

FILE # 1695922 RCD: Apr 27 1999 @ 08:47AM  
Newman C. Brackin, Clerk, Okaloosa Cnty Fl



**DECLARATION OF COVENANTS AND RESTRICTIONS  
SINGLE FAMILY SUBDIVISION: PHASE II (22 HOMESITES)  
MAGNOLIA VILLAGE AT BLUEWATER BAY**

**WHEREAS, EMCA FOREST INVESTORS, LTD.,** a Florida limited partnership, ("Developer") is the owner of certain subdivided real estate in Okaloosa County, Florida, which is a part of Magnolia Plantation at Bluewater Bay and is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Subdivision");

**WHEREAS,** said Developer, in developing the Subdivision, is desirous of placing certain covenants and restrictions upon the use of all of the land comprising the Subdivision and is desirous that said covenants and restrictions shall run with title to said land and the grantee of any deed conveying any lot or lots, parcels or tracts included in Subdivision shall be deemed by the acceptance of such deed to have agreed to all such covenants and restrictions, and to have covenanted to observe, comply with and be bound by all such covenants and restrictions; and

**WHEREAS,** Developer has previously filed a Master Declaration of Covenants, Conditions and Restrictions for Magnolia Plantation at Bluewater Bay at Book 2204, Page 4656 Official Records of Okaloosa County (the "Master Declaration") the Subdivision being a part of the property subjected to said Master Declaration;

**NOW THEREFORE,** Developer hereby declares that all of the property within the Subdivision shall be held, sold, and conveyed subject to the Master Declaration and subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of and which shall run with the property submitted to this Declaration and which shall be binding on all parties having any right, title, or interest in the Subdivision or any part thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof.

**(1) MASTER ASSOCIATION AND FEES.** The Subdivision is part of a larger development area known as "Magnolia Plantation at Bluewater Bay", more particularly described in the Master Declaration. Each lot in the Subdivision is automatically a member of Magnolia Plantation Property Owners' Association as constituted from time to time. The powers and obligations of the Association and its members, including the obligation of members to pay assessments, are more particularly described in the Master Declaration and the Articles of Incorporation and By-Laws of the Association ("Association Documents"). The Association Documents may be modified or amended from time to time as provided for in said Association Documents.

**(2) SINGLE FAMILY RESIDENCE ONLY.** No structure shall be erected, altered or permitted to remain on any lot in the Subdivision other than for use as a single family residence (which excludes use of a single residential unit as a multi-family residence or for use as a place of business, except that Developer may use residential units as model sales centers). A portion of a residence constructed in the Subdivision may be used as a home-office or as an ancillary business office only with the prior written approval of Developer, which approval may be given or denied in Developer's sole discretion and only if said use is in accordance with the provisions of any applicable ordinances, rules and regulations of Okaloosa County. The residence on each lot shall not be more than 35 feet in height above the normal surface of the ground. No building situated on any lot shall be rented or leased separately from the rental or lease of the entire property, nor shall any property be used or leased for other than a single family residence. No duplex residence or garage apartment shall be



46.50

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receipt of written notice from Developer, then Developer may enter onto the lot and remove the fence. The cost of Developer doing so shall be paid by owner. Without Developer's prior consent, there shall be no fences or wall of any kind erected to the rear of the building on any lot that directly abuts the golf course or a lake.

**(10) SITE DESIGN, LANDSCAPING PLAN AND TREE REMOVAL TO BE APPROVED BY DEVELOPER.** For the purpose of further insuring the development to be a residential area of highest quality and standards, and in order that all improvements on each lot shall present an attractive and pleasing appearance from all sides of view, the Developer reserves the exclusive power and discretion to control and approve the location on the lot as well as the design of all buildings, structures and other improvements to be built on each lot. Developer shall also have the right to approve the landscaping plan for removal of trees from any lot. No clearing of a lot, construction of improvements, installation of landscaping or tree removal may be done until Developer has approved the plan for said improvements and for the landscaping. Plans showing such details as Developer may reasonably require shall be submitted by Owner to Developer for review and approval. The timing for submitting plans for review, the methods used for the review process and the time period for Developer to respond shall be established from time to time by Developer. The landscaping plan of a lot must provide that all designated grass areas of front, rear and side yards shall be served by an underground irrigation system. In planning and installing this irrigation system, considerations should be made of all improvements to the lot. Landscaping plans shall include sodding up to the paved surface of any abutting street and up to the side and rear property lines. The landscaping installed anywhere on a lot shall not impede the designed flow of stormwater.

