

COPY

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Kimberly

PROTECTIVE RESTRICTIONS  
FOR  
KIMBERLEY SUBDIVISION

WHEREAS, the undersigned E. P. Fayard is the owner of respective parcels of the real property in Escambia County, Alabama embraced in the plat of Kimberley Subdivision, which is recorded in Plat Book 5, at page 142, in the Office of the Judge of Probate of Escambia County, Alabama, and WHEREAS, said property has been subdivided into 18 residential lots in the manner indicated on said plat; and

WHEREAS, the undersigned desires to place certain protective restrictions hereinafter set forth (herein collectively called "restrictions") upon said property and the future use thereof, to protect the owner of each lot against such improper use of surrounding lots as will depreciate the value of his property, to preserve, so far as practicable, the natural beauty of such lots, to insure the erection thereon of attractive, well designed, properly proportioned, and appropriate homes and other structures constructed of proper and suitable materials, with appropriate locations of such homes and other structures on the lots, to insure proper set-backs from streets and lot lines, to provide adequate free space between structures, and in general to assure the best use and most appropriate development and improvement of the subdivision and of each lot therein:

NOW THEREFORE, the undersigned does hereby impose the following protective restrictions upon said property:

1. USE. All lots in the subdivision shall be known and described as residential lots. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one detached, single family dwelling with an optional private garage and appurtenant private outbuildings.
2. ARCHITECTURAL CONTROL. An Architectural Control Committee consisting of three persons is hereby constituted to function for the purposes hereinafter set forth; and the undersigned by these presents does hereby appoint as the initial members thereof the undersigned E. P. Fayard, and Sarah S. Fayard, and Wayne M. Fayard. The successor to any member who dies or resigns or otherwise ceases to serve shall be named by the remaining members or member of the Committee, except that

the record owners of the least 60% of the lots in the subdivision may remove any member of the Committee and name the successor of any member so removed. The designation of succeeding members of the Committee shall be evidenced by instruments to be filed for record in the Office of the Judge of Probate of Escambia County, Alabama. The decision of a majority of the members of the Committee shall be the decision of the Committee. In the event of death, resignation, or removal of one or more members of the Committee, the remaining members shall have full authority to act in the name of the Committee. With respect to all matters which are, by the terms of this instrument, to be decided by the Committee, the decision of the Committee shall be final and binding on all parties.

3. OFFENSIVE ACTIVITIES, ETC. No noxious or offensive activity shall be permitted on any lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

4. BUILDING PLANS. No building shall be erected, placed, or altered on any lot until a copy of complete building plans, specifications, and plot plans, showing, without limitation, a schedule of exterior materials, exterior colors, and the location of such building, have been approved in writing by the Architectural Committee as to (1) location, orientation and finished ground elevation of the building with respect to streets and existing structures in the subdivision, (2) conformity and harmony of external design with existing structures in the subdivision, and (3) compliance with all other requirements stated in these restrictions.

The copy of such building plans, specifications, and plot plans submitted to the Committee will be retained by it. Should the Committee fail to approve or disapprove such plans and specifications within 30 days after submission, such approval will not be required, but such lot shall be and remain in all other respects subject to these restrictions. If such plans and specifications are disapproved, written notice of such disapproval shall be given to the submitting lot owner in person or by certified letter addressed to the lot owner at the address furnished by him with the plans and specifications. Such notice will set forth the elements disapproved and the reasons therefor but need not contain any suggestions as to corrective measures to be taken.

5. LOCATION OF DWELLINGS. Except as otherwise provided in this instrument, no dwelling or any part thereof, exclusive of steps or eaves, shall be located on any lot nearer than 50 feet to the right-of-way line

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of any side street in the subdivision, nor nearer than 35 feet to any property line of any other lot in the subdivision, nor nearer than 25 feet to the rear property line of the lot; provided, however, that should one building be constructed on two adjacent lots, such building may occupy the adjacent 35 feet side-lot spaces of the two lots. Dwellings shall be located a minimum of 80 feet from front lot line. The Architectural Committee may grant exceptions to these dwelling location restrictions, because of unusual lot size and shape.

