

**ARTICLES OF INCORPORATION  
OF  
THE RACQUET CLUB CONDOMINIUM OWNER'S ASSOCIATION, INC.,  
A NON-PROFIT CORPORATION**

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The undersigned, acting as Incorporator of a not for profit corporation under the Alabama Nonprofit Corporation Act, Sections 10-3A-1 — 10-3A-225, *Code of Alabama* (1975) ("Nonprofit Corporation Act") and the Alabama Uniform Condominium Act of 1991, Sections 35-8A-101 — 35-8A-417, *Code of Alabama* (1975) ("Condominium Act") adopts the following Articles of Incorporation.

**Article I — Name**

The name of the corporation is The Racquet Club Condominium Owner's Association, Inc. ("Association").

**Article II — Period of Duration**

The period of duration of the Association is perpetual unless and until hereafter legally dissolved.

**Article III — Not for Profit**

The Association is not organized for pecuniary profit and it shall pay no dividend, and shall distribute no part of its income to its members, directors, or officers. Nevertheless, the Association may pay compensation in a reasonable amount to its members, directors, and officers for services rendered, and it may confer benefits on its members in conformity with the Declaration and the purposes of the Association. Any income received by the Association shall be applied only to the non-profit purposes and objectives of the Association and no part of the net earnings thereof shall enure to the benefit of any private member, officer, director or individual. The members of the Association shall not be personally liable for the debts, liabilities, or obligations of the Association. On termination, the Association may make distributions to its members as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income. All funds and title to properties acquired by the Association and the proceeds therefrom shall be held in trust for the members of the Association in accordance with the provisions of the Acts, the Declaration and the By-Laws of the Association.

**Article IV — Purposes and Powers**

The Association is organized for the purpose of providing an entity pursuant to the Condominium Act for the acquisition, operation, management, maintenance, care, control, and administration of all those properties known as The Racquet Club, a Condominium (the

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"Condominium"), located in Baldwin County, Alabama. The Association shall have all the common law and statutory powers of a non-profit corporation and shall have all the powers which an association may have or exercise under the Condominium Act, which are not in conflict with the terms of these Articles or the Declaration of Condominium of The Racquet Club, A Condominium (the "Declaration") (the Declaration is being recorded in the Probate records of Baldwin County, Alabama) as they may be amended from time to time, including but not limited to the following (the terms capitalized below shall have the meanings set forth in the Declaration or the Condominium Act to which reference is hereby made):

- (1) To elect and remove officers of the Association as provided in the By-Laws.
- (2) To administer the affairs of the Association and Condominium Property.
- (3) To maintain bank accounts on behalf of the Association and to designate signatories required therefor.
- (4) To acquire, hold, lease, mortgage, or convey real, personal, or mixed Condominium Property wherever situated, including, without limit, units in the Condominium.
- (5) To pay the cost of all taxes and utilities assessed against the Condominium that are not assessed and billed to the owners of individual units.
- (6) To borrow money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the common elements, provided, however, that the consent of at least two-thirds (2/3) of the votes of the members, obtained at a meeting duly called and held for such purpose in accordance with the provision of the By-Laws, shall be required for the borrowing of such money.
- (7) To estimate the amount of the annual budget and to make, levy, enforce, and collect Assessments against unit owners to defray the costs, expenses and losses of the Condominium, and to provide adequate remedies for failure to pay such Assessments.
- (8) To use the proceeds of Assessments in the exercise of its powers and duties.
- (9) To maintain, repair, replace and operate the Condominium Property, including the reasonable right of entry upon any unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the project and the right to grant permits, licenses and easements over the common areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

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- (10) To purchase insurance on the Condominium Property, and to purchase insurance for the protection of the Association and its members, and the members of the Board of Directors and officers of the Association.
- (11) To reconstruct improvements after casualty and to further improve the Condominium Property.
- (12) To make and amend reasonable Rules and Regulations respecting the use of the Condominium Property and the operation of the Condominium.
- (13) To enforce by legal means the provisions of the Acts, the Declaration, the Articles Of Incorporation, the By-Laws and the Rules and Regulations for the use of the Condominium Property.
- (14) To contract for the management of the Condominium Property and to delegate to such managing agent all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.
- (15) To retain attorneys and accountants.
- (16) To employ personnel to perform the services required for proper operation of the Condominium.
- (17) To purchase a unit of the Condominium for the purposes authorized in the Declaration.
- (18) To maintain a class action and to settle a cause of action on behalf of owners with reference to the Common Elements, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from such elements serving only one (1) unit; and to bring an action and to settle the same on behalf of two (2) or more of the owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or more than one (1) unit; all as the Board deems advisable.
- (19) To procure such fidelity bonds, as the Board deems advisable, covering officers and employees of the Association handling and responsible for the Association's funds and personal Condominium Property, and to procure directors' and Officers' liability insurance, if the Board deems it advisable, and the premiums of such bonds and insurance shall be paid by the Association as common expense.
- (20) To adopt and establish By-Laws for the operation of the Association.

