

KILLEARN COMMONS

KILLEARN LAKES HOMEOWNERS ASSOCIATION, INC.

RESIDENTIAL

DECLARATION OF COVENANTS AND RESTRICTIONS

STATE OF FLORIDA,
COUNTY OF LEON:

KNOW ALL PEOPLE BY THESE PRESENTS, that this declaration of Covenants and Restrictions, made and entered in to on this 16 day of August, A.D., 1995, by Capital First, Inc., a Florida corporation, hereinafter referred to as Developer,

WITNESSETH:

WHEREAS, Developer is the owner of the real property commonly known as Killearn Lakes and desires to create thereon a residential community with permanent parks, lakes, playgrounds, open space, and other common facilities, for the benefit of the said community and,

WHEREAS, Developer desires to provide for the preservation of the values 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 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 in said community, to create an agency to which such duties be delegated and assigned the power 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, a non-profit corporation, KILLEARN LAKES HOMEOWNERS 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 located in Leon County, and shall be, held, transferred, sold, conveyed, and occupied contains 27.97 acres more or less, and is more particularly described in Exhibit "A" attached hereto.

Section 2. Additional Units of Killearn Lakes 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 Developer. Any subsequent Declarations of Covenants and

Restrictions shall interlock all rights of Members of the Association to the end that all rights resulting to Members of the Killearn Lakes Homeowners Association, Inc. shall be uniform as between all units of Killearn Lakes.

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 Lakes Homeowners Association, Inc.
- (b) "Board" shall mean and refer to the Board of Directors of the Killearn Lakes Homeowners Association, Inc.
- (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 decks, carports, canopies, enclosed malls, porches, walls, docks and fences.
- (d) "Building Setback Line" shall mean an imaginary line or lines parallel to any property line specifying the closest point from any property line that a building structure may be located.
- (e) "Committee" shall mean and refer to the Architectural Control Committee.
- (f) "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.
- (g) "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.
- (h) "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.
- (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) "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.
- (k) "Site" shall mean a portion of contiguous portions of said property, which accommodates a single use or related uses under single control. In areas zoned for single-family use, "site" shall mean and refer to any plat of land shown upon recorded subdivision map of The

Properties with the exception of Common Properties as heretofore defined. After improvement to the site providing for residential use, "site" shall mean each residential Living Unit and its adjoining property.

(1) 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 I. 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 which 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 lots 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.

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.

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. The cost incurred by the Association to enforce these restrictions, attorney fees included, will be paid by the person(s) violating these covenants.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. Amendment. The Declarant may amend this Declaration with the approval of the Killeam Lakes Homeowners Association Board of Directors at any time prior to the date of the sale of the last lot described in ARTICLE I. Thereafter, this Declaration may be amended at any time with the consent and approval of not less than two-thirds (2/3) of all lot owners voting, provided however that the total number of votes is greater than fifty percent (50%) of all property owners entitled to cast a vote.

Notice of any proposed amendment shall be given in writing to each lot owner by registered mail, return receipt requested, at least thirty (30) days prior to a meeting called by the Association to consider such a proposed amendment.

Notwithstanding any of the above provisions, no amendment shall be adopted to these covenants which discriminates against any Lot Owner or group of Lot Owners without their express consent. No amendment shall change or increase the percentage of any individual Lot Owner's contribution to assessments.

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 subsequent Declaration of Covenants and Restrictions, 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 herein contained, 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 member 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 thirty (30) days before commencing the construction or alteration of any and all buildings, fences, or any other structures or 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 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 and a drainage plan noting grades.
- (b) **Landscape Plan.** A landscape plan showing types, size and locations of all shrubs, ground covers and turfs to be planted, as well as 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 section detail and foundation plan.

(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

ARCHITECTURAL 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 judgement, 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 not-enforcement, modification or waiver, breach or default of any covenant or restriction or provision contained herein. Every Owner, and their successor 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 modification thereto), such approval shall be deemed to be strictly limited to any acknowledgement 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, will 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. No building of any type shall be erected, altered, placed, or permitted to remain on any site other than one detached single-family dwelling. When the construction of any building is once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. The structures must be completed in accordance with said plans and specifications approved by the Committee upon each building plot unless such completion is rendered impossible as the direct result of strikes, fires, national emergencies, or natural calamities.

