

KELLIWOOD TERRACE, SECTION THREE RESTRICTIONS

THE STATE OF TEXAS }
COUNTY OF FORT BEND } KNOW ALL MEN BY THESE PRESENTS:

THAT LOCHMERE DEVELOPMENT COMPANY, INC., hereinafter referred to as "Lochmere" or "Developer" (a Texas corporation), being the owner of that certain 8.5729 acres, more or less, out of the Ira H. Evans Survey, A-547, all of which is part of the same 5,345.123 acre tract of land designated as Tract 1 in that certain deed recorded in Volume 1471, Page 60 of the Fort Bend County Official Records, which has been heretofore platted and subdivided into that certain subdivision known as KELLIWOOD TERRACE, SECTION THREE, ("Subdivision"), according to the plat of said subdivision recorded in slide number 1248B of the Plat Records in the County of Fort Bend, State of Texas, and desiring to create and carry out a uniform plan for the improvement, development, and sale of all of the residential lots in KELLIWOOD TERRACE, SECTION THREE, for the benefit of the present and future owners of said lots, does hereby adopt and establish the following reservations, restrictions, agreements, covenants and easements to apply uniformly to the use, occupancy, and conveyance of all residential lots in KELLIWOOD TERRACE, SECTION THREE (described below), and each contract of deed which may be hereafter executed with regard to any lots in KELLIWOOD TERRACE, SECTION THREE, shall conclusively be held to have been executed, delivered and accepted subject to the following reservations, restrictions, agreements, covenants and easements, regardless of whether or not the said reservations, restrictions, agreements, covenants and easements are set out in full or by reference in said contract or deed, such residential lots in KELLIWOOD TERRACE, SECTION THREE, being as follows:

Lots 24-53 Block 1

1. LAND USE AND BUILDING TYPE

No building shall be erected, altered, placed or permitted to remain on any lot other than One (1) single family residential dwelling not to exceed two (2) stories in height, excluding attic space, and a private garage for not more than four (4) cars, but not less than two (2) cars, and bona fide servants' quarters, which structures shall not exceed the main dwelling in height or number of stories and which structure may be occupied only by a member of the family occupying the main residence on the building site or by domestic servants employed on the premises.

2. ARCHITECTURAL CONTROL

No building or improvements of any character shall be erected or placed, or the erection begun on any lot until the construction plans, specifications and plot plan showing the location of the structure or improvements, easements and building lines have been submitted to and approved by the Architectural Control Committee ("Committee"), consisting of Vincent D. Kickerillo, Jim A. Miller, and Lawrence E. Lippincott, or their successors or assigns, as to compliance with these restrictions, as to quality of material, harmony of external design with existing and proposed structures.

All structures must be constructed with exterior brick on the front and side walls. In the case of lots which adjoin the golf course, the structures must have exterior brick on the back, in addition to the front and side walls. Such brick and color selection must be submitted with construction plans to the Architectural Control Committee for approval.

In the event of death or resignation of any member of the Committee, the remaining members shall have the full authority to designate a successor. No member of the Committee, nor its representative, shall be entitled to compensation for services performed pursuant to this covenant, nor is any member of the Committee personally liable for any act relating to approval or disapproval of construction plans and specifications or the enforcement of any of these restrictions. In the event that within thirty (30) days after receipt of the required documents, the Committee fails to approve or disapprove the plans and specifications submitted, approval shall not be required, and the related covenants set out herein shall be deemed to have been fully satisfied. The Architectural Control Committee, at its sole discretion, is hereby permitted to approve deviations in building area and location in instances where, in its judgement, such deviations would result in a more commonly beneficial use. Such approval must be granted in writing, and when given, will become part of these restrictions. The Architectural Control Committee hereby agrees to assign its rights to approve or disapprove plans and specifications, location of structures, construction contracts and all documents or approvals required to be submitted to it to Kelliwood Fund, Inc. ("Fund"), or its designees, when One Hundred Per Cent (100%) of all of the lots in KELLIWOOD TERRACE, SECTION THREE, are occupied by residents.

3. MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS.

The livable area of each main residential structure, exclusive of open or screened porches, stoops, open terraces, garages or detached servants' quarters shall not be less than Two Thousand One Hundred (2,100) square feet for a one (1) story structure and not less than Two Thousand Four Hundred (2,400) square feet for a two (2) story structure.

4. LOCATION OF THE IMPROVEMENTS UPON THE LOT.

No building shall be located on any lot nearer to the front lot line or nearer to the side street lot line than the minimum building set back lines shown on the recorded plat. In any event, no building, garage or other permitted accessory building shall be located on any residential building plot nearer than Twenty-five feet (25') to the front line, nor nearer than Ten feet (10') to any side street line, unless otherwise noted on the recorded plat, nor nearer than Five feet (5') to the rear lot line, nor nearer than five feet (5') to any side lot line.

Unless otherwise prohibited by the recorded subdivision plat, houses bounded on two sides by streets may, in the alternative, have garage access directly from the street along the side lot line. Each residential structure must be accompanied by a four-sided garage structure which must be directly attached or connected by breezeway to the main structure unless otherwise approved by the Committee.

All residential structures shall front on the street on which the lot has the smallest frontage.

No carports shall be erected or permitted to remain on any lot, unless otherwise approved by the Committee.

5. WALLS, FENCES AND HEDGES.

No wall, fence, hedge, planters or other detached structure may be erected, grown or maintained on any part of any lot between the building set back line and the adjoining street(s). Any wall, fence, hedge or planters erected as a protective screening on a lot by Developer or Builder shall pass ownership with title to the property, and it shall be owner's responsibility to maintain such protective screening thereafter.

6. AIR CONDITIONING REQUIREMENTS.

No window or wall type air conditioning units shall be permitted to be used, erected, placed or maintained in or any building in any part of the subdivision.

7. SOLAR COLLECTORS.

No solar collector shall be installed without prior written approval of the Committee. Such installation shall be in harmony with the design of the residential structure. Solar collectors shall be installed in a location not visible from the public street in front of the residence.

8. WALKWAYS.

All walks and walkways which are visible to the public will be constructed of poured concrete or other material as approved the Committee and within standards established by Fort Bend County.

9. UTILITY EASEMENTS.

Easements for installation and maintenance of utilities are reserved as shown and provide on the recorded plat and as they may appear in the records of the Fort Bend County Clerk's Offices, and no structure shall be erected upon said easements. Neither Lochmere nor any utility company suing such easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers, grass or other improvements of the owner located on the land covered by said easements.

10. PROHIBITION OF OFFENSIVE ACTIVITIES.

No activity, whether for profit or not, which is not related to single family residential purposes, shall be engaged on any lot, except as herein referred. No noxious or offensive activity shall be permitted on any lot, nor shall anything be done on any lot which may be or become an annoyance of nuisance to the neighborhood. As long as it owns property in KELLIWOOD TERRACE, SECTION THREE, Lochmere, or its assigns may maintain in or upon such portions of the property as Lochmere determines, such facilities as in its sole discretion may be necessary or convenient, including, but not limited to, offices, storage areas and signs. Under the provision of this paragraph, real estate offices, builders' sales offices, construction offices, builders' business offices, residential sales company offices and real estate brokers' offices are specifically prohibited without the express written prior consent of Lochmere.

11. USE OF TEMPORARY STRUCTURES.

Except as provided in paragraph 10, no structure of a temporary nature, trailer, basement, tent, shack, barn, garage or other out-building shall be used on any lot at any time as a residence temporarily or permanently, nor shall any residence or building be moved onto any building lot.

