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THIS INSTRUMENT PREPARED BY:  
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MARBRISA VILLAS

DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
MARBRISA VILLAS  
AS FILED OF RECORD IN INDIAN RIVER COUNTY, FLORIDA, BY THE DEVELOPER  
AND  
NOTICE OF PROVISIONS OF MARBRISA VILLA OWNERS ASSOCIATION, INC.

THIS DECLARATION, made this 10<sup>th</sup> day of February, 1988, by Marbrisa, a joint venture, with its principal place of business at 345 North Woodland Blvd., DeLand, Volusia County, Florida, (herein sometimes referred to as the "Developer").

WITNESSETH:

WHEREAS, the Developer is the record owner in fee simple absolute of certain real property located in Indian River County, Florida, and more particularly described in Exhibit "A" which is attached hereto and made a part hereof; and

WHEREAS, in accordance with the applicable provisions of State law and local ordinance, the Developer caused the above described real property to be developed and platted into a single family cluster home community known as Marbrisa Villas, and a plat thereof duly filed and recorded in Plat Book 12, Pages 55 and 55A, Public Records of Indian River County, Florida; and

WHEREAS, it is the present intention of the Developer to develop Marbrisa Villas as a low density, high quality, cluster home community and the Developer has developed and is developing Marbrisa Villas into single family cluster homes, together with common areas; and

WHEREAS, there is a need to specify, make and impose covenants and to grant necessary easements for the proper use of the community and to provide for the effective administration of the common areas in Marbrisa Villas; and

WHEREAS, the Developer has caused the incorporation of a Florida non-profit corporation known as The Marbrisa Villa Owners Association, Inc., which was formed to manage the common areas, collect assessments, and generally provide for the orderly enjoyment of Marbrisa Villas.

NOW, THEREFORE, this Declaration is made, filed and recorded by the Developer so that from the effective date hereof, the real property described in Exhibit "A", is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the restrictions, conditions, easements, charges, burdens, assessments, affirmative obligations, and liens (all sometimes referred to as the "covenants") hereinafter set forth. This Declaration shall become effective for Marbrisa Villas on the date and at the time it is filed and recorded in the Public Records of Indian River County, Florida, and shall become effective as to additional phases or units of Marbrisa Villas on the date and at the time the respective plats of such additional phases or units or other documents evidencing the Developer's intent that such property is burdened hereby are recorded in the Public Records of Indian River County, Florida.

BY THE RECORDS  
09 FEB 12 AM 10:23  
D. J. [Signature]

ARTICLE I  
DEFINITIONS AND DESCRIPTION OF PROPERTY

Section 1.1 - Definitions - The following words and terms when used in this Declaration and any supplemental declaration or amendment, unless the context shall clearly indicate otherwise, shall have the following meanings:

- (a) "Association" shall mean and refer to Marbrisa Villa Owners Association, Inc., a Florida Corporation not for profit, and its successors and assigns, the members of which will be owners of "Dwelling Units" in Marbrisa Villas. This Association is separate and distinct from the Marbrisa Homeowners Association, Inc. which association may sometimes be referred to herein as the "Umbrella Association".
- (b) "Developer" shall mean and refer to Marbrisa, a joint venture, between Brandywine Enterprises, Inc. and Marbrisa Development, Inc., its successors and assigns.
- (c) "Common Areas" shall mean and refer to those tracts of land, described in Section 1.2 hereof, together with any improvements thereon which are conveyed to the Association and such property designated in any Deed or recorded map as "Common Areas" of Marbrisa Villas. All Common Areas are to be devoted to and intended for the common use and enjoyment of all owners of Dwelling Units in Marbrisa Villas, their families, guests, persons occupying Dwelling Units as a house guest or tenant, and visiting members of the general public (but only to the extent authorized by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by said Association.
- (d) "Dwelling Unit" shall mean and refer to all or any portion of a building (proposed or constructed) including any land conveyed therewith situated in Marbrisa Villas designed and intended for use and occupancy as a single family residence. It shall mean an improved numbered parcel of land as shown on the recorded plat for Marbrisa Villas, Unit One referenced herein and an improved numbered parcel of land shown on any plat for future units or phases of Marbrisa Villas recorded in the Public Records of Indian River County.
- (e) "Community or Development" shall mean the real property of Marbrisa Villas described above and any other real property which may hereafter be made subject to this Declaration. "Marbrisa Community" shall mean that real property, now or hereafter, subject to the Declaration of Covenants and Restrictions for Marbrisa and governed by the Umbrella Association.
- (f) "Party Wall Agreement" shall mean the agreement between adjoining Owners as set forth in Article XIII which shall govern the rights and responsibilities for the maintenance and repair of common walls.
- (g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Dwelling Unit, but excluding those having such interest merely as security for the performance of an obligation unless and until such interest has been acquired pursuant to foreclosure, judicial sale or any proceeding in lieu of foreclosure.
- (h) "Member" shall mean all those Owners who are members of the Association as provided in Article II herein.
- (i) "Maintenance" shall mean the exercise of reasonable care to keep buildings, Dwelling Units, private roads, parking areas, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices to promote a healthy environment for optimum plant growth.

