

ARTICLES OF INCORPORATION
OF
INDIAN RIVER FARMS OWNERS' ASSOCIATION

ARTICLE I
NAME

The name of the corporation is Indian River Farms Owners' Association, hereinafter called the "Association."

ARTICLE II
PURPOSES

The Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for the management, maintenance and care of certain real estate within the development known as "Indian River Farms" located in the City of Virginia Beach, Virginia, as more particularly described in the Declaration of Covenants, Restrictions, Reservations and Easements of even date herewith, made by VIRGINIA PARTNERS, L.P., et al, to be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, as the same may hereafter be amended, restated or supplemented (collectively, the "Declaration"), and to provide a means whereby the Owners, acting together may provide for the management, maintenance and care of the Common Areas and for this purpose to: (a) enforce the Declaration and exercise all of the powers and privileges and perform all of the duties and obligations of the Association; (b) fix, levy, collect and enforce payment by any lawful means, of all charges or assessments pursuant to the Declaration and Bylaws; (c) pay all expenses of the Association; (d) subject to the Declaration and the Bylaws, acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association; (e) borrow money, and, with the affirmative vote of more than two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for such purpose, mortgage, pledge or hypothecate any and all of its real or personal property as security for money borrowed or debts incurred; (f) dedicate, sell 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, sale or transfer shall be effective unless the same should have been approved by an affirmative vote of more than two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for such purpose; (g) participate in mergers and consolidations with other non-profit corporations organized for the same purpose; and (h) have and exercise any and all powers, rights and privileges which a corporation organized under the Nonstock Corporation Act of the Commonwealth of Virginia may by law now or hereafter have or exercise. No part of the net earnings of the Association shall inure (other than by providing management, maintenance and care

of the Common Areas and other than by a rebate of excess membership dues, fees and assessments), to the benefit of any private individual.

ARTICLE III DEFINITIONS

Except as expressly defined herein, all capitalized terms used herein shall have the respective meanings set forth in the Declaration or in the Bylaws of this Association.

ARTICLE IV MEMBERSHIP

Section 4.1. *Membership.* Every Owner of a Lot or Parcel shall be a Member of the Association. Membership shall be appurtenant to, and shall not be separated from ownership of any Lot or Parcel. Upon the recordation of the deed to a Lot or Parcel, the membership of the selling Owner shall cease and the purchasing Owner shall thereupon become a Member of the Association.

Section 4.2. *Classes of Membership and Voting Rights.* The designation of classes of membership and the voting rights of Members shall be as provided in the Bylaws.

ARTICLE V BOARD OF DIRECTORS

Section 5.1. *Number.* Except as provided below, the number of directors shall be as fixed in accordance with the Bylaws, or in the absence of such a bylaw, shall be three (3).

Section 5.2. *Appointment of Directors During Period of Declarant Control.* The Class B members shall have the right to appoint or remove any member or members of the Board of Directors until such time as the Class B membership terminates. The period of time until the Class B membership terminates is hereafter called the "Period of Declarant Control." Each Owner, by acceptance of a deed to or other conveyance of a Lot or Parcel, vests in Declarant the authority to appoint and remove directors of the Association during the Period of Declarant Control. The directors selected by Declarant need not be Owners or residents within the Property.

Section 5.3. *Election of Directors After Period of Declarant Control.*

(a) Within ninety (90) days after the expiration of the Period of Declarant Control, the Board of Directors shall call a special meeting of Members at which meeting all directors appointed by Declarant shall resign and the Class A Members shall elect all members of the Board. Thereafter, nominations for election to the Board of Directors shall be made from the floor and may

also be made by a nominating committee, if such a committee is established by the Board of Directors. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election of directors shall be held at the annual members' meeting. At the first annual meeting of the Association after termination of the Period of Declarant Control, elections will be held for all three (3) directors. The person receiving the highest vote total shall be elected for a three (3) year term. The person receiving the second highest vote total shall be elected for a two (2) year term. The person receiving the third highest vote total shall be elected for a one (1) year term. Thereafter, upon the expiration of the terms of the directors so elected, at each annual meeting of the Association, elections shall be held for one (1) director, who shall be elected to serve for a three (3) year term.

(c) Except with respect to directors appointed by Declarant at any regular or special meeting of the Association duly called where the meeting notice states that the purpose, or any of the purposes, of the meeting is removal of the director, any one (1) or more of the members of the Board of Directors may be removed with or without cause, by a majority vote of the Members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed shall be given at least seven (7) days' notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting.

