

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE
FOUR COLONIES HOMES ASSOCIATION**

(Reprinted: March, 1991)

THIS DECLARATION, made on the date hereinafter set forth by Realco Kansas Three, Inc., and Bodine-Ashner Builders, Inc., hereinafter referred to as "Declarant".

Witnesseth:

WHEREAS, Declarant is the owner of certain property in the City of Lenexa, County of Johnson, State of Kansas, which is more particularly described as:

Commencing at the Southeast corner of the Northeast $\frac{1}{4}$ of Section 27, Township 12 South, Range 24 East, Johnson County, Kansas; thence North 00 degrees 07'11" East along the East line of said Section 27, a distance of 1381.55 feet to the TRUE POINT OF BEGINNING; thence North 89 degrees 52'49" West, a distance of 50.00 feet to a point; thence in a Northwesterly direction and on a curve to the right having a radius of 1087.04 feet with a central angle of 17 degrees 21'12", a distance of 329.24 feet to a point; thence North 72 degrees 31'38" West, a distance of 103.57 feet to a point; thence in a Northerly direction and on a curve to the left having a radius of 220.62 feet with a central angle of 42 degrees 15'37" a distance of 158.87 feet to a point; thence in a Northeasterly direction and on a curve to the left having a radius of 361.59 feet and a central angle of 16 degrees 00'00", a distance of 100.98 feet to a point; thence South 45 degrees 35'18" West, a distance of 186.74 feet to a point; thence South 71 degrees 02'45" West, a distance of 104.68 feet to a point; thence South 06 degrees 48'15" West, a distance of 177.25 feet to a point; thence South 51 degrees 31'49" East, a distance of 155.68 feet to a point; thence in a Southwesterly direction and on a curve to the left having a radius of 398.98 feet and a central angle of 41 degrees 12'31", a distance of 286.96 feet to a point; thence South 11 degrees 50'54" West, a distance of 124.45 feet to a point; thence in a Southwesterly direction and on a curve to the right having a radius of 759.00 feet and a central angle of 25 degrees 45'52", a distance of 341.30 feet to a point; thence East to the East line of said Section 27; thence North 00 degrees 07'11" East along the East line of said Section 27, a distance of 781.55 feet to the Point of Beginning.

NOW THEREFORE, Declarant hereby declares that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Subject only to such exceptions as may hereinafter be set forth, all of the property within Colony One shall be used solely for residential purposes:

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Four Colonies Homes Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a free simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean real property and private streets owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance of the first Lot is that shown on the survey of Colony One as same is filed of record in the office of the Register of Deeds of Johnson County, Kansas.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision survey or map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Realco Kansas Three, Inc., and Bodine-Ashner Builders, Inc., their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Private Streets" shall mean and refer to those streets within Colony One not dedicated to the Public Domain.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- b. the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- c. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class members agreeing to such dedication or transfer has been recorded.
- d. the right of individual Owners to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Except for those Lots which have on-lot parking, ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two automobile parking spaces

which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign one vehicle parking space for each such dwelling.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Members may vote at any meeting of the Association in person or by written proxy duly filed with the Secretary of the Homes Association.

Section 2. The Association shall have two classes of voting membership:

- (a) Class A. Class A members shall be all Owners, with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
- (b) Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease to be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
 - (1) when the total votes outstanding in Class A membership equals the total votes outstanding in the Class B membership, or
 - (2) on June 30, 1975.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Subject to the provisions of Section 2 of this Article, the Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by accepting a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments of charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and for the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Forty and 00/100ths Dollars (\$240.00) per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more

than 3% above the maximum assessment for the previous year without a vote of the membership.

- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Such assent shall be obtained prior to the incurring of any such cost.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 & 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots with like improvements and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessment. Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Non-Payment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest from the due date at the rate of 6 per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any property subject to assessment. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or

transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Kansas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V RESIDENTIAL MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment for exterior maintenance hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family or guest, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject:

- (a) In the event an Owner of any Lot subject to an assessment for maintenance of the Properties shall fail to maintain the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and restore the Lot and the exterior of the buildings and any other improvements located thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.
- (b) The Association, its employees and agents shall have the right to go on any Lot in Colony One for the purpose of performing maintenance and is hereby granted a specific easement for such purpose.

ARTICLE VI ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color scheme, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board (hereinafter "Committee"). In the event said Board, or its designated Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be submitted to and determined by a board of three arbitrators as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within 10 days after the receipt of such notice the other party shall name a second arbitrator, and in case of failure so to do, the party who has already named an arbitrator, may have the second arbitrator selected or appointed by a judge of the Johnson County District Court, State of Kansas, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and in the event the two arbitrators so appointed shall fail to appoint the third arbitrator within 10 days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement, or difference, and the decision of any two of them shall be final, conclusive and binding upon all parties. In all cases of arbitration, the parties hereto shall pay the expense of its own attorneys' and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties.