Section 1.2 - Common Areas, Including Private Roads - The Common Areas are those areas designated as Common Area or private road easements on any plats or site plan for Marbrisa Villas, now or hereafter, recorded in the Public Records of Indian River County, Florida. All roads serving only Marbrisa Villas are private roads, shall be maintained solely by this Association and shall be deemed part of the Common Areas. Such Common Areas shall be conveyed by quit claim deed to the Association by the Developer.

Section 1.3 - Property subject to Covenants and Restrictions. The property subject to this Declaration of Covenants and Restrictions is that property described in Exhibit "A", such other property as is included in any recorded plat for any additional unit or phase of Marbrisa Villas and such other property as may become part of this Community by amendment hereto. The property subject to this Declaration is also subject to and burdened by that certain Declaration of Covenants and Restrictions for Marbrisa recorded in Official Record Book 0190 Pages <sup>1386-</sup>1427 Public Records of Indian River County, Florida. In case of any conflict which cannot be resolved between this Declaration and the Declaration for the Marbrisa Community, the Declaration for the Marbrisa Community shall control except when (1) only members of this Association are affected, and (2) property subject to this Declaration is involved. In such event this Declaration shall control.

Section 1.4 - The use of any gender includes all other genders and the use of the singular includes the plural and vice versa. The headings used herein are for ease of reference only and do not constitute substantive provisions of this instrument.

## ARTICLE II ASSOCIATION

Section 2.1 - The Association has been created to provide for the effective and efficient administration of the Common Areas by the Owners in Marbrisa Villas. The Association shall operate, maintain, and manage the Common Areas and any other property of the Association, assist in the enforcement of any restrictions and covenants contained herein, and undertake and perform all acts and duties necessary and incident to such duties, all in accordance with the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association. A true copy of the Articles of Incorporation and By-Laws of the Association are attached as hereto Exhibit "B" and "C" and incorporated by reference herein. The Association shall serve as the legal entity for the representation of the Owners in Marbrisa Villas.

Section 2.2 - Every Owner of a Dwelling Unit, which is subject to assessments, within Marbrisa Villas shall automatically become a member of the Association upon acquisition of an ownership interest in any Dwelling Unit. Each Dwelling Unit shall be entitled to one vote in Association business. When more than one person or entity holds an ownership interest in any Dwelling Unit, the vote for such Dwelling Unit shall be cast as may be set forth in the Articles of Incorporation and/or the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit which is subject to assessment. The membership of such Owner shall terminate automatically at the time that such Owner divests himself or is divested of such ownership interest or title to such Dwelling Unit, regardless of the means of divestment.

Section 2.3 - No person, corporation, or other entity holding any liens, mortgage or other encumbrance upon any Dwelling Unit shall be entitled, by virtue of such lien, mortgage, or other encumbrance to membership in the Association or to any of the rights and privileges, or be charged with any of the duties of such membership; provided, however, that nothing contained herein shall be construed as prohibiting membership in the Association of a person, corporation, or other entity which acquires title to a Dwelling Unit either by foreclosure, judicial sale or by voluntary conveyance from its mortgagor or his successors or assigns.

Section 2.4 - In the administration, operation and management of the Common Areas and the enforcement of this Declaration, the Association shall have and is hereby granted full power and authority to enforce all the provisions of this Declaration, to levy and collect assessments in accordance herewith, and

to adopt, promulgate, and enforce such rules and regulations governing the use and enjoyment of the Common Areas and the administration of the aforesaid covenants and restrictions as the Board of Directors may, from time to time, deem appropriate and in the best interests of the Association.

Section 2.5 - Without intending to limit any other right, obligation or duty of the Association under the terms of this Declaration or the Articles of Incorporation and By-Laws of the Association, all Common Areas landscaped by the Developer or the Association within Marbrisa Villas shall be maintained by the Association. Any retaining wall constructed by the Developer or the Association shall be maintained by the Association.

