

STATE OF ALABAMA }  
COUNTY OF BALDWIN }

**ARTICLES OF INCORPORATION  
OF  
THE MAGNOLIAS OWNER'S ASSOCIATION, INC.,  
A NONPROFIT CORPORATION**

**WHEREAS**, the undersigned incorporators, being of lawful age, do hereby associate themselves for the purpose of becoming a nonprofit corporation for the management and administration of the common affairs and expenses of The Magnolias, a subdivision, according to map or plat thereof recorded July 7, 2006 on Slide 2278-D, in the Office of the Judge of Probate, Baldwin County, Alabama, hereinafter referred to as the "Subdivision," and developed by Harless Development Company, Inc., an Alabama corporation, hereinafter referred to as the "Developer."

**AND WHEREAS**, the said incorporators do hereby make, ratify and adopt the Alabama Nonprofit Corporation Act, Section 10-3A-1, et seq., Code of Alabama, 1975, as amended, hereinafter referred to in its entirety as the "Act."

**WHEREFORE**, the premises considered, pursuant to said Act, the said incorporators do hereby organize as follows, to-wit:

**ARTICLE ONE  
NAME**

1.1. The name of the corporation shall be **THE MAGNOLIAS OWNER'S ASSOCIATION, INC.**, hereinafter referred to as the "Association."

**ARTICLE TWO  
DURATION**

2.1. The duration of the corporation shall be perpetual.

**ARTICLE THREE  
PURPOSE**

3.1. The nature and business of the Association and the primary purpose for which it is formed shall be to manage and administer the common affairs and expenses of the Subdivision and maintain all of the common areas and facilities of the Subdivision.

3.2. The Association shall provide for the government, administration, preservation and architectural control of all lots and common areas within the Subdivision.

**ARTICLE FOUR**

## **DUTIES AND POWERS**

4.1. The Association shall manage and arrange for the services, utilities and insurance on all common areas and facilities of the Subdivision and the respective ownership interests therein.

4.2. The Association shall administer and enforce the covenants, terms and conditions described in the Declaration of Rights, Easements, Covenants, Conditions, Affirmative Obligations and Restrictions to The Magnolias, which Declaration is part of the records in the office of the Judge of Probate of Baldwin County, Alabama, hereinafter referred to in its entirety as the "Declaration."

4.3. The Association shall have the authority to perform all obligations and duties and exercise all rights and powers of the Association as specified in the Declaration and the By-Laws.

4.4. The Association shall be deemed and constitute a business entity by which the interests of the Developer and all lot owners of the Subdivision may be furthered.

4.5. The Association shall maintain, repair, replace, clean and sanitize the common elements or common areas of the Subdivision, as may be required from time to time to promote the health, safety and welfare of the residents and lot owners located within the Subdivision.

4.6. The Association shall assess, collect and utilize funds from the lot owners in the Subdivision necessary to pay for the common expenses of the Subdivision, including, but not limited to, such expenses as common water service, street lights and other lighting of common areas and grounds, and maintenance and repair of common equipment, facilities and areas.

4.7. The Association shall not arrange or be responsible for utilities or services benefitting solely private individual lot owners in the Subdivision.

4.8. Any surplus of funds assessed in excess of the common expenses at the end of any accounting period shall be retained by the Association or refunded pro rata to the lot owners, as the Board of Directors of the Association shall elect.

4.9. The Association shall not contemplate pecuniary gain or profit to the lot owners.

4.10. The Association may maintain and all forms of insurance coverage for the benefit of the lot owners, including, but not limited to, coverage against loss by fire, windstorm, rainstorm, hurricane, and other hazards which the Association may elect.

4.11. The Association may also maintain liability insurance against any risk, such as death, personal injury, or damage to the common areas, including, but not limited to, the acts and omissions of the Association, its agents, Board of Directors, servants and employees.

4.12. The Association shall advise each lot owner of the type and amount of all insurance coverage maintained by the Association.

4.13. The Associate may appoint an insurance committee or trustee charged with the responsibility for securing, maintaining and administrating insurance proceeds of any Association.

