

0031039

BK4513PG0249

Prepared by:
Hofheimer Nusbaum, P.C.

DECLARATION OF COVENANTS, RESTRICTIONS,
RESERVATIONS AND EASEMENTS
OF
INDIAN RIVER FARMS

GPIN NO.: 1474-80-2839; 1474-80-1875
1474-80-0891; 1474-80-0732

HNI:317249.3

MAP Book 299 pg 31-34

TABLE OF CONTENTS

RECITALS 1

ARTICLE I

DEFINITIONS 1

 Section 1.1. Annual Assessment 1

 Section 1.2. Architectural Review Board 2

 Section 1.3. Articles 2

 Section 1.4. Association 2

 Section 1.5. Bylaws 2

 Section 1.6. Clerk's Office 2

 Section 1.7. Common Area 2

 Section 1.8. Declaration 2

 Section 1.9. Declarant 2

 Section 1.10. General Assessments 2

 Section 1.11. Governing Documents 2

 Section 1.12. Improvement 2

 Section 1.13. Lot 3

 Section 1.14. Member 3

 Section 1.15. Owner 3

 Section 1.16. Parcel 3

 Section 1.17. Properties 3

 Section 1.18. Supplemental Declaration 3

 Section 1.19. Virginia Code 3

 Section 1.20. Visible from Neighboring Property 3

 Section 1.21. Zoning Ordinance 3

ARTICLE II

ADDITIONS TO THE PROPERTIES 4

 Section 2.1. Additional Area 4

 Section 2.2. Right to Subject Additional Area to Declaration 4

 Section 2.3. Supplemental Declarations 4

 Section 2.4. Power Not Exhausted by One Exercise, Etc 4

 Section 2.5. Development of Additional Area 5

 Section 2.6. Withdrawal 5

 Section 2.7. Master Plan 5

ARTICLE III

INDIAN RIVER FARMS OWNERS' ASSOCIATION 5

 Section 3.1. Membership 5

 Section 3.2. Classes of Membership 5

 Section 3.3. Articles and Bylaws to Govern; Virginia Property
 Owners Association Act 5

ARTICLE IV

<i>COMMON AREA</i>	6
Section 4.1. Obligations of the Association	6
Section 4.2. Owners' Rights of Enjoyment and Use of Common Areas	6
Section 4.3. General Limitations on Owners' Rights	6
Section 4.4. Delegation of Use	7
Section 4.5. Damage or Destruction of Common Area by Owner	7
Section 4.6. Rights in Common Areas Reserved by Declarant	7
Section 4.7. Title to Common Area	7
Section 4.8. Common Areas on the Additional Area	8

ARTICLE V

<i>ASSESSMENTS</i>	8
Section 5.1. Creation of the Lien and Personal Obligation for Assessments	8
Section 5.2. Purpose of Assessments	8
Section 5.3. Annual Assessments	8
(a) Purpose	8
(b) Basis	9
(c) Assessment Levels	9
(1) Level 1 - Improved Lots or Parcels	9
(2) Level 2 - Unimproved Lots	9
(3) Level 3 - Unimproved Parcels	9
Section 5.4. Special Assessments	9
Section 5.5. Date of Commencement of Annual Assessments	9
Section 5.6. Effect of Nonpayment of Assessments; Remedies of Association	10
Section 5.7. Subordination of Lien to Mortgages	10
Section 5.8. Exempt Property	10
Section 5.9. Annual Budget	10
Section 5.10. Capitalization of Association	10

ARTICLE VI

<i>ARCHITECTURAL CONTROL</i>	11
Section 6.1. Architectural Review Board	11
Section 6.2. Plans to be Submitted	11
Section 6.3. Consultation with Architects, Etc.; Administrative Fee	12
Section 6.4. Approval of Plans	12
Section 6.5. No Structures to be Constructed, Etc. Without Approval	13
Section 6.6. Guidelines May Be Established	13
Section 6.7. Limitation of Liability	13
Section 6.8. Other Responsibilities of Architectural Review Board	13
Section 6.9. Construction of Initial Improvements	14

ARTICLE VII

<i>USE OF PROPERTY</i>	14
------------------------------	----

Section 7.1.	Protective Covenants	14
	(a) Nuisances	14
	(b) Land Use; Subdivision and Rezoning; Easements	14
	(c) Completion of Structures	14
	(d) Residential Use	14
	(e) Size of Structures	15
	(f) Vehicles	15
	(1) Operation of Vehicles	15
	(2) Parking	15
	(g) Pets	15
	(h) Antennae	16
	(i) Trash Receptacles and Firewood	16
	(j) Trash Burning	16
	(k) Signs	16
	(l) Mailboxes and Newspaper Tubes	16
	(m) Fences and Walls	16
	(n) Lighting	16
	(o) Rules	16
	(p) Irrigation and Water Bodies	17
	(1) Irrigation	17
	(2) Lakes and Water Bodies	17
	(q) Exceptions	17
Section 7.2.	Maintenance of Property	17
	(a) Owner Obligation	18
	(b) Failure to Maintain	18
Section 7.3.	Resales of Lots by Owners Other Than Declarant or Initial Builder	18
Section 7.4.	Security	18

ARTICLE VIII

	<i>EASEMENTS</i>	18
Section 8.1.	Utility Easements	18
Section 8.2.	Maintenance of Lots and Parcels	19
Section 8.3.	Construction Easements and Rights	19
Section 8.4.	Right of Entry for Governmental Personnel	19
Section 8.5.	Easement for Landscaping, Signs and Related Purposes	19
Section 8.6.	[Intentionally Deleted]	19
Section 8.7.	Easement for Ingress, Egress, Development and Utilities for the Additional Area; Marketing	20
Section 8.8.	Easement for Use of Water Bodies and Irrigation	20

ARTICLE IX

	<i>GENERAL PROVISIONS</i>	20
Section 9.1.	Duration	20

Section 9.2. Amendments 20
 Section 9.3. Enforcement 21
 Section 9.4. Limitations 21
 Section 9.5. Severability 21
 Section 9.6. Conflict 21
 Section 9.7. Interpretation 21
 Section 9.8. "Indian River Farms" or "Indian River Farms
 Owners' Association" 21
 Section 9.9. Approvals and Consents 22
 Section 9.10. Assignment of Declarant's Rights 22
 Section 9.11. Successors and Assigns 22

ARTICLE X
 DISSOLUTION OF THE ASSOCIATION 22

ARTICLE XI
 NOTICES 22

ARTICLE XII
 APPROVAL OF HUD OR VA 23

EXHIBIT A 25
 SUBJECTED PROPERTY 25

EXHIBIT B
 ADDITIONAL AREA 26

EXHIBIT C
 COMMON AREA 27

THIS DECLARATION OF COVENANTS, RESTRICTIONS, RESERVATION AND EASEMENTS is made on this 26th day of Sept., 2001, by VIRGINIA PARTNERS, L.P., a Texas Limited Partnership, Grantor, (the "Declarant"), the owner of residential lots in the development known as "INDIAN RIVER FARMS" which is located in the City of Virginia Beach, Virginia, SAMUEL G. SCOTT, Trustee, Grantor for indexing purposes (the "Trustee") and by BRANCH BANKING AND TRUST COMPANY OF VIRGINIA, Grantor for indexing purposes (the "Beneficiary").

RECITALS

Declarant is the owner of certain real property in Virginia Beach, Virginia, more particularly described in Exhibit A attached hereto and desires to create thereon a community of high quality single-family homes to be known as Indian River Farms, to provide for the preservation and enhancement of property values, amenities and opportunities within the community, and to provide for the management, maintenance and care of certain of the improvements within the community.

For the foregoing purposes, the Declarant, with the consent of the undersigned Beneficiary and Trustee, desires to subject the real estate described in Exhibit A (together with such additions as may hereafter be made pursuant to Article II hereof) to the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth, all of which are for the benefit of the Indian River Farms community and the Owners of property within the community. Branch Banking and Trust Company of Virginia is the Beneficiary and N. Joseph Dreps, Jr., and Samuel G. Scott are the Trustees, either of whom may act, under that certain Deed of Trust constituting a first lien on the real estate described in Exhibit A, which is recorded in the Clerk's office of the Circuit Court of the City of Virginia Beach, in Deed Book 4342, at page 716 (the "Deed of Trust"). The Beneficiary and the Trustee join herein for the sole purpose of evidencing their consent to the provisions hereof and subjecting the real estate contained in the Deed of Trust to the provisions of this Declaration.