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- (21) The objects and purposes set forth in this Article shall be construed as powers, as well as objects and purposes and the Association shall have and may exercise such powers as if such powers were set forth in full herein.
- (22) The Association shall have and may exercise all powers as shall enable it to do each and everything necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in this Article.

#### **Article V — Membership and Voting Rights**

The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law and all rights conferred upon officers and Directors herein are granted subject to this reservation.

The Association shall issue no shares of stock of any kind or nature whatsoever. Every person or entity who is a record owner of a fee or undivided fee interest in any unit in the Condominium shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any unit. The Members shall enjoy such qualifications, rights and voting rights as may be fixed in the Declaration and in the By-Laws of the Association. The share of a member in the funds or assets of the Association cannot be assigned, hypothecated or transferred, in any manner, except as an appurtenance to the unit.

Notwithstanding the foregoing, any person or entity who holds an interest in a unit the Condominium merely as security for the performance of an obligation shall not be a member of the Association, unless and until such security holder or Mortgagee has acquired title to the unit pursuant to foreclosure or any proceeding in lieu thereof and the deed thereby evidencing title has been duly and properly recorded, at which time, such security holder or Mortgagee shall become a member and the membership of the debtor shall thereupon cease, regardless of whether or not there is an outstanding right of redemption to the unit.

#### **Article VI — Board of Directors**

The Condominium Property, business and affairs of the Association shall be managed by a Board of Directors consisting of the number of directors as shall be determined by the By-Laws; provided, however, that the Board of Directors shall consist of not less than three (3) nor more than five (5) directors and in the absence of a provision in the By-Laws to the contrary, shall consist of five (5) directors. Directors of the Association shall, from time to time, be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the members in the manner determined by the By-Laws and as limited herein. Except as may otherwise be provided in the Declaration and the By-Laws, each director may be either a person designated by H/M Partners, L.L.C. ("*Declarant*") or a person entitled to cast a vote in the Association. Directors may be designated or elected and removed, and vacancies on the Board of

Directors shall be filled as provided in the Declaration and the By-Laws. All the duties and powers of the Association existing under the Acts, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by unit owners when such approval is specifically required by the Acts, the Declaration, these Articles or the By-Laws.

The initial Board of Directors shall be composed of five (5) members. The names and addresses of the five (5) members of the initial Board of Directors, who shall hold office until election or appointment of their successors, are as follows:

<b>Name</b>	<b>Address</b>
Dilana G. Norman	Post Office Box 395 Gulf Shores, Alabama 36542
Cindy Ward	Magnolia Trace, Inc. Post Office Box 769 Point Clear, Alabama 36564
J.M. Phillips	Magnolia Trace, Inc. Post Office Box 769 Point Clear, Alabama 36564
Albert Corte, III	Post Office Box 395 Gulf Shores, Alabama 36547
J.K. Mclean, Jr.	Magnolia Trace, Inc. Post Office Box 769 Point Clear, Alabama 36564

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Notwithstanding the provisions set forth in this Article VI of these Articles or in any provision of the By-Laws granting to the members the right to elect and remove members of the Board of Directors Declarant, its successors and assigns, shall have exclusive control of the Board of Directors of the Association by electing or appointing, removing, and in the event of vacancies shall fill such vacancies, in all of the positions of members of the Board of Directors of the Association, until such time as either (a) the expiration of sixty (60) days following the conveyance of seventy-five percent (75%) of the Units in the Condominium to purchasers of Units other than the Declarant, or (b) the expiration of two (2) years from the date the Declarant has ceased to offer Units for sale in the ordinary course of business, or the Declarant elects by written notice to the Association, at its option, to terminate such control of the Association, whichever first occurs. Notwithstanding the above, within ninety (90) days after conveyance of twenty-five percent (25%) of the Units, the members of the Association other than Declarant, shall be entitled

to elect twenty-five percent (25%) of the members of the Board of Directors. Not later than nine (90) days after conveyance of fifty percent (50%) of the Units to members of the Association, other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board shall be elected by the members of the Association. Further, the Declarant shall be entitled to elect at least one (1) members of the Board of Directors, as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Units in the Condominium and such right is not violative of the then provisions of the Condominium Act. Within sixty (60) days before the date of termination of control of the Association by the Declarant, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days' notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors to be elected by the members other than the Declarant.