4.14. The premiums for all said insurance may be assessed to the lot owners on a pro rata basis and shall constitute a part of each lot owner's liability for common expenses.

4.15. No lot owner or other person or entity having an insurable risk in the Subdivision shall be precluded from obtaining additional insurance, individually at such owner's own expense and for such owner's own exclusive benefit against any risk, regardless or whether such risk is covered by insurance maintained by the Association.

4.16. In the event of loss or damage to all or any part of the common areas or any common improvements located therein, the Association shall have the power to assess the lot owners, on a pro rata basis, for the amount of any deficiency in the amount of insurance proceeds paid or due to be paid for such damage or the repair of same.

4.17. The Association shall have the right of access to the individual lots located in the Subdivision as may be necessary for the purpose of enforcing all rules, restrictions, regulations and obligations set forth in the Declaration or By-Laws, and for the maintenance, repair or replacement of any common areas in the Subdivision or for making emergency repairs necessary to prevent damage to any other lots or common areas located in the Subdivision.

4.18. The Association may purchase lots in the Subdivision and otherwise acquire, hold, lease, mortgage and convey the same.

4.19. The Association shall have the right to own real property in its name, including but not limited to the Common Areas.

4.20. The Association may lease or license the use of the common areas in a manner not inconsistent with the rights of the lot owners of the Subdivision.

4.21. The Association may acquire or enter into any agreement to acquire any interest of any kind or nature in any property, either real or personal.

4.22. The Association may appoint or otherwise designate any person or entity as an agent with the authority to exercise any or all of the Association's powers and responsibilities.

4.23. The Association may make, adopt, alter, remove, and otherwise amend such By-Laws as the Association deems necessary or desirable for the proper management and administration of the affairs of the Association; however, such By-Laws shall not be inconsistent with or contrary to any provisions of the Declaration.

4.24. The Association may make contracts and incur liabilities, borrow at such rates of interest, issue notes, bonds or other obligations, mortgage or pledge any or all of its property, franchises and income, as the Association shall elect.

4.25. The Association may purchase, take, receive, subscribe for, acquire, own, hold, vote, use, employ, sell, mortgage, pledge or otherwise dispose of, use and deal in and with shares or other interests in, or obligations of, other corporations, associations, partnerships or individuals, whether

such entities be for profit or not for profit, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, county or municipality, or any instrumentality organized under the auspices, powers or permission thereof.

4.26. Nothing in these Articles shall be construed as conferring upon the Association any interest of ownership in any lot located in the Subdivision.

4.27. The Association shall not issue shares of stock, and its interest in the Subdivision shall be limited to the administration and management of the common affairs of the lot owners.

4.28. The Association may have a corporate seal, and such seal may be used, altered and affixed in any manner deemed appropriate by the Association or its Board of Directors.

4.29. The Association may lend, invest and reinvest its funds for its corporate purposes, and give, take and hold real and personal property as security therefor.

4.30. The Association may conduct its affairs, carry on its operations, have offices, employees and agents, and exercise all of the powers granted to it by these Articles, the Declaration, the By-Laws, and the Act, in any state, territory, district or possession of the United States, or in any foreign country.

4.31. The Association may elect or appoint officers and agents of the corporation, and define and determine their duties and compensation.

4.32. The Association may indemnify any current or former director or officer of the Association, or any person who may have served at its request as a director or officer of another corporation, against expenses actually and necessarily incurred by such person in connection with the defense of any action, suit or proceeding in which such person is made a party and shall be adjudged to be liable for negligence or misconduct in the performance of such person's duty; however, such indemnification shall not be deemed exclusive of any other right to which such director may be entitled under any agreement or resolution by the board of directors, the By-Laws, or otherwise.

4.33. The Association may cease its corporate activities and surrender its corporate franchise at any time, upon the appropriate approval of its members, and the Association shall have and exercise all other powers, rights and duties necessary or convenient to the furtherance of any or all of the purposes for which the corporation is organized, including those set forth in the Declaration, the Act, whether or not specifically set forth or enumerated herein.

