

# 573022

HOMES ASSOCIATION DECLARATION

Recorded: Apr 6, 1959  
Book 102, Misc.  
Page 470

THIS DECLARATION, Made on this 6th day of April, 1959, by J. C. Nichols Company, a corporation of Kansas City, Jackson County, Missouri, duly authorized to transact business in the State of Kansas, which corporation is the owner of all of the lots shown on the recorded plat of Lots 1 to 10, both inclusive, in Block 1, Lots 1 to 23, both inclusive, in Block 2, Lots 1 to 14, both inclusive, in Block 3, Lots 1 to 23, both inclusive, in Block 4, Lots 1 to 11, both inclusive, in Block 5, and Lots 1 to 21, both inclusive, in Block 6, of Antioch Hills, which plat was recorded on March 18, 1959, in the Office of the Register of Deeds of Johnson County, Kansas, at Olathe, in Plat Book 21, at Page 25.

WITNESSETH: That

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

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

DEFINITIONS OF TERMS USED.

The term "district" as used in this Declaration shall mean, unless and until extended as hereinafter provided, all of the lots shown on said plat of Antioch Hills. If or when other land shall, in the manner hereinafter provided for, be added to that described above, then the term "district" shall thereafter mean all land which shall from time to time be subjected to the terms of this Declaration, including any future modification thereof. The term "improved property", as used herein shall be deemed to mean a single tract under a single ownership and use, and on which tract a residence has been erected or is in the process of erection or on which any other building not in violation of the restrictions then of record thereon is erected or is in the process of erection. Any such tract may consist of one or more contiguous lots or part or parts thereof. Any other land covered by this Declaration shall be deemed to be vacant and unimproved. The term "public places" as used herein shall be deemed to mean all streets, all parks at street intersections or elsewhere, and all similar places the use of which is dedicated to or set aside for the use of general public, or for the general use of all of the owners within the district, or which may, with appropriate consent, be used by all of the owners of the district. The term "owners" as used herein shall mean those persons or corporations who may from time to time own the land within the district.

SECTION 1. MEMBERSHIP IN ASSOCIATION.

The owners of Lots 1 to 10, both inclusive, in Block 1, Lots 1 to 23, both inclusive, in Block 2, Lots 1 to 14, both inclusive, in Block 3, Lots 1 to 23, both inclusive, in Block 4, Lots 1 to 11, both inclusive, in Block 5, and Lots 1 to 21, both inclusive, in Block 6, of Antioch Hills, together with the owners of any other land which may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of an Association, which is hereby created and established, to be known as THE ANTIOCH HILLS HOMES ASSOCIATION. The Association shall be incorporated under the laws of the State of Kansas as a corporation not organized 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. 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 2. LAND ENTITLED TO BENEFITS.

No land shall be entitled to any of the benefits, improvements or services provided by this Association, except for the services and with the funds provided for by Section 5 hereof, unless the owner or owners thereof shall have subject<sup>ed</sup> their land to the terms of this Declaration and to the assessments herein provided for.

#### SECTION 3. OTHER LANDS - HOW THEY MAY BE ADDED.

J. C. Nichols Company may from time to time add such land to the district as is now or hereafter owned or approved for addition by it, provided that the land so added to the district shall at that time be bound by all of the terms of this Declaration and any future modifications thereof, except that in the addition to the district of land owned by a church and used for church purposes, J. C. Nichols Company shall have the right to provide that such land shall not be obligated to pay the assessments herein provided for so long as such land is used for church purposes. The Association may also unite or combine with any other association similarly organized, operating on a similar basis, and having jurisdiction of land lying within Johnson County, Kansas.

#### SECTION 4. POWERS AND DUTIES OF THE ASSOCIATION.

The Association shall have the following powers and duties which it may exercise and perform whenever in its discretion it may deem them necessary or desirable, to-wit:

(1) 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 of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, declarations, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any such proceedings shall, however, be paid out of the general fund of the Association as herein provided for. 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 building restrictions.

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

(3) To provide for the collection and disposal of rubbish and garbage, when such services are not available from any public source.

(4) To care for, spray, trim, protect, plant and replant trees on all streets and in other public places where trees have once been planted, when such services are not available from any public source; and to care for, protect, plant and replant shrubbery, and reseed grass in the parks which are in the streets and in the parks set aside for the general use of the owners in the district, or to which such owners have access and the use thereof.

(5) 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.

(6) To provide for the plowing and removal of snow from sidewalks and streets, when such services are not available from any public source.

(7) To provide for the maintenance of any tennis courts, playgrounds, pedestrian ways, gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or created in said district in any public street or park, or on any land set aside for the general use of the owners in the district, or to which all of such owners have access and the use thereof; and also to provide for the maintenance of any streams and natural water-courses within the district.

(8) To provide such lights as the Association may deem advisable on streets, parks, parkings, pedestrian ways, gateways, entrances or other features, and in other public or semi-public places, when such facilities are not available from any public source.

(9) To provide for the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways, and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.

(10) 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.

(11) 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.

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

(13) 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; and to pay such taxes as may be assessed against land in public or semi-public places within the district.

(14) To levy and collect the assessments which are provided for in this Declaration.

#### SECTION 5. ASSIGNMENT BY COMPANY OF RIGHTS AND DUTIES UNDER SEWER DECLARATION.

J. C. Nichols Company shall have the right to assign and transfer to the Association all of the rights and obligations of said Company under a certain Sewer Declaration dated April 6, 1959, affecting land within and without the district served by said Association, and in the event of such assignment the Association shall exercise all of the rights and perform all of the duties of the Company provided for in said Sewer Declaration, including the collection, management and disbursement of assessments thereunder.

