Chronology and Summary of Known Documents Affecting the Trust and Agreement of University Heights Subdivision No. 1 As of November 1, 2006

The documents referred to in this Chronology and Summary are available for review through your Neighborhood Association. Those documents are numbered to coincide with the page numbers in this Chronology and Summary. The same numbering system is used in the Introduction and Syllabus to the 2006 Annotated Version of the Trust and Agreement of University Heights, a copy of which may also be procured from your Neighborhood Association.

Herein, the terms "First Amendment", "Second Amendment, etc., are somewhat loosely used to refer to documents which affect title to real estate in University Heights. Not all of the "Amendments" denominated as such are, strictly speaking, true amendments. For example, a lawsuit which affects title to a street is not an "amendment" as commonly understood but is nevertheless referred to as an amendment.

1

Date	Document
1904	Plat of Subdivision ("Plat") titled "University Heights Lot Data"

Style of cause / Cause no.: N/A
Date of matter / decree: 2/20/1904
Date of Recording: 2/23/1904
Book / Page: Plat Book 6 pp. 14-15
Affects: This is the original plat
Purpose: Creates University Heights
Document reviewed: Yes

Comment:

The handwritten parts of the Plat are difficult to read on the copy reviewed. Page 1A attached is our effort to decipher the substantive provisions of those parts of the Plat. The important point is that those substantive provisions DO NOT add to or conflict with anything in the Declaration of Trust and Agreement (see 2 below). Observe that some kind of revised copy of the Plat is attached to other documents reviewed. The origins of any such copies of the Plat are unknown.

1A

Transcript of legible substantive handwritten parts of Plat, seratim by paragraph, plus comment thereon where relevant:

> The University Heights Realty and Development Company - ________________ of Lot sixteen (16) of Clemens Extension of Olive Street Addition and Lot number ten (10) and the western twelve and 28/100 (12.28) acres of lot number nine (9) of the subdivision of the Eliza Clemens Estate all in United States survey three hundred and seventy eight (378) in St. Louis County, State of Missouri under and subject to deed recorded in Book 38 Page 68 *?* in the office of the Recorder of Deeds of said County has caused the same to be improved *?* and subdivided ------------------ which subdivision----------------- to be known as "University Heights".
>
> The private avenues *?* ------------------ the said subdivision and the then 10' strip of ground ------ along and ---------- north of the north line of Delmar Avenue are not dedicated to public use but are reserved for use as private right of way for the owners of the several lots abutting thereon subject however to the right of way of said Company at any time hereafter to dedicate all or any thereof for public use.
>
> In witness whereof…etc.
>
> (sealed) (signed)

Note:

Reservations of streets as "private avenues" and the 10 foot strip of ground on the north line of Delmar Avenue as a private right of way for abutting lots are consistent with the first "Whereas" paragraph and Article I of the Trust.

> [The next paragraph is a standard form of acknowledgement and notarization]
>
> [The next paragraph is the surveyor's certificate followed by the Recorder's "Stamp"]

The "Note" on the second page of the Plat reads as follows:

> The corners of all lots are numbered and referenced to two lines at right angles to each other and designated as "Axis of x" and "Axis of y". Distances measured north and east from these axes *?*[1] are termed plus (+) and distances measured south and west are termed minus (-). The axis of x is parallel to the present north line of Delmar Avenue and distant one thousand (1000') feet from said line.

All curves are circular curves and the junctions of ------------, where same are not lot line corners are numbered and referred to the axes. The coordinate Tables give the coordinates or distances at right angles of all of the points from the axes.

2

Date	Document
1905	Trust and Agreement – University Heights Subdivision No. 1 (“Trust”)

Style of cause / Cause no.: N/A
Date of matter / decree: 1/19/1905
Date of Recording: 3/14/1905
Book / Page: Book 161 pp. 37-42
Affects: This is the Original Trust
Purpose: To establish the covenants, conditions and restrictions governing development, use and governance of University Heights
Document reviewed: Yes

Comment:

A word for word comparison between this recorded copy and the 1957 Booklet (see 12 below) was made. The Trust, as recorded, is not titled, otherwise the text of the Trust as given in the 1957 Booklet is correct. We are uncertain how the “No. 1” became appended as part of the name of University Heights per the 1957 Booklet and other documents. It is referred to simply as “University Heights” in the Plat (see 1 above). Observe that the Trust was copied into the Records in handwriting from the original. The whereabouts of the original Trust is unknown which is not important because what shows up in the Records is the “legal” document. Also observe that there is no paragraphing in the recorded copy of the Trust whereas there is in the 1957 Booklet.