4.34. The Association may sue and be sued, complain and defend, in its corporate name.

4.35. The Association shall not engage in any transaction prohibited by any section or provision of the Act or the Internal Revenue Code as now enacted or as hereafter amended.

## **ARTICLE FIVE**

## OFFICERS

5.1. The officers of the Association shall consist of a president, vice president, secretary, and treasurer, and such other officers and assistant officers as may be deemed necessary by the Board of Directors.

5.2. The offices of president and secretary may not be held by the same person, but all other offices may be combined in any manner the Board of Directors should elect.

5.3. The initial officers shall serve until the Developer has surrendered control of the Association to the lot owners. The name and address of the initial officers are as follows, to-wit:

<b>Douglas J. Harless</b>	<b>Paula H. Harless</b>	<b>Douglas H. Jacobs</b>
President	Vice-President	Secretary/Treasurer
2924 Normandy Place	2924 Normandy Place	Post Office Box 1277
Tuscaloosa, AL 35406	Tuscaloosa, AL 35406	Gulf Shores, AL 36547

5.4. When the Developer has elected to surrender control of the Association to the lot owners, but not later than within sixty (60) days after the Developer has conveyed the last lot in the Subdivision to an owner other than the Developer, the Developer shall call the initial meeting of the members of the Association, and the new officers elected at such meeting shall thereafter serve in such manner and for terms, not exceeding two years, as may be prescribed in the By-Laws.

## ARTICLE SIX BOARD OF DIRECTORS

6.1. The Board of Directors of the Association, hereinafter referred to as the "Board," shall consist of not less than three (3) or more than five (5) persons.

6.2. Each said initial Director shall serve until the Developer has surrendered control of the Association to the lot owners. The name and address of the initial Directors are as follows, to-wit:

<b>Douglas J. Harless</b>	<b>Paula H. Harless</b>	<b>Douglas H. Jacobs</b>
2924 Normandy Place	2924 Normandy Place	Post Office Box 1277
Tuscaloosa, AL 35406	Tuscaloosa, AL 35406	Gulf Shores, AL 36547

6.3. When the Developer has elected to surrender control of the Association to the lot owners, but not later than within sixty (60) days after the Developer has conveyed the last lot in the Subdivision to an owner other than the Developer, the Developer shall call the initial meeting of the members of the Association, and the Association shall elect the new Directors.

6.4. Subsequent to said initial meeting, the newly elected Directors shall hold office and serve in such manner and for such terms until the Director's successor has been elected, appointed or otherwise qualified.

6.5. Any Director, other than a Director appointed by the Developer, may be removed from

office prior to the expiration of his or her term, for cause, upon a majority vote of the other Directors and written notice, by certified mail, to such removed Director.

6.6. Vacancies occurring in the Board for any reason, shall be filled by appointment by the remaining Directors, and such newly appointed Director shall serve for the unexpired term of the said vacancy or until such time as a new Director has been duly elected by the Association.

6.7. The Board shall have control over the management and administration of the Association's activities, including, but not limited to, the authority to determine all policies, discipline and assess members, and generally supervise the affairs of the Association.

6.8. The Board may designate one or more committees to perform certain duties of the Association and the Board, and said committees shall have and exercise the authority of the Board.

## **ARTICLE SEVEN** **INCORPORATOR**

7.1. The name and address of the incorporator of this Association is as follows, to-wit:

**Douglas J. Harless**  
2924 Normandy Place  
Tuscaloosa, AL 35406

## **ARTICLE EIGHT** **REGISTERED OFFICE AND AGENT**

8.1. The registered office of the Association shall be 2924 NORMANDY PLACE, TUSCALOOSA, ALABAMA 35406, and the registered agent at such address shall be DOUGLAS J. HARLESS, or such other places and persons as the members may hereafter designate from time to time.

8.2. The initial mailing address of the Association shall be POST OFFICE BOX 2137, ORANGE BEACH, ALABAMA 36561.

## **ARTICLE NINE** **MEMBERSHIP AND VOTING**

9.1. There shall be one (1) unit (vote) of membership in the Association for each individual platted lot located in the Subdivision, subject to the rights of the Developer.