**Article VII — By-Laws**

The initial By-Laws of this Association shall be adopted by its Board of Directors. The power to alter, amend, or repeal the By-Laws or adopt new By-Laws shall be vested in the Board of Directors of this Association for such period of time as the Declarant has the right to elect at least a majority of the members of the Board of Directors and thereafter, by the members at any regular or special meeting upon the affirmative vote of the holders of not less than two-thirds (2/3) of the outstanding votes present at such meeting in person or represented by proxy.

**Article VIII — Officers**

The affairs of the Association shall be administered by the officers designated in accordance with the By-laws. The names and the addresses of the officers who shall serve until the election or appointment of their successors in accordance with the By-Laws are as follows:

Name	Office	Address
Albert Corte, III	President	Post Office Box 395 Gulf Shores, Alabama 36547
J.M. Phillips	Vice President	Magnolia Trace, Inc. Post Office Box 769 Point Clear, Alabama 36564
Dilana G. Norman	Secretary/Treasurer	Post Office Box 395 Gulf Shores, Alabama 36547

**Article IX — Indemnification**

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The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which court shall deem proper.

To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs one and two of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

Any indemnification under the first two unnumbered paragraphs of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the

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circumstances because he has met the applicable standard of conduct set forth in paragraphs one and two of this Article. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the members.

Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in paragraph four of this Article upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Article.

The indemnification authorized by this Article shall not be deemed exclusive of and shall be in addition to any other right (whether created prior or subsequent to the enactment of this Article) to which those indemnified may be entitled under any statute, rule of law, provisions of articles of incorporation, by-law, agreement, or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provision of this Article.

Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities or any settlement thereof, including counsel fees, reasonably incurred by or imposed in connection with any proceeding to which said director or officer may be a party, or in which said director or officer may become involved, by reason of being or having been a director or officer of the Association, whether or not said director or officer is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of the duties of said director or officer; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be



in addition to and not exclusive of all other rights to which such director or officer may be entitled.

#### **Article X — Related Party Transactions**

No contract or other transaction between the Association or any person, firm, Association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or are related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, Association or corporation. Any director of the Association individually, or any firm or Association of which any director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or Association is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors or of any committee of directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken, and if such fact shall be so disclosed or known, any director of the Association so related or otherwise interested may be counted in determining the presence of a quorum of any meeting of the Board of Directors or of such Committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

#### **Article XI — Incorporator**

The name and address of the incorporator of the Association is J.M. Phillips, Post Office Box 769, Point Clear, Alabama 36564.

#### **Article XII — Registered Office and Agent**

The location of the initial registered office of the Association is 10 Peninsula Boulevard, Gulf Shores, Alabama 36542. The mailing address of the initial registered office of the Association is Post Office Box 395, Gulf Shores, Alabama 36547-0395. The name of the initial registered agent of the Association at such address is J.M. Phillips.

#### **Article XIII — Declarant Control**

The Declarant shall retain control of the Association in accordance with the terms and conditions of the Declaration.

**Article XIV — Dissolution**

The Association shall be dissolved upon the termination of the Condominium in the manner provided in the Declaration, the Condominium Act, and the Nonprofit Corporation Act. Upon dissolution of the Association, the assets of the Association, if any, and all money received by the Association from its operations, after the payment in full of all debts and obligations of the Association of whatsoever kind and nature, shall be used and distributed solely and exclusively in the manner provided for in the Condominium Act and the Nonprofit Corporation Act.

**Article XV — Amendments**

The Association reserves the right to amend, alter, change or appeal any provision contained in these Articles Of Incorporation in the manner now or hereafter provided by law and all rights conferred upon officers and directors herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Incorporator has caused this instrument to be executed on this 2 day of December 1997.

INCORPORATOR:

J.M. Phillips  
J.M. PHILLIPS

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STATE OF ALABAMA :

COUNTY OF BALDWIN :

Before me, the undersigned authority, a Notary Public in and for said State and County, hereby certify that J.M. Phillips, whose name is signed to the foregoing Articles of Incorporation, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date. Subscribed and sworn to before me on this 2<sup>nd</sup> day of December, 1997.

Cindy A. Ward  
NOTARY PUBLIC



[AFFIX SEAL]  
My Commission Expires:  
December 17, 2000

This Instrument Prepared By:  
ARMBRECHT, JACKSON, DeMOULY,  
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RECORDED FEE 25.00  
STATE OF ALABAMA  
BARBENT COUNTY  
I CERTIFY THIS INSTRUMENT WAS  
FILED AND TAXES COLLECTED ON

1997 DEC 19 P 2:59

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MISC 96/1333-43  
12-19-97  
JUDGE OF PROBATE