Section 2.6 - The Association shall make available to Owners, mortgagees and to holders, insurers or guarantors of any first mortgage current copies of this Declaration, the Articles, By-Laws and Rules and Regulations of the Association and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

### ARTICLE III MAINTENANCE EASEMENT AND MAINTENANCE OF BUILDING EXTERIOR, SHRUBBERY AND LANDSCAPING

Section 3.1 - The Association shall have the right of access over, through and upon all of the Dwelling Units for the purpose of maintaining and caring for the Common Areas particularly the private roads, lawns and landscaping, cleaning the roof of buildings and painting the exterior of buildings. "Maintenance and Care" shall include mowing, irrigating, trimming, edging, spraying, and fertilizing of the lawns, resurfacing and restriping the private roads, painting of the exterior of the buildings and cleaning of the roofs of such buildings. This easement shall specifically include an easement for the installation and maintenance of an underground irrigation system which shall be connected to the Marbrisa Community irrigation system when available. The Association shall be liable for the full reasonable cost of all required replacement of sod (as the same shall be determined from time to time by the Association in its discretion) in all Common Areas and in areas of the Dwelling Units maintained by the Association hereunder. In the exercise of its discretion in this latter regard, the Association shall be governed by the principle that all sodded areas shall be fully maintained free from unsightly bald spots and dead grass and uniform in texture and appearance with surrounding lawns in the Marbrisa Community.

Section 3.2 - Each Owner shall maintain in good condition and repair the interior of the Dwelling Unit and the party walls shared with other Owners and shall keep the same in good, safe, clean, and neat condition. In the event the Owner fails to keep the Dwelling Unit or party wall in said condition, the Association shall have the right to mail a written notice to the property address or the last known address of the Owner, advising the Owner of the Dwelling Unit of failure to comply with the above provisions. Failure of the affected Owner to correct the violation(s) within thirty days of the date of mailing of the notice shall give the Association the right, but not obligation, to enter upon the Dwelling Unit and correct the violation, and such entry shall not be deemed a trespass. The cost and expense of the maintenance and repair necessitated by neglect, misuse or negligence of the Owner or his tenant shall be payable by such Owner. The Association shall have the further right to assess the Owner for the full cost of any service or maintenance performed pursuant to this paragraph and the cost of same shall be added to and become a part of the assessment to which such Dwelling Unit is subject and said cost shall be a lien upon the Dwelling Unit of the same force and effect as the liens on Dwelling Units for assessments as provided for in this Declaration.

and in the Articles of Incorporation and By-Laws of the Association. The obligation and responsibility for party walls and the maintenance thereof is more fully described in Article XIII "Party Wall Agreement".

Section 3.3 - In addition to its responsibility for maintenance of the Common Areas, the Association shall maintain a reserve account to resurface the private roads and to paint the exterior of the buildings within Marbrisa Villas. This responsibility is to promote consistency in the appearance of the buildings located within the Marbrisa Villas. All such painting shall be performed at such times as the Association, in its sole discretion, determines the same to be necessary. In the event that the need for painting is caused through the willful or negligent acts of an Owner or the family, guests, tenants or invitees of the Owner, the cost of such painting shall be added to and become part of the assessment to which such Dwelling Unit is subject and such cost shall be a lien upon the Dwelling Unit of the same force and effect as the lien for assessments. The exterior coloration of each building housing Dwelling Units shall be uniform, but coloration of individual buildings may be different. All other exterior maintenance of the Dwelling Unit shall be the responsibility of the Owner.

Section 3.4 - No trees, plants, shrubbery or landscaping effects of any kind shall be planted by any Owner without the prior written consent of the Association, except within the confines of any walls of the Owner's property. The Association shall maintain the lawns, shrubbery and landscaping in the Common Areas and in the front, rear and side yards of the individual Dwelling Units, including fertilizing, mowing, edging, sod replacement and trimming at such times as the Association, in its sole discretion, determines to be necessary. Each Dwelling Unit shall connect to the Marbrisa Community irrigation system when it is available. Courtyards and patio landscaping of an individual Dwelling Unit are deemed to be private areas with maintenance thereof being the responsibility of the individual Owner.

#### ARTICLE IV UTILITY/SERVICE EASEMENT

Section 4.1 - To provide for the adequate delivery of municipal services to Marbrisa Villas, the Developer, for valuable consideration, does hereby grant, bargain and convey unto the Town of Indian River Shores, a Florida municipal corporation, its licensees, agents, successors and assigns, the right of ingress and egress and easements over, under, across and upon the Common Areas of Marbrisa Villas for the purpose of furnishing all municipal services provided, franchised or contracted by the Town, including but not limited to, police protection, fire protection, water, sewer, garbage collection and inspection by Town Inspectors. Further, the Developer grants unto the Town of Indian River Shores, any provider of cable television services, natural gas, water, sewer, electricity, garbage collection and telephone service, the right of ingress and egress over, under, across and upon all of the Common Areas of Marbrisa Villas for the purpose of constructing, installing, maintaining, providing and servicing all of the utilities and all utility type services for Marbrisa Villas.