NOW THEREFORE, Declarant, with the consent of the Beneficiary and Trustee, hereby declares that the real estate described in Exhibit A and such additions thereto as may be made pursuant to Article II (but as to such additions, subject to any additions, deletions and modifications to the provisions of the declaration as are made pursuant to Section 2.2) is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth.

ARTICLE I DEFINITIONS

Section 1.1. "Annual Assessment" shall have the meaning set forth in Section 5.3 of this Declaration.

Section 1.2. "**Architectural Review Board**" shall have the meaning set forth in Section 6.1 of this Declaration.

Section 1.3. "**Articles**" means the Articles of Incorporation of Indian Rivers Farms Owners' Association, as the same may be amended from time to time.

Section 1.4. "**Association**" means the Indian River Farms Owners' Association, a Virginia non-stock corporation, its successors and assigns.

Section 1.5. "**Bylaws**" means the bylaws of Indian River Farms Owners' Association, as the same may be amended from time to time.

Section 1.6. "**Clerk's Office**" means the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia.

Section 1.7. "**Common Area**" means (i) all of the real estate specifically designated as "Common Area" on recorded plats of the Properties, in Exhibit C to this Declaration, in any Supplemental Declaration, or in any amendment to this Declaration or in any other instrument executed by Declarant and recorded in the Clerk's Office; (ii) private streets or rights-of-way, designated on recorded plats of the Properties and conveyed by deed to the Association, if any; (iii) all landscape easements shown as dedicated or to be dedicated to the homeowners' association on any recorded plat of the Properties; and (iv) all other real property and improvements or facilities now or hereafter owned by the Association which are intended to be devoted to the common use and enjoyment of the Owners. The Common Area includes or may in the future include, without limitation, open space, private parks, a lake or other water bodies, areas used for entrance features, areas set aside for pedestrian and/or bicycle paths and other recreational facilities intended to be used by the Owners, which may be submitted to the provisions of this Declaration.

Section 1.8. "**Declaration**" means this Declaration of Covenants, Restrictions, Reservations and Easements, as the same may from time to time be supplemented or amended.

Section 1.9. "**Declarant**" means Virginia Partners, L.P., a Texas limited partnership, and its successors as developers of the Properties to whom Virginia Partners, L.P., may assign its rights hereunder by instrument(s) recorded in the Clerk's Office as provided in Section 9.10.

Section 1.10. "**General Assessments**" shall have the meaning set forth in Section 5.3 of the Declaration.

Section 1.11. "**Governing Documents**" means the Articles, the Bylaws, this Declaration and any Supplemental Declaration, as the same may be amended or supplemented from time to time.

Section 1.12. "**Improvement**" shall have the meaning set forth in Section 6.2 of this Declaration.

Section 1.13. "**Lot**" means any lot which is shown on a recorded subdivision plat of the Properties (or any subsequently recorded subdivision plat) and on which is constructed or is to be constructed a single family, detached residence. The term "Lot" shall not include any portion of the Properties designated Common Areas or property dedicated to and accepted by a public authority.

Section 1.14. "**Member**" means every person or entity who holds membership in the Association.

Section 1.15. "**Owner**" means the record holder, whether one or more persons or entities, of fee simple title to any Lot or parcel, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.16. "**Parcel**" means any portion of the Properties which, when subjected to the Declaration in accordance with Article II, has not been subdivided or created into Lots, and which is to be developed by either resubdivision or creation into Lots.

Section 1.17. "**Properties**" means all property subjected herein to this Declaration, together with such other real property as may from time to time be subjected in whole or in part to this Declaration by Declarant.

Section 1.18. "**Supplemental Declaration**" shall have the meaning set forth in Section 2.3 hereof.

Section 1.19. "**Virginia Code**" shall mean the Code of Virginia, 1950, as in effect on the date of recordation of this Declaration, and as amended from time to time thereafter. Except as otherwise expressly permitted herein, if any sections of the Virginia Code referred to in this Declaration are hereafter repealed or recodified, each such reference shall be deemed to apply to the sections of the Virginia Code that is the successor to the previous section referred to herein or, if there is no successor section, such reference shall be interpreted as if the section had not been repealed.

Section 1.20. "**Visible from Neighboring Property**" means, with respect to any given object, that such object is or would be visible to a person six feet (6') feet tall, standing on any part of such neighboring property at an elevation no greater than the ground elevation of the dwelling on such property.

Section 1.21. "**Zoning Ordinance**" means the ordinances adopted by the City Council of the City of Virginia Beach, Virginia, together with all other zoning ordinances, rules and regulations applicable to the Properties. If any applicable ordinance, rule or regulation in effect on the date of recordation of this Declaration is repealed, amended or supplemented in any respect, or if any variances or waivers are subsequently granted with respect thereto, the term "Zoning Ordinance" when used in interpreting or applying this Declaration shall mean such ordinance, rule and regulation as it may have been repealed, amended, supplemented, varied or waived.

ARTICLE II
ADDITIONS TO THE PROPERTIES

Section 2.1. **Additional Area.** The real estate which is subject to this Declaration as of the date of its recordation in the Clerk's Office is described in Exhibit A hereto. Declarant contemplates the extension of this Declaration to the real estate described in Exhibit B hereto (the "Additional Area") or portions thereof. However, Declarant shall not be obligated to bring all or any part of the Additional Area within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Properties or the Additional Area until such portion of the Additional Area is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below, and then such portion of the Additional Area shall be subject to any additions, deletions and modifications as are made pursuant to Section 2.2.

Section 2.2. **Right to Subject Additional Area to Declaration.** Declarant reserves the right, at its discretion, at such time or times as it shall determine on or before December 31, 2011, to subject the Additional Area, or such portions thereof as Declarant shall determine, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of this Declaration in whole or in part. Any portion of the Additional Area which is not, on or before December 31, 2011, subjected to the provisions of this Declaration in whole or in part pursuant to this Section 2.2 and thereby constituted a part of the "Properties", shall cease to be Additional Area. Each of the additions authorized pursuant to this Section 2.2 shall be made by Declarant's recordation in the Clerk's Office of an appropriate instrument describing the portion (s) of the Additional Area subjected to this Declaration. Each such instrument may contain such additions, deletions and modifications to the provisions of this Declaration as may be desired by Declarant. However, no negative reciprocal easement shall arise out of any additions, deletions or modifications to this Declaration made in the instruments which subject the Additional Area to this Declaration except as to the real estate expressly subject to such additions, deletions and modifications.

Section 2.3. **Supplemental Declarations.** In addition to subjecting the Additional Area to this Declaration as provided in Section 2.2, Declarant may, in its discretion, execute and record one or more supplemental declarations (each a "Supplemental Declaration") for the purpose of establishing certain additional or different covenants, restrictions, reservations and easements applicable to such specific Additional Area. However, no negative reciprocal easement shall arise out of any Supplemental Declaration so as to bind any real property not expressly subjected thereto.

Section 2.4. **Power Not Exhausted by One Exercise, Etc.** No exercise of the power granted Declarant hereunder as to any portion of the Additional Area shall be deemed to be an exhaustion of such power as to other portion(s) of the Additional Area not so subjected to the provisions hereof or to the provisions of a Supplemental Declaration. The discretionary right of Declarant to subject the Additional Area to the provisions of this Declaration or a Supplemental Declaration is not

conditioned upon or subject to the approval of other Owners and therefore the requirements set forth in Section 9.2 for amendments to this Declaration shall be inapplicable to this Article II. The failure of Declarant to extend the provisions of this Declaration to the Additional Area or any portion(s) thereof shall not be deemed to prohibit the establishment of a separate scheme of development (including provisions substantially similar or identical to those contained herein) for such portion(s) of the Additional Areas to which this Declaration is not extended.

Section 2.5. Development of Additional Area. The portion(s) of the Additional Area subjected to the provisions of this Declaration may contain additional Common Areas and facilities to be owned and/or maintained by the Association.

Section 2.6. Withdrawal. Provided no Lot or Parcel in the portion of the Additional Area which is subsequently subjected to the Declaration pursuant to the provisions of Article II has been conveyed to an Owner other than Declarant, Declarant shall have the right, in its sole discretion, to remove from the Properties any Additional Area by recording in the Clerk's Office an appropriate instrument describing the portion(s) of the Additional Area to be removed from the Properties.