3

Date	**Document**
1917	First Amendment: Bub vs. McFarland: 196 S.W. 373 (St. Louis Court of Appeals 1917)

This case arose out of a dispute over the permitted use of Lots 1 and 2 in Block 2 of University Heights. McFarland owned the Lots. Bub and other plaintiffs were owners of lots elsewhere in University Heights.

Article III, Section 5 of the Trust reserved the Lots owned by McFarland for "offices and retail stores or places of business either with or without flats or apartments above the first floor…". The Trust, however, gave the original developer of University Heights the right to "release" McFarland's Lots (and others) from the restriction quoted in the sentence immediately preceding so as to cause the Lots to be subject to general provisions of the Trust restricting use of Lots in University Heights for private residence purposes only. There had been no such "release".

McFarland had set about building an office building with apartments above on her Lots. Bub and others filed this suit contending that the right to determine use of the Lots lay with the original developer of University Heights and until the original developer exercised that right (which it had not done), Bub's Lots and others similarly "reserved") could only be used for residential purposes.

The Court disagreed and held that until the original developer exercised its right to determine whether the subject lots should be "commercial" or "private residence", McFarland (or anyone else who purchased lots similarly reserved in the Trust) could make the determination and she had done so.

Comment:

There's some interesting history relative to University Heights reviewed by the Court in its opinion. So much of that history as is directly relevant to "amendment" of the Trust boils down to the following:

1. The Court reproduces a part of the Plat in its opinion.
2. The Court notes that the original developer of University Heights (University Heights Realty & Development Company) had been placed in receivership by the Federal District Court in St. Louis. (In fact, it was the Receiver and not the original developer who had conveyed McFarland's Lots to her in May, 1912).
3. More interesting for our purposes, the Court found that in October, 1911, the Receiver for the original developer had executed and recorded a deed (of which we do not have a copy) "…whereby certain trustees chosen by the property owners in the tract (University Heights) in accordance with the terms of the 'declaration of trust and agreement' (the Trust)…and their successors, were invested…with the trust, powers, and duties which originally devolved upon the University Heights Realty & Development Company by virtue of said 'declaration of trust and agreement(.)". (Parenthetical supplied.) This record

of the appointment of trustees becomes important as explained in connection with the Fourth Amendment (see 6 below).

Note:

The area of University Heights spawning this litigation bred more controversy in later years. (See summaries of Britton vs. School District of University City and State ex. rel. Britton vs. Mulloy at 7 and 9, respectively, below.)

4

Date	**Document**
1921	Second Amendment

Style of cause / Cause no.: George W. Reed et. al. vs. Lucy A McFarland et. al. / 36273
Date of matter / decree: 6/21/1921
Date of Recording: 7/21/1921
Book / Page: 518 Page 9
Affects: Article III Section 3 (dealing with minimum cost of dwellings)
Purpose: Increase minimum cost of dwellings subsequently erected on specified lots to amounts stated AND require dwellings which must cost $6,000 or more to be "not less than two and one-half (2 1/2) stories high or two (2) full stories with a hip roof."
Document reviewed: Yes. The "summary" of this document in the 1957 Booklet (see 12 below) is accurate except for some of the data identifying the decree.

Comment:

There are a number of plaintiffs and defendants named in this matter. It may be that the recitation is a roster of all owners of lots in the Subdivision at the time. Many of the defendants were voluntarily dismissed by plaintiffs' counsel, perhaps because they weren't served with process, while the remaining defendants were "duly summoned and called come not, but make default". This seems to be surplusage in that the Trust Agreement required only that an amendment be triggered by petition of "a majority of the owners of lots in said University Heights (sic), estimated by the frontage of said lots and also by the value of said lots" and the Court found the plaintiffs to be such a majority.

Note:

One of the defendants in this matter was Calvin P. Bascom, presumed to be the grandfather of C.(alvin) Perry Bascom II, one of the authors of this Chronology and Summary.