6. RESUBDIVISION. No building or any part thereof of any character may be erected or maintained on any part of a lot which is subdivided subsequent to the date hereof, unless all such resulting resubdivided lots be at least 40,000 square feet in area with a street frontage of not less than 150 feet, and except that where a lot is subdivided and all of its parts are combined with adjacent entire lots, a building may, with the approval of the Architectural Committee, be erected and maintained on each of the lots as so combined even though a portion of such building may be located on a part of the subdivided lot, but each resulting combined lot shall be subject to these restrictions as fully and completely as if shown on the subdivision plat as a single lot.

7. ANIMALS. 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 they are not kept, bred, or maintained for any commercial purpose.

8. FENCES, WALLS, HEDGES AND ORNAMENTAL STRUCTURES. No fence, wall or hedge shall be located nearer the front property line of any lot than the front of the dwelling on such lot without the written approval of the Architectural Committee, and no fence, wall or ornamental structure shall be constructed upon any portion of any lot without the prior written approval of the Architectural Committee.

9. TRAILERS, ETC. No mobile home, trailer, or semi-trailer designed for human habitation shall be brought on any lot or parked on the street in the subdivision. Except for immediate use in connection with construction or maintenance, no commercial vehicle with a weight capacity in excess of 3/4 ton shall be brought on any lot or parked on the street in the subdivision. No mobile home, trailer, tent, shack, garage, or out-building of any type shall at any time be used for human habitation, temporarily or permanently, on a lot covered by

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these restrictions, nor shall any structure of a temporary nature be used for human habitation, without the prior written approval of the Architectural Committee.

10. COMPLETION OF CONSTRUCTION. Each dwelling or other building shall be completed within one year after commencement of construction unless completion is prevented by conditions found by the Architectural Committee to be beyond the control of the owner.

11. SWIMMING POOLS. No swimming pool shall be constructed, placed, altered, or maintained upon any lot without the prior written approval of the Architectural Committee of the type, design and location thereof. Any such swimming pool must also be constructed, equipped and maintained in accordance with the requirements of the appropriate city, county, and state authorities.

12. GARBAGE DISPOSAL CONTAINERS AND EQUIPMENT. All outside garbage disposal containers must be placed in concealed or underground covered receptacles or other type receptacles approved by the Architectural Committee. All outside garbage disposal equipment and containers shall be kept in a clean and sanitary condition. Sealed or tied plastic bags may be placed at the edge of the street right-of-way on garbage pick-up days designated by governmental authority.

13. CLOTHES LINES. No outside clothes lines and no radio or television antennae or tower or similar structures shall be permitted in the subdivision unless screened in such manner as not to be visible from adjacent lots or streets.

14. SIGNS. No sign of any kind shall be placed or maintained upon any lot, except one sign of not more than five square feet advertising the property for sale or rent, signs used by the builder during the construction period, and signs listing street address and name of occupant.

15. HEATING AND COOLING SERVICE UNITS. No air-conditioning or heating unit, blower, tower, condenser, water well or structure shall be placed, constructed or operated between the side of any house and the side lot line of the lot on which such house is located, without the prior written approval of the Architectural Committee.

16. BUSINESS ACTIVITIES. No trade or business activity of any kind shall be carried on upon any lot.

17. TYPE AND SIZES OF BUILDINGS. No building shall be erected, altered, placed or permitted to remain on any of the lots other than one single family dwelling, which shall be not more than two stories in height and shall have a heated habitable area, exclusive of basements, open porches and garages, of at least 2,250 square feet with at least 1,500 square feet on the ground floor if the building is more than one story in height. Total heated area shall not exceed 3600 square feet. An outbuilding may be erected upon any lot if the written approval of the Architectural Committee is first obtained, and if the outbuilding is of the same architecture as the dwelling.

18. CONSTRUCTION. A. Exterior construction material may be brick, stucco, wood or other as approved by the Architectural Committee. The criteria will be whether or not the material is suited for Architectural design of dwelling.

B. All construction will meet or exceed Federal Housing Administration minimum property standards.

C. All drive ways are to be asphalt with brick head walls at entrance according to the design approved by the Architectural Committee.

D. Mail boxes at street will be mounted as approved by the Architectural Committee.

E. The floor elevation will be a minimum of 24" above finished grade.

F. The roof pitch on dwelling will be a minimum of 6/12. The porches may be less if required by the design of the house.

G. No mercury vapor, sodium, incandescent, or other lighting fixture, whether mounted on a pole or attached to a building structure or otherwise, shall be erected or maintained unless the beam thereof is shaded or otherwise restricted so that it does not penetrate any boundary of the property on which it is erected.