12. SIGNS.

No signs of any kind shall be displayed to the public view on any lot except one sign per lot of not more than five (5) square feet advertising the property for sale or for rent except signs used by Lochmere and builders to advertise the property during the construction and sales period. Lochmere, its assignees, or the Fund, will have the right to remove any such sign exceeding the five (5) square feet which is placed on any lot and in so doing shall not be subject to any liability of trespass or other tort in connection therewith or arising with such removal.

13. STORAGE OF AUTOMOBILES, BOATS, TRAILERS, AND OTHER VEHICLES.

No boats, boat trailers, travel trailers, inoperative automobiles, campers or vehicles of any kind are to be semi-permanently or permanently stored in the public street or alley right of way or on driveways. Permanent or semi-permanent storage of such items and vehicles must be totally screened from the public view, either within the garage or behind a fence which shall enclose the rear of the lot. In the case of a golf course lot, no such listed item or vehicle of any kind may be stored in the rear of the lot.

14. OIL AND MINING OPERATIONS.

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 any wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

15. ANIMAL HUSBANDRY.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except no more than two (2) dogs, housecats or other household pets may be kept provided that they shall not become a nuisance and are not kept, bred or maintained for any commercial purposes. Dogs shall be kept quiet so as not to disturb any persons and must be maintained on a leash at all times when outdoors and not kept in an fenced enclosure.

16. GARBAGE AND REFUSE DISPOSAL.

No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage and other waste shall not be kept except in enclosed sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and concealed from public view.

17. VISUAL OBSTRUCTIONS AT THE INTERSECTIONS OF PUBLIC STREETS.

No object or thing which obstructs sight lines at elevations between two feet (2') and six feet (6') above the roadways within the triangular area formed by the intersecting lot property lines and a line connecting them at points twenty-five feet (25') from the intersecting of the street property lines or extensions thereof shall be placed, planted or permitted on any corner lot. Not by way of limitation, enforcement of this paragraph may be effected under the provision of paragraph 21 hereinbelow.

18. LOT MAINTENANCE.

The owners or occupants of all lots (inclusive of easement areas) shall at all times keep weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any lot or portion thereof for the storage of materials and equipment except for normal single family residential requirements or incident to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash or rubbish of any kind thereon and shall not burn anything (except as permitted by law). The drying of clothes in public view is prohibited and the owners or occupants of an lot(s) at the intersection of streets or other facilities where the rear yard or portion of the lot is visible to full public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. Not by way of limitation, in the event of default on the part of the owner or occupant of any lot in observing any of the above requirements, compliance may be effected under the provisions of paragraph 21 hereinbelow.

19. ROOFING MATERIAL.

The roof of all buildings shall be constructed or covered only with materials specifically approved by the Committee and not less in grade than Elk Prestique II type shingles, which approval must be obtained in writing prior to commencement of roof construction, covering or recovering. The Committee shall review, not by way of limitation, the color, composition, quality, grade and overall appearance of the exterior roofing materials proposed. The use of wood shingles for roofing materials is strictly forbidden.

20. COMMUNICATIONS ANTENNAE.

No radio or television or other aerial wires or antennae or satellite dish shall be maintained on any portion of any residential lot or structure unless hidden from outside view. All radio or television or other aerial wires or satellite dish must be built within the main or other structure, as approved by the Committee and may not be visible from the outside of the structure.

21. MAINTENANCE FUND.

Each lot shall be subject to an annual maintenance assessment payable in advance on January 1 each year for the purpose of creating a fund to be known as Kelliwood Fund, Inc. ("Fund"), a non-profit corporation. The maintenance assessment for each lot will commence with the date of conveyance of such lot by Lochmere, its successors and assigns. The owner, for each lot owned within the subdivision, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Fund (1) annual assessments ("Assessment") and (2) other charges ("Charges") provided for hereinbelow. Assessments shall be established and collected and Charges shall be collected as hereinafter provided. The Assessments and Charges, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against such Assessment or other Charge is made. However, the aforesaid lien is expressly subordinate and inferior to any first mortgage lien on any lot in the subdivision. In addition to the charge on the land, each such Assessment or Charge, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the owner of such land at the time the assessment or other charges fell due.