5

Date	Document
1923	Third Amendment ("Masonic Temple")

Style of cause / Cause no.: In the Matter of University Heights Realty and Development Company / 42981
Date of matter / decree: 7/5/1923
Date of Recording: 7/14/1923
Book / Page: Book 599 Page 503
Affects: Lot 22 and the west 44 feet of Lot 1 in Block 5 and provisions of the Trust restricting use of lots in the Subdivision to residential purposes, etc.
Purpose: To allow the subject property to be used "as a single lot or parcel of ground for the erection of a Masonic Temple."
Document reviewed: Yes. We have a draft petition for the "Childgrove School" amendment (see 15 below) which refers to four amendments to the Trust. Two of those documents are not referenced in any other of the documents reviewed, including the 1957 Booklet (see 12 below). This is one of the two "stray" documents. The second of the two "stray" documents is reprised at 15 below.

Comment:

A summary of this document should be included in any "annotated" version of the Original Trust as this document clears up questions as to present non-residential use of the subject property.

6

Date **Document**
1926 Fourth Amendment

Style of cause / Cause no.: "Indenture" - this is a written document, not a court decree – see explanation below
Date of matter / decree: 12/29/1926
Date of Recording: 4/5/1927
Book / Page: Book 824 Page 279
Affects: Article III Section 5 specifying that certain lots in designated blocks (including "the printery and Office Buildings of the 'Woman's Magazine'") are not governed by restrictions of Article III, which relates to use for residential purposes only, setback lines and minimum cost of buildings.
Purpose: Causes all lots in Block 10 plus lots 24, 25, 26, and 27 in Block 12, plus lot 20 of Block 2 (but not the printery and Office Building of the Woman's Magazine which apparently occupied all of Block 4) to be subject to the terms of the Original Trust.
Document reviewed: Yes. The "summary" of this document in the 1957 Booklet (see 12 below) is accurate except for some of the data identifying it. Note that said "summary" is actually a quote from this Fourth amendment which commences with the "Now Therefore…" and ends with the ending of that paragraph (the close quotation marks at the end of that paragraph are not clear in the 1957 Booklet). That's important because the Fourth amendment does not affect other lots described in the following three paragraphs which remain reserved for the purposes stated (retail, business, flats or apartments, a public high school or common school and a church or place of public worship).

Comment:

At this point in time and until In re Buckles (see 8 below), amendments to the trust had to be affected via petition to the Circuit Court by the terms of the Trust. This Fourth Amendment was signed only by the Trustees of the Subdivision. That's legitimate inasmuch as the right to subject the lots here subjected to the Trust was, in the Trust, reserved to the original developer of the Subdivision, "its successors or its assigns" and the Trustees signing this Fourth Amendment are the successors to the original developer. Article III of the Original Trust contemplated that, after January 1, 1906, the original developer would, in effect, transfer its right, title and interest under the Original Trust (including its interest in the streets and the 10 foot strip along Delmar) to "three trustees" and that the transfer would "be evidenced by a deed…recorded in the office of the Recorder of Deeds…". We don't have that deed but we know from what the Court found in Bub vs. McFarland (see 3 above) that the deed was given and recorded by the Receiver of the original developer.

7

Date **Document**

1931 Fifth Amendment: Britton vs. School District of University City;
328 Mo. 1185, 44 S.W. 2d 33 (1931)

This case is round one of an unscheduled two round bout between some disgruntled University Heights residents and an aggressive University City School District. The final round was fought in State ex. re. Britton vs. Mulloy (see 9 below).

Interestingly enough, the property here in question was essentially the same property over which Bub and McFarland duked it out in 1917 (see 3 above).

In this matter, Britton owned Lots 2 and 3 in Block 3 of University Heights. The School District had apparently acquired part of Cornell Avenue from the University Heights trustees and part of Lot 1 in Block 2 (part of the former McFarland property) from an unnamed source. Notwithstanding Britton's having filed this lawsuit, the School District had spent $170,000 building an auditorium on the property.

Britton's complaint was twofold, to wit: first, that the trustees had no right to sell part of Cornell Avenue to the School District, and second, that the School District had no right to use part of Lot 1 in Block 2 for school purposes because the Trust restricted use of the property to business or residential purposes. The Court agreed with Britton on both points.

However, instead of kicking the School District out, the Court sent the case back to the trial court "with directions to continue the case…to afford the (School District)…an opportunity to lawfully acquire…" the property (parenthetical supplied).

