

**HOMES ASSOCIATION DECLARATION**

THIS DECLARATION, made and entered into this 18<sup>th</sup> day of April, 2003, by MADISON HEIGHTS, L.L.C., a Kansas limited liability company (hereinafter referred to as "Developer"),

WHEREAS, the Developer is the owner of all of:

**Lots 1 through 52, inclusive, Tract "A" of MADISON HEIGHTS, a subdivision in the City of Shawnee, Johnson County, Kansas;**

as shown on the plat of MADISON HEIGHTS, a residential subdivision in the City of Shawnee, Johnson County, Kansas, which plat was recorded on JAN. 5, 2003, in the office of Register of Deeds of Johnson County, Kansas in Plat Book K at page 4 K. 200401 000555?

WHEREAS, the Developer is now developing the above described land and desires to create and maintain a residential neighborhood possessing features of more than ordinary value to the said community.

NOW, THEREFORE, in order to assist itself and its grantees in providing the necessary means to bring about the development of the above-described land, the Developer now and hereby subjects all of the above-described lots and tracts located in the development known as "MADISON HEIGHTS" to the covenants, charges and assessments set forth and contained in this Declaration, subject, however, to the limitations hereinafter specified.

**SECTION 1. DEFINITION OF TERMS USED**

The term "district" as used in this Declaration shall mean, unless and until extended as hereinafter provided, all of the lots enumerated above as shown on said plat of MADISON HEIGHTS.

The term "lot" as used herein shall mean either any numbered lot as platted or any parcel or parcels of land as conveyed, which may consist of one or more numbered lots or part or parts of one or more numbered lots, as platted, upon which a residence may be erected in accordance with the "Restrictions" hereinafter defined, and shall include any other lots or parts thereof which may hereafter be made part of the district.

The term "Association" shall mean and refer to the MADISON HEIGHTS HOMES ASSOCIATION or any corporate variation of said name which shall be organized to administer the common areas and for other functions herein provided.

The term "public place" as used herein shall be deemed to mean all streets, all parks and all similar places the use of which is dedicated to or set aside for the use of the general public.

The term "Common Areas" as used herein shall be deemed to mean any tract designated by a letter of the English alphabet, located within the District as it exists from time to time, which tracts shall be owned, managed and maintained by the MADISON HEIGHTS HOMES ASSOCIATION for the use, benefit and enjoyment of the present and future owners of land within the district.

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

The term "Restrictions" as used herein shall specifically include those contained in the "DECLARATION OF RESTRICTIONS" of MADISON HEIGHTS filed in the office of the

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Register of Deeds, Johnson County, Kansas, on JAN 5, 200~~4~~<sup>4</sup>, beginning at page  
of Book \_\_\_\_\_, and all amendments thereto.

**SECTION 2. MEMBERSHIP IN ASSOCIATION**

The Owners of all of the land hereinabove described together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided shall be the members of an association, which by this Declaration is hereby created and established, to be known as "MADISON HEIGHTS HOMES ASSOCIATION" or any legally permissible corporate variation thereof. The Association shall be incorporated under the laws of the State of Kansas as a corporation not for profit. Membership in the Association shall be limited to the Owners of land within the boundaries of the District as it exists from time to time.

**SECTION 3. VOTING RIGHTS**

MADISON HEIGHTS HOMES ASSOCIATION shall have two (2) classes of voting membership, as follows:

(1) Class A. Each Owner, with the exception of the Developer, of a lot in MADISON HEIGHTS, a development in the City of Shawnee, Johnson County, Kansas, shall be a Class A member. Each Class A member shall be entitled to one (1) vote for each lot owned by him, her or it in fee simple title. When more than one person holds interest or interests in any lot, all such persons shall be members and the vote for such lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast with respect to any such lot.

(2) Class B. The Class B member shall be the Developer. The Class B member shall be entitled to one hundred (100) votes for each Lot within the District owned by it in fee simple title.

The voting rights of Class A members shall be suspended for any period during which any assessment, including interest and fees, against his, her or its Lot remains unpaid.

Except as hereinbefore provided, the Association shall be the sole judge of the qualifications of its members and of their rights to participate in its meetings and proceedings.

**SECTION 3. LAND ENTITLED TO BENEFITS.**

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the owner thereof, with the written consent of the Developer, shall have subjected his, her or its land to the terms of this Declaration and to the assessments provided for herein.

**SECTION 4. OTHER LANDS - HOW THEY MAY BE ADDED**

The Developer may from time to time add to the District such other land as is now or hereafter owned by it or is approved for addition by it, provided that the land so added to the District shall at that time be bound by all of the terms of this Declaration and all amendments thereto.

**SECTION 5. USE OF COMMON AREAS**

The Owners of land within the District shall have the exclusive right to the use of all Common Areas within the District as it from time to time exists.

