upon any of the said lots which shall cost less than the amounts herein below respectively specified, to-wit:

<i>Minimum Cost of</i>	
<i>Lots</i>	<i>Dwelling</i>
<i>Lots 3 to 14, both inclusive, in Block 2.....</i>	<i>\$3000</i>
<i>Lots 15 to 20, both inclusive, in Block 2.....</i>	<i>2000</i>
<i>Lots 1 to 24, both inclusive, in Block 3.....</i>	<i>2000</i>
<i>Lots 25 to 34, both inclusive, in Block 3.....</i>	<i>3000</i>
<i>All lots in Block 5.....</i>	<i>6000</i>
<i>Lots 3 to 21, both inclusive, in Block 6.....</i>	<i>6000</i>
<i>All lots in Block 7.....</i>	<i>4000</i>
<i>All lots in Block 8.....</i>	<i>3000</i>
<i>All lots in Block 9.....</i>	<i>2000</i>
<i>All lots in Block 10.....</i>	<i>1500</i>
<i>Lots 1 to 4, both inclusive, in Block 11.....</i>	<i>6000</i>
<i>Lots 5 to 11 and 25 to 34, both inclusive, in Block 11</i>	<i>5000</i>
<i>Lots 12 to 24, both inclusive, in Block 11.....</i>	<i>3000</i>
<i>Lots 1 to 3, both inclusive, in Block 12.....</i>	<i>6000</i>
<i>Lots 4 to 14, both inclusive, in Block 12.....</i>	<i>4000</i>
<i>Lots 15 to 23, both inclusive, in Block 12.....</i>	<i>2000</i>
<i>Lots 24 to 27, both inclusive, in Block 12.....</i>	<i>1500</i>

NOTE: Pursuant to the Second Amendment (Reed vs. McFarland), Section 3 italicized above was deleted in its entirety and the following substituted therefore:

"Section 3. No dwelling house shall hereafter be erected upon any of the said lots which shall cost less than the amounts and shall conform to the requirements, as to height as herein below respectively specified, to-wit:

Lots	Minimum Cost of Dwelling
Lots 3 to 14, both inclusive, in Block 2.....	\$ 6000
Lots 15 to 20, both inclusive, in Block 2.....	3500
Lots 1 to 16, both inclusive, in Block 2.....	4000
Lots 17 to 23, both inclusive, in Block 3.....	3500
Lots 24 to 34, both inclusive, in Block 3.....	5000
All lots in Block 5.....	10000
Lots 3 to 12, both inclusive, in Block 6.....	8000

Lots 1, 2 and 13 to 21, both inclusive, in Block 6.....	10000
All lots in Block 7.....	7000
Lots 2 to 16, both inclusive, in Block 8.....	5000
Lots 1, and 17 to 30, both inclusive, in Block 8	6000
All lots in Block 9.....	4000
All lots in Block 10.....	2500
Lots 1 to 4, both inclusive, in Block 11.....	8000
Lots 5 to 11, and 25 to 34, both inclusive, in Block 11.....	7500
Lots 12 to 24, both inclusive, in Block 11.....	6000
Lots 1 to 3, both inclusive, in Block 12.....	10000
Lots 4 to 14, both inclusive, in Block 12.....	7000
Lots 15 to 23, both inclusive, in Block 12.....	5000
Lots 24 to 27, both inclusive, in Block 12	3000

All dwelling houses hereafter erected on any residence lot on which the restrictions herein require such dwelling house to cost not less than Six Thousand Dollars (\$6,000.00) shall be not less than two and one-half (2 1/2) stories high or two (2) full stories, with a hip roof."

Section 4. No stable, shed or other outbuilding shall be constructed or maintained upon any of the lots in said University Heights nearer to the line of any public or private street upon which said lot abuts, than two-thirds (2/3) of the distance between the line of such street and the opposite line of said lot.

Section 5. The above restrictions in this Article contained, shall not, however, apply to Block No. 4 reserved for, and on which is situated, the printery and Office Buildings of the "Woman's Magazine," nor at the option of the Company, shall they apply to the following lots which are expressly reserved for the purposes respectively stated as follows:

All lots in Block 10 and lots 24, 25, 26 and 27 of Block 12 and lot 20 of Block 2 of said University Heights, which, for the present are reserved from the effect of these presents, subject to such future limitations or stipulations as the Company, its successors or its assigns, may hereafter declare by a like instrument.

NOTE: Pursuant to the Fourth Amendment (an Indenture recorded by the Trustees in 1926), all of the lots reserved per the italicized language in the paragraph immediately preceding were released from the reservation as follows:

"NOW, THEREFORE, in consideration of the premises and in order to further carry out the terms and provisions of said Declaration of Trust and Agreement in each and every particular, and to make said instrument applicable to said property, the undersigned Trustees, acting under and by virtue of said Declaration, and in pursuance of the authority conferred upon them therein, hereby declare that all the terms, conditions, covenants,

restrictions, easements and trust, are hereby made applicable to, binding upon, and impressed on all lots in said Block 10, and Lots 24, 25, 26 and 27 of said Block 12, and Lot 20 of Block 2 of said University Heights, the same as though said provisions were specifically set forth in this Instrument and in the terms, words, phrases and figures set forth in said original Declaration, reference to which is hereby made, and same is incorporated as a part hereof as though fully set forth in this instrument."

All lots in Block No. 1, and Lots 1 and 2 of Block 2 reserved for offices and retail stores or places of business either with or without flats or apartments above the first floor.

