

FILE # 1695920 RCD: Apr 27 1999 @ 08:46AM  
Newman C. Brackin, Clerk, Okaloosa Cnty Fl



**DECLARATION OF COVENANTS AND RESTRICTIONS  
SINGLE FAMILY PLANNED UNIT SUBDIVISION: PHASE III-A (26 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

erected or placed on or allowed to occupy said lot and no building shall be altered or converted into a duplex residence or garage apartment. Furthermore, a lot owner may not use any lot for road purposes or as an easement to any lands not contained within the Subdivision.

**(3) MOTORIST'S VISION TO REMAIN UNOBSTRUCTED.** No structure or planting (including but not limited to a fence, wall, hedge, shrub, bush, tree or other thing, natural or artificial) shall be placed or located on any lot if the location of same will, in the sole judgement and opinion of the Developer, obstruct the vision of motorists travelling on any of the streets.

**(4) MINIMUM SQUARE FOOTAGE FOR ANY PRINCIPAL RESIDENCE.** (a) No one-story residence shall be erected or allowed to remain on any lot unless the enclosed heated and cooled area thereof, exclusive of screened porches, garages and storage rooms, shall equal or exceed 1400 square feet. (b) No one and one-half story residence, no split-level residence and no two-story residence shall be erected or allowed to remain on any lot unless the heated and cooled area thereof, exclusive of screened porches, garages and storage rooms, shall equal or exceed 2000 square feet and further provided that the first floor thereof contain a minimum of 1000 square feet.

**(5) PLAN APPROVAL.** No lot clearing or construction of any kind, including but not limited to construction or remodeling of main structure, garages, fences or ancillary structures, shall be permitted to commence or allowed to remain on any lot until the plans, design, colors and location of said improvements on the lot have been approved by Developer acting through an Architectural Review Committee appointed by Developer or through such other representative as Developer may designate from time to time. A lot owner shall be required to submit such information as Developer may request in order to facilitate Developer's approval process. One set of the plans required to be submitted for approval will be retained by Developer. If the finished building or other structure does not comply with the approved plans, Developer retains the right to cause the necessary changes to be made at owner's expense, the cost of which shall be a lien upon the property involved. Any changes in plans must first be re-approved by the Developer in accordance with the procedures specified from time to time by Developer.

**(6) OTHER STRUCTURES.** Construction or placement of structures other than the main residence and a garage shall not be permitted on any lot of the Subdivision except for the following ancillary structures which may be permitted subject to approval by Developer of location, architectural design and exterior finishes: pet house (up to 25 square feet and not more than 5 feet high), hothouse or greenhouse (up to 100 square feet and not more than 15 feet high), poolhouse, outdoor fireplace or barbecue pit (up to 9 square feet and not more than 10 feet high), swimming pools and mechanical installation in connection therewith, playground equipment, hot tubs, and such other structures as Developer may approve. Any such ancillary structures permitted hereunder shall be attractively landscaped, constructed in a harmonious design with the main structure, and located only on such part of the lot area as Developer may approve. No ancillary structure shall be built or placed on a lot until the quality, style, color and design have been approved by the Developer in the manner provided for herein.

**(7) SETBACK FOR ALL STRUCTURES.** No building of any type, nor any kind of structure, except driveways and walks, or any part of same, shall be erected, placed or allowed within the front, side and rear building setbacks established by Developer for each lot, which setbacks are shown on Exhibit B attached hereto and made a part hereof.

**(8) RESUBDIVIDING OR REPLATTING OF LOTS.** Developer reserves the right unto itself to resubdivide or replat a lot or lots in the Subdivision. Except as provided herein no lot may be further subdivided. When more than one lot is owned by a single owner and committed, in Developer's opinion, to be used only as one residential unit, Developer may declare that said two lots be treated as a single lot without the need to formally replat.

**(9) FENCES.** No fence or wall shall be erected until the location, quality, style, color and design shall have been first approved by the Developer or its duly appointed representative in the manner provided for herein. Fences may be built only on portions of any lot and only in such locations as Developer shall approve in its sole discretion. Maintenance of said fence shall be the responsibility of the owner. Without Developer's prior consent, no fence or wall shall be erected higher than six feet from the normal surface of the ground. Fences must be of uniform design and the sides facing away from the lot must be finished. Any such fence or wall constructed without said approval shall, at the request of Developer, be immediately removed at the owner's expense. If said owner does not cause the removal of the fence within ten days after

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



after the commencement date unless such completion is rendered impossible as the direct result of strikes, fires, national emergencies or natural calamities or unless otherwise approved by Developer. All landscaping must also be completed seven (7) months after construction has commenced and, in any event, prior to anyone commencing occupancy.