#### SECTION 6. METHOD OF PROVIDING GENERAL FUNDS.

(1) For the purpose of providing a general fund to enable the Association to exercise the powers, and maintain the improvements and render the services herein provided for, all land within the boundaries of the district within one hundred fifty feet of any paved street open to vehicular travel shall be subject to an annual

assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the respective owners of the assessable land subject thereto, which assessable land shall be deemed to be all of the lots in the aforesaid plat of Antioch Hills, together with such other land as may from time to time be added to the said district as herein provided. The Association may from year to year fix and determine the total amount required in this general fund and may levy and collect an annual assessment not exceeding \$20.00 for each lot within the district as now or hereafter established, provided, however, that if in the sale of land within the district any lot or lots be divided into one or more building sites, each of which building sites shall be for a single residence and may consist of a part or parts of one or more lots as platted, then for the purpose of levying this assessment each of such building sites shall constitute one assessment unit and shall be liable for each annual assessment in the same way and manner as one platted lot under a single ownership. All building sites, consisting of either platted or unplatted land, which are now or may hereafter become a part of the district as herein provided for, shall be at least of such size as will under the restrictions of record, if any there be, permit the erection of a residence thereon. For the purpose of levying this assessment, the Association shall be the sole judge as to what may from time to time constitute a building site under the provisions of this paragraph.

(2) The annual assessment upon each lot or building site as aforesaid may be increased by an amount not exceeding one hundred per cent of the \$20.00 maximum annual assessment which the Association may levy and collect from year to year, 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, a majority of the members present at such meeting authorize such an increase by an affirmative vote therefor; and provided, further, that the annual assessment upon each lot or building site as aforesaid may be increased by an amount not exceeding one hundred fifty per cent of the said \$20.00 maximum annual assessment, 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, three-fourths of the members present at such meeting authorize such an increase by an affirmative vote therefor. Whenever the Association may deem it advisable to submit to the members a proposal for increasing the amount of the annual assessment for a particular year, it shall notify the members of the Association by mailing to such members at the last known address with United States postage thereon prepaid, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase in the amount of the annual assessment is to be voted upon at such meeting. No increase in the amount of the annual assessment may be made for more than one year at a time.

(3) The first assessment shall be for the fiscal year beginning May 1, 1960, and it shall be fixed and levied prior to May 1, 1960, and shall be payable on that date, and thereafter it shall be due and payable on May 1st of each year. It will be the duty of the Association to notify all owners whose address is listed with the Association on or before that date, giving the amount of the assessment on each tract of land owned by them, and the date when such assessment is due. Failure of the Association to levy the assessment prior to May 1st of each year for the next succeeding fiscal year beginning on May 1st shall not invalidate any such assessment made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to May 1st of any year, then it shall become due and payable not later than thirty days from the date of levying the assessment. Prior to the first assessment hereinabove provided for, if the Trustee shall deem it necessary for the purpose of carrying out the terms of this Declaration, it shall have the right to make a partial assessment within the limits herein provided for and on a prorata basis for the period of time ending April 30, 1960. Thereafter all assessments shall be made annually as herein provided.

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

#### SECTION 7. LIEN ON REAL ESTATE.

(1) The assessment shall become a lien on the 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 and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is insured or guaranteed by any agency of the United States Government. In the event of failure of any of the owners to pay the assessment on or before the first day of June following the making of such assessment, then such assessment shall bear interest at the rate of eight per cent per annum from the first day of May, but if the assessment is paid before June 1st, or within thirty days from the date of the assessment, if the assessment is made subsequent to May 1st for the fiscal year beginning May 1st, then no interest shall be charged.

(2) On or after June 1st of each year, beginning June 1, 1960, or within thirty days from the date of levying the assessment for the fiscal 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 nonpayment 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 a fee of \$2.00, which fee 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 securing the payment of a loan which is insured or guaranteed by any agency of the United States Government. 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 years from the date of delinquency and no longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

#### SECTION 8. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR.

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

#### SECTION 9. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

The Association shall notify all owners of land in the district as it may exist from time to time, insofar as the addresses of such owners are listed with said Association, of the official address of said Association, as to what place and time regular meetings of the Association shall be held, designating the place where

payments shall be made, and any other business in connection with said Association may be transacted, and in case of any change of such address, the Association shall notify all the owners of the land in the district, insofar as their addresses are listed with the Association, of the change, notifying them of its new address.

**SECTION 10. TEMPORARY TRUSTEE.**

Prior to the actual organization or incorporation of the Association contemplated by the terms of this Declaration, J. C. Nichols Company shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were herein given directly to J. C. Nichols Company. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of J. C. Nichols Company and its relinquishment of its rights as temporary trustee.

**SECTION 11. TO OBSERVE ALL LAWS.**

Said Association shall at all times observe all applicable State, County, City and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such part of this Declaration as is in conflict with such laws shall become null and void, but no other part 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 such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject however to the limitations of its rights to contract as are herein provided for.

**SECTION 12. NEW POWER TO BE GIVEN.**

By written consent of the owners of two-thirds of the area of the land within the said district, evidenced by a Declaration duly executed and acknowledged by such owners, and recorded in the office of the Register of Deeds of Johnson County, Kansas, at Olathe, the Association may be given such additional powers as may be desired by said members, or may otherwise amend this instrument, provided, however, that no right to exceed the maximum annual assessment herein provided for may be given.

**SECTION 13. HOW TERMINATED.**

This Declaration may be terminated and all of the land now or hereafter affected may be released from all of the terms and provisions thereof by the owners of two-thirds of the areas subject thereto at the time it is proposed to terminate this Declaration, 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, at Olathe.

**SECTION 14. COVENANTS RUNNING WITH THE LAND.**

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

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



J. C. NICHOLS COMPANY

By: Miller Nichols  
President