Comment:

As with the opinion in Bub vs. McFarland (see 3 above) there's some interesting history recited in this opinion. As far as that history is directly germane to the Trust, observe that:

1. The School District argued that Britton should get no relief on account of the doctrine of "unclean hands" in that the Lots on which Britton was living had been dedicated by the original developer for school purposes. Without citing Bub vs. McFarland, the Court said the original developer had the right to decide whether Britton's Lots would be used for residence or school purposes and had done so when it conveyed those Lots to an individual rather than the School District.
2. The School District's having built its auditorium on Cornell Avenue and part of Lot 1 in Block 2 doesn't make sense if the graphic of the Plat in the Bub case is correct. (To make sense of why this doesn't make sense, you have to compare the Plat with the graphic of the Plat in the Bub case.) That leads us to believe that the graphic of the Plat in the Bub case is incorrect or maybe the Plat got amended but doesn't solve the mystery.
3. The Court notes in its opinion that in 1915 the School District purchased a building for school purposes, part of which was located in Lots 10 and 11 in Block 1 plus a small part of Cornell Avenue and that, in 1919, the School District purchased Lots 3-9 of Block 1. The School District purchased

the rest of Block 1 (Lots 1 and 2) in 1920. You have to look at the plat to understand this but the effect of these acquisitions was to give the School District all of Block 1, and part of Lot 1 in Block 2. The Trust, although reserving property elsewhere in University Heights for school purposes, expressly reserved the aforesaid School District property for commercial use. (See Trust, Article III, Section 5.) We leave to the historians how the School District acquired its property in Block 1 and part of Cornell Avenue in violation of the Trust without anyone complaining prior to Britton vs. School District of University City. Might it be that the Trustees sale of part of Cornell Avenue to the School District had something to do with Article 1 of the Trust allowing the Trustees to dedicate streets for "public use"?

8

Date **Document**
1932 Sixth Amendment: In re Buckles; 331 Mo. 405; 53 S.W. 2d 1055 (1932)

This 1932 decision of the Missouri Supreme Court arose from an attempted amendment of the Trust. Herein, the Court considered the part of Article III Section 6 of the Trust requiring amendments of the Trust to be effected via petition to the Circuit Court. The Court held that the contemplated procedure was a nullity. In effect, this left the Trust with no procedure or vehicle for amendment (other than by action of 100% of the property owners). Reference is made to the decision itself for the Court's rationale.

Comment:

Following this case, there have been no fewer than five amendments to the Trust which appear facially to have been made pursuant to Article III, Section 6 of the Trust, to wit:

Wishaar vs. Gissler (see 11 below)
Hellan vs. Riles (see 15 below)
Lang v. Gers (see 16 below)
Wesley v. Chulick (see 17 below)
Biggs v. Scott (see 18 below)

Other amendments to the Trust also occurred after In re Buckles but those were not instigated by vote of the residents of University Heights followed by a petition to the Circuit Court.

In the case of the five matters referred to above, the Circuit Court was explicitly or implicitly aware of In re Buckles. That raises the question of whether those later amendments fly in the face of In re Buckles and are of any effect.

The answer is "no problem".

A careful reading of how the five matters in question were handled makes clear that the Circuit Court was not relying on the Article III, Section 6 procedure to amend the Trust. The real rationale of the court's rulings was the legal doctrine of "cy pres". Cy pres is a rule of general application to trusts which allows a court to amend a trust if not making the change would defeat the purposes of the trust. In other words, for example, if annual assessments in University Heights are set too low by the Trust to enable the Trustees to repair streets, the Court can raise the assessment itself even though the procedure set forth in the Trust for amending the assessment is no good.

Biggs v. Scott (see 18 below) obviated the need for going to the Court and requesting amendments in reliance on the doctrine of cy pres. Biggs v. Scott used the doctrine to install a procedure whereby a majority of the residents can amend the Trust by signing a document filed with the Recorder and not having to go to the Court.

9

<u>Date</u> **<u>Document</u>**

1933 Seventh Amendment; <u>State ex. rel. Britton vs. Mulloy</u>; 332 Mo. 1107, 61 S.W. 2d 741 (1933)

The way the Missouri Supreme Court left things with Britton and the School District of University City two years before this (see 7 above), we didn't expect to see them again. However, they're back, except now (for reasons unclear), they're fighting about <u>ALL</u> of Lots 1 and 2 in Block 2 and part of Cornell Avenue instead of just <u>PART</u> of Lot 1 and part of Cornell Avenue. (Maybe the court got it wrong the first time.)

In any event, the problem now is that while the School District has, as directed by the Court, tried to purchase the property on which the $170,000 auditorium and gym is already built, Britton and the other plaintiffs have stiffed the School District and the trial court has set a date for trial to determine the plaintiff's damages.