NOTE: All of the lots referred in the paragraph immediately preceding are now part of Delmar Harvard School and include, perhaps, the University City Public Library. As to the history of how this happened (all of which is not solved) see explanations to First, Fifth and Seventh Amendments (Bub vs. McFarland, Bretton vs. School District of University City and State e. rel. Bretton vs. Mulloy, respectively).

Lots 1 to 7 and 31 to 34. both inclusive, in Block 3, reserved for use as an entire tract for a public high school or common school.

Lots 1 and 2 of Block No.6, reserved for use as an entire tract for a church or place of public worship.

NOTE: All of the lots referred to in the two paragraphs immediately preceding are presently used for residential purposes. At some point in time, the reservations for school and church purposes were clearly released but we have found no record of such release(s).

The Company shall have, and it hereby reserves the right to determine whether said lots in Blocks No. 2 and No. 3 shall be used for the purposes for which they are respectively reserved, or for private residence purposes, but in the event that they shall be used for private residence purposes, they shall be and remain subject to all the provisions and restrictions in the preceding sections of this Article contained.

The lots in this section described shall not, however be used for any purposes other than the purposes for which they are respectively reserved, or for private residence purposes as aforesaid; to which purposes they are hereby expressly restricted, into whosoever hands they may come. And nothing in this section contained shall be so construed as to permit any livery stable, any public pool or billiard room, any gambling establishment, or any bar, saloon, or place for the sale of beer, wine or intoxicating liquors, or any nuisance or any sort to be erected or maintained upon any or the blocks or lots in said University Heights, or on any part hereof.

Section 6. The restrictions in these presents contained are to be construed as independent, and in the event that any one of them should be declared void, or for any reason unenforceable, the validity and binding effect of the other restrictions shall not thereby be impaired or affected.

It is further agreed that if, at any time after January 1, 1910, a majority of the owners of lots in University Heights (estimated by the frontage or said lots and also by the assessed value of said lots) shall agree that further limitations and restrictions on the use of lots in University

Heights are desirable to maintain said tract as a first-class residence quarter. Said majority of lot owners may petition the Circuit Court of said locality for a decree that such further limitations and restrictions be imposed as though recited herein, and if the said court upon due hearing (alter such notice to all other lot owners as may be practicable) shall adjudge that said limitation, prayed are reasonable and just, then it is hereby authorized by decree to make the same a part of the terms of this instrument upon the due record of said decree in the office of the Recorder of Deeds of said locality.

NOTE: As is the case with several other provisions of the Trust, the paragraph italicized above has had a "history" which is a bit complicated. For those interested in such things, consult the Sixth Amendment (In re Buckles) and the Fifteenth Amendment (Biggs vs. Scott). That "history" became ancient history with the Sixteenth Amendment (2005 Amendments) providing in relevant part as follows:

6.1 "The second sentence of Section 6, Article III of the Trust contains provisions relative to amendment of the Trust. Due to the Final Order, Judgment and Decree by the Circuit Court of the County of St. Louis, Missouri, in the matter of Theresa Biggs vs. Ronald Scott, et. al. (Cause No. 01CC-0003742) on November 5, 2001, a copy of which was recorded in the Recorder's Office on February 10, 2004, in Book 15631, Page 1997, said sentence should be and hereby is deleted in its entirety and the following substituted in lieu thereof:

- A. Amendments to the Trust will become effective upon approval by owners of lots in University Heights representing a majority of the residential lots in University Heights and recordation of the relevant Amendment or Amendments in the Recorder's Office.**
- B. Owners of any residential lot in University Heights will, for the purposes of Amendments to the Trust, decide among themselves how their vote for or against any Amendment may be cast. For each residential lot owned, only one vote will be cast. If a residence occupies more than one lot, the owners of that residence shall have votes equal to the number of lots occupied by the residence.**
- C. Certification by owners of their ownership of a particular lot (designated by street address or otherwise) shall, absent fraud, be conclusive without further inquiry by the Trustees, any other owners of any other lots or any other interested persons or organizations.**
- D. As used in this Section 6.1, "residential lot" or "residential lots" means a lot or lots used solely for single family residential purposes.**
- E. Any Amendment to the Trust shall be evidenced by a document in counterpart (or otherwise) setting forth the relevant Amendment or Amendments, bearing the requisite number of signatures of owners and reciting compliance with these requirements being recorded in the Recorder's Office."**

And if, after January 1, 1910, all the then owners of lots in University Heights shall (by deed duly acknowledged and recorded in said Recorder's Office) mutually agree that all restrictions herein as to buildings and the uses of lots by lot owners be abolished and cancelled, their deed so recorded to that effect shall be valid and have the force and effect to annul all said restrictions and limitations from and after the date of the recording of said instrument.

This declaration of trust and agreement has been executed, and is made a part of the public records, for the express purpose of inducing persons, in consideration of the benefits hereby conferred, to purchase the said lots in University Heights, and is hereby made irrevocable and binding upon said Company, and upon said property and every lot and part thereof, in favor of the purchaser or purchasers of any of said lots of University Heights, as laid down on said plat, and his and their heirs and assigns.

IN TESTIMONY WHEREOF the University Heights Realty & Development Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, attested by its Secretary, the day and year first above written.

UNIVERSITY HEIGHTS REALTY & DEVELOPMENT COMPANY

By E. G. Lewis
President

Attest the Corporate Seal:

By J. Cabot
Secretary