Section 4.2 - The Developer and/or the Board of Directors of the Association reserve the right to grant such additional easements for (including but not limited to) irrigation, wells, pumps, electric, gas, water or other utility easement or to relocate any existing utility easement onto any portion of the property as the Developer and/or the Board of Directors of the Association shall deem necessary or desirable for the proper operation and maintenance of Marbrisa Villas or any portion thereof, or for the general health or welfare of the Owners. Notwithstanding any other clause of these covenants and restrictions, each Dwelling Unit and the Common Areas shall be subject to easements for public protection, garbage and trash removal, water and sewer system, electric and gas service, cable television, telephone and the utilities and applicable

governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access of any Dwelling Unit or the Common Areas in furtherance of such easement.

#### ARTICLE V PROPERTY RIGHTS

Section 5.1 - Every Owner including the Owner's family, guests, tenants and invitees shall have a right and is hereby granted a perpetual non-exclusive easement of ingress and egress across and over the Common Areas including the private roads and any parking areas and of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Dwelling Unit 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 situated upon the Common Areas;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any 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 Areas 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 agreeing to such dedication or transfer signed by two-thirds of the Members has been recorded except as may be provided otherwise herein.

Section 5.2 - Any Owner may delegate, in accordance with the By-Laws, the Owner's right of enjoyment to the Common Areas and facilities to the Members of the Owner's family, tenants, or contract purchasers who reside in Marbrisa Villas.

#### ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 6.1 - Each Owner, whether the Owner is in possession of the Dwelling Unit, shall, by acceptance of a deed or other instrument of conveyance therefore, whether or not it shall be so expressed in any such deed or instrument, be deemed to have covenanted and agreed to all the terms, covenants, conditions, restrictions, and other provisions of this Declaration and to have agreed to pay promptly to the Association or its successors or assigns the following:

- (a) All monthly assessments or charges and,
- (b) All special assessments or charges for the purposes set forth in this Article. Such assessments or charges shall be fixed, established, levied, and collected from time to time as hereinafter provided. The monthly and special assessments (together with such interest thereon and the cost of collection including reasonable attorney's fees) shall be a continuing lien on the Dwelling Unit against which the assessment is made and shall also be the personal obligation of the person who was the owner of such Dwelling Unit at the time when the assessment first became due and payable. Both monthly and special assessments must be fixed at a uniform rate for all Dwelling Units. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them. In the case of co-ownership of a Dwelling Unit such co-owners shall be jointly and severally liable for the entire amount of the assessment and the aforesaid interest, collection costs, and attorney's fees.

Section 6.2 - The assessments levied by the Association shall be used exclusively for the recreation, health, safety and welfare of the residents, for the improvement, maintenance, administration, operation, enhancement, enlargement, and operation of the Common Areas and other Association property, including the costs of restriping and resurfacing the private roads, for the costs of painting the exterior of the buildings and for the costs of maintaining landscaping to be performed by the Association hereunder; to provide for the effective management, administration and operation of the Association; and to provide services which the Association is authorized to provide including, but not limited to, the payment of taxes (including special tax districts, if any), governmental assessments, common insurance premiums, construction of improvements, repairs, replacements, and acquisitions of additions to the Common Areas and other Association property, payment of the cost of acquired labor, services, equipment, materials, management, and supervision necessary to carry out the authorized functions of the Association and for the payment of principal, interest and other charges connected with loans made to or assessed by the Association for the purpose of enabling the Association to perform its authorized functions, including the payment of mortgages, if any, covering the Common Area. The Association shall not be bound in setting assessments in subsequent years by the amount of the assessments set in earlier years except as may be limited elsewhere herein. Notwithstanding any of the provisions of this Article, in no event shall the assessments and other revenues collected by the Association exceed its expenses and reasonable reserves to the extent which would violate the Association's non-profit status. The Association, however, shall maintain, establish and provide for an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and all other property which the Association is required to maintain, replace or repair hereunder. Such reserve fund shall be maintained out of the regular monthly assessments.