The MADISON HEIGHTS HOMES ASSOCIATION shall have the right and the power to make reasonable rules and regulations which shall govern the use of the said common Areas.

**SECTION 6. POWERS AND DUTIES OF THE ASSOCIATION.**

(1) The Association shall have the following powers and mandatory duties:

(a) To care for, spray, trim, protect, replace and replant trees, shrubbery, bushes,

flowers, grass and sod along all streets, in other public places where trees, shrubbery, bushes, flowers, grass and sod have once been planted or located; and to care for, spray, trim, protect, place, replace, plant and replant trees, shrubbery, bushes, flowers, grass and sod in the common areas set aside for the exclusive use of the Owners in the District.

(b) To provide, maintain, protect and, where necessary, design, construct, reconstruct and replace protective lighting within the District when adequate service of that type is not available from any public source.

(c) To provide for the maintenance of any gateways, entrances, lawn sprinklers and ornamental features now existing or which may hereafter be erected or created in said District in a public street or park, or on any land set aside for the exclusive use of the Owners in the District; to pay all utility bills and other bills for services provided to the Common Areas; and also to provide for the maintenance of any streams or natural water-courses within the District.

(d) To provide for the operation and maintenance of and also to establish and enforce rules for the exclusive use by the members of any playgrounds, green areas and parking areas which now exist or which may hereafter be included, created or erected in the Common Areas within said District.

(e) 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 owned by it; to pay such taxes as may be assessed against land in the semi-public places within the District.

(f) 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 such 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 as are permissible in the deeds, declaration, contract, plats or certificate of survey in which such restrictions or 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 enforcement proceedings shall be paid out of the general fund of the Association as provided for herein. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

(g) To manage and control as trustee for its members all improvements located upon lettered tracts in the District, provided that such management and control of said improvement shall at all times be subject to that had and exercised by the City, County and State, or any one of them in which the land within the District is located.

(h) To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the District neat in appearance and in good order.

(i) To exercise control over such easements as it may acquire from time to time.

(j) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

- (k) To levy and collect the assessments which are provided for in this Declaration.
- 2) The Association shall have the following additional powers and duties which it may exercise and perform whenever in its discretion it may deem it necessary or desirable, to-wit:
- (a) To provide for the plowing and removal of snow from sidewalks and streets, when such services are not available from any public source.
  - (b) To provide such lights as the Association may deem advisable on gateways, entrances or other features, and in other public or semi-public places, when such facilities are not available from any public source.
  - (c) To provide for the cleaning of streets, gutters, catch basins and sidewalks and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.
  - (d) To erect and maintain signs for the marking of streets, and safety signs for the protection of children and other persons, when such signs are not available from any public source.
  - (e) To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

#### SECTION 7. METHOD OF PROVIDING GENERAL FUNDS

(1) For the purpose of providing a general fund to enable said Association to exercise the powers and maintain the improvements and render the services herein provided for, each lot within the District upon which a dwelling has been erected and is then or has been at any time theretofore occupied as a residence, shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid in advance to the Association annually on the second day of each calendar year or at such other times as the Association may determine. The Association may initially and without further meeting or vote, levy and collect an annual assessment in the amount of one hundred dollars (\$100.00) for each lot owned by a Class A member upon which a dwelling has been erected and is then or has been at any time theretofore occupied as a residence. In the year in which a dwelling is constructed on any certain lot covered by this Declaration, the assessment for the said year shall be prorated to the first day in which such dwelling is first occupied as a residence.

(2) The annual assessment upon each lot as aforesaid may be increased or decreased on all the Lots in the District by the Association, provided that at a meeting of the members specially called for that purpose prior to the date on which the assessment is levied for the year for which such increase is proposed, sixty percent (60%) of the votes of members present in person or by proxy at such meeting authorize such an increase by an affirmative vote therefor.

(3) Unless the increases provided for in paragraph (2) of this Section 7 are specifically limited, by the resolutions in which they are contained, to be for a specified period, they shall continue to be effective until rescinded by the Association, at a meeting specially called for such purpose, by an affirmative vote of sixty percent (60%) of votes of the members present and the rescission shall be effective commencing on the first day of the next succeeding year.

(4) Whenever the Association may deem it advisable to submit to the members a proposal under Paragraph (2) of this Section 7 for increasing or decreasing the amount of the annual assessments, it shall notify the members of the Association by mailing to such members at the last known address, with United States postage prepaid thereon, a notice of such meeting, giving the

time and place at which it is to be held and the fact that an increase or decrease in the amount of the annual assessment is to be voted upon at such meeting; such notice must be deposited in the United States mail at a post office within twenty (20) miles of Shawnee, Kansas, not less than fifteen (15) days prior to the date of such special meeting.

