

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 11 day of January, 1978, by DAVMOR DEVELOPMENT, INC., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Brevard, State of Florida, which is more particularly described as:

Lot 2 of Harbour Villa, Section 1,
as recorded in Plat Book 25 Page 6
Public Records of Brevard County,
Florida.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed 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 real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Harbour Villa Owners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance on an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Witness my hand and seal this 11th day of January, 1978.
James T. Brennan, Atty. at Law
112 N. Flagler Blvd.
Maitland, Fla.

Item II

155544

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Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members. The Common Area to be owned by the Association at the time of the conveyance of the first Unit Lot is described as follows:

All of Lot 2, with the exception of the Unit Lots herein described and annexed hereto as Exhibit "A".

Section 5. "Unit Lot" shall mean and refer to the plots of land shown upon the survey annexed hereto and made a part hereof as Exhibit "A". Said Unit Lots being those parcels numbered 21 through 28, inclusive, on said survey and the legal descriptions of each said Unit Lot being annexed hereto as Exhibit "A".

Section 6. "Declarant" shall mean and refer to Davmor Development, Inc.

ARTICLE II - PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit Lot, subject to the following provisions:

a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility associated upon the Common Area;

b. The right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his Unit Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public

agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III - MEMBERSHIP VOTING RIGHTS

Section 1. Every owner of a Unit Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Unit Lot owned. When more than one person holds an interest in any Unit Lot, all such persons shall be members. The vote for such Unit Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three votes for each Unit Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 1981.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Unit Lot owned within the Properties hereby covenants and each owner of any Unit Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the association:

- a. Annual assessments or charges;
- b. Special assessments for capital improvements,

such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, and for the maintenance and improvements of the Common Areas, and of the exteriors of the homes situated upon the Properties. The Association shall be responsible for and pay all ad valorem taxes assessed against the common areas.

Section 3. Maximum Annual Assessment. Until January of the year immediately following the conveyance of the first residence to an owner, the maximum annual assessment shall be \$360.00 per Unit Lot.

a. From and after January 1 of the year immediately following the conveyance of the first Unit Lot to an owner, the maximum annual assessment may be increased each year, not more than five percent (5%) above the maximum assessment for the preceding year, without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Unit Lot to an owner, the maximum annual assessment may be increased more than five percent (5%) above the maximum annual assessment for the preceding year, by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for said purpose.

c. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Area, provided that any such assessment shall require the assent of two-thirds (2/3) of the votes of each class of members voting in person or by proxy, at a meeting duly called for said purpose.

Section 5. Notice and Quorum for Any Action Authorized

Under Sections 3 and 4. Written notice of any meeting called for the purpose of making any assessment shall be given to each

member of the Association not less than thirty (30) nor more than sixty (60) days prior to the meeting, and notice of any such meeting shall be given by personal delivery or mailing, and mailing by the Association to the members thereof shall be deemed notice to such members. At the first such meeting called, the presence at the meeting of members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all residences and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate, signed by an officer of the Association setting forth the assessments on a specified Unit Lot have been paid. A properly executed certificate of the Association as to the status of assessments on any Unit Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of six percent (6%) per year. The Association may bring an action at law against the owner personally obligated to pay the assessment or foreclose the lien against the property, and interests, costs and reasonable fees of any such action shall be added to the assessment. No owner may waiver or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit Lot.

By laws
changed
to 12%
per year

Section 9. Subordination of the Lien to Mortgages. The

lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit Lot shall not affect the assessment lien. However, the sale or transfer of any Unit Lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V - ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural

committee composed of 3 or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI - USE RESTRICTIONS

The use of the Properties shall be in accordance with the following provisions:

- a. No Unit Lot shall be ~~used~~^{used} except for residential purposes.
- b. No structure of a temporary character, trailer, mobile home, camping trailer, tent, shack, garage, barn or other outbuilding shall be used on any Unit Lot at any time as a residence either temporarily or permanently.
- c. No noxious or offensive activity shall be carried on upon any Unit Lot, nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.
- d. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are kept within doors at all times, or kept on leash when outside, and will not be kept, bred or maintained for any commercial purposes.
- e. No fence, wall, hedge or shrub planting shall be permitted unless approved by the Board of Directors of the Association or its Architectural Control Committee.
- f. Easements for installation and maintenance of utilities and drainage facilities are reserved. No structure, planting or other material shall be allowed to damage or interfere with the installation and maintenance of any such utilities or flow of drainage swales in the easements. The easement areas of

each Unit Lot and all improvements in such easements shall be maintained continuously by the Association, except for those improvements for which a public utility or authority is responsible.

g. Inoperable automobiles, trucks and other vehicles may not be stored on Unit Lots. Owners are prohibited from making major repairs on vehicles on any Unit Lot or adjacent streets.

h. No antennas shall be erected on any roof or exterior wall.

i. No owner may lease or rent his dwelling unit for transient or hotel purposes which shall be defined as a rental for any period less than 60 days.

ARTICLE VII - PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Unit Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for the property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion of such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to

the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII - GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Annexation. Additional land within the area described in Exhibit "B" may be annexed by the Declarant without the consent of the members within 4 years of the date of this instrument; provided, however, that in the event the Declarant shall elect not to develop all or part of the additional land described in said Exhibit "B" it may file an affidavit to that effect in the Public Records of Brevard County, Florida, and thereafter said land shall be free from the provisions of this Declaration.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of 20 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of 10 years. This Declaration may be amended during the first 20-year period by an instrument signed by not less than ninety percent (90%) of the Unit Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Unit Lot Owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the day and year first above written.

DAVMOR DEVELOPMENT, INC.

BY Joseph W. Dymally

ATTEST: James L. Reiman
Sec.

STATE OF FLORIDA
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state and county aforesaid to take acknowledgements, personally appeared _____ as Secretary of Davmor Development, Inc., and they acknowledged before me that they executed same.

19 77. WITNESS my hand and seal this 4 day of January.

Charles E. Osborne
NOTARY PUBLIC

MY COMM. EXPIRES:

Notary Public, State of Florida at Large
My Commission Expires Oct. 22, 1978.
Bonded by American Fire & Casualty Co.