"WHOA," says the Supreme Court. We can't have this. If the parties can't agree on a price then the School District gets enjoined from using its property for school (auditorium and gym) purposes-bye, bye gym and auditorium and bye, bye $170,000. "But," says the Supreme Court, "why doesn't the School District use its power of eminent domain to zap the property and get it free and clear of any restrictions at all?".

The court's opinion is a little more refined than our summary above but the bottom line is the same. Why the Court didn't tell the School District to use eminent domain the first time around is problematic.

We don't know what happened next but a visual inspection today would show that Cornell Avenue is closed in this area and Delmar Harvard School is there. We leave the "story behind the story" to the historians, especially how the School got built on this and other property restricted to commercial use, to wit, all of Block 1 (see comment 3 to 7 above).

10

Date	Document
1948	Eighth Amendment: Shelley vs. Kraemer; 334 U.S. 1 (1948)

This landmark 1948 decision of the United States Supreme Court is referenced in the footnote to Article III on page 7 of the 1957 Booklet (see 12 below). [The reference is to a "1954 decision of (sic) United States Supreme Court" but should have been to a "1948" decision…] Properly speaking, this Supreme Court decision is not a document affecting title to real estate in University Heights because the case had nothing to do with University Heights. It does, however, affect the enforceability of the "racial covenant" contained in Article III Section 1 of the Original Trust providing that residential lots in University Heights may not be occupied by persons other "than those of the Caucasian race" (with the exception of "servants" employed by owners). The Supreme Court of the United States held such provisions to be unenforceable in a case appealed to the Court from the Missouri Supreme Court. The case had to do with a property in North Saint Louis but is universally applicable among the Several States.

Comment:

This case is to be distinguished from Jones v. Alfred H. Mayer Co. (see 14 below) and it is important to make the distinction because it was Shelley vs. Kraemer and NOT the Jones case which invalidated racial covenants. See discussion of the Jones case below. Also observe that the above referenced footnote on page 7 of the 1957 Booklet states that "(T)his portion of the Indenture invalid by…reason of Shelley vs. Kraemer." Only the "racial covenant" part was invalidated, not the whole "portion".

11

Date	Document
1957	Ninth Amendment

Style of cause / Cause no.: F.F. Wishaar vs. Fred A. Gissler, et. al. / 215900
Date of matter / decree: 10/11/1957
Date of Recording: 6/25/1963
Book / Page: Book 5121 Page 278
Affects: Provisions of Article II limiting assessments "in any one year" to "twenty-five cents per front foot".
Purpose: To increase "twenty-five cents" to "fifty" cents.
Document reviewed: Yes. The "summary" of this document in the 1957 Booklet (see 12 below) is accurate except for deletion of some of the data identifying the decree.

Comment:

This is the first of amendments to the Trust succeeding In re Buckles (see 8 above). Buckles is not mentioned but the doctrine of "cy pres" (rather than provisions of the Trust) is clearly relied upon in effecting the amendment.

12

Date	**Document**
1957 or thereafter	Declaration of Trust and Agreement ("1957 Booklet")

This item appears to be a "facsimile" of the Trust, annotated to show all amendments thereto through the Ninth Amendment (see 11 above) with the exception of the Third Amendment (see 5 above). It has a useful but partially illegible plat of University Heights attached. That plat bears no indication that it is an "as recorded" copy. We call the 1957 Booklet (i) a "facsimile" because it is neither an "as executed" nor an "as recorded" copy, and (ii) the "1957 Booklet", because the Ninth Amendment was effected in 1957 and is the latest amendment appearing therein. Its author is unknown. It has probably substituted itself for the Trust in common usage, perhaps because the Trust was handwritten. We have compared the text of the 1957 Booklet with the Trust as best we are able (the recorded copy of the Trust being illegible in certain spots). Except for paragraphing in the 1957 Booklet (there is none in the Trust), they are the same.

13

Date	Document
1963	Tenth Amendment; Barnes vs. Anchor Temple Association; 369 S.W. 2d 893 (St. L. Ct. App. 1963)

Recall that the Third Amendment (see 5 above) amended the Trust in 1923 so as to permit use of Lot 22 and the west 44 feet of Lot 1 in Block 5 (hereinafter the "Original Masonic Property") to be used as a Masonic Temple-an exception to Trust prohibitions against use of property in University Heights for other than residential purposes. (The Trust excepts other property from residential use but that's not relevant here.)