(5) When any increased assessment is levied subsequent to the 1st day of December which precedes the year in which such assessment is to be effective, then such assessment shall become due and payable not later than thirty (30) days from the date of levying the assessment. The Association may elect to permit collections in quarterly or semi-annual payments in lieu of the annual payments provided for herein.

(6) The Owner of each Lot subject to an annual assessment as herein provided in subparagraph (1) of this Section 7 shall by acceptance of a deed to such Lot be taken to have agreed and does by these presents agree to pay to the Association all assessments placed against such lot in accordance herewith, and said Association is hereby granted the power to proceed against such owner personally for the collection of said assessments, said right to be in addition to and not to be construed as a limitation upon remedies and rights of said Association otherwise herein granted.

#### SECTION 8. LIEN ON REAL ESTATE

(1) The assessment provided for herein shall become a lien on said real estate against which it is levied as soon as it is due and payable as above set forth, provided, however, that such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. In the event of failure of any of the owners to pay said assessment within thirty (30) days from the date same is levied, then such assessment, from the thirtieth (30th) day after it has been levied shall bear interest at the rate of interest then fixed by statute on judgments rendered under Chapter 61 of Kansas Statutes Annotated.

(2) Within thirty (30) days from the date of levying the assessment for the calendar year during which and for which the assessment is levied, 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 office of the Register of Deeds 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 an administrative fee, which fee shall be in the amount of the then applicable annual assessment and is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. Such fee shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

(3) Such liens shall continue for a period of five (5) years from the date of delinquency and no longer unless within such period suit shall have been instituted for collection, in which case the lien shall continue until termination of the suit and until the sale of the property under the execution of judgment establishing the same.

#### SECTION 9. EXPENDITURES LIMITED TO ASSESSMENT FOR CURRENT YEAR

After there is no longer a Class B member, the Association shall not expend more money

in any calendar year than the total amount of the assessments for that particular year plus any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatsoever 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 assessments for each year shall be applied as far as practicable toward payment of the obligations of that year, and that after there is no longer a Class B member the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

#### SECTION 10. ADDRESS OF ASSOCIATION AND MEMBERS

The Association shall notify all Owners of land in the District as it may exist from time to time, insofar as the addresses of such Owners are listed with said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address the Association shall notify all the Owners of the land within the District, insofar as their addresses are listed with the Association, of the new address.

Any notice to an owner shall be sufficient if mailed, first class U.S. Postage prepaid, addressed to the owner at said owner's address as listed on the rolls of the Association, or the address of the lot owned by the owner.

#### SECTION 11. TEMPORARY TRUSTEE

Prior to the first election of directors of the association, by meeting held for that purpose, the Developer 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 hereby given directly to the Developer. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of Developer and its relinquishment in writing of its rights as temporary Trustee. The Developer may, at any time hereafter, by appropriate agreement made expressly for that purpose, assign or convey to any person or corporation all of the rights, reservations and privileges reserved by it in this Section 11, and upon such assignment or conveyance being made, its assigns or grantees may, at its option, exercise, transfer or assign such rights at any time or times, in the same way and manner as though directly reserved by them or it, in this instrument.

#### SECTION 12. TO OBSERVE ALL LAWS

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

#### SECTION 13. AMENDMENT

This instrument may be modified and amended by written consent of the Owners of two-thirds (2/3) of the Lots then within the District, and of the Developer if it owns any unsold Lots

within the District, evidenced by a Declaration duly executed and acknowledged by such Owners, and Developer if it owns any unsold Lots within the District, and properly recorded in the office of the Register of Deeds of Johnson County, Kansas.

SECTION 14. HOW TERMINATED

This Declaration may be terminated, and all of the land now or hereafter affected may be released from all or any of the terms and provisions thereof, by the Owners of two-thirds (2/3) of the lots then subject thereto and the Developer if it owns any unsold Lots within the District, 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.

SECTION 15. COVENANTS RUNNING WITH THE LAND

All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon the Developer and upon its successors and assigns.

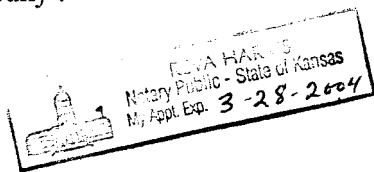
IN WITNESS WHEREOF, the Developer has caused these presents to be executed the day and year first above written.

MADISON HEIGHTS, L.L.C.

By *Sean P. McGaw*  
Sean P. McGaw, Manager

STATE OF KANSAS, JOHNSON COUNTY: ss

THIS INSTRUMENT was acknowledged before me on the 18<sup>th</sup> day of April, 2003, by Sean P. McGaw as Manager of MADISON HEIGHTS, L.L.C., a Kansas limited liability company .



*Rebecca Harris* Notary Public  
My appointment expires: March 28, 2004