The Assessment shall be established or adjusted by the Fund from year to year as the needs of the property may, in its judgement, require, but in no event shall such assessment exceed Twenty Five Hundred Dollars (\$2,500.00) per lot per year or increase more than Ten Percent (10%) per year. The assessment shall remain effective until December 31, 2013, and shall automatically be extended thereafter for successive periods of ten (10) years; provided, however, that the owners of the majority of the lots may revoke such assessment on either December 31, 2013, or at the end of any successive ten (10) year period thereafter by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for the record in the office of County Clerk of Fort Bend County, Texas, at any time prior to December 31, 2013, or at any time prior to the expiration of any successive ten (10) year period thereafter.

Kelliwood Fund, Inc., its successors and assigns, without liability to the owner or occupant in trespass or otherwise, may, after ten (10) days written notice to the owner or occupant and failure of the owner or occupant to comply with the terms of such notice, enter upon such lot or lots and do or cause to be done such actions that will bring the lot and improvements thereon into compliance with these restrictions. The cost of said actions shall be billed to the lot owner by the Fund by placing such bill in United States mail, postage paid. Any Assessments and Charges which are not paid when due shall be delinquent. If the assessment or other charge is not paid within thirty (3) days after the due date, the assessment or other charge shall bear interest from the date of delinquency at a rate which shall not exceed the maximum prevailing legal rate per annum, and the Fund may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against such lot or lots, regardless of whether or not there is personal liability of the current owner, and interest, costs and reasonable attorneys fees of any such action shall be added to the amount of such assessments or charge. Each such owner, by his acceptance of a deed to a lot, hereby expressly vests in the Fund, or its agents, the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of liens against real property, including foreclosure by judicial action brought in the name of the Fund and by a non-judicial foreclosure of said lien. The lien provided for in this paragraph shall be in favor of the Fund and shall be for the benefit of all other lot owners. The Fund, acting on behalf of the lot owners, shall have the power to bid for the interest foreclosed at foreclosure sale and acquire and hold, lease, mortgage and convey the same.

The maintenance fund shall be applied, insofar as it may be sufficient (with priority given to maintenance of cul-de-sacs, island, esplanades and all other aesthetic features located within county right of ways) toward the payment for maintenance (cleaning and/or mowing) of streets, alleyways, paths, parkways, cul-de-sacs, esplanades and vacant lots. Additionally, this maintenance fund shall cover costs of normal household garbage service and street lighting, fogging, employing of policemen and workmen, enforcement of these restrictions, and any other things necessary or desirable in the opinion of Kelliwood Fund, Inc. to maintain or improve the property or which it considers to be of general benefit to the owners or occupants of the property covered by these restrictions, it being understood the judgement of Kelliwood Fund, Inc. in the expenditure of said maintenance fund, shall be final as long as said judgement is exercised in good faith.

22. LOT GRADING.

After the conveyance of each lot or lots from Lochmere, each lot must be graded and maintained in such a manner so as to permit all water from all sources to drain naturally into the street storm sewer systems that sides on or fronts each respective lot. No lot may be graded in such a manner as to permit water runoff to drain or flow onto or across any adjacent lot nor shall any lot be graded or maintained in such a manner as to allow the accumulating of standing water. All grading and drainage on any lot conveyed must conform to U.S. Government Storm Water Discharge laws and regulations.

23. RIGHTS OF MORTGAGES.

Any violation of any of the reservations, restrictions, agreements, covenants and easements contained herein shall not have the effect of impairing or affecting the rights of any mortgagee, guarantor or trustee under any mortgage or deed of trust outstanding against the lot, at the time that reservations, restrictions, agreements, covenants or easements are violated.

