

DR1525PC1949

This instrument is re-recorded to reflect the  
attachment of Exhibit "A"

KILLEARN ESTATES  
UNIT 40  
RESIDENTIAL  
DECLARATION OF COVENANTS AND RESTRICTIONS

1099043

RECORDED BY THE PUBLIC  
CLERK OF COUNTY COURT  
OCT 9 2 05 PM '91

1099043

1099517

STATE OF FLORIDA  
COUNTY OF LEON

DR1520PC2025

KNOW ALL MEN BY THESE PRESENTS, That this Declaration of Covenants and Restrictions, made and entered into on this 3rd day of October, 1991, by KILLEARN PROPERTIES, INC., a Florida corporation, hereinafter referred to as "Developer",

WITNESSETH:

WHEREAS, Developer is the owner of the real property commonly known as Killearn Estates and desires therein a residential community with permanent parks, lakes, playgrounds, open spaces, and other common facilities for the benefit of the said community; and,

WHEREAS, Developer desires to provide for the preservation of the value and amenities in said community and for the maintenance of said parks, lakes, street lights, playgrounds, open spaces, and other common facilities, and to this end, desires to subject the real property described in Exhibit "A", together with such additions as have been or may hereinafter be made thereto (as provided in Article I) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities of said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Florida, as a non-profit corporation, KILLEARN HOMES ASSOCIATION, INC., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit "A", and such additions thereto as may hereafter be made pursuant to Article I hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I  
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Leon County, Florida, contains 58.05 acres more or less, and is more particularly described in Exhibit "A" attached hereto.

Section 2. Additional properties in Killearn Estates may become subject to this Declaration by recordation of additional declarations containing essentially the same substance as the instant indenture in the sole discretion of the Developer. Any subsequent Declarations of Covenants and Restrictions shall interlock all rights of Members to the Association to the end that all rights resulting to Members of the Killearn Homes Association shall be uniform as between all units of Killearn Estates.

ARTICLE II  
DEFINITIONS

Section 1. The following words, when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean and refer to the Killearn Homes Association, Inc.

OR1525PC1950

(b) "Board" shall mean and refer to the Board of Directors of the Killlearn Homes Association, Inc.

OR1520PC2026

(c) "Building" shall include, but not be limited to, both the main portion of such building and all projections or extensions thereof, including garages, outside platforms and docks, carports, canopies, enclosed malls, porches, walls, docks and fences.

(d) "Committee" shall mean and refer to the Architectural Control Committee.

(e) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.

(f) "Improvements" shall mean and include structures and construction of any kind, whether above or below the land surface, such as, but not limited to, buildings, out-buildings, water lines, sewers, electrical and gas distribution facilities, loading areas, parking areas, walkways, wells, fences, hedges, mass plantings, entrance ways or gates and signs.

(g) "Living Area" shall mean and refer to those heated and/or air conditioned areas which are completely finished as living area and which shall not include garages, carports, porches, patios or storage areas.

(h) "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family.

(i) "Member" shall mean and refer to all those Owners who are members of the Association, as provided in Article XXXI, Section 1 hereof.

(j) "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof, or when the density of Living Units exceeds five per acre.

(k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any site situated upon The Properties, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(l) "Site" shall mean a portion or contiguous portions of said property, which accommodate a single use or related uses under single control. After improvement to the site, providing for residential use, "site" shall mean each residential living unit and its adjoining property. In areas zoned for single-family use, "site" shall mean and refer to any plot of land shown upon any recorded subdivision map or The Properties, with the exception of Common Properties, as heretofore defined.

(m) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article 1 hereof.

ARTICLE III  
GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by The Association, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after such time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds of the sites has been recorded, agreeing to change said covenants and restrictions in whole, or in part, provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

OR 1525 PC 1951

Section 2. Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

OR 1520 PC 2027

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or 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 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**ARTICLE IV**  
**AMENDMENT OF DECLARATION**  
**OF COVENANTS AND RESTRICTIONS**

The Developer reserves and shall have the sole right (a) to amend these Covenants and Restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein; (b) to include in any contract or deed or other instrument hereafter made any additional covenants and restrictions applicable to the said land which do not lower standards of the covenants and restrictions contained herein; and (c) to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein, provided, however, that said variances shall not materially injure any of the property or improvements of adjacent property. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other person or real property.