Section 2.7. Master Plan. The existence of a master plan for the Properties as part of the Zoning Ordinance or as used by Declarant in developing and/or selling the Properties, Lots and Parcels and Common Areas therein shall not be deemed to constitute a representation by Declarant that the real estate shown thereon shall be developed as depicted on the master plan and the master plan may be amended from time to time in the sole discretion of Declarant with the consent, to the extent required, of the City of Virginia Beach, Virginia.

ARTICLE III INDIAN FARMS OWNERS' ASSOCIATION

Section 3.1. Membership. Every Owner of a Lot or a 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 a deed to a Lot or Parcel, the membership of the selling Owner shall cease and the purchasing Owner shall automatically become a member of the Association.

Section 3.2. Classes of Membership. The Association shall have two (2) classes of voting membership as more particularly described in the Bylaws of the Association which are recorded simultaneously herewith.

Section 3.3. Articles and Bylaws to Govern; Virginia Property Owners Association Act. Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Association and the Members, including the Members' voting rights, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Class B member shall appoint the members of the Board of Directors until the Class B membership terminates. However, in the event of any conflict or inconsistency between the provision of this Declaration or any Supplemental Declaration, and the provisions of the Articles or Bylaws, this Declaration and all

Supplemental Declarations (to the extent applicable) shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have all of the rights, powers and duties provided in the Virginia Property Owners Association Act, Section 55-508 et seq. of the Virginia Code, as the same may be amended from time to time.

ARTICLE IV COMMON AREA

Section 4.1. Obligations of the Association. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the maintenance, management, operation and control, for the benefit of the Members, of the Common Area conveyed to the Association and all improvements thereon, including fixtures, personal property and equipment related thereto, and shall keep the Common Area, and the improvements thereon in compliance with the requirements of the Zoning Ordinance, this Declaration and any applicable Supplemental Declaration, and the Association shall keep the same in good, clean and attractive condition, order and repair. The Association shall be responsible for the management, control and maintenance of all street intersection signs, directional signs, temporary promotional signs, plantings, street lights, retention ponds, park areas, entrance features and/or "theme areas", lighting, sprinkler systems, stone, wood or masonry wall features and/or related landscaping installed or planted in the Common Areas, or in any street or right of way, by the Declarant or the Association, for the benefit of the Members or the Association; provided such items are not maintained by the City of Virginia Beach or the Virginia Department of Transportation.

Section 4.2. Owners' Rights of Enjoyment and Use of Common Areas. Subject to the provisions of this Declaration and any applicable Supplemental Declaration and the Articles and Bylaws, every Owner shall have a right of enjoyment in and to the Common Areas which right of enjoyment shall be appurtenant to and shall pass with the title to every Lot and Parcel. The Common Areas shall be used by Owners only for the purposes for which the Common Areas may have been improved by Declarant or the Association and subject to any applicable restrictions in the Zoning Ordinance. Any Common Area which has not been improved for a particular use is intended to remain in its natural condition until so improved and any use thereof by an Owner shall not damage or disturb such natural condition or the enjoyment thereof by other Owners.

Section 4.3. General Limitations on Owners' Rights. The Owners' rights of enjoyment in the Common Areas shall be subject to the following: (i) the right of the Association to establish reasonable rules and regulations for the use of the Common Areas; (ii) subject to the limitation imposed by the last sentence of Section 55-514.C of the Virginia Code as in effect on the date hereof, the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for the period during which any assessment against his Lot or Parcel is delinquent, (iii) the right of the Association to suspend the right of an Owner to use or benefit from any of the Common Areas for any period during which any other violation by the Owner of this Declaration, a Supplemental Declaration or the rules promulgated by the Association pursuant to this Declaration remains uncorrected after the last day of a period established for correction by the Association (such period to be stated in a notice to the Owner together with a statement of the

violation complained of and the manner of its correction) and for not more than ten (10) days after such correction; (iv) subject to the Bylaws, the right of the Association to mortgage any or all of the Common Areas for the purpose of making improvements or repairs thereto; (v) subject to the Bylaws, the right of Declarant or the Association to grant utility easements across the Common Areas as provided in Section 8. 1; (vi) subject to the Bylaws, 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 desired by the Association; and (vii) all of the other easements, covenants and restrictions provided for in this Declaration and any Supplemental Declaration(s) applicable to the Common Areas.

Section 4.4. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to members of his family living on his Lot or Parcel and to his guests and invitees, and he may transfer such right to his tenants, subject to such rules and regulations and fees as may be established from time to time by the Board of Directors of the Association.

Section 4.5. Damage or Destruction of Common Area by Owner. In the event any Common Area or improvement thereon is damaged or destroyed by an Owner, his tenants, guests, invitees, agents or members of his family, the Association may repair such damage at the Owner's expense. The Association shall repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the area or improvement involved, or as the Common Area, or improvement may have been theretofore modified or altered by the Association, in the discretion of the Association. The cost of such repairs shall become a special assessment on the Lot or Parcel of such Owner and shall constitute a lien on such Owner's Lot or Parcel and be collectible in the same manner as other assessments set forth herein.

Section 4.6. Rights in Common Areas Reserved by Declarant. Until such time as Declarant conveys a parcel of land constituting Common Area to the Association, Declarant shall have the right as to that parcel, but not the obligation (i) subject to the provisions of Article VI hereof, to construct such improvements thereon as it deems appropriate for the common use and enjoyment of Owners, including, without limitation, directional signs, recreational facilities, and (ii) to use the Common Area for other purposes not inconsistent with the provisions of this Declaration. Until such time as Declarant conveys a parcel of land constituting Common Area to the Association, Declarant shall maintain such Common Area in a neat condition and repair, including mowing and removing underbrush and weeds.

Section 4.7. Title to Common Area. Declarant may retain legal title to the Common Areas, or portions thereof, but notwithstanding any provision herein to the contrary, Declarant shall convey each Common Area to the Association, free and clear of all liens, but subject to this Declaration and all other easements, conditions and restrictions of record at such time as such improvements are completed. Regardless of whether the Common Areas have been conveyed by the Declarant, Owners and the Association shall have all the rights and obligations imposed by this Declaration, any Supplemental Declaration, the Articles and Bylaws with respect to the Common Areas from and after the date such Common Areas are designated as such by recordation of an appropriate instrument in the Clerk's Office. The Association shall be liable from the date of a deed or deeds to

such Common Areas are recorded in the Clerk's Office for the payment of all taxes, insurance and maintenance costs with respect thereto. Until the Common Areas are conveyed to the Association, the Declarant shall be liable for the payment of all taxes, insurance and maintenance costs with respect thereto.

Section 4.8. **Common Areas on the Additional Area.** The Declarant may designate additional Common Areas and facilities from any of the land subsequently added to the Declaration.

ARTICLE V ASSESSMENTS

Section 5.1. **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot and Parcel owned within the Properties, hereby covenants (subject to Sections 5.5, 5.8 and 5.9) and each Owner of any Lot or Parcel by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association assessments as set forth in this Declaration, any Supplemental Declaration and in the Bylaws. The assessments, together with interest thereon, late charges and costs of collection including attorneys' fees, shall be a continuing lien upon the Lot or Parcel against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the Owner of the Lot or Parcel at the time the assessment became due. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot or Parcel. Each assessment that is not paid when due shall bear interest at the rate established by the Association, which rate shall not exceed the maximum rate permitted by applicable law. Each assessment that is not paid within ten (10) days of its due date shall, at the option of the Association, incur a late charge equal to the greater of five percent (5%) of the delinquent assessment or twenty dollars (\$20.00).

Section 5.2. **Purpose of Assessments.** The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the discharge of all taxes and other levies and assessments against the Common Areas and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association in accordance with the Bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to its Articles or Bylaws or this Declaration or any Supplemental Declaration and for such other purposes as may be authorized by or pursuant to the Articles or Bylaws.

Section 5.3. **Annual Assessments.**

"Annual Assessments" shall mean "General Assessments."

(a) **Purpose.** "General Assessments" shall mean those assessments used for the general purposes set forth in Section 5.2 above.

(b) **Basis.** The General Assessments shall be established and increased or decreased from time to time by the Board of Directors of the Association pursuant to the Bylaws.