Everything went fine with the Original Masonic Property for nearly 40 years and until parking became a problem for the Masons.

In 1961, Barnes, owner of Lot 19 in Block 5, came home from a vacation and found a bulldozer parked in Lot 20, just east of his Lot. On inquiry of the Masons, he discovered that they had purchased Lot 20 nine years before (1952) and now intended to construct a parking lot on Lot 20. Barnes was none too pleased and got an injunction against the Masons from using Lot 20 as a parking area. The Masons weren't too pleased by that and appealed. This is the appeal.

In effect, the appellate court tells the Masons to "take a hike" with regard to using Lot 20 for a parking lot because the Trust prohibits use of Lot 20 for anything other than residential purposes.

As is true with other reported cases we have summarized involving University Heights and the Trust, there's some interesting history in this opinion. A lot of that history is attributable to evidence adduced by the Masons (e.g. traffic on Delmar) in an effort to show the neighborhood had changed and "that the restrictions are, accordingly, no longer valid or applicable…". "No dice," says the Court:

> "So long as University Heights Subdivision retains its essential residential character…without deterioration or impairment of value for residential uses, the restrictions against (other than residential use) will remain valid and enforceable." (Parenthetical supplied.)

Comment:

Two items mentioned in this opinion bear notice:

1. The Trust expressly states that every deed to property in the Subdivision shall refer to the Trust "…and by such reference…make the provisions hereof a part of such conveyance(.)" The Court notes that the Masons' deed to Lot 20 complied with the Trust in this regard. We wonder if (i) all deeds to property in University Heights so comply, and if not (ii) whether non-compliance would vitiate the effect of the Trust on any Lot. An amendment to the Trust in this regard would preclude any wondering and, perhaps, avoid a result in enforcement of the Trust contrary to that experienced by the Masons here.

2. Apparently, in addition to acquiring Lot 20 in 1952, the Masons had

previously acquired Lot 21, which was not part of the Original Masonic Property "authorized" by the Third Amendment (see 5 above). We have no knowledge of whether use restrictions on Lot 21 were resolved then or later or how use restrictions on Lot 20 were resolved. At this point in time, those questions are moot due to the Twelfth Amendment (Childgrove School, see 15 below) and the Fourteenth Amendment (Scientology, see 17 below) but refer to our Note 1 to the Twelfth Amendment (Childgrove School, see 15 below) as to the south 178 feet of Lot 21. The historians can pursue this further.

14

Date	Document
1968	Eleventh Amendment; Jones vs. Alfred H. Mayer Co.; 392 U.S. 409 (1968)

This decision of the United States Supreme Court, an appeal from the Supreme Court of Missouri, is thought by some to strike down the "racial covenant" in Article III, Section 1 of the trust, previously discussed in connection with the United States Supreme Court decision in Shelley vs. Kraemer (see 10 above). For the record, it should be noted that the Jones case made it illegal to refuse to sell or rent a residence to a person solely because of his or her race or color. Shelley vs. Kraemer involved construction of the United States Constitution, Jones was a construction of Civil Rights Act of 1866. Reference is made to the two cases for a further explanation. Both were "landmarks". Neither involved property in University Heights but are applicable to property in the Subdivision and, indeed, throughout the United States.

15

Date	**Document**
1977	Twelfth Amendment; ("Childgrove School")

Style of cause / Cause no.: Richard T. Hellan et. al. vs. James P. Riles et. al. / 397031
Date of matter / decree: 8/25/1977
Date of Recording: 12/16/1977
Book / Page: Book 7018 Page 1958
Affects: Same property as Third Amendment (Masonic Temple see 5 above) except adds and includes Lot 20 and the south 178 feet of Lot 21 all in Block 5.
Purpose: To allow the subject property to be used for (among other things) "non-residential educational and school uses". ALSO gives residents of the University Heights veto power over any future conveyances of the property or any part of it by Childgrove School or its successors AND imposes certain restrictions on parking.
Document reviewed: Yes. This is the other of the two "stray" documents referred to in "Document reviewed" section relating to the Third Amendment (Masonic Temple see 5 above).

Comment:

A summary of this document should be included in any "annotated" version of the Trust as this document clears up questions as to non-residential use of the subject property.