**ARTICLE V**  
**ADDITIONAL COVENANTS AND RESTRICTIONS**

No property owner, without the prior written approval of the Developer, may impose any additional covenants or restrictions on any part of the land described in Article I hereof.

**ARTICLE VI**  
**ARCHITECTURAL CONTROL**

Section 1. The Committee. The Architectural Control Committee is composed of two (2) members to be appointed by the Developer and a third party to be appointed by the Association. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Committee shall have the powers and duties enumerated herein. It may approve, disapprove or approve with modifications, the plans submitted in writing to the Committee.

Section 2. Submission of plans. At least ten (10) days before commencing the construction or alteration of any and all buildings, fences, or any other structures of permanent improvements on or to any Lot, the Owner shall submit a complete set of architectural and landscape plans to the Committee for its written approval, disapproval or approval with modifications, as hereinafter provided;

Section 3. Approval; Content of Plans. No improvement shall be erected, placed, altered, maintained or permitted on any Lot until plans shall have been submitted to and approved in writing by the Committee. Such plans shall include the following:

- (a) Site plan. A site plan complete with dimensional locations of all proposed improvements, with all building setback lines shown;

(b) Landscape Plan. A landscape plan showing types, sizes and locations of all shrubs, ground covers and turfs to be planted, as well as all trees to be planted and all "protected" trees, as defined herein, which are proposed to be removed. A "protected" tree is defined as any tree of any kind measuring twelve (12) inches or more in diameter at a height measured three (3) feet above the natural ground elevation. No "protected" tree shall be cut or removed from any Lot without the express written approval of the Committee unless located within ten (10) feet of the approved site for any building;

(c) Architectural Plan. Floor plans, elevation drawings of all exterior walls and roof plan; and

(d) Description of exterior finish. A description of all proposed exterior finishes, materials and colors, including those for walls, roofs, windows, doors, paving and fences. Samples and/or manufacturer's identification data shall be supplied if requested by the Committee.

#### ARTICLE VII LIMITATION OF LIABILITY

Section 1. Plan Approval. Neither the Developer nor its successors or assigns nor the Committee nor any member thereof shall be liable in damages to any Owner, their successors and assigns by reason of any mistake in judgment, negligence, act or omission arising out of or in connection with the approval or disapproval or failure to approve any such plans, the enforcement or non-enforcement, modification or waiver, breach of default of any covenant or restriction or provision contained herein. Every Owner, and their successors and assigns, waives and releases the right to bring any action, proceeding or suit against the Developer, the Committee and all members thereof to recover damages.

Section 2. Construction. Where plans are approved by the Committee (or any change or modification thereto), such approval shall be deemed to be strictly limited to an acknowledgment or consent by the Committee to the improvements being constructed in accordance therewith, and shall not, in any way, be deemed to imply any warranty, representation or approval by the Committee, Developer, its successors or assigns, that such improvements, if so constructed, shall be structurally sound, will be fit for any particular purpose or will have a market value of any particular magnitude.

#### ARTICLE VIII LAND USE AND BUILDING TYPE

No site shall be used except for residential and recreational purposes. Except in areas zoned for multi-family use, no building of any type shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height. When the construction of any building is once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. The main residence and attached structures shown on the plans and specifications approved by the Committee must be completed in accordance with said plans and specifications upon each building plot unless such completion is rendered impossible as the direct result of strikes, fires, natural emergencies or natural calamities.

#### ARTICLE IX TEMPORARY STRUCTURES

No structure of a temporary character, basement, tent, shack, garage, barn or other outbuilding of any type shall be located on any site at any time, except during approved construction.