ARTICLE IX

PRESERVATION OF THE NATURAL ENVIRONMENT LAKES, AND GREEN AREAS

Section 1. It shall be the express intent and purpose of these Covenants and Restrictions to protect, maintain, and enhance the natural environment and specifically those certain areas

designated as Green Areas on plats recorded in the Public Records of Leon County, Florida by the Developer. It shall be the further intent and purpose of these Covenants and Restrictions to protect streams, lakes and water supplies, to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, fish, wildlife, game and migratory birds, enhance the value of abutting and neighboring forests, wildlife preserves, natural reservations or sanctuaries or other open areas and open spaces, and to afford and enhance recreation opportunities, preserve historical sites, and implement generally the Killbuck Lakes Master Plan for development.

Section 2. Pursuant to its overall program of wildlife conservation and nature study, the right is expressly reserved to the Developer, his successors and assigns, to erect wildlife feeding stations to plant small patches of cover and food crops for quail, turkey, and other wildlife, to make access trails or paths through said Green Areas for the purpose of permitting observation and study of wildlife and hiking, to erect buildings and other facilities for all types of recreation, to erect small signs throughout the Green Area designating points of particular interest and attraction, and take such other steps as are reasonable, necessary and proper to further the aims and purposes of the Green Areas.

Section 3. The general topography of the landscape, lake frontage or streams, as well as distinctive and attractive scenic features such as rock outcrops, the natural vegetation, trees and any and all other unusual features in the Green Areas shall be continued in their present condition, subject only to the exceptions noted herein.

Section 4. The Association and the Developer, its successors and assigns, shall have the right to protect from erosion the land described as Green Area by planting trees, plants and shrubs where and to the extent necessary or by such mechanical means as bulkheading or other means deemed expedient or necessary by said Developer or Association. The right is likewise reserved to the Association and Developer to take necessary steps to provide adequate drainage ways, canals, and access roads in Green Areas. The Association and The Developer, its successors and assigns, shall also have the right to cut fire breaks, cut and remove trees, and in general do all things necessary to carry on tree farming operations in such Green Areas, including harvesting of trees.

Section 5. The Developer reserves unto itself, its successors and assigns the right to go on, over and under the ground comprising the Common Properties to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, cable television or other public conveniences or utilities in said Common Properties. These reservations and the rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Developer further reserves the right to locate wells, pumping station and tanks, treatment plants, and/or other facilities within such Green Areas. Such right may be exercised by any licensee of the Developer, but this reservation shall not be considered an obligation of the Developer to provide or maintain any such utility or service.

Section 6. No dumping, burning or disposal in any manner of trash, litter, garbage, sewage, woodlands or any unsightly or offensive material shall be permitted in or upon such Green Area, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classifications as Green Area. Fires of any and all kinds shall be prohibited in Green Areas except in designated and controlled areas as specified by the Association.

Section 7. No large trees of any kind measuring 6" or more in diameter for other portions of a lot, at a height measured three (3) feet above the natural ground elevation shall be cut or removed from any lot without the express written approval of the Architectural Control Committee unless located within ten (10) feet of the main dwelling or within ten (10) feet of the approved site for such building.

Section 8. The Developer expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of said Green Areas, in a manner not inconsistent with the provisions of this Declaration.

Section 9. It is expressly understood and agreed that the granting of this easement does in no way place a burden of affirmative action on the Developer, that the Developer is not bound to make any of the improvements noted herein, or extend to any Member or Owner any service of any kind. The Association shall, however, have the responsibility to maintain such areas as required by governmental authorities. Prior to title being transferred from the Developer to the Association, this responsibility for maintenance shall be that of the Developer if not performed by the Association.

ARTICLE X

TEMPORARY STRUCTURES

No structure of a temporary character, basement, tent, shack, tool or storage shed, barn or other outbuilding of any type shall be located on any site or on any lands shown and/or set aside on a recorded plat as Green Areas at any time, unless approved by the Architectural Control Committee.

ARTICLE XI

DWELLING SIZE

The minimum square footage of the living area required for residential dwellings shall be 1100 square feet.

In the event a structure contains more than one story, the ground floor must contain not less than 800 square feet and must be completely finished as living area, and the total square 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 20 feet to the front property line, or nearer than 5 feet to the side property line, or 15 feet to any side street line, or as otherwise specified by the Architectural Control Committee.

(b) No dwelling shall be located on any site nearer than 25 feet to the rear line for other lots.

(c) No driveway shall be located nearer than 5 feet to any property line and no turnaround pad shall be located nearer than one (1) foot to any property line.

(d) No fence of any kind shall be placed or constructed nearer to the front property line than the rear corner of the residence.

(e) For the purpose of this covenant, swimming pools, decks, uncovered porches, patios, eaves 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 site.