Note:

1. Refer to Comment 2 to the Tenth Amendment (see 13 above). The question there raised as to non-residential use of Lots 20 and 21 is cured by this Twelfth Amendment (and we don't know for sure that the question was not previously cured). However, observe that in the Court's opinion relative to the Tenth Amendment (see 13 above), it is stated that the Masons owned all of Lot 21. This Twelfth Amendment, however, only covers "the south 178 feet of Lot 21" (and the other property described). We leave to the historians the mystery of what happened to the rest of Lot 21.

2. This Twelfth Amendment is worth looking at because of (i) the veto on sales conferred on residents of the Subdivision, (ii) the uses to which the subject property can be put (e.g., religious, charitable, parks, wildlife preservation, etc.), (ii) restrictions on parking, and (iv) some historical data on the Subdivision.

16

Date	Document
1979	Thirteenth Amendment

Style of cause / Cause no.: Stanley Lang vs. Jerry M. Gers, et. al. / 415024
Date of matter / decree: 1/5/1979
Date of Recording: 1/25/1979
Book / Page: Book 7131 Page 628
Affects: Provisions of Article III [as previously amended (see Ninth Amendment, 11 above)] limiting assessments to "50¢" per front foot per year.
Purpose: To increase "50¢" to "$1.50".
Document reviewed: Yes.

Comment:

A summary of this document should be included in any "annotated" version of the Trust.

17

Date	Document
1993	Fourteenth Amendment ("Scientology")

Style of cause / Cause no.: Clayvon Wesley et. al. and Childgrove School Corporation vs. William P. Chulick et. al., as Trustees of University Heights Subdivision #1 / 652042

Date of matter / decree: 7/22/1993

Date of Recording: 7/26/1993

Book / Page: Book 9811 Page 2299

Affects: Same property as Twelfth Amendment (Childgrove School, see 15 above).

Purpose: To allow the subject property to be used for (among other things) "commercial or professional offices of all types (but excluding medical or dental)..." AND imposing certain restrictions on parking lots and outdoor activity areas.

Document reviewed: Yes, but…this document refers to an "Exhibit A" to the plaintiffs' petition in this matter which is stated to be an amendment to the Trust executed by the requisite number of owners in the Subdivision. "Exhibit A" is not part of or attached to this document. It should have been or should be recorded as a separate document. Further inquiry should be made here and appropriate action taken if required. Also, "Exhibit A" needs to be compared to this Fourteenth Amendment for assurance of consistency.

Comment:

A summary of this document should be included in any "annotated" version of the Trust.

Note:

If one compares the Judgment and Decree in this matter with the Final Judgment and Decree in the Twelfth Amendment (Childgrove School, see 15 above), some rather serious problems may be evident. To wit:

1. Both judgments expressly state that they amend Article III, Sections 1, 4 and 5.
2. The judgments aren't the same, particularly in that this Fourteenth Amendment makes no reference to some things included in the Twelfth Amendment, e.g., (i) veto power over sales conferred on residents of the Subdivision, and (ii) some uses permitted by the Twelfth Amendment.
3. Does this Fourteenth Amendment "further" amend Article III, Sections 1, 4 and 5, by adding to the prior Twelfth Amendment or by wiping it out and substituting for it? We're not sure!

18

Date	Document
2001	Fifteenth Amendment ("Biggs / Kanzler Suit")

Style of cause / Cause no.: Biggs vs. Ronald M Scott et. al., Trustees of University Heights Subdivision ("Trustees, etc." being alleged in the Petition but not appearing in the caption and "#1" not being part of the subdivision named) / 01CC - 0003742
Date of matter / decree: 11/5/2001
Date of Recording: 2/10/2004
Book / Page: Book 15631 Page 1997
Affects: (i) Provisions of Article III [as previously amended (see 16 above)] limiting assessments to "$1.50" per front foot per year, and (ii) provisions of Article III Section 6 requiring Circuit Court approval of amendments to the Trust.
Purpose: (i) To increase "$1.50" to "$3.00", and (ii) to allow future amendments to "become effective upon approval by a majority of the residents of the University Heights Subdivision(.)".
Document reviewed: Yes.

Comment:

This Fifteenth Amendment is huge in that it forever clears up how the Trust is to be amended in the future. It is also useful in tying some facts together which are otherwise not on the record at all or only partially so. Observe that the recorded package contains not only the "Consent Judgment Order and Final Decree" but what also appears to be all pleadings in the case. The factual recitations in the pleadings help some of the history come together but only the "Consent Judgment Order and Final Decree" itself should be considered as amending anything – in other words, don't rely on recitations in the pleadings as having any impact on the Trust. We wish that the Trustees had been named as such in the style of the case and that the Subdivision had been designated as "#1" throughout, but we consider those oversights aesthetic rather than substantive.