ARTICLE VIII GENERAL RESTRICTIONS

Section 1. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within Four Colonies without the written consent of the Committee.

Section 2. Building or Uses Other than for Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the property within Colony One. Provided, however, this prohibition shall not apply:

- (a) to any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to Colony One, or
- (b) to any portion of a building used for coin-operated laundry or dry cleaning equipment for the use of occupants of buildings in Colony One, or
- (c) to any portion of a building used by Declarant for a manager's office or a sales office, or by the Four Colonies Homes Association, for its office,

if written permission for such placement, erection or use under (a) or (b) above, is first obtained from the Committee. Permission of the Committee is not required for exception (c) above.

Section 3. Colony One Recreation Area. Anything contained herein to the contrary notwithstanding, Parcel One (1) of Colony One shall be used only as a private country club or recreational area for the

benefit of the residents of Colony One, their families, guests, and invitees, with such structures and improvements as may be constructed thereon, including, but not by way of limitation, swimming pools, cabanas, tennis courts, snack bars, club houses, and other recreational facilities. "Resident", as used herein, shall include not only the Owners of Lots in Colony One, but also the lessees and tenants of such Owners. Residents of Colony Two and Colony Three shall also have the use of such club or recreation area.

Section 4. Fences, Etc. No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within Colony One except such fences or enclosures as may be authorized by the Committee. No truck, trailer, boat, equipment or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any building site, parking area or street in Colony One. Automobiles shall be parked only in designated parking areas and subject to the provisions of Article II hereof. No external television or radio antenna shall hereafter be erected on or about any of the building sites or property within Colony One except, with the written approval of the Committee, one or more television antenna towers may be erected for the benefit and use of all or part of the residents of Colony One. No clotheslines or clothes hangers may be constructed or used unless completely concealed within enclosed patio areas.

Section 5. Easement for Public Utilities. Easements and rights of way of varying dimensions for various public utility services have heretofore been dedicated by the undersigned in the survey of Colony One, the specific description and location thereof being set forth in said survey. To the extent additional easements or rights of way for public utility services are later deemed necessary or desirable, the undersigned shall have and do hereby reserve the right, at any time hereafter, to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines, televisions antenna lines and other utilities, and give or grant easements or rights of way therefore over and upon any part of the land hereby restricted without the consent of the then record Owner of Owners of said land. No trees, shrubbery, structures, buildings, fences, pavements or similar improvements shall be grown, built or maintained within the area of a utility easement or right of way which may damage or interfere with their use.

Section 6. Easement for Right-of-Way. Notwithstanding the legal description and survey map or plat of the Lots to be conveyed in Colony One, any part of a Lot conveyed in Colony One which is not covered and delineated by the unit originally placed on the Lot by the original builder of the same, or enclosed or delineated by the patio fence originally placed on the Lot by the original builder, shall be subject to an easement of right-of-way for the common use of the members of the Homes Association, their families, tenants or contract purchasers who reside on the properties, and such easement is hereby granted for such use.

Section 7. Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building site in Colony One other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pets will be kept, bred or maintained for commercial purposes.

Section 8. Noxious Activity. No noxious or offensive activity shall be carried on within Colony One, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any vacant building site, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.

Section 9. Billboards Prohibited. The construction, placing or maintenance of billboards, advertising boards or structures or "For Sale" or "For Rent" signs on any building site in Colony One is expressly prohibited except that "For Sale" or "For Rent" signs may be erected by Bodine-Ashner Builders, Inc.,

or Realco Kansas three, Inc., and "For Sale" or "For Rent" signs may be placed by others after first obtaining the written consent of Bodine-Ashner Builders, Inc., or Realco Kansas Three, Inc.

Section 10. Outbuildings Prohibited. No outbuilding or other attached structure appurtenant to a residence may be erected on any of the building sites hereby restricted without the consent in writing of the Committee.

Section 11. Temporary Structures. No trailer, basement, tent, shack, garage, barn, or other outbuilding shall at any time be used for human habitation, temporary or permanently, nor shall any structure of a temporary character be used for human habitation. Provided, however, nothing herein contained shall restrict Bodine-Ashner Builders, Inc., or Realco Kansas Three, Inc., from locating, constructing or moving a temporary real estate office on any building site in Colony One to be used during the period of the sale of the property within Colony One. Bodine-Ashner Builders, Inc., or Realco Kansas Three, Inc., may also erect and maintain model homes for sale purposes and rental and lease purposes and may operate such office or offices therein for so long as they deem necessary for the purpose of selling, renting, or leasing property within Colony One.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

(As long as there is Class B membership,) the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 18th day of April, 1971.