Section 6.3 - The initial regular monthly assessment is hereby set at \$98.00 per month per Dwelling Unit. Dwelling Units owned by Developer shall not be subject to assessments, either regular or special. The Assessment shall be due starting the first day of the first month after closing with the Developer. Such Owner shall commence paying the regular monthly assessment in force and effect on that date. The Developer shall determine the amount of the assessment until the Owners, excluding the Developer, have 75% of the votes in the Association or December 31, 1990, whichever occurs first, but the Developer agrees that during such period the assessment shall not exceed \$150.00 per month per Dwelling Unit. After said event has occurred, regular monthly assessments shall be determined at the annual budget meeting of the directors of the Association. If a budget is adopted by the Board of Directors which requires an assessment against the Owners exceeding One Hundred Fifteen (115%) percent of the assessment for the preceding year, the Board of Directors shall call a meeting of the members as provided in the By-Laws giving at least ten (10) days notice, at which meeting the budget must be approved by 75% of the voting members in attendance in person or by proxy. If the proposed budget is not approved, a substitute budget shall be adopted as may be provided in the By-Laws. At the time of conveyance of each Dwelling Unit from the Developer, the purchaser shall contribute the sum equal to two times the current monthly assessment to the Association as working capital. This working capital shall be collected at closing and delivered to the Association for its use to meet unforeseen expenditures or to acquire additional equipment or reserves deemed desirable. The working capital contribution is in addition to the monthly and special assessments.

Section 6.4 - Nothing herein shall prohibit the Owner of a Dwelling Unit from leasing or renting such Dwelling Unit. In that event, the Lessor may deliver his written proxy to the tenant for one vote and permit the tenant to exercise the vote as he sees fit. Such proxy shall be in full force and effect so long as may be provided in the By-Laws.

Section 6.5 - Assessments which are not paid on or before the date the same shall become due shall be delinquent, and each delinquent assessment shall bear interest at the highest rate of interest allowed by law

from time to time until it is paid in full. In addition to the accrual of interest, when an assessment becomes delinquent in payment, the Association may file a claim of lien to perfect the lien of such assessment as against third persons, against the Dwelling Unit and other property of the Owner(s) who defaulted in the payment of such assessment. There shall be no exemption from the payment of any assessment or installment thereof by waiver of the use of the Common Areas, by abandonment of the Dwelling Unit, by extended absence from Marbrisa Villas, or by or for any other reason.

Section 6.6 - The Association, upon written request of any Owner, shall furnish to a prospective purchaser, mortgagee or other authorized person a statement of the current status of the assessments on such Owner's Dwelling Unit. When executed by any officer of the Association, the statement shall be binding on the Association, and any purchaser or mortgagee may rely upon such statement as an accurate statement of the status of assessments.

Section 6.7 - All revenue collected by the Association shall be segregated, held and used as the separate property of the Association, and such revenue may be paid or applied by the Association, at the discretion of the Board of Directors, towards the payment of any costs and expenses related to the purpose of the assessments set forth in Section 6.2. Revenue collected by the Association from an Owner of a Dwelling Unit may be co-mingled with monies collected from other Owners.

Section 6.8 - Although all funds and other assets of the Association and any profits derived therefrom, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, encumber, hypothecate, pledge, or in any manner transfer his membership or interest in or to such funds and assets, except as an appurtenance to his Dwelling Unit. When an Owner ceases to be a member of the Association by reason of his divestment of his ownership interest in the Dwelling Unit, by whatever means that occurs, the Association shall not be required to account to that Owner for any share of the funds or assets of the Association.

Section 6.9 - In the event that any first mortgagee shall acquire title to any Dwelling Unit by virtue of foreclosure, judicial sale or a deed in lieu of foreclosure, then such person or entity who acquired title shall not be liable or obligated for the payment of any assessments which are in default and delinquent at the time title was acquired. Any first mortgagee, person or other entity acquiring title to a Dwelling Unit as contemplated in this provision shall be liable and obligated for such assessments as may accrue and become due subsequent to the date of acquisition of such title.

Section 6.10 - Recognizing that proper management and operation of the Common Area (including improvements thereto) result in benefit to all members of the Association, the Association is hereby granted the right of lien upon all real property within Marbrisa Villas and the present and future interests of each member of the Association in the Common Area and property and improvements thereto, to secure the prompt payment of each and all assessments made and levied in accordance with this Declaration and any other right of lien created herein, and each Owner shall be liable for, and this lien shall secure, the full amount of said assessment, and the costs and expenses, including attorney's fees at trial and on appeal, which may be incurred by the Association in enforcing any such lien or the provisions of this Declaration.

Section 6.11 - Any lien established herein may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. Any lien granted herein shall also secure such payment of or advances for taxes and payments on superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to protect its interests, and the Association shall be



entitled to interest on such payments or advances made, from time to time, computed at the highest legal rate of interest on all such payments or advances.

Section 6.12 - All persons, firms, corporations, and other entities, which shall acquire, by whatever means, any interest in the ownership of any Dwelling Unit, or who may be given or who may acquire a mortgage, lien or other encumbrance on a Dwelling Unit are hereby placed on notice of the lien rights granted to the Association under this Declaration, and all such persons, firms, corporations, and other entities shall acquire their rights, title and interest in and to said Dwelling Unit expressly subject to the lien rights provided herein.