(c) **Assessment Levels.** There shall be three (3) levels of assessments to Owners as follows:

(1) **Level 1 - Improved Lots or Parcels.** All Lots on which a single family residence has been constructed and which are or have been occupied, shall be assessed at one hundred percent (100%) of the General Assessment. All Parcels on which one or more Lots have been created and on which one or more single family residences have been constructed and which are or have been occupied shall be assessed at one hundred percent (100%) of the General Assessment per Lot.

(2) **Level 2 - Unimproved Lots.** All Lots on which no single family residence has been completed and occupied shall be assessed at a rate of twenty-five percent (25%) of the General Assessment.

(3) **Level 3 - Unimproved Parcels.** All Parcels added to or subjected to the provisions of the Declaration in accordance with Article II, but that have not been subdivided into Lots, or improved by the creation of Lots shall be assessed at a rate equal to twenty-five percent (25%) of the General Assessment times the number of Lots which have been approved by the City of Virginia Beach for such Parcel in accordance with the Zoning Ordinance.

Section 5.4. Special Assessments. In addition to the General Assessments, the Board of Directors of the Association may levy special assessments if the purpose in doing so is found by the Board of Directors to be in the best interest of the Association and the proceeds of such assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area. If any such special assessment is in an amount greater than the General Assessment for the same year, then no such special assessment shall be levied without the approval of a majority of the votes of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose and the approval of the Class B member; otherwise, such special assessment may be established by the Board of Directors of the Association without a vote of the Membership. provided, however, that any such special assessment may be rescinded by a majority vote of the Members attending a meeting of the Association, convened in accordance with the Bylaws within thirty (30) days after receipt of the notice of such special assessment. Further, the Board of Directors of the Association may, in accordance with Section 55-513 of the Virginia Code, assess charges against any Member for any violation of this Declaration or any rules or regulations duly adopted by the Association for which the Member or his family members, tenants, guests or other invitees are responsible.

Section 5.5. Date of Commencement of Annual Assessments. Subject to Sections 5.8 and 5.9, the Annual Assessments provided for herein shall commence as to each Lot or Parcel on the first day of the month following the date of recordation of the first Deed conveying such Lot or Parcel to an Owner other than the Declarant. The first Annual Assessment on a Lot or Parcel shall be

adjusted according to the number of months remaining in the calendar year. Unless the Board of Directors of the Association provides otherwise, the Annual Assessments shall be paid in quarterly installments due on the first day of each January, April, July, and October.

Section 5.6. Effect of Nonpayment of Assessments; Remedies of Association. The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner provided in Section 55-516 of the Virginia Code. A statement from the Association showing the balance due on any assessment shall be *prima facie* proof of the current assessment balance and the delinquency, if any, due on a particular Lot or Parcel. The Association may also bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection, including reasonable attorney's fees, shall be added to the amount of such assessment and secured by the assessment lien.

In any case where an assessment against a Lot or Parcel is payable in installments, upon a default by such Owner in the timely payment of any installment due for thirty (30) days, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the Owner by the Board of Directors or the managing agent.

Section 5.7. Subordination of Lien to Mortgages. The lien upon each of the Lots and Parcels securing the payment to the assessments shall have the priority set forth in Section 55-516A of the Virginia Code.

Section 5.8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments and liens created herein: (i) any property used as a sales or leasing center, model, maintenance center or management facility by Declarant or for similar purposes; (ii) all properties dedicated and accepted by a public authority, (iii) all Common Areas; and (iv) all properties wholly exempt from real estate taxation by state or local governments upon the terms and to the extent of such legal exemption.

Section 5.9. Annual Budget. The Board of Directors shall adopt an annual budget for each fiscal year, which budget shall provide for the level of General Assessments (including provision for reserves and physical damage insurance deductible) and an allocation of expenses. There shall be no responsibility for the payment of assessments until after the Board of Directors adopts its initial annual budget.

Section 5.10. Capitalization of Association. Upon the acquisition of record title to a Lot or Parcel by the first purchaser thereof (other than Declarant or a Builder who purchases a Lot or Parcel for development and resale to another) a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount equal to one (1) quarterly installment of the amount of the Annual Assessment payable on such Lot or Parcel for that year. This amount shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the

Association for its reserves and/or operating expenses.

ARTICLE VI ARCHITECTURAL CONTROL

Section 6.1. **Architectural Review Board.** There is hereby established a board (the "Architectural Review Board") for the purpose of reviewing and, as appropriate, approving or disapproving all Plans (hereinafter defined) submitted by Owners in accordance with this Article VI. The Architectural Review Board shall be composed of three (3) persons, who shall be Members of the Association, and who shall be appointed from time to time by Declarant, so long as its Class B membership in the Association continues, or by the Board of Directors of the Association from and after the date on which the Class B membership terminates or Declarant delegates this responsibility to the Association. The Declarant or the Board of Directors, as the case may be, may appoint one (1) alternate member to the Architectural Review Board, which alternate member may vote only in the absence of a regular member. The members of the Architectural Review Board shall serve for such terms as may be determined by Declarant or the Board of Directors of the Association, as the case may be. For the purposes of this Article, a Member of the Association shall include an officer of a corporation, a general partner of a limited partnership, a manager of a limited liability company or the trustee of a trust which owns a Lot or Parcel.

Section 6.2. **Plans to be Submitted.** Before commencing the construction, erection or installation of any building, fence, wall, animal pen or shelter, exterior lighting, sign, mailbox or mailbox support, or any improvement or other structure (each of the foregoing being hereinafter referred to as an "Improvement") on any Lot or Parcel, including any site work in preparation therefor, and before commencing any alteration, enlargement, demolition or removal of an Improvement or any portion thereof in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot or the Parcel on which it is situated, each Owner, other than the Declarant, shall submit to the Architectural Review Board the completed application on the form provided by the Architectural Review Board (the "Application") a proposed construction schedule and at least three (3) sets of plans and specifications of the proposed construction, erection, installation, alteration, enlargement, demolition or removal, which plans and specifications shall include (unless waived by the Architectural Review Board): (i) a site plan showing the size, location and configuration of all Improvements, including driveways and landscaped areas, and all setback lines, buffer areas and other features required under the Zoning Ordinance, (ii) as to Improvements initially constructed on a lot or a Parcel, landscaping plans showing the trees to be removed and to be retained and shrubs, plants and ground cover to be installed, (iii) architectural plans of the Improvements showing exterior elevations, construction materials, exterior colors, driveway material, (iv) a sediment and erosion control plan, (v) a tree protection plan and (vi) such other information as the Architectural Review Board in its discretion shall require (collectively, the "Plans"). The Architectural Review Board may, in its sole discretion, waive the requirement that any or all of the required Plans be submitted in a particular case where it determines such Plans are not necessary to properly evaluate the Application. The Architectural Review Board shall not be required to review any Plans unless and until the Application has been submitted in completed form with the proposed

construction schedule and the Plans contain all of the required items. The Application, Plans and the proposed construction schedule must be submitted to the Architectural Review Board at the address of Declarant in the same manner as notices are to be sent to Declarant pursuant to Article XI, for so long as all members of the Architectural Review Board are appointed by Declarant, and thereafter the Application, Plans and the proposed construction schedule may be submitted to the Architectural Review Board at the address of the Association in the same manner as notices are to be sent to the Association pursuant to Article XI. In no event shall the Declarant be required to submit any plans for approval by the Architectural Review Board, the Declarant being exempt from the provisions of this Section as well as Sections 6.4, 6.5 and 6.6.

Notwithstanding anything contained in this Article VI to the contrary, the Declarant so long as Declarant retains an interest in any of the real property listed in Exhibits A or B, at Declarant's option, shall review Plans presented by a Builder for construction of the original Improvements to be made to any Lot without submission to the Architectural Review Board, and if approved, which approval shall be within the sole discretion of Declarant, which shall not be unreasonably withheld or arbitrarily exercised, such approval shall be deemed to satisfy this Section, as well as Sections 6.3, 6.4, 6.5 and 6.6. Declarant shall review the Plan submitted by a Builder and within fifteen (15) business days of submittal provide Builder with either the approval of the Plans or the specific Plans which are not approved. Should no action be taken by the Declarant within said time period, the Plans shall be deemed approved. Such approval may be conditioned upon such requirements as Declarant may determine. Provided the Declarant has approved the Plans, submission of such Plans to, and approval of same by, the Architectural Review Board shall not be required.