(d) Vacancies in the Board of Directors occurring for any reason other than the removal of a director by the Declarant or by a majority vote of the Members shall be filled by vote of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors, or, in the absence of any remaining directors, vacancies may be filled by the Declarant. Each person so elected shall serve the unexpired portion of the term of the director being replaced. Notwithstanding the foregoing, the Declarant shall fill all vacancies in the Board of Directors arising before the termination of the Period of Declarant Control.

(e) Any representative of the Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself or herself upon any vote upon any management contract or other contract or lease between Declarant (or any individual, partnership or corporation affiliated with Declarant), and the Association.

Section 5.4. *Initial Board of Directors.* The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

M. Albert Carmichael
999 Waterside Drive, Suite 1400
Norfolk, Virginia 23510

J. George Carmichael
4550 Post Oak Place, Suite 340
Houston, Texas 77027

Ronald L. Hensarling
4550 Post Oak Place, Suite 340
Houston, Texas 77027

ARTICLE VI LIMITATIONS ON LIABILITY AND INDEMNIFICATION

Section 6.1 *Limitation on Liability.* In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation or its Members or of the directors or officers of a "community association" (as defined in the Virginia Nonstock Corporation Act), any liability of the directors and officers of this Association shall be so limited or eliminated.

Section 6.2. *Mandatory Indemnification.* The Association shall indemnify any individual who is, was or is threatened to be made a party to any civil, criminal, administrative, investigative or other proceeding (including a proceeding by or in the right of the Association or by or for the behalf of its Members because such individual is or was a director or officer of the Association, a member of the Architectural Review Board or of any other legal entity controlled by the Association), against all liabilities (including, without limitation, liabilities resulting from activities performed and decisions made on behalf of the Association), and reasonable expenses incurred by him or her on account of the proceeding, except such liabilities and expenses as are incurred because of his or her willful misconduct or knowing violation of the criminal law. Unless a determination has been made that indemnification is not permissible, the Association shall make advances and reimbursement for expenses incurred by any of the persons named above upon receipt of an undertaking from him or her to repay the same if it is ultimately determined that such individual is not entitled to indemnification. The Association is authorized to contract in advance to indemnify any of the persons named above to the extent it is required to indemnify them pursuant to this Section 6.2.

Section 6.3. *Miscellaneous.* The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Indemnification pursuant to this Article shall not be exclusive of any other rights of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Association and indemnification under policies of insurance purchased and maintained by the Association or others. However, no person shall be entitled to indemnification by the Association to the extent he or she is indemnified by another, including an insurer.

ARTICLE VII AMENDMENT

These Articles of Incorporation may be amended pursuant to Section 13.1-886 of the Code of Virginia, as amended, and with the approval of the Class B Members (until the Class B membership terminates) and the vote of two-thirds (2/3) of the Members' votes (including Declarant as to votes held by it) at a meeting duly called for that purpose at which a quorum is present.

ARTICLE VIII MERGERS AND CONSOLIDATIONS

To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes as the Association, provided that any such merger or consolidation shall have the affirmative vote of more than two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be mailed to all members not less than twenty-five (25) nor more than sixty (60) days in advance and shall set forth the purpose of the meeting. Upon a merger or consolidation of the Association with another association, its property, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or alternatively, the property, rights and obligations of the other association may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger or consolidation. The surviving or consolidated association may administer the covenants, conditions, restrictions and easements established by the Declaration within the Property, together with the covenants, conditions, restrictions and easements established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants, conditions, restrictions and easements established by the Declaration within the Property, except as herein provided.

ARTICLE IX DISSOLUTION

The Association may be dissolved upon an affirmative vote, in person or by proxy, of at least two-thirds (2/3) of the Class A members and the vote of the Class B member (so long as Class B membership exists). Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to similar purposes.

ARTICLE X
DURATION

The corporation shall exist perpetually.

ARTICLE XI
REGISTERED AGENT

The initial registered office of the Corporation is located in the City of Norfolk, Commonwealth of Virginia, and its post office address is 999 Waterside Drive, Suite 1700, Norfolk, Virginia 23510. The name of its initial registered agent is Howard E. Gordon, who is a resident of Virginia, a member of the Virginia State Bar and whose business address is the same as the address of the initial registered office of the Corporation.

ARTICLE XII
APPROVAL OF HUD OR VA

As long as Class B membership exists, annexation of Additional properties, mergers and consolidations, mortgaging of Common Areas, dissolution and amendment of the Articles, requires the prior approval of the Department of Housing and Urban Development ("HUD"), or the Veterans Administration (the "VA") in the event any Lot or Parcel in the Property is owned by, or encumbered by a loan insured or guaranteed by HUD or the VA.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation as its incorporator this 30th day of May, 2001.



Howard E. Gordon, Incorporator