Boats, trailers, campers, or other recreational vehicles shall be parked or stored within the garage or placed behind the residence; however, in no event shall the vehicles be visible from the street which runs in front of the property.

#### ARTICLE X SINGLE-FAMILY LOT AREA AND WIDTH

No dwelling shall be erected or placed on any single-family site having a width of less than 100 feet at the place the dwelling is proposed to be erected nor shall any dwelling be erected or placed on any site having an area of less than 20,000 square feet.

ARTICLE XI  
SINGLE-FAMILY DWELLING QUANTITY AND SIZE

The ground floor area of the main structure of single-family dwelling, exclusive of one-story porches, garages, carports and patios shall be not less than 2,000 square feet.

In the event a structure contains more than one story, the ground floor must contain not less than 1,000 square feet and must be completely finished as living area, and at least 1,000 square feet of the second floor must be completely finished as living area. However, the total footage must equal or exceed that of the required one-story dwelling.

ARTICLE XII  
BUILDING LOCATION

(a) No building shall be located on any site nearer to the front property line, rear property line, or nearer to the side street line than the minimum building setback lines specified on any recorded plat or site plan. In any event, no building shall be located on any site nearer than 35 feet to the front property line, or nearer than 12 1/2 feet to any side property line, or as otherwise specified by the Committee.

(b) No single-family dwelling shall be located nearer than 12 1/2 feet to an interior property line. No single-family dwelling shall be located on any interior site nearer than 50 feet to the rear line.

(c) No driveway shall be located nearer than 5 feet to an interior property line except a back-up turn around pad may be located as near as one foot to a property line.

(d) Except as otherwise provided herein, no fence of any kind shall be placed or constructed nearer to the front property line than the building setback line or the front corner of the residence, whichever is greater. No fence shall be located nearer than 2 inches to an interior property line.

(e) No fence or prominent structure of any kind shall be permitted on the rear 50 feet of any site which has a rear property line adjacent to the golf course property.

(f) For the purpose of this covenant, eaves, swimming pools, decks and steps shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building to encroach upon another side.

ARTICLE XIII  
LAND NEAR PARKS AND WATER COURSES

No building shall be placed nor shall any material or refuse be placed or stored on any site within 20 feet of the property line of any park or edge of any open water course, except that clean fill may be placed nearer, provided that the natural water course is not altered or blocked by such fill.

ARTICLE XIV  
EXTERIOR STRUCTURE MATERIALS

The exterior structure material of exterior walls of dwellings must be at least two-thirds (2/3) brick or stone masonry, unless specifically waived in writing by the Committee.

ARTICLE XV  
GARAGES AND CARPORTS

Each Living Unit shall have a functional carport or garage attached to the residence which shall be screened on sides which are visible from the street, which runs in front of or adjacent to the property, in such a manner that objects located within the carport shall present a broken and obscured view from the outside thereof. All garage and carport entrances shall face the rear property line or a side property line that is not adjacent to a street.

ARTICLE XVI  
DRIVEWAY AND WALKWAY CONSTRUCTION

All driveways shall be constructed of concrete or "hot mix" asphalt. Where curbs are required to be broken for driveway entrances, the curb shall be repaired in a neat and orderly fashion and in such a way to be acceptable to the Committee. All walkways and sidewalks shall be constructed of concrete and have minimum width of 30 inches.

ARTICLE XVII  
UTILITY CONNECTIONS AND TELEVISION ANTENNAS

All house connections for all utilities, including, but not limited to, water, sewage, electricity, telephone and television shall be run underground from the property connecting points to the building structure in such manner to be acceptable to the governing utility authority and the Committee.

Exterior radio, television antenna and satellite dish installations must be approved in writing by the Committee.

ARTICLE XVIII  
WATER SUPPLY

No individual sewage disposal system shall be permitted on any site unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the State of Florida and the Leon County Health Departments. Approval of such system, as installed, shall be obtained from such departments.

