

2502



**DECLARATION OF COVENANTS AND RESTRICTIONS
SINGLE FAMILY PLANNED UNIT SUBDIVISION
MEDITERRANEAN VILLAGE AT BLUEWATER BAY (46 HOMESITES)**

WHEREAS, EMCA FOREST INVESTORS, LTD., a Florida limited partnership, ("Developer") is the owner of certain subdivided real estate in Okaloosa County, Florida, which is to be known as Mediterranean Village, 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.

FILE # 1696021 RCD: Apr 27 1999 @ 11:26AM
Newman C. Brackin, Clerk, Okaloosa Cnty Fl

(4) **MINIMUM SQUARE FOOTAGE FOR ANY PRINCIPAL RESIDENCE.** 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 1100 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 1700 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 tub 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 the Development Order for the Subdivision issued by Okaloosa County (January 29, 1999) and by Developer.

(8) **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.

(9) **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.

(10) **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.

(11) **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. 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.

(12) **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.

(13) **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.

(14) **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.

(15) **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.

(16) **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.

(17) **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.

(18) **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.

(19) **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.

(20) **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

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.

(29) 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 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.

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

(31) 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.

(32) 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 42 hereof.

(33) 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.

(34) 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.

(35) 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.

(36) **AMENDMENT OF RESTRICTION WITH CONSENT OF OWNERS.** In addition to the rights of the Developer, the Developer reserves and shall have the right, with the consent 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.

(37) **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.

(38) **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 of ten (10) years unless two thirds of the unit owners agree in writing to extinguish these restrictions.

(39) **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.

(40) **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.

(41) **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 or in Magnolia Plantation. 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.

(42) **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.

(43) **UNLICENSED MOTORIZED VEHICLES.** 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.

(44) **ALL REQUEST FOR APPROVAL OR WAIVERS.** All request 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 requestor. These approvals should be passed to subsequent purchasers of the requestors property.

IN WITNESS WHEREOF the Developer has hereunto set his hand and seal this 19 day of April, 1999.

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

Jennifer Brooks
Witness: Jennifer Brooks

By: Raimund Herden
RAIMUND HERDEN, GENERAL PARTNER

Ellen Hartinger
Witness: Ellen Hartinger

**** OFFICIAL RECORDS ****
BK 2207 PG 926

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 Raimund Herden, 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 19 day of April, 1999.

Linda Harrison
Notary Public

My commission expires:

 Linda Harrison
MY COMMISSION # CC672048 EXPIRES
December 4, 2001
BONDED THRU TROY FAIR INSURANCE, INC

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

Exhibit "A"

LEGAL DESCRIPTION: Recorded: Mediterranean Village a Subdivision in Magnolia Plantation at Bluewater Bay. Plat Book 18, Pages 50 and 51

**** OFFICIAL RECORDS ****
BK 2207 PG 927