**(11) GARAGES AND CARPORTS.** The improvements on a lot must include a garage which shall have the capacity for at least two automobiles. Use of recessed garages utilizing motor courts and/or porte cocheres are subject to approval by Developer.

**(12) FUTURE PURCHASERS.** The original purchaser of property in this Subdivision as well as subsequent purchasers are bound by these covenants and restrictions which run with the land (see Article 39). Therefore, structural modifications to the exterior of existing structures, new structures (such as ancillary structures and fences) and exterior color changes of any improvements on the lot must be approved in advance by the Developer or his authorized representative.

**(13) NO PARKING OF VEHICLES, BOATS, ETC.** No wheeled vehicles of any kind, boats or any offensive objects may be kept on public rights-of-way of the Subdivision or in the driveway, front, side or rear yard area of any lot except that passenger vehicles, passenger vans and pickup trucks (as long as any such vehicle has no commercial signs thereon) may be parked on a temporary basis in the paved driveway serving a lot. Parking of vehicles in driveways on a temporary basis is meant to facilitate daytime use of vehicles only. At all other times vehicles must be kept in the garage. If the number of resident vehicles exceed the design capacity of the garage, case by case exceptions can be obtained by application to the Association Property Manager. Note: Vehicles belonging to guests or visitors may be temporarily parked on the homeowners driveway or street in front of the property for a limited period of time. The Board of Directors of Magnolia Plantation will determine what amount of time constitutes a "limited period" as needed on a case by case basis depending on the individual circumstances involved. Boats or wheeled vehicles must be kept completely inside a garage located on the lot. No trailers or habitable motor vehicles of any nature shall be kept for use on any lot except within a fully enclosed garage. Disabled vehicles, vehicles under repair or vehicles in storage must be kept only within the garage located on said lot.

**(14) WINDOW AIR CONDITIONERS.** Unless prior approval of the Developer has been obtained, no window air-conditioning units may be installed in any building or ancillary structure.

**(15) NO OVERHEAD WIRES.** All telephone, electric and other utility lines and connections between the main utility lines and the residence and other buildings located on each lot shall be located underground so as not to be visible.

**(16) COMPLETION OF COMMENCED CONSTRUCTION.** When the construction of any improvements is once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. All permanent structures shown on the plans and specifications approved by the Developer must be completed within seven (7) months



receipt of written notice from Developer, then Developer may enter onto the lot and remove the fence. The cost of Developer doing so shall be paid by owner. Without Developer's prior consent, there shall be no fences or wall of any kind erected to the rear of the building on any lot that directly abuts the golf course or a lake.

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(25) **PETS.** Except for not more than two dogs or two cats, or other pets which are confined exclusively to the interior of the main residence located on the lot, no pets or other animals may be kept on a lot or in any structure located on the lot. No animals of any kind may be kept for any commercial or breeding purposes. If in the sole opinion of the Developer, the animal or animals become dangerous or an annoyance or nuisance in the neighborhood or to nearby property or destructive of wildlife, they may not thereafter be kept on the lot or inside the main residence. All pets must be kept under control at all times and must not become a nuisance by barking or other acts. No pets are allowed on the golf course or in the lakes and all pets must be on a leash when outside the boundary of the owner's lot.

(26) **NO OFFENSIVE ACTIVITIES.** No illegal, noxious, commercial, or offensive activities shall be permitted or carried out on said lot nor shall anything be permitted or done thereon which is or may become a nuisance or a source of embarrassment, discomfort or annoyance to the neighborhood. No trash, garbage, rubbish, debris, waste material or other refuse shall be deposited or allowed to accumulate or remain on any part of said lot nor upon any land or lands contiguous thereto. No fires for burning of trash, leaves, clippings or other debris or refuse shall be permitted to be on any part of said land or road right-of-ways. Trash containers shall be kept either inside the garage or within a screened area to the side of the house. On the day prior to trash or yard waste pick-up the trash may be placed on the street at dusk in a secured animal proof covered container. This container must be returned to the garage or screened area no later than dusk on collection day.