(17) **DRIVEWAYS.** Prior to completion of construction, the owner of the lot in the Subdivision shall install at his expense a suitable concrete or brick paver driveway extending from the paved portion of the abutting street to the garage entrance. Driveway design, size, location and elevation shall be submitted to the Developer for its prior approval. Owner of the lot shall not permit the driveway to interfere with or impede the flow or drainage of surface water along the road right-of-way. During construction on any lot, all vehicles involved in such construction, including those delivering materials and supplies shall enter upon such lot from the street only at the location for the proposed driveway. Such vehicles shall not be parked so as to obstruct the street nor shall they be parked on any property other than the lot on which the construction is proceeding.

(18) **NO PICNIC AREA PRIOR TO CONSTRUCTION.** No picnic areas and no detached outbuildings shall be erected or permitted to remain on any lot prior to the start of construction of a permanent residence thereon.

(19) **NO SHEDS, SHACKS OR TRAILERS.** No shed, trailer, tent or other temporary or movable building or structure of any kind shall be erected or permitted to remain on any lot. However, this paragraph shall not prevent the location on the lot of adequate sanitary toilet facilities for use of workmen during the course of such construction.

(20) **RESIDING ONLY IN RESIDENCE.** No trailer, basement, garage or any outbuilding of any kind, even if otherwise permitted hereunder to be or remain on a lot, shall be at any time used as a residence either temporarily or permanently.

(21) **SIGNS.** Neither owner nor any agent of owner shall place a sign of any character upon any lot or on any other property within Magnolia Plantation except as approved by the Developer. The Developer hereby approves one "FOR SALE" or "For Rent" sign, not to exceed six square feet in size and height not to exceed five feet above grade, to be placed upon said lot by an owner-resident or his agent to facilitate the sale or rental of the home. Only one such sign shall be permitted per lot and if such sign is placed on the golf course or lake front side of a lot, it must be within the required setback. A sign placed in the front yard must be at least ten feet back from the front property line. "SOLD" may be affixed to said sign and said sign may remain on the lot until SEVEN days after closing of the sale. The Developer may enter upon any lot and summarily remove any signs which do not meet the provisions of this paragraph. During the construction period, Developer hereby approves a single identification sign board which may be located on a lot on which the builder may identify his company and, at the option of builder, permit his sub-contractors and lender to identify themselves. No portion of this sign board shall be more than four feet high or three feet wide. Signs should be placed in the center of each lot at least ten feet back from any adjacent street. In no event shall any builder signs be affixed to any trees on the lot, placed in the right-of-way of the street or placed in the rear yard of the lot.

(22) **COMMERCIAL SIGNS.** Nothing contained in these covenants and restrictions shall prevent the Developer or any person designated by the Developer from erecting or maintaining such commercial and display signs and such temporary dwellings, sales center, model houses and other structures as the Developer may deem advisable for development, marketing or sales purposes.

(23) **AERIALS AND ANTENNAS.** Unless otherwise approved by Developer, no television or radio aerial or antenna nor any other exterior electronic or electric equipment or devices of any kind shall be located on any lot or installed or maintained on the exterior of any structure located on a lot. T.V. reception devices no larger than 36 inches in diameter may be installed on the ground (not on the house unless totally hidden) when approved by the Developer or Architectural Review Committee and suitably landscaped to preclude visibility.

(24) **MAIL BOXES.** Only the specific mail box or newspaper receiving box of the type approved by Developer may be erected or located on any lot. No other receptacle of any kind for use in the delivery of mail or newspapers or similar material may be erected or located on any lot.

**(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.

(30) **LOT APPEARANCE AND LANDSCAPING.** The owner of each lot, whether such lot be improved or unimproved, shall keep such lot and the area between the property line of the lot and the paved surface of any abutting street ("street frontage") free of trash and rubbish, and shall keep such lot, Street frontage and landscaping thereof in a neat and attractive landscaped condition at all times. During construction, all trash and waste material generated shall be removed and disposed of by the lot owner or the contractor at regular intervals so that the lot does not become unsightly. Developer may specify the trash removal frequency required during construction. The owner of a lot with a completed home shall install, maintain and replenish, if needed, the landscaping required pursuant to the approved landscaping plan. In the event the owner of any lot fails to comply with the provisions hereof, the Developer shall, after giving written notice to the lot owner, have the right, but not the obligation, to go upon such lot and install the sod or other landscaping required in Developer's opinion or remove rubbish and any unsightly or undesirable things and objects from the lot or street frontage and to do any other things and perform and furnish any labor necessary or desirable in its judgement to complete or maintain the landscaping in the manner as set forth herein and to maintain the lot and street frontage in a neat and attractive condition, all at the expense of the owner of such lot. The expense shall be payable by such owner to the Developer on demand. In the event of a failure of such owner to pay the Developer as above provided, 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 bylaw, whichever is lower, all in like manner as if the Developer had performed such work at the instance and request of such owner. Any such lien, however, shall be subordinate and inferior to any mortgage then or thereafter encumbering such lot.