Section 6.3. Consultation with Architects, Etc.; Administrative Fee. In connection with the discharge of its responsibilities, the Architectural Review Board may engage or consult with architects, engineers, planners, surveyors, attorneys and others. Any person seeking the approval of the Architectural Review Board agrees to pay all reasonable fees actually incurred by the Architectural Review Board and further agrees to pay an administrative fee to the Architectural Review Board in such amount as the Architectural Review Board may from time to time reasonably establish. The payment of all such fees is a condition to the approval or disapproval by the Architectural Review Board of any Plans, and the commencement of review of any Plans may be conditioned upon the payment of the Architectural Review Board's estimate of such fees.

Section 6.4. Approval of Plans. The Architectural Review Board shall not approve the Plans for any Improvement that would violate any of the provisions of this Declaration or of any Supplemental Declaration applicable thereto. In all other respects, the Architectural Review Board may exercise its sole discretion in determining whether to approve or disapprove any Plans, including, without limitation, the location of any Improvement on a Lot or Parcel. Provided the plans are submitted in accordance with this Article, the Architectural Review Board shall approve, approve subject to modification or disapprove the same within thirty (30) days from the date of their receipt. Should no action be taken by the Architectural Review Board within said time period the Plans shall be deemed approved.

Section 6.5. No Structures to be Constructed, Etc. Without Approval. No Improvement shall be constructed, erected, installed or maintained on any Lot or Parcel, nor shall any Improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the Improvement or of the Lot or the Parcel on which it is situated, unless the Application, Plans and construction schedule therefor have been approved by the Architectural Review Board. After the Application, Plans and Construction Schedule therefor have been approved, all Improvements shall be constructed, erected, installed, maintained, altered, enlarged, demolished or removed strictly in accordance with the approved Plans. Upon commencing the construction, erection, installation, alteration, enlargement, demolition or removal of an Improvement, all of the work related thereto shall be carried on with reasonable diligence and dispatch and in accordance with the construction schedule approved by the Architectural Review Board.

Section 6.6. Guidelines May Be Established. The Architectural Review Board, may, in its discretion, establish guidelines and standards to be used in considering whether to approve or disapprove Plans. Such guidelines may include, without limitation, uniform standards for signage, garages and parking enclosures, clothes lines or other drying apparatus, antennae and satellite dishes, mailboxes and mailbox supports, fences and walls, storage of firewood, lighting, size, placement and location of structures, improvements and landscaping. However, nothing contained in this Declaration shall require the Architectural Review Board to approve the Plans for Improvements on a Lot or a Parcel on the grounds that the layout, design and other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved by the Architectural Review Board for another Lot or Parcel. The guidelines adopted by the Architectural Review Board may not vary between Sections of the Properties.

Section 6.7. Limitation of Liability. The approval by the Architectural Review Board of any Plans, and any requirement by the Architectural Review Board that the Plans be modified, shall not constitute a warranty or representation by the Architectural Review Board of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the Architectural Review Board shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Architectural Review Board have any liability whatsoever to an Owner, a contractor or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the Architectural Review Board's approval, disapproval or conditional approval of any Plans.

Section 6.8. Other Responsibilities of Architectural Review Board. In addition to the responsibilities and authority provided in this Article VI, the Architectural Review Board shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration, in any Supplemental Declaration and in the Bylaws.

Section 6.9. **Construction of Initial Improvements.** During the Period of Declarant Control and in furtherance of the provisions of Section 6.2 above, a Builder which is the Owner of more than five (5) Lots which have not previously been improved, may submit to the Declarant plans for several model or prototype homes which are to be constructed on one (1) or more of the Lots. Once the Plans for said model or prototype homes are approved, the Builder may construct said model or prototype homes on any of the Lots which it owns or thereafter acquires. Approval by the Declarant of the Plans for the model or prototype homes shall be deemed to satisfy the requirements of Section 6.2 hereof.

ARTICLE VII USE OF PROPERTY

Section 7.1. **Protective Covenants.**

(a) **Nuisances.** No nuisance shall be permitted to exist on any Lot or Parcel.

(b) **Land Use; Subdivision and Rezoning; Easements.** None of the real property which is or shall become subject to the provisions of this Declaration shall be subdivided, resubdivided or rezoned without the prior written consent of the Architectural Review Board, and until the termination of the Class B membership, the Declarant. The subdivision, site plan and landscape plan of the said property and any changes to the present zoning of the said property shall be subject to the prior approval of the Architectural Review Board, which approval procedure shall be as set forth in Article VI of the Declaration, and the Declarant, until the termination of the Class B membership. Further, until the termination of the Class B membership, no dedication, reservation or easement may be made or granted on, through or over any Lot or Parcel without the prior written consent of the Declarant, or its assignees or designees.

(c) **Completion of Structures.** The exterior of any new structure and the grounds related thereto must be substantially completed in accordance with the plans and specifications approved by the Architectural Review Board within twelve (12) months after construction of the same shall have commenced, except that said Board may grant extensions where such completion is impossible or is the result of matters beyond the control of the Owner or Builder, such as strikes, casualty losses, national emergencies or act of God.

(d) **Residential Use.** All Lots and Improvements, now or hereafter erected on the Properties shall be designated for residential use and shall be used, improved and devoted exclusively to residential use by a single family, except home occupations may be pursued: (i) if permitted by the City Virginia Beach, and (ii) if in accordance with rules adopted from time to time by the Association. Nothing herein shall be deemed to prevent an Owner from leasing his property to a single family, provided such lease shall be in writing and subject to all of the provision of the Governing Documents with any failure by a lessee to comply with the terms of the Governing Documents constituting a default under the lease. Each Lot located on the Property described in Exhibit A attached hereto, and each Lot located on any Additional Area subsequently

subjected to the Declaration, unless a different use is specifically set forth in any Supplemental Declaration, shall contain no more than one (1) detached single-family residence with a private garage or other accessory structures, not for habitation of any description, for the exclusive use of the occupants of such dwelling. No garage apartment or similar structure shall be permitted nor shall any structure of a temporary character such as a trailer, tent, shack, garage, barn or other out-building be utilized on any lot as a temporary or permanent residence. Notwithstanding the foregoing, the Declarant and its successors and assigns and agents and builders may utilize trailers and temporary structures in and during the development of the Properties and construction of residential dwellings and associated structures.

(e) **Size of Structures.** Unless approved pursuant to the second paragraph of Section 6.2 or Section 6.9 hereof, the size and location of all structures shall be regulated by the Architectural Review Board of the Association pursuant to Article VI of the Declaration.

(f) **Vehicles.** No unenclosed portion of the Property subjected hereto shall be used for the repair of motor vehicles, except that the Owner, his immediate family and any tenant of Owner may work on his or her personal vehicles inside the home's garage. Use and storage of all vehicles and recreational equipment upon the Common Area and Lots or upon any street, public or private, adjacent thereto shall be subject to the Zoning Ordinance and to the rules promulgated by the Board of Directors as provided for herein.

(1) **Operation of Vehicles.** All motor vehicles, including, but not limited to, trail bikes, motorcycles and dune buggies shall be driven only upon the paved portion of the streets. No motor vehicles shall be driven on pathways or in the Common Area, except such vehicles as are authorized by the Association as needed to maintain, repair or improve the Common Area. This prohibition shall not apply to normal vehicular use of designated streets and lanes constructed on Common Area.

(2) **Parking.** Each Lot shall provide off-street parking which must be paved from the edge of pavement of the connection right-of-way to the extent of the off-street parking area and shall not be constructed of stone, shell, rock or like or similar loose materials. The off-street parking area shall be of sufficient size to extend beyond the perimeter of the item(s) or vehicle(s) that utilize the off-street parking. No boats, boat trailers, house trailers, trucks in excess of three-quarter (3/4) ton, busses, recreational vehicles, campers, camper-pickups or similar items or vehicles, or any vehicles bearing commercial or institutional signage, slogans or advertising, shall be parked within the subdivision except in a garage or on a Lot in a paved area 15 feet to the rear of the front building line of the residence constructed thereon; and then only if said area is enclosed by a six feet (6') high privacy fence. Non-licensed, non-operational or junk motor vehicles, trailers, campers, recreational vehicles, motorcycles, motorbikes, boats or like items shall not be kept, stored, repaired or fabricated within the subdivision.