ARTICLE XX  
GARBAGE AND REFUSE DISPOSAL

No site shall be used, maintained, or allowed to become a dumping ground for scraps, litter, leaves, limbs, or rubbish. Trash, garbage or other waste shall not be allowed to accumulate on the property and shall not be kept except in sanitary containers installed in such a manner to be acceptable to the Committee. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

ARTICLE XXI  
WINDOW AIR-CONDITIONING UNITS

No window air-conditioning units shall be installed in the front of a building and all exterior heating and/or air-conditioning compressors or other machinery must be screened in a manner acceptable to the Architectural Control Committee.

ARTICLE XXII  
MAIL BOXES

No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar materials shall be erected or located on any building plot unless and until the size, location, design and type of material for said boxes or receptacles shall have been approved by the Committee. If and when the United States mail service or the newspaper or newspapers involved shall indicate a willingness to make delivery to wall receptacles attached to the residence, each property owner, on the request of the Committee shall replace the boxes or receptacles previously employed for such purpose or purposes with wall receptacles attached to the residence.

ARTICLE XXIII  
SIGNS

No sign of any kind shall be displayed to the public view on any site except one sign of not more than five square feet advertising the property for sale or rent. All signs must be approved in writing by the Committee.

ARTICLE XXIV  
PROTECTIVE SCREENING

OR1520PC2031

OR1525PC1955

Protective screening areas are or shall be established as shown on the plat. Except as otherwise provided herein regarding street intersections under "Sight Distance at Intersections", plantings, fences or walls shall be maintained throughout the entire length of such areas by the owner or owners of the sites at their own expense to form an effective screen for the protection of the residential area. No building or structure, except a screen fence or wall or utilities or drainage facilities, shall be placed or permitted to remain in such areas. No vehicular access over the area shall be permitted except for the purpose of installation and maintenance of screening, utilities and drainage facilities.

ARTICLE XXVI  
EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each site and all improvements in it shall be maintained continuously by the owner thereof, except for those improvements for which a public authority or utility company is responsible.

ARTICLE XXVII  
BRIDLE TRAIL USE

Bridle trail areas, if any, shown on the recorded plats of Killearn Estates are to be used only for such purpose and for utility construction and maintenance. Bridle trails are to be kept clear of fences, shrubbery, gates and cattle crossings, leaves, grass trimmings, limbs or other refuse, and are to be kept in a manner to make possible for the use of the bridle trails for horseback riding. In no instance shall the bridle trails be used as an access to carports, garages and driveways.

ARTICLE XXVIII  
LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred or kept on any site, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, further, provided they are not allowed to wander or roam freely about the neighborhood.

ARTICLE XXIX  
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 site, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any site. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, or maintained, for any commercial purpose.

ARTICLE XXX  
NUISANCES

No noxious or offensive activity shall be carried on upon any site, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or tend to damage or destroy either private or public property.

ARTICLE XXXI  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any site which is subject to covenants of record to assessment by the Association, shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. The requirement for membership shall not apply to any mortgagee or third person acquiring title by foreclosure or otherwise, pursuant to the mortgage instrument or those holding by, through or under such mortgagee or third person.

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

Class A. Class A Members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote for each single-family site, and, in the case of a multi-family site, one-half (1/2) vote for each residential Living Unit in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any site, all such persons shall be members, and the vote for such site shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such site.

Class B. Class B Members shall be the Developer. The Class B Member shall be entitled to two votes for each site in which it holds the interest required for membership by Section 1, provided that the Class B membership shall cease and become converted to Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, at which time the Class B membership shall be determined to be a Class A membership and entitled to vote as such.

**ARTICLE XXXII**  
**PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every site.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the lender shall have a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Members thereunder shall be fully restored; and

(b) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(c) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purpose or as to the conditions thereof, shall be effective, unless an instrument signed by Members entitled to case two-third (2/3) of the votes irrespective of class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken; and

(e) The rights of Members of the Association shall in no wise be altered or restricted because of the location of the Common Property in a Unit of Killearn Estates in which such Member is not a resident. Common Property belonging to the Association shall result in membership entitlement, notwithstanding the Unit in which the site is acquired, which results in membership rights as herein provided.