(27) **WELL LIMITATION: WATER SUPPLY.** Unless prior approval is obtained from Developer and such governmental agencies as may have jurisdiction, no artesian wells may be drilled or maintained on any lot. A central potable water supply system owned and operated by Developer or Okaloosa County or their successors or assigns will be provided to serve the Subdivision and shall be used as the sole source of water for all water spigots and outlets located within all buildings and improvements located on each lot. Each property owner at his expense shall connect his water lines to the water distribution main provided to serve the lot in the Subdivision. After such connection, each lot owner shall pay when due the periodic charges or rates for the furnishing of water made by the supplier thereof. A lot owner may provide an individual, underground water supply and delivery system from a shallow well on his lot provided that said system is used solely to supply water for an air-conditioning or heating installation, irrigation purposes, swimming pools or other exterior uses.

(28) **SEWAGE DISPOSAL.** Each owner of a lot, at his expense, shall connect his sewage disposal line to the sewage collection line provided by Developer to serve the lot in the Subdivision. The connection shall be made in such manner so as to comply with the requirements of the Okaloosa County sewage collection and disposal service. After such connection and payment of sewer connection charges, each lot owner shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal service. No septic tank or other private sewage disposal unit shall be installed or maintained on any land in the Subdivision and no sewage shall be discharged into the open grounds, golf course, other lot or into any river, marsh, pond, park, ravine, drainage ditch or canal access way.

(29) **UTILITY EASEMENTS ON SIDES AND REAR OF LOTS, AND ON PRIVATE ROADS AND ENVIRONMENTAL PRESERVATION AREAS.** The Developer, for itself and its successors and assigns, hereby reserves and is given an easement, privilege and right on, over and under the ground in order to erect, maintain and use electric and telephone wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers and other suitable equipment for drainage and sewage disposal purposes or for the installation, maintenance, transmission and use of electricity, gas, telephone, lighting, heating, water, drainage, sewage and other conveniences or utilities, on, in, over and under all of the easements shown on said plat (whether such easements are shown on said plat to be for drainage, utilities or other purposes) and on, in, over and under a further easement retained hereby in favor of Developer described as a five foot strip at the front, back and sides of each lot and on, in over and under designated easements and on, in, over and under all private roads and Environmental Preservation Areas. The Developer shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements and rights referred to in this paragraph. The owner of the lot subject to the privileges, rights and easements referred to in this paragraph shall acquire no right, title or interest in or to any wires, cables, conduits, pipes, mains, lines or other equipment of facilities placed on, over or under the property which is subject to said privileges, rights and easements. The Developer for itself and its successors and assigns reserves the right to designate the users of all such easements by parties other than the real property owner.



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the standards of the covenants and restrictions herein contained; and (c) to release any lot from any part of the covenants and restrictions which have been violated if the Developer, in its sole judgement, determines such violation to be a minor or insubstantial violation or if such variance is appropriate in the particular situation presented.

(37) **AMENDMENT OF RESTRICTION WITH CONSENT OF OWNERS.** In addition to the rights of the Developer provided for in paragraph (36) hereof, the Developer reserves and shall have the right, with the consent of the Developer and of the persons then owning two-thirds or more of the platted lots shown on the plat of the Subdivision, to amend or alter these covenants and restrictions and any part thereof in any other respects.

(38) **ADDITIONAL RESTRICTIONS BY INDIVIDUAL OWNERS.** No lot owner, without the prior written consent and approval of the Developer, may impose any additional covenants and restrictions.

(39) **RESTRICTIONS EFFECTIVE PERIOD.** The covenants and restrictions as amended and added to from time to time as provided for herein, shall be subject to the provisions hereof and unless released as herein provided, be deemed to be covenants and restrictions running with the title to said land on the Subdivision and shall remain in full force and effect until the last day of December, 2044. Thereafter the restrictions shall remain in effect for successive periods often (10) years unless two thirds of the unit owners agree in writing to extinguish these restrictions.

