

KIRKWOOD DEVELOPMENT CO., INC.
 TO
 CATALINA SQUARE, SECTION FIVE

STATE OF TEXAS)

RETYPED

COUNTY OF HARRIS)

WHEREAS, KIRKWOOD DEVELOPMENT CO., INC., a Texas corporation, which maintains its principal office and place of business in Harris County, Texas, is the owner of CATALINA SQUARE, SECTION FIVE (5), being a subdivision of a certain 25.9936 acre tract out of the W. E. Sanders Survey, A-1138, in Harris County, Texas, according to the map and plat of said CATALINA SQUARE, SECTION FIVE (5), recorded in Volume 159, Page 89, of the Map Records of Harris County, Texas and

WHEREAS, it is deemed to be in the best interest of said corporation and of the persons and/or corporations who may purchase lands described in and covered by the above mentioned map and plat that there be established and maintained a uniform plan for the improvement and development of the lots covered thereby.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That Kirkwood Development Co., Inc., does hereby dedicate the streets, avenues, drives and parkways for use by the public as such, reserving the right to itself, its successors and assigns to any time use the same for installation, maintenance, repairs and renewal of any and all public utilities, and agrees that the land shown to be subdivided according to said plat is held, and shall hereafter be conveyed, subject to covenants, conditions, stipulations, easements, and restrictions as herein after set forth.

DEFINITIONS

The word "STREET" as used herein shall include any street, drive, boulevard, road, lane, avenue, or any place as shown on the recorded plat as a thoroughfare.

A "CORNER LOT" is one that abuts on more than one street. Any lot, except a corner, is deemed to front the street upon which it abuts. A corner lot shall be deemed to front the street designated by the Architectural Committee as hereinafter provided.

RESTRICTIONS

For the purpose of creating and carrying out a uniform plan for the improvement and sale of property in said Addition as a restricted subdivision, the following restrictions upon the use of said property are hereby established and adopted subject to the provisions hereof and shall be made a part of each and every contract and deed executed by or on behalf of Kirkwood Development Co., Inc., its successors and assigns, by appropriate reference to this dedication and same shall be considered a part of each contract and deed as though incorporated fully therein. And these restrictions as hereinafter set forth shall be and are hereby imposed upon each lot or parcel of land in said addition as shown by said plat and referred to herein, and same shall constitute covenants running with the land and shall be binding upon, and shall inure to the benefit of Kirkwood Development Co., Inc. and its successors, and all subsequent purchasers of said property and each purchaser by virtue of accepting a contract or deed covering each property shall be subject to and bound by such restrictions, covenants and conditions and for the term of this instrument as hereinafter set forth.

USE OF LAND

(a) Except as herein noted, no lots shall be used for anything other than residential purposes.

(b) No sign of any kind shall be displayed to the public view on any residential lot except one sign of no more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

(c) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

(d) No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(e) No spirituous, vinous or malt or medicated bitters capable of producing intoxication shall be sold or offered for sale, on said premises or any part thereof, nor shall said premises or any part thereof be used for illegal or immoral purposes.

ARCHITECTURAL RESTRICTIONS

No improvements of any character shall be erected or the erection thereof begun, or change made in the exterior design thereof after original construction on any lot or homesite in Catalina Square, Section Five (5), until plans and specifications have been submitted to an approval in writing by the Architectural Committee as hereinafter constituted. Such approval is to include exterior design, the type of material to be used and the colors to be applied on the exterior of the structure and such approval is to be based on the following general requirements, stipulations and restrictions:

(a) All lots in the tract shall be known and described as residential lots as shown on map of Catalina Square, Section Five.

(b) No structure shall be erected on any residential building plat other than one detached single-family dwelling not to exceed two stories in height and not to exceed two car garage, except sales offices during actual construction period.

(c) No structure shall be moved on to any lot.

(d) No trailer, basement, tent, shack, garage, barn or other buildings erected in the tract shall at any time be used as a residence except as provided in paragraph (i) below, nor shall any residence of a temporary character be permitted.

(e) No temporary building shall be erected or maintained on any lot except during actual construction of a home being erected thereon, and then such temporary building must be on the lot on which construction is in progress and not on adjoining lots, streets, or easements and at completion of a construction, the temporary building must be removed immediately. No such temporary building or structure shall be used for residential purposes during construction, except sales offices as provided for in paragraph (b) above.

(f) No garage apartment for rental purposes shall be permitted. Living quarters on property other than in main building may be used for bonafide servants only.

(g) All improvements shall be constructed on the lot so as to front the street upon which lot faces.

(h) The Architectural Control Committee reserves the right to designate the direction in which such improvements on any corner lot shall face and such decision shall be made with the thought in mind of the best general appearance to that immediate section.