ARTICLE XXXIII  
COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Developer, for each site owned by him within the Property, hereby covenants and each Owner of any site by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time, as hereinafter provided. The annual and special assessments, together with such interest thereof and costs of collections thereof, as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3. Basis and Maximum of Annual Assessments.** The assessments shall be \$50.00 per year. Payment of the assessment on or prior to June 1 of the year on which same becomes due entitles the payment of \$40.00.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

**Section 4. Special Assessment for Capital Improvements.** In addition to the annual assessments authorized by Section 3 hereof, 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 or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 5. Change in Basis and Maximum Amount of Annual Assessments.** Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum amount and basis of the assessments fixed by Section 3 hereto prospectively for any such period, provided that any such change shall have the assent of two-thirds (2/3) of the votes irrespective of class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of such shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum amount and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article I, Section 2 hereof.

**Section 6. Quorum for any action authorized under Sections 4 and 5.** The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence of the meeting of Members, or of proxies, entitled to cast sixty (60%) percent of all votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5 hereof, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessments. Due Dates.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. No assessment shall be due until all promised improvements have been completed by the Developer and Warranty Deeds issued. Assessments for multi-family structures or units will not commence until completion of the construction of the structures.

OR1520PC2034

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of April of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

**Section 8. Duties of the Board of Directors.** The Board shall fix the date of the commencement, and the amount of the assessment against each site, for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment thereupon shall be sent to every Owner subject thereto.

The Association shall, upon demand, furnish at any time to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 9. Effect of Non-payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.** If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereof and cost of collection thereof, as hereinafter provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of such action. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage now or hereafter placed upon the properties subject to assessment. This subordination shall not relieve such property from liability for any assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage as if said lien were a second mortgage, irrespective of when such first mortgage was executed and recorded.

**Section 11. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created therein: (a) all properties to the extent of any easement or other interest therein; (b) all Common Properties as defined in Article II hereof; and (c) all properties exempted from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

**ARTICLE XXXIV  
EXTERIOR MAINTENANCE**

OR1520PC2035

**Section 1. Exterior Maintenance.** In addition to maintenance upon the Common Properties, the Association shall have the right to provide maintenance upon vacant sites and shall have the right to provide maintenance upon every improved site which is subject to assessment under Article VIII hereof. Such maintenance may include paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces and other exterior improvements. Such maintenance as to a vacant site may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

**Section 2. Assessment of Cost.** The cost of such maintenance shall be assessed against the site upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such site is subject under Article XXXIII hereof and, as part of such annual assessment or charge, it shall be a lien against said property as heretofore defined and limited, and a personal obligation to the Owner, as heretofore limited, and shall become due and payable in all respects as provided in Article XXXIII hereof.

**ARTICLE XXXV  
BOATS, LAKES AND SWIMMING**

**Section 1. Boats.** Boats may be powered only by an outboard electric motor having a maximum of three (3) horsepower and shall be maintained and operated at all times in a safe manner according to the safety rules established by the Outboard Boating Club of America, U. S. Coast Guard, or other similar organizations.

**Section 2. Swimming.** No swimming shall be permitted from any area deeded to the Killearn Homes Association, Inc. Any owner of a site or sites abutting upon Lake Killarney, Lake Kanturk or any other lake who swims or permits others to swim from such site or sites shall do so at their own risk. Neither Killearn Properties, Inc. nor Killearn Homes Association, Inc. assume any responsibility for the purity of the water in Lake Killarney and Lake Kanturk or any damage resulting from their use.

**Section 3. Authority and Responsibility.** It shall be the sole responsibility of the Association to maintain the aesthetics of all lakes, the discharge of which jurisdiction shall entitle said Association to go on and upon all lakes for the purpose of performing its responsibilities to the members and contributing owners.