Section 6.13 - Any lien created pursuant to this Declaration shall be effective from and after the recording in the Public Records of Indian River County, Florida, of a "claim of lien" stating the description of the property encumbered by the lien, the name of the record Owner of the property, the amounts due and the date when the same became due. The lien shall continue in effect for the maximum time allowed by law or until all sums secured by the lien have been fully paid, whichever event occurs first. The claim of lien may include assessments which are due and payable when the claim is made and recorded, plus interest, collection costs, attorney's fees, and advances to pay taxes and prior encumbrances and interest thereon and any other right of lien, all as provided herein. The claim of lien shall be signed and verified by the President or Vice President of the Association. When full payment of all sums secured by such lien is made, the claim of lien shall be satisfied of record by any officer of the Association. The claim of lien filed by the Association shall be subordinate to any lien, any other encumbrance or any claim of lien if the said lien, encumbrance or claim of lien is recorded prior to the Association's claim of lien.

#### ARTICLE VII AMENDMENT, TERMINATION AND ENFORCEMENT

Section 7.1 - The Developer hereby reserves the right to amend, modify, rescind or terminate, in whole or in part, these restrictions and this document as it in its sole discretion deems necessary or desirable so long as it is (a) Owner of seventy-five (75%) percent of the total proposed Dwelling Units in Marbrisa Villas, or in the alternative, (b) such amendment or modification does not substantially change the character, nature, or general scheme of development of the Community. This right of amendment specifically includes without limitation the right to add more Dwelling Units to the property subject hereto or annex property to be subject to these restrictions.

Section 7.2 - In addition to the manner of amendment set forth in the preceding paragraph, the record Owners of seventy-five percent (75%) of Dwelling Units in Marbrisa Villas (including the Developer) may amend, modify, rescind or terminate such provisions of this Document as they deem necessary or desirable.

Section 7.3 - In the event of amendment under Section 7.2, above, the President and Secretary of the Association shall execute a certificate under oath reciting that the amendment was adopted at a meeting of the Association duly called and at which a quorum was present in person (or by proxy) and that at least a seventy-five percent (75%) vote of the Owners voting approved the amendment, modification or other action contemplated in Section 7.2. Such certificate, together with the amendment adopted, shall be filed in the Public Records of Indian River County, Florida. It shall not be necessary for the Owners to join in any document to effectuate such amendment.

Section 7.4 - The Developer, the Association or any Owner may enforce these covenants and restrictions by any proceeding at law or in equity including but not limited to an action at law for damages, or a proceeding for injunctive relief. All costs of enforcement, including reasonable attorney's fees at trial and on appeal, shall be borne by the non-prevailing party. Failure of any person or entity to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

ARTICLE VIII  
USE OF COMMON PROPERTY

Section 8.1 - The Common Areas as described herein, or hereafter designated by Developer, shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Owners within Marbrisa Villas for the use of such Owners and the use of their immediate families, guests, lessees, invitees, and others similarly situated, for all proper and normal residential purposes, for the furnishing of services and facilities for which the same are reasonably intended, and for the quiet enjoyment of the Owners. By accepting any instrument of conveyance or by taking possession or occupancy of any Dwelling Unit in Marbrisa Villas, each person agrees to abide by and comply with all rules and regulations promulgated by the Association now in effect or which may hereafter be adopted, it being understood that the compliance with such rules and regulations is necessary for the orderly enjoyment of all Common Areas and recreational facilities now existing or which may hereafter be designated.

Section 8.2 - Any Common Area located within Marbrisa Villas designated as a drainage retention area or any Common Area or part thereof designated as a drainage retention area on any final site plan approved by the Town of Indian Rivers Shores shall be preserved in its natural state. Any such drainage retention area may not be filled, altered, modified or changed in any way by Developer or the Association without the express prior consent of the Town of Indian River Shores.