(i) Dwellings on corner lots shall have representable frontage on all streets on which that particular lot fronts.

(j) No residence shall be constructed on any lot or building site in the subdivision for less than actual cost than Twelve Thousand Dollars (\$12,000.00). These restrictions as to the value of improvements are to be given consideration based upon labor and material costs as of January 1, 1964, and all future value of improvements is to be given consideration based upon comparative costs of labor and material at the time of construction, using the base value hereinabove given.

(k) No residence shall be constructed on any lot or building site in this subdivision with less than one thousand two hundred (1,200) square feet of ground floor area exclusive of porches and garage. In case of two story, the ground floor shall not be less than 800 square feet, nor the second story less than 600 feet.

(l) The building lines of any residence to be erected in Catalina Square, Section Five, shall be as follows:

Not less than twenty-five (25) feet from the front property line and not less than five (5) feet from either side property line except that on all corner lots no structure shall be erected nearer than 10 feet from the side property line abutting a street. No dwelling shall be located on any lot nearer than 15 feet to the rear lot line.

Any building set back as shown on recorded plat shall take precedent, If greater, than those indicated in preceding paragraph.

(m) No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(n) No radio aerial wires shall be maintained on any portion of any lot forward of the front building line of said lot.

(o) No detached garage, servant's house or other outbuilding of any kind shall be erected on any lot nearer than 70 feet to the front property line, nor nearer than 3 feet to either side property line, nor nearer than the easement on the rear or side property line of said lot.

This does not apply to garage and servant's quarters when attached to the main residence but any servant's quarters attached to the main residence must be in the rear of same. No outside toilets will be permitted.

(p) No house shall be built on a lot having a width at the building line of less than 60 feet.

(q) Fifty percent of all front elevation excluding gables and window and door openings must be of masonry veneer.

No outbuildings shall exceed in height the dwelling to which they are appurtenant, without the written consent of the Architectural Committee.

Every outbuilding except a green house shall correspond in style and architecture to the dwelling to which it is appurtenant.

(r) No building of frame construction on the exterior of any kind or character shall be erected on any lot unless same at the time of construction shall receive at least two coats of paint.

(s) No building material of any kind or character shall be placed or stored upon the property until the owner is ready to commence to improve, and then such material shall be placed within the property lines of the lot or parcel of land upon which the improvements are to be erected, and shall not be placed in the street or between the pavement and property line.

(t) No stumps, trees, underbrush or any refuse of any kind nor scrap material from the improvements being erected on any lot shall be placed on any adjoining lots, streets or easements. All such material, if not disposed of immediately, must remain on the property on which construction work is in progress and at the completion of such improvements, such material must be immediately removed from the property.

(u) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas, shall be erected, maintained or permitted on any lot.

Kirkwood Development Co., Inc. hereby designates and appoints Johnnie Attaway, L. C. Owens, Milton Freedman and Jack R. Bryan, as the Architectural Committee, which Committee and its successors, are hereby vested with the full right and authority to act as such under the provisions of these restrictions. The majority of such committee shall have the right to designate a representative to act for it in all matters arising hereunder. In the event that the Architectural Control Committee results in a tie vote and a fifth temporary Control Committee member is necessary to decide an issue a fifth member shall be selected and agreed upon by all other members of said committee, and his self as a temporary member of Committee shall be binding on the Committee as a whole. The selection of a Committee member shall be for one specific act only and said temporary member shall not become a permanent member of Committee of this procedure.

DURATION OF RESTRICTIONS

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of Forty (40) years from date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to chance said covenants in whole or in part.

CATALINA SQUARE IMPROVEMENT COMMITTEE

Each record lot owner of each lot of all sections in Catalina Square shall have one (1) vote or membership in Catalina Square Improvement Committee, which vote or membership shall automatically pass with the title of the lot. Owners of fractional portions of any lot shall have that same fractional portion of a vote or membership. The vote of any lot, owned in common by two (2) more persons, may be cast by any one (1) representative so designated by the officers of that corporation.

Any voting may be by mail, or in any open meeting, as designated by the Constitution and By-Laws of the Catalina Square Improvement Committee, which will outline in full all the voting procedures, initiative and referendum procedures, its officers and their duties and committees and their duties.

Catalina Square Improvement Committee, a Texas corporation, shall be a non-stock, non-profit corporation, with the principal purposes of: the collection, expenditure, and management of the Maintenance Fund; enforcement of these restrictions; the ownership of the swimming pool site, with all its improvements including swimming pool, change facilities, locker room, playground equipment, etc.