(g) **Pets.** Subject to rules as may from time to time be set by the Association, generally recognized house or yard pets, in reasonable numbers, may be kept and maintained on a Lot,

provided such pets are not kept or maintained for commercial purposes and no kennel or animal boarding facility shall be permitted. All pets must be kept under the control of their owner when they are outside of the Lot and must not become a nuisance to other residents.

(h) **Antennae.** Subject to rules as may from time to time be adopted by the Board of Directors of the Association, exterior television aerials, satellite dishes, dish receivers and other antennae having a diameter in excess of forty (40) inches are prohibited. Further, no transmitting or receiving equipment or communication devices shall be operated on any Lot or Parcel that will, in any manner, interfere with standard electronic equipment or radio or television reception on adjacent Lots or Parcels.

(i) **Trash Receptacles and Firewood.** Storage, collection and disposal of trash, and the storage of firewood shall be in compliance with rules set by the Architectural Review Board or the Board of Directors of the Association.

(j) **Trash Burning.** Trash, leaves and other similar material shall not be burned on any Lot or in the streets or Common Area adjacent thereto.

(k) **Signs.** No signs of any type shall be displayed to public view on any Lot or the Common Area without the prior written consent of the Architectural Review Board, except customary name and address signs meeting established Architectural Review Board standards and "For Sale" or "For Lease" signs meeting established Architectural Review Board Standards. The foregoing shall neither prohibit or restrict the signs erected at the entrances to the Properties from Indian River Road nor prohibit the Builders of the initial Improvements on any Lot from erecting directional, promotional and for sale signs on Lots owned by said Builder.

(l) **Mailboxes and Newspaper Tubes.** Only mailboxes and newspaper tubes meeting the design standards of the Architectural Review Board or, during the period of Declarant Control, of the Declarant, shall be permitted.

(m) **Fences and Walls.** Any fence, wall, tree, hedge or shrub shall be planted, erected or maintained in such a manner so as not to obstruct sight lines for vehicular traffic. All fences or enclosures must be approved by the Architectural Review Board as to location, material and design. Any fence or wall built on any of the Lots or Parcels shall be maintained in a proper manner so as not to detract from the value and desirability of surrounding property.

(n) **Lighting.** No exterior lighting shall be directed outside the boundaries of any Lot and all exterior lighting shall be subject to such other rules as adopted by the Board of Directors of the Association from time to time.

(o) **Rules.** From time to time the Board of Directors may adopt general rules, including, but not limited to, rules to regulate potential problems relating to the use of Properties and the well-being of Members, such as the definition of nuisances, keeping of animals, storage and use

of vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash and trash containers, restrictions on sprinkler and irrigation systems, private irrigation wells and uses of lakes, water bodies and wetlands, use of any other recreational amenity, maintenance and removal of vegetation on the Properties and the type and manner of application of fertilizers or other chemical treatments to the Properties in accord with non-point source pollution control standards. All such rules and any subsequent amendments thereto shall be binding on all Members, except where expressly provided otherwise in such rule.

(p) Irrigation and Water Bodies.

(1) **Irrigation.** Subject to the rights retained by the Declarant in Section 8.8, no sprinkler or irrigation system of any type which draws upon the water from a lake or other surface waters within the Properties shall be installed, constructed or operated within the Properties, except the Association shall have the right to draw upon water from such water bodies for irrigation of the Common Area. All sprinkler and irrigation systems shall be subject to approval in accordance with Article VI of this Declaration. Provided, however, this paragraph shall not apply to the Declarant or to the Builders which construct the initial Improvements on any Lots.

(2) **Lakes and Water Bodies.** The lakes and water bodies within the Properties shall be aesthetic amenities and for surface water drainage retention only, and no other use shall be made thereof, including without limitation, swimming, boating, playing or use of personal flotation device. No piers or docks shall be constructed on any portion of any lake, nor attached to the shoreline or banks thereof, except that the Declarant shall be permitted to construct a gazebo or other improvement thereon or on the adjacent Common Area. This paragraph shall not apply to, or prohibit any use by Declarant specifically authorized under this Declaration. The Association shall not be responsible for any loss, damage or injury to any person arising out of the authorized or unauthorized use of any lake within or adjacent to the Properties.

(q) **Exceptions.** In certain special circumstances, the Board of Directors may issue variances exempting a particular Lot, Parcel or Common Area from any of the provisions of this Article VII.

Section 7.2. Maintenance of Property.

(a) **Owner Obligation.** Each Owner shall keep all Lots and Parcels owned by him, and all improvements therein or thereon, in good order and repair, free of debris, all in a manner and with such frequency as is acceptable to the Association and consistent with a first-quality single-family residential development. However, the temporary accumulation of construction debris during construction of a dwelling on a Lot by Declarant or a Builder constructing the initial Improvements on a Lot which is periodically removed in accordance with normal and customary construction standards shall not be deemed to violate this paragraph or Section 7.1(i) above.

(b) **Failure to Maintain.** In the event an Owner shall fail to maintain his Lot or Parcel and the Improvements situated thereon as provided herein, the Association, after notice to the Owner and approval of the Board of Directors, shall have the right to enter upon such Lot or Parcel to correct such failure. All costs related to such correction shall become a special assessment upon such Lot or Parcel and shall be regarded as any other assessment with respect to lien rights of the Association and remedies provided herein for non-payment.

Section 7.3. Resales of Lots by Owners Other Than Declarant or Initial Builder. Upon the acquisition of record title to Lot from an Owner other than Declarant or the initial Builder of a single family residence, an administrative fee in an amount set from time to time by the Board of Directors, which amount shall initially be \$100.00, shall be paid to the Association by or on behalf of the purchaser of the Lot. Such administrative fee shall be deposited in the purchase and sales escrow at settlement and shall be disbursed therefrom to the Association.

Section 7.4. SECURITY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGES THAT THE ASSOCIATION AND DECLARANT, AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO STRUCTURES OR OTHER IMPROVEMENTS SITUATED ON LOTS AND PARCELS, AND TO THE CONTENTS OF ANY IMPROVEMENTS SITUATED ON LOTS AND PARCELS AND FURTHER ACKNOWLEDGES THAT DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

ARTICLE VIII EASEMENTS

Section 8.1. Utility Easements. Declarant reserves perpetual non-exclusive easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, fiber optic lines, pipes, mains, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, sanitary and storm sewer, water, gas, cable television, drainage, and other public conveniences or utilities, upon, in or over those portions of the Properties (including Lots, Parcels and Common Areas) as Declarant, its successors or assigns may consider to be reasonably necessary (the "Utility Easements"). However, after Declarant ceases to be the Owner of a Lot or Parcel, no Utility Easements shall be placed on the portion of such Lot or Parcel on which is already located a building which was either constructed by Declarant or approved by the Architectural Review

Board or on which a building is to be located pursuant to Plans approved by the Architectural Review Board. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Declarant or the applicable governmental authority or utility company providing the utilities may require. The utility lines installed pursuant to the Utility Easements may be installed above or below ground, except as otherwise provided in any Supplemental Declaration. Declarant shall have the right to convey Utility Easements to other Owners, governmental authorities or utility companies, the Association and any other party or parties.

Section 8.2. Maintenance of Lots and Parcels. Declarant reserves the easement, right and privilege during the Period of Declarant Control and the Association is granted the perpetual easement, right and privilege, to enter on any Lot or Parcel, after at least five (5) days notice to the Owner thereof, for the purpose of mowing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, dispensing pesticides, herbicides, fertilizer and grass seed, removing trash and taking such other actions as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Properties or which may constitute a hazard or nuisance. The cost incurred by the Association in taking such action (including any overhead costs associated therewith) shall constitute a special assessment on the Lot or Parcel and shall be collectible in the manner provided herein for the payment of assessments. This Section shall not apply to Lots or Parcels owned by Declarant.

Section 8.3. Construction Easements and Rights. Notwithstanding any provision of this Declaration or of any Supplemental Declaration, so long as Declarant is engaged in developing or improving any portion of the Properties or the Additional Areas, Declarant shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for the (i) moving and storage of building materials and equipment, (ii) erection and maintenance of directional and promotional signs, and (iii) conduct of sales activities, including maintenance of model residences.

Section 8.4. Right of Entry for Governmental Personnel. A right of entry on any Lot, Parcel and Common Area is hereby granted to law enforcement officers and fire and rescue personnel as needed to lawfully carry out their duties, including enforcement of emergency vehicle access.