24. ENFORCEMENT.

The reservations, restrictions, agreements, covenants and easements set out herein are for the benefit of the undersigned, its successors and assigns, and equally for the benefit of the Fund any subsequent owner of a lot or lots in KELLWOOD TERRACE, SECTION THREE, and their heirs, executors, administrators and assigns. Accordingly, all of the reservations, restrictions, agreements, covenants and easements contained herein shall be construed to be covenants running with the land, enforceable at law or in equity, by any one or more said parties.

25. UNDERGROUND ELECTRIC DISTRIBUTION SYSTEM.

A underground electric distribution system will be installed in that part of the subdivision designated herein as Underground Residential Subdivision, which underground service area embraces all of the lots which are platted in the subdivision. The owner of each lot shall, at his own cost, furnish, install and maintain (all in accordance with the requirements of the local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment and at the meter. Lochmere, at the request of the electric company, has either by designation on the plat of the subdivision or by separate instrument granted necessary easements to the electric company, in the location and of a size designated by the electric company, providing for the installation, maintenance and operation of its electric distribution system and also has granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the owner of each lot containing a dwelling shall at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for said dwelling for so long as said electric service is maintained. For so long as the underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/140 volt, three wire, 60 cycle, alternating current.

26. SEVERABILITY.

The invalidity, abandonment or waiver of any one of these reservations, restrictions, agreements covenants and easements shall in no way affect or impair the other reservations, restrictions, agreements, covenants and easements which shall remain in full force and effect.

27. AMENDMENT TO THE ABOVE RESTRICTIONS.

The covenants and restrictions of this declaration shall run with and the land for a term of forty (40) 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 the owners of not less than seventy-five per cent (75%) of the lots and thereafter by an instrument signed by the owners of not less than sixty per cent (60%) of the lots. Lochmere, its successors and assigns, may within seven (7) years from the date this declaration is recorded, amend these covenants and restrictions when, in its opinion, such amendment will beneficially affect the overall plan of the development for the subdivision. Any amendment must be recorded in the Office of the County Clerk of Fort Bend County, Texas.

28. FIREWORKS PROHIBITION.

The use, sale or distribution of any pyrotechnic device which may be classified as a "firework" is expressly prohibited within the confines of the subdivision. A firework is defined as being "a device for producing a striking display, as of light, noise or smoke, by the combustion of explosive or inflammable compositions". Use of firearms is expressly prohibited.

29. EXTERIOR BRICK.

All lots which are adjacent to the golf course must be constructed with 100% exterior brick, except as approved by the Committee, not including those accents of trimming. Those lots not adjacent to the golf course are required to be constructed so that all exterior walls visible from the street are done in brick, except as approved by the Committee, not including those accents of trimming. In all cases, the type, style, color, and other characteristics of the brick must be approved by the Architectural Control Committee as outlined in paragraph 2.

LOCHMERE DEVELOPMENT COMPANY, INC.

Lawrence E. Lippincott 4-28-93
 Lawrence E. Lippincott Date
 Senior Vice President

Attest:

Gloria J. Hooker 4.28.93
 Gloria J. Hooker Date
 Vice President

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on April 22, 1993 by Lawrence E. Lippincott, Senior Vice President of Lochmere Development Company, Inc., a Texas corporation, on behalf of said corporation.



Cheryl L. Carey
 Cheryl L. Carey
 Notary Public, State of Texas

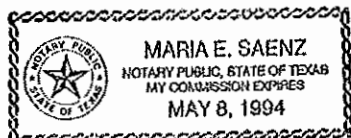
Notary Seal

KELLIWOOD FUND, INC.

Jim A. Miller 04/28/93
 Jim A. Miller Date
 Director

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on April 23, 1993 by Jim A. Miller, Director of Kelliwood Fund, Inc., a Texas corporation, on behalf of said corporation.



Maria E. Saenz
 Maria E. Saenz
 Notary Public, State of Texas

Notary Seal

Return To:

Lochmere Development Company, Inc.
 1306 S. Fry Blvd.
 Katy, Texas 77450