(f) In the event governmental rules and regulations are more restrictive than these covenants, said rules and regulations shall prevail.

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.

ARTICLE XIV

EXTERIOR STRUCTURE MATERIALS

The exterior structure material of exterior walls of dwellings must be specifically approved in writing by the Architectural Control Committee.

ARTICLE XV

GARAGES

Each single family unit shall have a functional single or two car garage attached to the residence. If the garage faces the street, the garage door will be closed except for when entering and exiting the garage.

ARTICLE XVI

OFF-STREET PARKING

No vehicle shall be parked on unpaved areas of the property. Each site Owner shall provide adequate space and facilities for parking at least two (2) automobiles off the street and within the boundaries of the site. "Adequate space" shall be defined as having minimum dimensions of eight (8) feet in width and twenty (20) feet in depth. Boats, trailers, campers, or other vehicles shall be parked or stored within the garage and/or other areas approved by the Homeowners Association or the Declarant.

ARTICLE XVII

DRIVEWAY AND WALKWAY CONSTRUCTION

All driveways shall be constructed of concrete or "hot mix" asphalt, and have a minimum width of eight (8) feet. 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 Architectural Control Committee. All walkways and sidewalks shall be constructed of concrete,

stone, or brick, and have a minimum width of 30 inches, unless an alternate is approved in writing by the Architectural Control Committee. All driveways must be constructed in a manner that will not alter the requirements of the drainage system constructed for the Killearn Lakes development.

ARTICLE XVIII

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 proper connecting points to the dwelling structure in such manner to be acceptable to the governing utility authority. Installation in a manner other than as prescribed herein shall not be permitted except upon written approval of the Architectural Control Committee. Exterior radio and TV antenna installations must be approved in writing by the Architectural Control Committee.

ARTICLE XIX

WATER SUPPLY

No individual water supply system of any type shall be permitted on any site, unless approved in writing by the Architectural Control Committee.

ARTICLE XX

SEWAGE DISPOSAL

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's Department of Pollution Control. Approval of such system as installed shall be obtained from such department or departments.

ARTICLE XXI

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 which shall be screened on sides which are visible from the street and installed in such a manner to be acceptable to the Architectural Control Committee. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

ARTICLE XXII

WINDOW AIR-CONDITIONING UNITS

No window air-conditioning units shall be installed in the front or any side of a building. Any exterior heating and/or air conditioning compressor or other machinery visible from the street which runs in front of or to the side of the property shall be screened by a brick wall or other architectural or vegetative wall approved in writing by the Architectural Control Committee.

ARTICLE XXIII

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 material 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 Architectural Control Committee. The Committee shall not be required to approve more than one type for all lots in Killcarn Commons. 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 Architectural Control Committee, shall replace the boxes or receptacles previously employed for such purpose or purposes with wall receptacles attached to the residence.

ARTICLE XXIV

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 Architectural Control Committee. No sign of any kind other than authorized traffic control signs shall be placed on the right-of-ways or Common Areas without Homeowner Association approval.

ARTICLE XXV

PROTECTIVE SCREENING

Protective screening areas are or shall be established as shown on the recorded plat. Except as otherwise provided herein regarding street intersections under "Sight Distance at Intersections", planting, 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 areas. 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

SIGHT DISTANCE AT INTERSECTIONS

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 within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the property lines extended. The same sightline limitations shall apply on any site within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. Trees shall be permitted to remain within such distance of such intersections provided

the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

ARTICLE XXVII

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 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 of the site, except for those improvements for which a public authority or utility company is responsible.

The developer reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment, gas, sewer, water or other public conveniences or utilities on, the utility easement shown on the recorded plat of Killiam Commons provided, further, that the Developer and/or Leon County, Florida may cut driveways for surface water wherever and whenever such action may be necessary in order to maintain reasonable standards of health, safety and appearance, or to meet governmental requirements. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take other similar action reasonably necessary to provide economical and safe drainage and utility installation and to maintain reasonable standards of health, safety and appearance. Such right may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

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 that 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 fee or undivided fee interest in any site which is subject by 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 security for the performance of an obligation shall not be a Member. The requirement of 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, thorough 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. 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 Developers. The Class B Members shall be entitled to four 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 at such time 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 3, every Member shall have the 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. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, the opinion of the Developer, the Association is able to maintain in the same but, notwithstanding any provision herein, the Developer shall convey the Common Properties to the Association not later than the 1st day of January, 199_.