**Section 4. Permission to Improve.** Permission is given to Killearn Properties, Inc., its successors or assigns, to enter upon all lakes and install or otherwise construct any docks, ramps, pumping, drainage and well facilities and to improve all lakes. Permission to undertake such construction is granted by each purchaser of property bordering any lake.

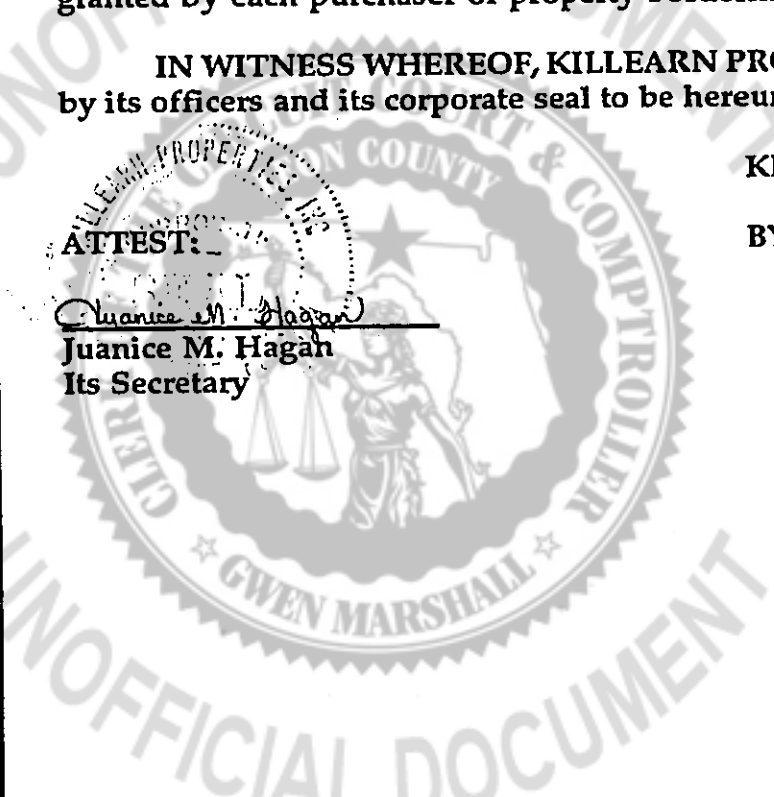
IN WITNESS WHEREOF, KILLEARN PROPERTIES, INC. has caused this instrument to be signed by its officers and its corporate seal to be hereunto affixed by its Officers this 9<sup>th</sup> day of October, 1991.

KILLEARN PROPERTIES, INC.

BY: David K. Williams  
David K. Williams  
Its Vice President

ATTEST:

Juanice M. Hagan  
Juanice M. Hagan  
Its Secretary



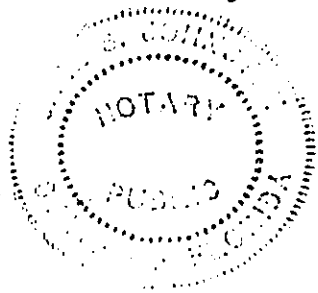
DR1525PC1960

STATE OF FLORIDA,  
COUNTY OF LEON:

DR1520PC2036

Before me personally appeared David K. Williams and Juanice M. Hagan, to me known to be the individuals described in and who executed the foregoing instrument as President and Secretary, respectively, of Killearn Properties, Inc., and severally acknowledged they executed such instrument and that the seal affixed to said instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 9<sup>th</sup> day of October, 1991.