Section 8.5. Easement for Landscaping, Signs and Related Purposes. There shall be and is hereby reserved to Declarant for so long as it retains its rights as Declarant, a non-exclusive easement over all Lots, Parcels and Common Area for a distance of fifteen (15) feet behind any Lot or Parcel line which parallels, and is adjacent to, a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, planting, street lights, entrance features and /or "theme area", lighting, stone, wood or masonry wall features and/or related landscaping. Exercise of this easement shall be with the consent of the Owner of the affected Lot or Parcel, or the Association as to the Common Area.

Section 8.6. [Intentionally Deleted.]

Section 8.7. Easement for Ingress, Egress, Development and Utilities for the Additional Area; Marketing. The Declarant shall have the unqualified right, prior to the termination of the Class B membership, to grant and reserve easements and right-of-ways through, under, over, and across any portion of the Common Area, for construction purposes, for ingress and egress to and from the Additional Area, and for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, and other utilities. Said easements and right-of-ways may be for the benefit of any portion of the Properties or any portion of the Additional Area, or for the benefit of any adjacent or proximate property. The Declarant shall also have the unqualified right, prior to the termination of the Class B membership, to use any recreational or other amenity for promotional, marketing, customer relations, sales and other related purposes for the Declarant and Builders of any Lot or Parcel on the Properties.

Section 8.8. Easement for Use of Water Bodies and Irrigation. There is hereby reserved by the Declarant a perpetual easement and unqualified right to use any lake and any water bodies lying within any Common Area for the purpose of irrigation of any Lot or any Parcel now or in the future owned by the Declarant or third parties.

ARTICLE IX GENERAL PROVISIONS

Section 9.1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of twenty-five (25) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of any such period the covenants and restrictions are terminated by consent of the Owners of two-thirds (2/3) of the Lots and Parcels. Notwithstanding the foregoing, the provisions of Section 4.2 and Article VIII shall be perpetual.

Section 9.2. Amendments. Except as otherwise set forth in this Declaration and subject to Section 10.4 of the Bylaws, this Declaration may be amended either (i) by Declarant without the consent of any other Owners during the Period of Declarant control, or (ii) by a vote of two-thirds of the Class A votes and with the written consent of Declarant for so long as its Class B membership in the Association continues. Notwithstanding the foregoing, the provisions of Article II and VIII and Sections 3.2, 4.6, 5.8, and this Section 9.2 may not be amended in any event without written consent of Declarant regardless of whether the Class B membership has terminated, as long as the Declarant owns any of the Properties or the Additional Area. In addition, Declarant, at Declarant's option, shall have the right without the consent of any other Owners to amend this Declaration to correct scrivener's errors pursuant to Section 55-515.2 of the Virginia Code or in any respect as may be necessary or appropriate in order for this Declaration or the Properties to comply with applicable laws now or hereafter enacted or to satisfy the requirements of any federal mortgage agency, including, without limitation, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the U.S. Department of Housing and Urban Development, as the same may be

amended from time to time with respect to their purchase, insurance or guaranty of any loan secured by a mortgage or deed of trust on one or more Lots.

Section 9.3. Enforcement. Declarant during the Period of Declarant Control, the Association, any Owner or any beneficiary or note holder under a Deed of Trust or mortgage, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Without limiting the generality of the foregoing, if any Owner fails to comply with any of the provisions of this Declaration or any Supplemental Declaration and such failure continues for at least five (5) days after notice thereof is given to the Owner, then either Declarant or the Association may, but without any obligation to do so, take such action as either of them considers necessary or appropriate (including, without limitation, entering the Owner's Lot or Parcel) to correct the noncompliance; provided, however, that judicial proceedings are instituted before any Improvements are subsequently altered or demolished. The cost incurred in taking such action shall constitute a special assessment upon the Owner's Lot(s) and/or Parcel(s) and shall be collectible in the manner provided herein for the payment of assessments. Failure by the Declarant, the Association or any Owner to enforce any provision of this Declaration or any Supplemental Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.4. Limitations. As long as the Declarant has an interest in developing the Properties or the Additional Area, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intent of this Declaration. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

Section 9.5. Severability. 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.

Section 9.6. Conflict. In the event of conflict among the Governing Documents, this Declaration shall control, then any Supplemental Declarations, then the Articles, then the Bylaws, except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

Section 9.7. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 9.8. "Indian River Farms" or "Indian River Farms Owners' Association." No person or entity shall use the words "Indian River Farms", "Indian River Farms Owners' Association" or any derivative thereof in any printed or promotional material without the prior

written consent of Declarant during the Period of Declarant Control or the Association after the Period of Declarant Control.

Section 9.9. Approvals and Consents. All approvals and consents required or permitted by this Declaration (other than approvals or consents given by Members in a vote conducted in accordance with the Bylaws) shall be in writing, shall be signed by the party from whom the consent or approval is sought, and unless otherwise provided herein, may be withheld by such party in its sole discretion.

Section 9.10. Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association, to another Owner or to any other party which owns Lots or Parcels within the Properties. Each such assignment shall be evidenced by an instrument which shall be signed by Declarant and its assignee and recorded in the Clerk's Office.

Section 9.11. Successors and Assigns. The provisions hereof shall be binding upon and shall inure to the benefit of Declarant, the Association and (subject to Article II hereof) the Owners and their respective heirs, legal representatives, successors and assigns.

ARTICLE X DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved at a meeting duly called for that purpose upon the 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). Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for dedication to the locality in which they are situated. In the event that such dedication is refused, upon dissolution, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization devoted to similar purposes.

ARTICLE XI NOTICES

All notices, demands, request and other communications required or permitted hereunder shall be in writing and shall either be delivered in person or sent by overnight express courier or by U.S. first class certified mail, postage prepaid. Notices to the Declarant shall be sent to Virginia Partners, L.P., 4550 Post Oak Place, Suite 340, Houston, Texas 77027; with copy to Hofheimer Nusbaum, P.C., 999 Waterside Drive, Suite 1700, Norfolk, Virginia 23510, Attention: Howard E. Gordon; or to such other address as the Declarant shall specify by executing and recording an amendment to this Declaration, which amendment shall not require the approval of any other parties as provided in Section 9.2. Notices to the Association or to Owners (other than Declarant) may be sent to the address which the Bylaws provide shall be used for them. All such notices, demands, requests and other communications shall be deemed to have been given when sent to the appropriate address specified above. Rejection or other refusal to accept shall not invalidate the

effectiveness of any notice, demand, request or other communication. Notwithstanding the foregoing, any notice of the filing of a memorandum of assessment lien shall be sent in the manner required by Section 55-516C of the Virginia Code.

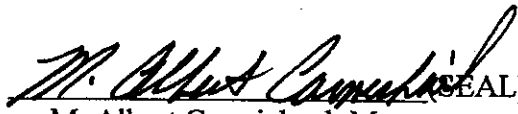
**ARTICLE XII
APPROVAL OF HUD OR VA**

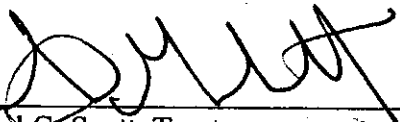
As long as Class B membership exists, annexation of Additional Areas, mergers and consolidations, mortgaging of Common Area, dissolution of the Association and amendment of the Declaration, requires the prior approval of the Department of Housing and Urban Development ("HUD") or the Veterans Administration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

WITNESS the following signatures and seals as of the date first above written.

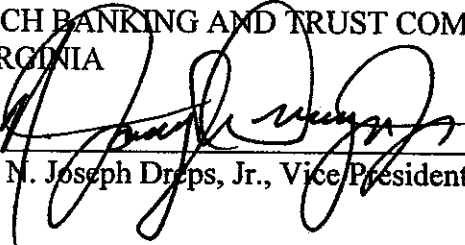
VIRGINIA PARTNERS, L.P.

By: MAC-GP, LLC, General Partner

By:  (SEAL)
M. Albert Carmichael, Manager

 (SEAL)
Samuel G. Scott, Trustee

BRANCH BANKING AND TRUST COMPANY
OF VIRGINIA

By:  (SEAL)
N. Joseph Draps, Jr., Vice President

COMMONWEALTH OF VIRGINIA
CITY OF Norfolk, TO-WIT:

The foregoing Declaration was acknowledged before me this 26th day of September, 2001, in my city and state above, by M. Albert Carmichael, Manager of MAC-GP, LLC, as General Partner on behalf of Virginia Partners, L.P.