(31) **CLOTHES LINES.** The hanging of clothes in the front, rear or side yard shall not be permitted.

(32) **STREET LIGHTING.** Developer shall install a street lighting system for the Subdivision. The cost of operating and maintaining this system shall be an expense of the Association and distributed among owners of lots within the Subdivision as the Association deems appropriate.

(33) **DEVELOPER MAY CORRECT VIOLATIONS.** Whenever there shall have been built or there shall exist on any lot any structure, building, thing or condition which is in violation of these covenants and restrictions, the Developer shall, after giving written notice to the lot owner, have the right, but not the obligation, to enter upon the lot or street frontage where such violation exists and summarily abate, correct or remove the same, all at the expense of the lot owner payable to the Developer on demand. Such entry and abatement, correction or removal shall not be deemed a trespass nor make the Developer liable in any way for any damages on account thereof. In the event of a failure of such owner to pay the Developer any sums required to be paid Developer under these covenants and restrictions, the Developer shall have the right to file a notice of lien as provided in Section 43 hereof..

(34) **APPROVAL OF DEVELOPER.** Wherever in these covenants and restrictions the consent or approval of the Developer is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request for approval is submitted in writing to the Developer and approved by the Developer. Such request shall be hand delivered or sent to the Developer by Certified Mail, Return Receipt Requested. After the Developer acts upon the application, it must be picked up and signed for by the applicant. No action shall be taken by or on behalf of the person or persons submitting such application which action violates any of the covenants and restrictions herein contained.

(35) **DEVELOPER MAY DESIGNATE A SUBSTITUTE.** The Developer shall have the sole and exclusive right at any time and from time to time to transfer and assign to, and to withdraw from such person, firm or corporation as it shall elect, any or all rights, powers, privileges, authorities and reservations given to or reserved to Developer hereunder or under the provisions herein contained. If at any time hereafter there shall be no person, firm or corporation entitled to exercise the right, powers, privileges, authorities and reservations given to or reserved by the Developer under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the owners of a majority of the lots in the Subdivision. Nothing herein contained, however, shall be construed as conferring any rights, powers, privileges, authorities or reservations in said committee except in the event aforesaid.

(36) **AMENDMENTS OR ADDITIONAL RESTRICTIONS.** The Developer reserves and shall have the 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, deed declaration or other instrument hereafter made, any additional covenants and restrictions applicable to said land which do not lower



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

like manner as if the Developer had performed such work at the instance and request of such owner. Any such lien, however, shall be subordinate and inferior to any mortgage then or thereafter encumbering such lot.

(44) **EASEMENT OVER LOTS FOR USE BY GOLFERS.** Each owner of a lot abutting the golf course grants an easement to each person registered to play golf on the golf course for the purpose of hitting golf balls over and on to such lot, and walking on said lot to recover golf balls thereon so long as destruction of property does not occur.

(45) **UNLICENSED MOTORIZED VEHICLES** of any kind are prohibited on all streets and common areas of Magnolia Plantation with the exception of golf carts operated under the supervision and legal responsibility of an adult Magnolia Plantation resident.

(46) **Waivers.** All requests for approval or waivers of any kind from the developer or any elected or appointed bodies of Magnolia Plantation must be in writing. The approval or denial of these requests must also be in writing and be kept by the requester. These approvals should be passed to subsequent purchasers of the requesters property.

IN WITNESS WHEREOF the Developer has hereunto set his hand and seal this 22 day of April, 1999.

Handwritten signature  
Witness:

"DEVELOPER"  
EMCA FOREST INVESTORS, LTD.  
A Florida Limited Partnership

By: Handwritten signature  
RAIMUND HERDEN, GENERAL PARTNER

Edna M. Keefe  
Witness

STATE OF FLORIDA  
COUNTY OF OKALOOSA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Raymond Herder, General Partner of EMCA Forest Investors to me known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same. He is personally known to me and did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 22 day of April, 1999.

Edna M. Keefe  
Notary Public

My commission expires:

PREPARED BY:  
EMCA FOREST INVESTORS, LTD.  
P.O. BOX 5277  
NICEVILLE, FL 32578

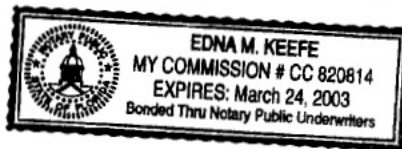




Exhibit "A"

**LEGAL DESCRIPTION:** Lots 12 through 37 of Magnolia Village at Bluewater Bay, Phase III-A as shown on Plat thereof recorded at Plat Book 16, Pages 82 and 83 Okaloosa County Official Records.

**\*\* OFFICIAL RECORDS \*\***  
**BK 2207 PG 698**