A summary of this document should be included in any "annotated" version of the Trust.

Note:

Paragraph 2 of the "Final Order, Judgment and Decree" in the "Biggs / Kanzler Suit" might be construed so as to retain language in the Trust requiring the "majority" required for future amendments to be "(estimated by the frontage of…lots and also by the assessed value of…lots)" (see Article III Section 6 of the Trust). We think that's contrary to the intention of the Decree.

Insofar as the Fifteenth Amendment allows future Trust amendments to be effected by "a majority of the residents", some potential ambiguities are created, to wit:

1. Does this mean every resident man, woman and child gets a vote or does it mean all resident owners of a single lot get one vote or what? Are renters included? Are owners of non-residential lots excluded?
2. Or is the intent to give each residential lot one vote no matter how many residents live there or how many owners a particular lot has? We think the intention of the Fifteenth Amendment was to allow each residential lot one vote. Clarification of that intention and the proposition that the "majority" is no longer to be determined with reference to (i) frontage, and (ii) assessed value of lots, might be a good idea.

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Date	Document
2005	Sixteenth Amendment (“2005 Amendments”)

Style of cause / Cause no.: N/A
Date of matter / decree: 6/7/2005
Date of Recording: 11/8/2005
Book / Page: Book 16897 Page 1374
Affects: (i) Article I, “Common Areas”;
(ii) Article I, election of Trustees
(iii) Article III, Section 1, racial covenant
(iv) Article II, assessments and special assessments
(v) Article III, Section 6, amendments to the Trust, voting and qualifications to vote
Purpose: (i) To add “Common Areas” to those already established
(ii) To provide for bi-annual election of Trustees, Trustees’ terms, interim appointment of Trustees; Annual and Special Meetings.
(iii) To delete the “racial covenant”
(iv) To provide for increases in Annual Assessments and allow for Special Assessments
(v) To clarify the manner in which future amendments to the Trust are to be made

Comment:

The 2005 Amendments were the capstone of labors involving review of the Trust (see 2 above), the Plat (see 1 and 1A above), the 1957 Booklet (see 12 above) and the other documents referenced in this “Chronology and Summary, etc.”. The objective of the Sixteenth Amendment was to bring the Trust “up to date”, “clean up” some inconsistencies inherent in prior amendments and provide a clear roadmap for the immediate future.

In connection with the Sixteenth Amendment, consideration was given to trashing the Trust and producing a complete restatement in modern language, a “plain English” version, if you will. The decision not to do that was premised on the feeling that while change was good, too much change (a complete re-writing) would sacrifice a sense of how University Heights had evolved over the previous 101 years.

So the Trust was not re-written. Since tracing its current substance involves the severely intellectually challenging task of threading through sixteen amendments, some haphazardly wrought, over a span of 89 years, probably the only readable current version of the Trust is the “2006 Annotated Trust and Agreement of University Heights Subdivision No. 1” produced in connection with this “Chronology and Summary, etc.”. And even the “2006 Annotated Trust, etc.” may have some gaps and gores as suggested in this “ Chronology and Summary, etc.”.

We leave to future historians the task of filling in the aforesaid “gaps and gores: - but with some confidence that as of this writing, the substance of the Trust, as of the 2005 Amendments, is whole.

Note:

At the time of the 2005 Amendments, a question was raised about "Architectural Control"; that is, whether there should be a provision in the Trust giving the Trustees some ability to review construction of and improvements to property in University Heights. The purpose of Architectural Control would be to maintain the architectural integrity of historic streetscapes in the neighborhood.

Since 1980, University Heights has been listed on the National Register of Historic Places. In and of itself, that listing does not provide anything like Architectural Control. (It does, however, provide certain potential tax benefits to owners who substantially renovate their homes.)

The City of University City has enacted ordinances relative to its own designated Historic Districts and has established an Historic District Commission. Those ordinances would provide Architectural Control in University Heights. However, to come under the aegis of the University City Historic District Commission, University Heights would have to be declared an Historic District by the University City Council – it has not.

Perhaps initiative will be taken to pursue designation of University Heights as an Historic District with the City of University City. Were that to be accomplished, it is suggested that another amendment to the Trust might be considered to the extent that University City ordinances do not provide the full panoply of Architectural Control deemed appropriate by the majority of homeowners of University Heights.