Section 3. 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 purposes 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 hereunder shall be full 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, 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 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, transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless ratified by two-thirds (2/3) vote of the membership represented at such meeting called specifically for such purpose and provided that 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 right 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 Killlearn Lakes 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 Properties, 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 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 thereon and cost of collection 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 of the Property and in particular for the improvement and maintenance of the 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. Until the year beginning January, 1994, the annual assessment shall be Sixty Dollars (\$60.00) per site. From and after January 1, 1995 the annual assessment may be increased by vote of the Members, as hereinafter

provided, for the next succeeding three (3) years, and at the end of each such period of three (3) years. Any Member paying the annual dues prior to the due date of March 1 of each year, as is stated forth in Section 7 hereof, shall be entitled to a discount of 20%.

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 for a lesser amount.

Section 4. Special Assessments 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 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 hereof, 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 which 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 maximum assessments permitted under Section 3 hereof shall not be increased 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, 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 at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the 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, and the required quorum at any such subsequent meeting shall be one-half 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.

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 of Directors of the Association shall fix the date of 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 thereto 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 thereon and cost of collection thereof as hereinafter provided, thereupon become 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.

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 eight percent (8%) 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 assessment provide for herein shall be absolutely subordinated 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 herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local authority and devoted to public uses; (b) all Common Properties as defined in Article 2 hereof; (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.

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

ARTICLE XXXIV

EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association shall have the right to provide maintenance upon every unimproved site and shall have the right to provide maintenance upon every improved site which is subject to

assessment under Article XXXIII 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 moving 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.

IN WITNESS WHEREOF, said corporation has caused this instrument to be signed and its name by its President and its corporate seal to be hereunto affixed and attested by its Secretary, this 15 day of August, A.D., 1995



CAPITAL FIRST, INC.

By: [Signature]

MARK A. CONNER
President

7118 Beech Ridge Tr
Tallahassee FL 32312

ATTEST:

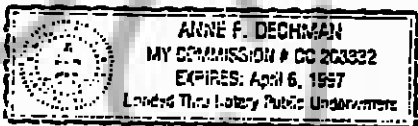
[Signature]
ANNE F. DECHMAN

STATE OF FLORIDA,
COUNTY OF LEON:

Before me personally appeared Mark A. Conner and _____
to me well known, and known to me to be the individuals described in and who
executed the foregoing instrument as
President and _____, respectively, of the above
named CAPITAL FIRST, INC., a Florida corporation and severally acknowledged to and before
me that ~~they~~ ^{he} executed such instrument as such President and _____
respectively, of said corporation, and that the seal affixed to the foregoing
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.

I relied upon the following form of identification of the above named person(s):
personally known as identification and that an oath was not taken.

WITNESS my hand and official seal this 15 day of August A.D., 1995
(SEAL)



[Signature]
NOTARY PUBLIC

My Commission expires:

4/6/97

Prepared By:
W. CRIT SMITH, Esq.
SUSAN S. THOMPSON, Esq.
FRANK'S. SHAW, III, Esq.
Fourth Floor
3520 Thomasville Road
Tallahassee, Florida 32308-3488

RECORDING NOTICE
 Document legibility unsatisfactory
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LEGAL DESCRIPTION
 KILLBARN COMMONS, PHASE 1

A 27.97 acre parcel lying in Sections 9 & 10, Township 2 North, Range 1 East, Leon County, Florida, being more particularly described as follows:

Commence at the intersection of the centerline of DEERLAKE SOUTH (100 foot right of way) with the intersection of TEKESTA DRIVE (100 foot right of way) as per plat of KILLBARN LAKES UNIT No. 1, recorded in Plat Book 6, Page 26 of the Public Records of Leon County, Florida, said point lying in Section 9, Township 2 North, Range 1 East, Leon County, Florida, and run thence the following five calls along the centerline of said DEERLAKE SOUTH: South 65 degrees 36 minutes 02 seconds East 49.59 feet to a point of curve concave to the North; thence Southeastly along said curve having a radius of 1534.81 feet through a central angle of 14 degrees 44 minutes 52 seconds for an arc length of 395.06 feet (chord of said arc bears South 72 degrees 59 minutes 48 seconds East 393.97 feet) thence South 80 degrees 21 minutes 54 seconds East 459.44 feet to a point of curve concave to the South; thence Southeastly along said curve having a radius of 842.63 feet through a central angle of 18 degrees 52 minutes 20 seconds for an arc length of 277.55 feet (chord of said arc bears South 70 degrees 56 minutes 24 seconds East 276.29 feet) thence South 61 degrees 31 minutes 01 seconds East 306.35 feet, thence leaving said centerline of DEERLAKE SOUTH run North 58 degrees 47 minutes 08 seconds East 834.63 feet, thence North 14 degrees 13 minutes 47 seconds East 759.80 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING run North 75 degrees 46 minutes 13 seconds West 20.00 feet, thence North 14 degrees 37 minutes 47 seconds East 11.45 feet, thence North 75 degrees 46 minutes 13 seconds West 100.00 feet, thence South 14 degrees 13 minutes 47 seconds West 69.93 feet, thence North 75 degrees 46 minutes 13 seconds West 45.00 feet, thence North 14 degrees 13 minutes 47 seconds East 52.04 feet, thence North 75 degrees 46 minutes 13 seconds West 351.24 feet, thence North 19 degrees 39 minutes 24 seconds West 89.00 feet, thence South 89 degrees 35 minutes 05 seconds West 20.44 feet, thence South 70 degrees 20 minutes 36 seconds West 140.27 feet, thence North 00 degrees 58 minutes 16 seconds East 148.27 feet through a central angle of 81 degrees 49 minutes 06 seconds for an arc length of 42.84 feet (chord of said arc bears South 29 degrees 26 minutes 03 seconds East 39.29 feet) through a central angle of 81 degrees 49 minutes 06 seconds for an arc length of 42.84 feet (chord of said arc bears South 29 degrees 26 minutes 03 seconds East 39.29 feet) to a point of compound curvature, thence Southeastly along said curve having a radius of 477.50 feet through a central angle of 02 degrees 50 minutes 59 seconds for an arc length of 24.86 feet (chord of said arc bears South 12 degrees 59 minutes 00 seconds East 24.86 feet) thence South 75 degrees 32 minutes 41 seconds West 45.00 feet to a point on a curve concave to the Northeastly; thence Northwesterly along said curve having a radius of 522.50 feet through a central angle of 15 degrees 25 minutes 43 seconds for an arc length of 140.70 feet (chord of said arc bears North 05 degrees 44 minutes 36 seconds West 140.27 feet) thence North 00 degrees 58 minutes 16 seconds East 36.40 feet to a point of curve concave to the Southwestly; thence Northwesterly along said curve having a radius of 30.00 feet through a central angle of 110 degrees 37 minutes 09 seconds for an arc length of 57.92 feet (chord of said arc bears North 54 degrees 20 minutes 18 seconds West 49.33 feet) thence South 70 degrees 20 minutes 36 seconds West 164.65 feet, thence North 19 degrees 39 minutes 24 seconds West 60.00 feet, thence North 70 degrees 20 minutes 36 seconds East 78.35 feet, thence North 03 degrees 30 minutes 28 seconds East 587.35 feet, thence North 70 degrees 20 minutes 36 seconds East 441.32 feet, thence North 77 degrees 49 minutes 50 seconds East 123.16 feet, thence South 80 degrees 25 minutes 32 seconds East 170.10 feet, thence South 49 degrees 16 minutes 17 seconds East 215.53 feet, thence South 24 degrees 39 minutes 30 seconds East 198.27 feet, thence South 09 degrees 46 minutes 42 seconds East 111.84 feet to a point on a curve concave to the South; thence Southeastly along said curve having a radius of 1050.00 feet through a central angle of 09 degrees 15 minutes 15 seconds for an arc length of 169.59 feet (chord of said arc bears South 83 degrees 40 minutes 17 seconds East 169.41 feet) thence South 79 degrees 02 minutes 39 seconds East 591.97 feet, to a point of curve concave to the Southwestly; thence Southeastly along said curve having a radius of 350.01 feet through a central angle of 20 degrees 34 minutes 25 seconds for an arc length of 125.68 feet (chord of said arc bears South 68 degrees 45 minutes 26 seconds East 125.01 feet) thence South 58 degrees 28 minutes 12 seconds East 59.63 feet, thence South 35 degrees 00 minutes 25 seconds West 338.25 feet, thence South 07 degrees 53 minutes 28 seconds East 44.77 feet, thence South 08 degrees 01 minutes 34 seconds East 50.05 feet, thence North 72 degrees 30 minutes 54 seconds West 200.18 feet, thence South 17 degrees 30 minutes 36 seconds West 145.76 feet, thence North 72 degrees 30 minutes 36 seconds West 615.74 feet to the POINT OF BEGINNING, containing 27.97 acres, more or less.

The undersigned surveyor has not been provided a current title opinion or abstract to the subject property. It is possible there are other deeds, easements, etc., recorded or unrecorded, that may affect the boundaries.