9.2. A deed to a lot in the Subdivision from the Developer or other person or entity holding through, under or in direct chain of title from the Developer, shall be conclusive evidence of membership in the Association and shall serve as a certificate of membership therein.

9.3. The Developer shall have the right to vote the membership for any lot which the Developer owns, but has not yet conveyed.

9.4. A lot owner shall have one vote, subject to the Developer's rights and the terms and conditions of these Articles, the Declaration and the By-Laws.

9.5. The owner of any lot may designate, appoint, or otherwise authorize at any time, another person, agent or entity to exercise and cast the votes of that lot by notifying the Secretary of the Association, in writing, of the name of such person so designated, and the Secretary shall enter such written designation and such name in a book kept for that purpose.

9.6. In the event a lot in the Subdivision is owned jointly or severally by two or more persons or other separate legal entities, the owners of said lot shall advise the Secretary of the Association, in writing, of the name of the owner, agent or other person designated to exercise and cast the votes attributable to the lot, and the Secretary shall enter such written designation, and such name, in a said book kept for that purpose.

9.7. The Association shall be entitled to rely on and recognize as entitled to vote only those persons properly designated as voters, notwithstanding whether other persons or entities not so designated may have various interests of ownership in the lots from time to time.

9.8. The granting of a mortgage on a lot by its owner(s) shall be construed as conferring upon the mortgagee a conditional proxy to cast the votes attributable to that lot at any regular or special meeting of the Association; however, to exercise such right, the said mortgagee shall first notify the Secretary of the Association, in writing, of said mortgagee's intent to exercise the conditional proxy rights granted to it, as mortgagee, by the terms hereof.

9.9. If a mortgagee fails to provide such written notice, the Association shall recognize the lot owner as fully entitled to cast the votes attributable to the lot, subject to the proviso herein below.

9.10. PROVISO, once such written notice is received by the Association, a mortgagee's right to cast the votes attributable to that lot shall be recognized by the Association until the mortgagee withdraws its intent to cast such votes, in writing, or until the mortgage is paid in full and satisfied of record, whichever first occurs.

9.11. In the event of a conflict between any provisions of these Articles with paragraph 9.9 herein above, the provisions of paragraph 9.9 shall control, and in the event of a conflict between any provision of these Articles, the Declaration or the By-Laws, the provisions of the Declaration shall control, unless otherwise prohibited by statute.

## **ARTICLE TEN** **AMENDMENTS**

10.1. These articles may be amended by the votes representing Eighty percent (80 %) of the lots eligible to vote as units of membership of the Association present, in person or by proxy, at a meeting duly held in accordance with the provisions of the By-Laws.

10.2. The notice of any meeting at which an amendment to these articles is proposed shall be in writing and shall include specific terms of the proposed amendment.

10.3 All amendments shall not become effective until duly recorded in the Office of the Judge of Probate, Baldwin County, Alabama.

**IN WITNESS WHEREOF**, the undersigned incorporator has duly executed these Articles of Incorporation under seal on this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_\_.

**ATTEST:**

**HARLESS DEVELOPMENT COMPANY, INC.,**  
An Alabama Corporation

\_\_\_\_\_  
**Witness**

\_\_\_\_\_(SEAL)  
**BY DOUGLAS J. HARLESS**  
As Its President

**STATE OF ALABAMA }  
COUNTY OF BALDWIN }**

I, the undersigned, a Notary Public in and for said county and said state, do hereby certify that **DOUGLAS J. HARLESS**, whose name as President of **HARLESS DEVELOPMENT COMPANY, INC.**, an Alabama corporation, is signed to the foregoing Articles of Incorporation and who is known to me or otherwise produced valid identification, acknowledged before me on this day, that, after being informed of the contents of said conveyance, he, as such officer and with full

authority, executed said Articles voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

**My Commission Expires:**

\_\_\_\_\_

\_\_\_\_\_

**NOTARY PUBLIC**

**This Instrument Prepared By:**

Timothy D. Garner

Attorney at Law

Post Office Box 3304

Gulf Shores, Alabama 36457-3304

(251) 968-5540