Jane S. Johnston  
NOTARY PUBLIC Jane S. Johnston

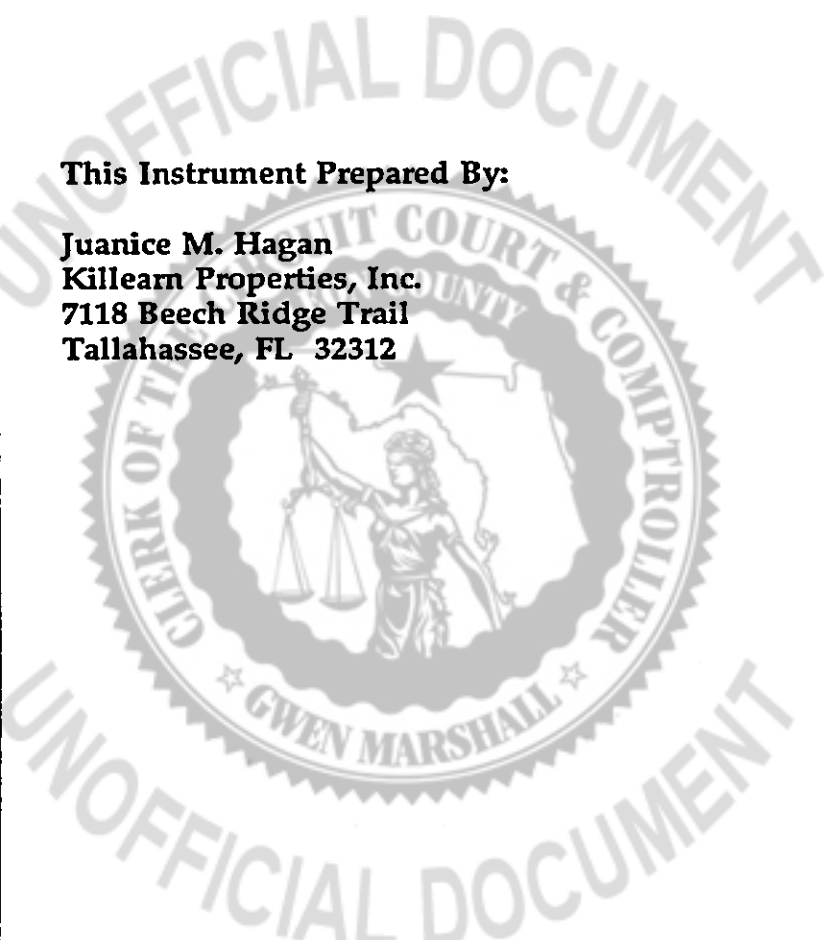
My Commission Expires:

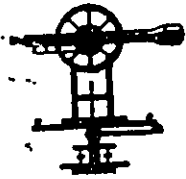
Notary Public, State of Florida  
My Commission Expires Dec. 4, 1993  
Bonded Thru Troy Feltz Insurance Inc.

12-4-93

This Instrument Prepared By:

Juanice M. Hagan  
Killearn Properties, Inc.  
7118 Beech Ridge Trail  
Tallahassee, FL 32312





**GARY GEE ALLEN**  
**REGISTERED LAND SURVEYOR, INC.**  
**LAND SURVEYING - CIVIL ENGINEERING**

GARY ALLEN, P.L.S., President  
B.J. ALLEN, V.P.  
MARK T. HENDERSON, P.L.S., V.P.  
R. MICHAEL LATIMER, P.E., V.P.  
ROBERT DILWORTH, P.L.S.

4101 APALACHEE PARKWAY

TALLAHASSEE, FLORIDA 32311

PHONE: (904) 877-0541  
FAX NO.: (904) 877-0041

LEGAL DESCRIPTION  
KILLEARN ESTATES UNIT NO. 40  
NOVEMBER 2, 1990

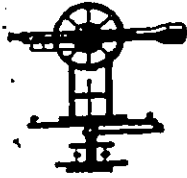
**OR1525PC1961**

A tract of land lying in Sections 34 and 35, Township 2 North, Range 1 East, Leon County, Florida, being more particularly described as follows:

Begin at a concrete monument marking the most Southeast corner of Lot 9, Block "B", Kimberton, Unit No. 1, a subdivision as per map or plat thereof recorded in Plat Book 6, Page 5 of the Public Records of Leon County, Florida and run thence North 46 degrees 42 minutes 18 seconds East 245.85 feet, thence South 70 degrees 57 minutes 44 seconds East 859.07 feet, thence South 01 degrees 48 minutes 28 seconds East 87.44 feet, thence South 16 degrees 35 minutes 51 seconds East 276.52 feet, thence North 72 degrees 09 minutes 13 seconds East 195.39 feet, thence North 53 degrees 56 minutes 40 seconds East 108.88 feet, thence North 41 degrees 21 minutes 48 seconds East 211.83 feet, thence North 00 degrees 00 minutes 45 seconds East 111.89 feet, thence North 53 degrees 23 minutes 33 seconds East 518.02 feet, thence North 67 degrees 19 minutes 06 seconds East 60.06 feet, thence North 79 degrees 36 minutes 00 seconds East 235.39 feet, thence South 86 degrees 32 minutes 00 seconds East 117.40 feet, thence South 67 degrees 11 minutes 51 seconds East 226.97 feet, thence South 47 degrees 54 minutes 02 seconds East 223.84 feet, thence South 31 degrees 00 minutes 29 seconds East 436.19 feet, thence South 71 degrees 12 minutes 30 seconds East 50.33 feet, thence South 02 degrees 45 minutes 44 seconds West 168.85 feet, thence South 07 degrees 27 minutes 36 seconds West 59.93 feet, thence South 13 degrees 50 minutes 57 seconds West 207.91 feet, thence North 77 degrees 50 minutes 29 seconds West 167.04 feet, thence South 73 degrees 54 minutes 32 seconds West 160.76 feet, thence North 09 degrees 40 minutes 59 seconds West 120.59 feet, thence North 28 degrees 50 minutes 38 seconds West 548.60 feet, thence North 84 degrees 33 minutes 56 seconds West 220.15 feet, thence South 38 degrees 18 minutes 07 seconds West 969.85 feet, thence South 83 degrees 24 minutes 39 seconds West 654.87 feet, thence North 87 degrees 01 minutes 20 seconds West 945.34 feet, thence North 61 degrees 43 minutes 28 seconds West 408.33 feet, thence North 16 degrees 18 minutes 13 seconds East 304.61 feet, thence South 83 degrees 02 minutes 20 seconds East 100.63 feet, thence North 08 degrees 22 minutes 39 seconds East 140.41 feet, thence North 15 degrees 29 minutes 15 seconds West 324.61 feet, thence South 87 degrees 44 minutes 54 seconds East 99.88 feet, thence North 86 degrees 53 minutes 33 seconds East 269.87 feet to the POINT OF BEGINNING; containing 58.05 acres more or less.

EXHIBIT "A"

PAGE 1 of 2 PAGES



**GARY GEE ALLEN**  
REGISTERED LAND SURVEYOR, INC.  
LAND SURVEYING - CIVIL ENGINEERING

GARY ALLEN, P.L.S., President  
B.J. ALLEN, V.P.  
MARK T. HENDERSON, P.L.S., V.P.  
R. MICHAEL LATIMER, P.E., V.P.  
ROBERT DILWORTH, P.L.S.

4101 APALACHEE PARKWAY

TALLAHASSEE, FLORIDA 32311

PHONE: (904) 877-0541  
FAX NO.: (904) 877-0041

KILLEARN ESTATES UNIT NO. 40  
PAGE 2 OF 2  
NOVEMBER 2, 1990

DR1525PC1962

I hereby certify that the legal description shown hereon meets the Minimum Technical Standards for Land Surveying (F.A.C. 21HH-6).

The undersigned surveyor has not been provided a current title opinion or abstract of matters affecting title or boundary to the subject property. It is possible that there are deeds of record, unrecorded deeds, easements or other instruments which could affect the boundaries.

Gary G. Allen      11-2-90  
Gary G. Allen      Date  
Fla. Reg. Land Surveyor No. 4016  
Job NO. 88-1443  
Disk No. 68



EXHIBIT "A"

PAGE 2 of 2 PAGES