(40) **RULES OF CONSTRUCTION.** All parties who take title subject to these covenants and restrictions understand the general rule of law to be that such covenants are to be construed strictly, against the Developer and in favor of unrestricted use. All parties agree that these covenants and restrictions shall instead be construed to accomplish their purpose consistent with continued support of the value of lots. These covenants are to be construed reasonable to accomplish their purpose.

(41) **LEGAL ACTION ON VIOLATIONS.** If any person, firm or corporation, or other entity shall violate or attempt to violate any of these covenants and restrictions it shall be lawful for the Developer or any person or persons owning any lot of the Subdivision (a) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such covenants and restrictions and (b) to maintain a proceeding in equity against those so violating or attempting to violate any such covenants and restrictions, for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this paragraph shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Developer, its successors or assigns, to enforce any covenant or restriction herein contained, shall in no event be deemed as a waiver of the right to enforce the same thereafter as to the same breach or violation thereof occurring prior to or subsequent thereto. Lot owners found in violation of any provision of these covenants and restrictions shall be obliged to pay attorney's fees to the successful plaintiff in all actions seeking to prevent, correct or enjoin such violations or in damage suits thereon. All restrictions and covenants herein contained shall be deemed several and independent. The invalidity of one or more or any part of one shall in no way impair the validity of the remaining restrictions and covenants or part thereof.

(42) **USE OF GOLF COURSE AND LAKES.** The fairways, tees, greens, and roughs of the golf course area are reserved for the exclusive use of golfers who have officially registered for play in accordance with the procedures then in effect as designated by the golf course owner, Bluewater Bay Resort, Ltd. No resident, regardless of club membership status, shall start play without registering for play. Pets shall not be allowed access to any portion of the golf course or be allowed in any lake or pond contained in the Subdivision. Bluewater Bay Resort, Ltd. is authorized to promulgate such rules and regulations governing access to and use of the golf course and any lake or marsh which they own as they may, in their sole discretion, deem appropriate. Bluewater Bay Resort, Ltd., as owner of the golf course, certain marsh areas and the lake adjacent to the first fairway of the Magnolia golf course, shall also have the right to enforce the provisions of this Declaration with respect to any lot that abuts property owned by Bluewater Bay Resort, Ltd.

(43) **LIENS.** Each lot owner hereby grants a lien upon his lot for any sums which may become due the Developer or the Association hereunder. In the event of a failure of such owner to pay the Developer any sums provided for herein, the Developer shall have the right to file a notice of lien in the office of the Clerk of the Circuit Court of Okaloosa County, Florida, and from and after the filing of such notice of lien, the Developer shall have a lien on such lot for the payment of such sum, with interest at the rate of 18% per annum or the highest permitted by law, whichever is lower, all in



the standards of the covenants and restrictions herein contained; and (c) to release any lot from any part of the covenants and restrictions which have been violated if the Developer, in its sole judgement, determines such violation to be a minor or insubstantial violation or if such variance is appropriate in the particular situation presented.

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Exhibit "A"

Land Surveyors/Engineers

# Gustin, Cothorn & Tucker, Inc.

121 Hart Street  
Niceville, Florida 32578

Telephone  
(904) 678-5141

**\*\* OFFICIAL RECORDS \*\***  
**BK 2207 PG 717**

**LEGAL DESCRIPTION:** Magnolia Village Phase II - Proposed Planned Unit Development (Single-Family)

A parcel of land lying partially in Sections 14 & 15, Township 1 South, Range 22 West, Okaloosa County, Florida, and southwest of Florida State Road No. 20, being more particularly described as follows:

Commencing at the General Land Office Monument marking the southeast corner of aforesaid Section 15, (which is also the southwest corner of Section 14) thence run S 88°01'59" E along the south line of said Section 14 for 965.07 feet (said south section line also being the north lines of Hidden Lakes, Plat Book 14, Pages 1 & 2; Caribbean Village West Phase II, Plat Book 10, Page 78; and Garden Oaks, A Condominium, Condominium Plat Book 5, Page 79; according to the plats thereof as recorded in the public records of Okaloosa County, Florida) to its intersection with the southwesterly right-of-way line of the previously mentioned Florida State Road No. 20; thence departing aforementioned south section line, run N 48°47'52" W along said right-of-way line for 237.89 feet; thence N 48°59'14" W for 795.05 feet to the POINT OF BEGINNING; thence continue N 48°59'14" W for 312.10 feet to its intersection with a chain-link fence marking an Okaloosa County water pumping station; thence departing said right-of-way line, run S 45°22'14" W along said fence for 35.43 feet; thence continuing along said fence, run N 51°47'44" W for 99.46 feet; thence N 38°22'16" E for 40.24 feet along said fence line and northeasterly extension to the intersection with the aforementioned southwesterly right-of-way line of Florida State Road No. 20; thence run N 48°59'14" W along said right-of-way line for 6.93 feet; thence departing said southwesterly right-of-way line, run S 46°01'45" W for 645.91 feet; thence S 01°50'05" W for 80.00 feet; thence S 88°09'55" E for 19.30 feet; thence S 01°50'05" W for 50.00 feet to the point of curvature of a curve concave northerly and having a radius of 566.99 feet; thence run along said curve in an easterly direction through a central angle of 13°40'39", an arc distance of 135.35 feet (chord = 135.03 feet, chord bearing = N 84°59'45" E) to the point of tangency of said curve; thence run N 78°09'26" E for 20.44 feet to the point of curvature of a curve concave southwesterly and having a radius of 25.00 feet; thence along said curve in a southeasterly direction through a central angle of 66°26'22", an arc distance of 28.99 feet (chord = 27.39 feet, chord bearing = S 68°38'26" E) to the point of reverse curve concave northerly and having a radius of 100.00 feet; thence along said curve in a northeasterly direction through a central angle of 108°48'50", an arc distance of 189.92 feet (chord = 162.63 feet, chord bearing = S 89°49'41" E) to the point of reverse curve concave southeasterly and having a radius of 25.00 feet; thence along said curve in a northeasterly direction through a central angle of 71°20'14", an arc distance of 31.13 feet (chord = 29.15 feet, chord bearing = N 71°26'02" E) to the point of tangency of said curve; thence run S 72°53'52" E for 201.57 feet to the point of curvature of a curve concave northerly and having a radius of 532.95 feet; thence run along said curve in a southeasterly direction through a central angle of 04°48'39", an arc distance of 44.75 feet (chord = 44.74 feet, chord bearing = S 75°18'11" E); thence departing said curve, run N 12°17'29" E for 31.00 feet to the point of curvature concave northeasterly and having a radius of 25.00 feet; thence run along said curve in a northwesterly direction through a central angle of 94°48'39", an arc distance of 41.37 feet (chord = 36.81 feet, chord bearing = N 30°18'12" W) to the point of tangency of said curve; thence run N 17°06'08" E for 102.29 feet to the point of curvature of a curve concave southeasterly and having a radius of 185.00 feet; thence along said curve in a northeasterly direction through a central angle of 28°55'37", an arc distance of 93.40 feet (chord = 92.41 feet, chord bearing = N 31°33'56" E) to the point of tangency of said curve; thence run N 46°01'45" E for 51.98 feet to the point of curvature of a curve concave southeasterly and having a radius of 25.00 feet; thence along said curve



in a northeasterly direction through a central angle of  $48^{\circ}11'23''$ , an arc distance of 21.03 feet (chord = 20.41 feet, chord bearing =  $N 70^{\circ}07'26'' E$ ) to the point of reverse curve, concave northwesterly and having a radius of 35.00 feet; thence along said curve in a northeasterly direction through a central angle of  $141^{\circ}22'32''$ , an arc distance of 86.36 feet (chord = 66.06 feet, chord bearing =  $N 23^{\circ}31'52'' E$ ); thence departing said curve run  $N 41^{\circ}00'46'' E$  for 20.05 feet to the southwesterly right-of-way line of the previously mentioned Florida State Road No. 20 and the POINT OF BEGINNING. Containing 6.38 acres, mores or less.

As recorded in Plat Book 15, Pages 46 & 47, Public Records of Okaloosa County, Florida.