19. BEAUTIFICATION AND MAINTENANCE OF LOTS. It is contemplated that approximately 50% of the lot area would be left in a well maintained natural state. This includes front, side, and rear of lot. The area that is not left in natural state will be planted with grass. No removal of trees not required in the construction of buildings or driveway shall be made without written approval of the Architectural Committee.

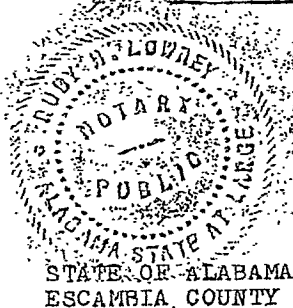
20. VIOLATIONS. The Architectural Committee shall, upon written request of any lot owner, or upon its own initiative if it so elects, investigate any possible violation of these restrictions and determine by majority vote whether a violation exists. If the Committee determines that no violation exists, it shall give written notice of its determination to the complaining lot owner, if any, in person or by registered or certified mail, addressed to such lot owner at his last known address. Should the Committee determine that a violation does exist, it shall give written notice of this determination in person or by certified mail to the complaining lot owner, if any, and to the owner of the lot on which or as to which such violation exists, addressed to each at his last known address. The owner of the lot on which or as to which such violation exists shall be allowed 30 days after the giving of such notice, or such longer period as the Committee may deem appropriate, in which to correct such violation. Should the violation not be corrected within such period, the Committee shall have the right, but not the obligation, to correct the violation, charge the lot owner with the cost of corrective measures taken, and collect such cost, either with or without suit. In addition, the Committee and any owner or owners of any part of the property hereby restricted shall each have the right to prosecute any proceedings at law or in equity against any person or persons found by the Architectural Committee to be violating any of these restrictions and prevent him or them from so doing, recover damages for such violation, and obtain any other legal and equitable relief to which it, he or they may be entitled under the circumstances.

The foregoing restrictions shall run with the land and shall be binding upon all lot owners, and upon all parties and persons claiming under or through them, each of whom shall, by virtue of his acceptance or acquisition of title or other interest, accept and agree to be bound by and to abide by all terms and provisions of this instrument, all of which shall be and remain in full force and effect until January 1, 1900, and thereafter, unless before such date the record owners of at least 60% of the lots in the subdivision, or unless on or after such date the record owners of a majority of the lots in the subdivision (excluding in both instances mortgagees and holders of vendors' liens), shall by instrument in writing annul, amend, or modify such restrictions in whole or part; provided, however, that no modification or amendment

shall place an additional burden or restriction on any lots in the subdivision the owners of which (including in this instance mortgagees and holders of vendors' liens) do not join in such modification or amendment.

Should any provision, clause, restriction, limitation or condition of this instrument be declared unenforceable, illegal, against public policy, or inconsistent with or contrary to the laws or Constitution of the State of Alabama or the United States of America, by any court of competent jurisdiction, or by any legislative enactment of the State of Alabama or of the United States of America, every remaining provision, clause, restriction, limitation or condition contained herein not affected by such judicial or legislative declaration, decision, or act shall be and remain in full force and effect. None of the foregoing restrictions shall operate as a cloud upon the title to any of the properties to which such restrictions relate, nor shall any breach thereof cause a forfeiture of title.

IN WITNESS WHEREOF, the undersigned has caused his presents to be executed or have hereunto set his hand and seal this the 28th day of June, 1984.



E. P. Fayard (SEAL)  
E. P. FAYARD

I, Ruby H. Lowrey, a Notary Public in and for said County, in said State, hereby certify that E. P. Fayard, whose name as Owner is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument he, with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 28th day of June, 1984.

Prepared by E. P. Fayard,  
P. O. Drawer H  
Atmore, Alabama 36504

Ruby H. Lowrey  
Notary Public  
My Commission Expires: 10-11-87



*Robert H. Murrell*

The State of Alabama, Escambia County  
I hereby certify that the within

Instrument

was filed in my office for record on  
the 5 day of July  
1986 at 2:44 P.M.

recorded in

Ac. cord. 425 at Page 294-301

*Martha Field*

Judge of Probate

*1150 Sec*