MAINTENANCE FUND

Each residential building site in Catalina Square, Section Five, is hereby subjected to an annual maintenance charge and assessment not to exceed \$4.00 per month or \$48.00 per annum, for the purpose of creating a fund to be designated and known as the "Maintenance Fund", which maintenance charge and assessment will be paid by the owner or owners of each lot within Catalina Square, Section Four to Catalina Square Improvement Committee, above mentioned, in advance quarterly installments, commencing on the date that the first such quarterly installment comes due subsequent to the date of sale of the respective lot concerned by Catalina Homes, Inc. The rate at which each lot will be assessed will be determined annually, and may be adjusted from year to year by Catalina Square Improvement Committee as the needs of the subdivision may in the judgment of that Committee require, provided that such assessment will be uniform and in no event will such assessment or charge exceed \$4.00/per lot per month, or \$48.00 per lot per year. The present owners of the property hereinabove described and their successors and assigns agree to pay their and each of their proper proportion of said assessment for all lots in Catalina Square, Section Four, which are fully developed and saleable building sites. Catalina Square Improvement Committee shall use the proceeds of said maintenance fund for the use and benefit of all residents of Catalina Square, Section Four, as well as all subsequent sections of Catalina Square, provided, however, that each future section of Catalina Square to be entitled to the benefit of this Maintenance Fund, must be impressed with and subjected to the annual Maintenance Charge and assessment on a uniform, per lot basis, equivalent to the maintenance charge and assessment imposed hereby, and further made subject to the jurisdiction of Catalina Square Improvement Committee.

The uses and benefits to be provided by said Committee shall include, by way of clarification and not limitation, any and all of the following: Constructing and maintaining parks, parkways, rights-of-way, easements, esplanades and other public areas, collecting and disposing of garbage, ashes, rubbish and the like payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting said property to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment, employing policemen and watchmen, caring for vacant lots and doing any other thing or things necessary or desirable in the opinion of the Catalina Square Improvement Committee to keep the property in the subdivision neat and in good order, or which is considered of general benefit to the owners or occupants of the property, it being understood that the judgment of Catalina Square Improvement Committee in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

To secure the payment of the maintenance fund established hereby and to be levied on individual residential lots above described, there is hereby reserved the Vendor's Lien for the benefit of the above mentioned Catalina Square Improvement Committee, said lien to be enforceable through appropriate proceedings in law by such beneficiary; provided, however, that each such lien is specifically made secondary, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance and request of the owner of any such lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such lot, and further provided that as a condition precedent to any proceedings to enforce such lien upon any lot upon which there is an outstanding, valid and subsisting first mortgage lien, said beneficiary shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage holder by prepaid U.S. Registered Mail, to contain the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, said beneficiary shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof.

The above maintenance charge and assessment will remain effective for the full term (and extended term, if applicable) of the within covenants.

RIGHT TO ENFORCE

The restrictions herein set forth shall be binding upon the Corporation, its successors and assigns and all parties claiming by, through or under it or them, and all subsequent property owners in subdivision, each of whom shall be obligated and bound to observe such restrictions, covenants and conditions, provided, however, that no such person or corporation shall be liable except in respect to breaches committed during its, his or their ownership, of said property. The violation of any restriction, covenant or condition shall not operate to invalidate any mortgage, deed of trust, or other lien acquired and held in good faith against property, or any part thereof, but such liens may be enforced as against any and all property covered thereby, subject nevertheless, to the restrictions, covenants and conditions herein mentioned. Invalidation of any one of these covenants by judgment of court order will be in no wise affecting any of the other provisions which shall remain in full force and effect.

Kirkwood Development Co., Inc., its successors and assigns, shall have the right to enforce observance and performance of such restrictions, covenants and conditions, and in order to prevent a breach or to enforce the observance or performance of same shall have the right in addition to all legal remedies, to an injunction either prohibitive or mandatory. The owner of any lot or lots affected shall have the right either to prevent a breach of any such restriction, covenant or condition or to enforce the performance of same.

SEVERABILITY

Invalidation of any one of these covenants by judgment or other court order shall in nowise affect any of the other provisions which shall remain in full force and effect.

RATIFICATION OF LIENHOLDER

Continental Bank, as lienholder, joins in the execution of this Instrument to evidence its ratification, confirmation and adoption of each and every restrictive covenant hereof.

IN TESTIMONY WHEREOF, KIRKWOOD DEVELOPMENT CO., INC., has caused these presents to be executed by its President and its corporate seal affixed hereto on this the 18th day of September, 1969.

ATTEST:
/s/ L. C. Owens
Secretary

KIRKWOOD DEVELOPMENT CO., INC.
By: /s/ Johnnie Attaway
President