ARTICLE IX  
GARBAGE AND TRASH DISPOSAL

Section 9.1 - No garbage, refuse or rubbish shall be deposited or kept on any Dwelling Unit except in a suitable container. A dumpster type receptacle may be located in the Common Area. If a dumpster type receptacle is located in the Common Area, the Association shall pay the cost of pickup and receptacle rental. All areas for the deposit, storage or collection of garbage or trash shall be substantially shielded or screened from neighboring property. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

ARTICLE X  
COVENANTS AGAINST PARTITION  
AND  
SEPARATE TRANSFER OF MEMBERSHIP RIGHTS

Section 10.1 - Recognizing that the full use and enjoyment of any Dwelling Unit within Marbrisa Villas is dependent upon the use and enjoyment of the Common Areas and the improvements made thereto, and that it is in the interests of all of the Owners that the membership rights in the Common Areas be retained by the Owners of Dwelling Units, it is therefore declared that the membership rights of any Owner in the Common Area shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of such membership rights in the Common Areas. In addition, there shall exist no

right to transfer the membership rights in the Common Areas in any other manner than as an appurtenance to and in the same transaction with, a transfer of title to or lease of the Dwelling Unit in Marbrisa Villas, provided, however, that nothing herein shall preclude a conveyance by the Developer herein of any undivided interest in the Common Areas to the Owners of Dwelling Units within Marbrisa Villas for the purpose of effectuating the intent of this Declaration. Any conveyance or transfer of a Dwelling Unit in Marbrisa Villas shall include the membership rights in all Common Areas appurtenant to Marbrisa Villas whether such membership rights shall have been described or referred to in the deed by which said Dwelling Unit is conveyed.

#### ARTICLE XI COVENANTS TO RUN WITH LAND

Section 11.1 - The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with the land, and each shall constitute an equitable servitude upon the Owner of each Dwelling Unit and any appurtenant undivided interest in the Common Areas and upon the heirs, personal representatives, successors, and assigns of each Owner. This Declaration shall be binding and in full force and effect for a period of thirty years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive ten (10) year periods, unless an instrument signed by seventy-five (75%) percent of the then record Owners of the Dwelling Units in Marbrisa Villas is recorded containing the agreement of the Owners with respect to the alteration, change, modification or repeal, in whole or part, of the provisions of this Declaration. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

#### ARTICLE XII OPTIONS PRIOR TO TRANSFER OF ASSOCIATION RIGHTS

Section 12.1 - In each instance where this document grants to the Association certain rights, privileges, authority or options, said rights, privileges, authority or options shall be exercised exclusively by the Developer in the same manner as if the Developer had been named in each such instance instead of the Association until such time as the Developer is the Owner of less than twenty-five (25%) percent of the Dwelling Units in Marbrisa Villas. Provided, however, the Developer, in its sole discretion, from time to time, prior to the date when it owns less than said twenty-five (25%) percent, may partially or fully relinquish any or all of said rights, privileges, authority or options in favor of said Association to be thereafter exercised exclusively by the Association. Notwithstanding the foregoing, or anything else contained herein to the contrary, the Developer shall transfer control of the Association to the Owners no later than the first of the following events to occur:

- (a) Four (4) months after 90% of the total Dwelling Units in the Community have been conveyed to Owners; or
- (b) Five (5) years after conveyance of the first Dwelling Unit.

#### ARTICLE XIII PARTY WALL AGREEMENT

Section 13.1 - Marbrisa Villas will be improved by building thereon multi-unit structures consisting of 35 Dwelling Units separated by common walls unless additional property is made subject to this Declaration as provided herein. The center line of said common walls is the common boundary of the individually owned Dwelling Units and said common walls are referred to herein as party walls.

It is contemplated that the Dwelling Units will be individually owned and may at some future date be owned by different persons. Therefore, the following protective covenants and restrictions are hereby established, declared and prescribed which shall run with the land and shall be binding upon the Developer, its successors and assigns, and any persons having an interest whatsoever in individually owned Dwelling Units, their heirs successors and assigns; said persons or Owners sometimes referred to herein collectively as "parties", and the Owner or Owners of one Dwelling Unit being referred to as the "party".

- (a) The walls between the Dwelling Units shall be party walls, and all Owners shall have the right to use the same jointly as hereinafter set forth. The term "use" shall and does include normal interior usage such as plastering, painting, decorating, erection of tangent walls and shelving, but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacements of the original structure materials forming said wall.
- (b) Any party removing his improvements from the party wall or making use of the party wall shall do so in such manner as to preserve all rights of the other party in the walls and shall save the other party harmless from all damage caused thereby to improvements then existing.
- (c) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the party wall in proportion to such use except as otherwise provided herein. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has use of the party wall shall restore it and if other Owners 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 others under any rule of law regarding liability for negligent acts or omissions.
- (d) Each Owner in a building grants to all other parties, a perpetual easement for necessary access to and from each individually owned Dwelling Unit, specifically including underground easements for water and sewer, easements for power, telephone, cable television and any other sub-feed lines installed either beneath the ground floor slab, through the attic space of any building, or on or under any individually owned real property. Any expense occasioned by necessary access of authorized personnel of any utility companies serving the building will be shared equally by the parties. In the event that any portion of any structure as originally constructed or as a result of settlement or movement of the structure including any party wall, shall protrude over an adjoining unit, such structure or party wall shall not be deemed to be an encroachment upon the adjoining Dwelling Unit. Owners shall neither maintain any action for the removal of a party wall or projection nor any action for damages. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that such Owner or Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or party wall.
- (e) As long as there shall be a mortgage or mortgages upon any of the parcels described above, the provisions of this paragraph shall not be modified, abandoned or extinguished without the consent of such mortgagee, and acquisition of the other party's property by either party shall not operate to render this agreement void, useless or extinguished, without the written approval of the holder of any then outstanding mortgage.
- (f) Each Owner shall keep his Dwelling Unit insured. Annually, each Owner shall submit a copy of the hazard insurance policy on his Dwelling Unit to the Board of Directors of the Association, providing proof of insurance equal to or better than the minimum coverage established for Dwelling Units, from time to time by the Board of Directors. In the event of any fire or other casualty which would cause the destruction (partial or complete) of any Dwelling Unit, the Owner shall be required to restore the Dwelling Unit to its original state. In the event of a fire or other casualty causing total destruction of a building and all Dwelling Units therein there shall be a like requirement to rebuild unless there is a unanimous decision by those effected, including any mortgagees, not to rebuild. If all effected agree

not to rebuild. Those Owners shall be required to return the site of their building back to its natural state by removing all debris, slabs and driveway and/or parking lots. Those effected Owners must then convey title to their Dwelling Units to the Association. The Association budget would then be reviewed by the Board and adjustments therein made as appropriate.

- (g) In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Dwelling Unit shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner, and consent is hereby given to enter on adjacent property to effect necessary repairs and reconstruction. In the event of any dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of costs thereof, then, upon written request of one such Owner addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute and the decision of such Board of Directors shall be final and conclusive upon the parties.
- (h) Any and all additional easements shall be supplemental to this agreement and not in derogation of any covenants herein contained.
- (i) Painting of the individual buildings shall be done uniformly and at the same time for the entire building. The expense of such painting will be paid from a special reserve account that has been created by the Association for said painting. Any expense of painting above the balance in this special reserve shall be paid by special assessment.
- (j) In connection with Sub-Paragraph (g) above any repair and replacement of a party wall that is not occasioned by the negligence or willful acts of a party shall be done at the joint expense of the party wall Owners.
- (k) The cost of repair and replacement of a party wall shall be the sole expense of the party who is an Owner of the said facility if the said repair and/or replacement results from the negligence or willful acts of said Owner.
- (l) Any party who is an Owner of a party wall and who fails to pay his share of repair and/or replacement costs of such a party wall shall be subject, and his property shall be subject to the same lien provisions as are contained in Article VI hereof and in the By-Laws of the Association, and the party's liability for his share of repair or replacement costs shall be treated as an assessment hereunder.
- (m) In the event of maintenance, replacement and/or reconstruction of a party wall the same shall be performed in such a manner as to cause the maintenance, replacement and/or reconstruction of the party wall to be in the same manner and location as originally built. Nothing herein contained shall be construed to mean that such reconstruction may occur without being in compliance with the Town of Indian River Shores' code of ordinances.
- (n) The exterior maintenance of any party wall or other improvement as set out herein shall be controlled by this Declaration.

#### ARTICLE XIV DEVELOPER'S RIGHTS

Section 14.1 - It is acknowledged that the performance by the Association of its duties hereunder, and the exercise of its right is for the benefit of the Owners subject to these restrictions as well as for the benefit of the Developer. Accordingly, if the Association shall fail or refuse to fulfill its obligations hereunder, or to exercise its rights, Developer, in its own name or in the name of the Association shall have the right, but not the obligation, to perform any of the Association's duties and to exercise any of the Association's rights arising out of or made necessary by the performance of such duties.

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal the day and year first above written.

WITNESSES:

Maui M. Harjian  
Jina M. Cato

WITNESSES:

Maui M. Harjian  
Jina M. Cato

MARBRISA, A JOINT VENTURE

BY: BRANDYWINE ENTERPRISES, INC.

BY: Wayne G. Sanborn  
Wayne G. Sanborn, President  
Partner

BY: MARBRISA DEVELOPMENT, INC.

BY: Charles K. Brown, Jr.  
Charles K. Brown, Jr., President  
Partner

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of February 1988, by Wayne G. Sanborn as President of BRANDYWINE ENTERPRISES, INC., a Florida Corporation, General Partner and by Charles K. Brown, Jr. as President of MARBRISA DEVELOPMENT, INC., a Florida Corporation, General Partner on behalf of the respective corporations and on behalf of the partnership.

(SEAL)

[Signature]  
Notary Public, State of Florida  
My commission expires: 11-4-88