Linda E. Aldredge
Notary Public

My commission expires: 8/31/02

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, TO-WIT:

The foregoing Declaration was acknowledged before me this 26 day of Sept, 2001, in my city and state above, by Samuel G. Scott, Trustee.

Elizabeth A. Metz
Notary Public

My commission expires: 11/30/02

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, TO-WIT:

The foregoing Declaration was acknowledged before me this 20 day of Sept, 2001, in my city and state above, by N. Joseph Dreps, Jr., Vice President of Branch Banking and Trust Company of Virginia, on behalf of said Bank.

Elizabeth A. Metz
Notary Public

My commission expires: 11/30/02

Exhibit "A"

Legal Description
for
Lots and Right-of-Way
in
Section One

Commencing at a point situate lying and being in the city of Virginia Beach, Virginia, on the westerly right-of-way of Indian River Road and at the northwesterly corner of Indian River Farms as recorded in Map Book 293, at page 6 in the Clerks's Office of the Circuit Court of Virginia Beach, Virginia; thence following the aforementioned right-of-way of Indian River Road;

S 52degrees32minutes53seconds E a distance of 115.56' the point of beginning; thence S 52degrees32minutes53seconds E a distance of 435.98' to a point; thence, following the proposed bounds of Section One, with a curve turning to the left with an arc length of 47.16', with a radius of 30.00', with a chord bearing of S 82degrees24minutes52seconds W, with a chord length of 42.45', thence S 37degrees22minutes38seconds W a distance of 15.28' to a point; thence with a curve turning to the right with an arc length of 100.03', with a radius of 400.00', with a chord bearing of S 44degrees32minutes30seconds W, with a chord length of 99.77', thence S 47degrees57minutes38seconds E a distance of 179.07' to a point; thence S 57degrees50minutes48seconds W a distance of 14.21' to a point; thence S 32degrees09minutes12seconds E a distance of 60.00' to a point; thence N 83degrees59minutes39seconds E a distance of 99.96' to a point; thence S 52degrees37minutes22seconds E a distance of 621.84' to a point; thence S 19degrees55minutes15seconds E a distance of 112.82' to a point; thence S 51degrees24minutes49seconds W a distance of 35.64' to a point; thence S 55degrees10minutes55seconds W a distance of 119.13' to a point; thence S 55degrees55minutes34seconds W a distance of 321.54' to a point; thence S 59degrees58minutes56seconds W a distance of 45.47' to a point; thence S 57degrees47minutes32seconds W a distance of 524.69' to a point; thence S 63degrees20minutes57seconds W a distance of 89.11' to a point; thence N 29degrees13minutes33seconds W a distance of 142.50' to a point; thence N 02degrees18minutes12seconds W a distance of 56.08' to a point; thence N 29degrees13minutes33seconds W a distance of 206.07' to a point; thence S 60degrees45minutes26seconds W a distance of 52.06' to a point; thence N 39degrees34minutes36seconds W a distance of 285.45' to a point; thence N 14degrees25minutes56seconds W a distance of 68.24' to a point; thence N 32degrees09minutes12seconds W a distance of 60.00' to a point; thence N 57degrees50minutes48seconds E a distance of 297.96' to a point; thence N 32degrees09minutes12seconds W a distance of 170.00' to a point; thence N 09degrees32minutes48seconds E a distance of 66.97' to a point; thence N 32degrees09minutes12seconds W a distance of 235.00' to a point; thence N 41degrees15minutes46seconds W a distance of 92.43' to a point; thence N 14degrees29minutes28seconds E a distance of 141.66' to a point;

thence N 62degrees50minutes18seconds E a distance of 127.90' to a point;
thence S 76degrees44minutes19seconds E a distance of 110.00' to a point;
thence S 32degrees09minutes12seconds E a distance of 334.05' to a point;
thence N 57degrees50minutes48seconds E a distance of 86.49' to a point;
thence with a curve turning to the left with an arc length of 125.04', with a radius of 350.00', with
a chord bearing of N 47degrees36minutes43seconds E, with a chord length of 124.38',
thence N 37degrees22minutes38seconds E a distance of 73.11' to a point;
thence with a curve turning to the left with an arc length of 47.08', with a radius of 30.00', with a
chord bearing of N 07degrees35minutes08seconds W, with a chord length of 42.40',
thence N 52degrees32minutes53seconds W a distance of 150.00' to a point;
thence N 47degrees58minutes27seconds W a distance of 150.48' to a point; which is the point of
beginning, having an area of 25.244 acres

Exhibit "B"Legal Description
for
Section Two Lots and Right-of-Way

Commencing at a point situate lying and being in the city of Virginia Beach, Virginia at a point on the westerly right-of-way of Indian River Farm and at the southeasterly corner of Indian River Farm as recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 293, at page 6; thence, following the northerly bounds of the Lonnie L. Davis Property, Est. S 51degrees24minutes49seconds W a distance of 225.39' to a point; thence S 55degrees10minutes55seconds W, a distance of 119.13' to a point; thence S 55degrees55minutes34seconds W, a distance of 321.54' to a point; thence S 59degrees58minutes56seconds W, a distance of 45.47' to a point; thence S 57degrees47minutes32seconds W, a distance of 524.69' to a point; thence S 63degrees20minutes57seconds W, a distance of 89.12' the point of beginning; thence, following the bounds Section Two, S 63degrees20minutes57seconds W a distance of 251.35' to a point; thence N 79degrees06minutes41seconds W a distance of 143.56' to a point; thence N 47degrees34minutes52seconds W a distance of 124.16' to a point; thence N 29degrees13minutes33seconds W a distance of 176.58' to a point; thence N 33degrees26minutes59seconds W a distance of 62.95' to a point; thence N 45degrees20minutes10seconds W a distance of 137.36' to a point; thence N 41degrees24minutes53seconds E a distance of 63.53' to a point; thence N 21degrees03minutes21seconds E a distance of 58.33' to a point; thence N 17degrees19minutes55seconds W a distance of 82.49' to a point; thence N 45degrees12minutes51seconds W a distance of 191.48' to a point; thence N 75degrees17minutes45seconds W a distance of 99.93' to a point; thence N 58degrees51minutes38seconds W a distance of 100.03' to a point; thence N 42degrees27minutes58seconds W a distance of 99.82' to a point; thence N 26degrees03minutes02seconds W a distance of 99.92' to a point; thence N 09degrees37minutes51seconds W a distance of 100.00' to a point; thence N 06degrees29minutes20seconds E a distance of 80.76' to a point; thence N 17degrees49minutes26seconds E a distance of 117.43' to a point; thence N 51degrees35minutes54seconds E a distance of 66.85' to a point; thence N 68degrees12minutes45seconds E a distance of 74.15' to a point; thence S 84degrees03minutes23seconds E a distance of 162.06' to a point; thence S 72degrees01minutes21seconds E a distance of 48.33' to a point; thence N 89degrees22minutes51seconds E a distance of 90.12' to a point; thence N 62degrees50minutes44seconds E a distance of 143.25' to a point; thence S 82degrees08minutes10seconds E a distance of 92.63' to a point; thence S 32degrees09minutes12seconds E a distance of 235.00' to a point; thence S 09degrees32minutes48seconds W a distance of 66.97' to a point; thence S 32degrees09minutes12seconds E a distance of 170.00' to a point; thence S 57degrees50minutes48seconds W a distance of 297.96' to a point; thence S 32degrees09minutes12seconds E a distance of 60.00' to a point;

BK4513PG0281

thence S 14degrees25minutes56seconds E a distance of 68.24' to a point;
thence S 39degrees34minutes36seconds E a distance of 285.45' to a point;
thence N 60degrees45minutes26seconds E a distance of 52.06' to a point;
thence S 29degrees13minutes33seconds E a distance of 206.07' to a point;
thence S 02degrees18minutes12seconds E a distance of 56.08' to a point;
thence S 29degrees13minutes33seconds E a distance of 142.50' to a point; which is the point of
beginning, having an area of 16.357 acres more or less.

Exhibit "C"

Legal Description
for
Open Space, Part One

Commencing at a point situate lying and being in the city of Virginia Beach, Virginia, on the westerly right-of-way of Indian River Road and at the northwesterly corner of Indian River Farms as recorded in Map Book 293, at page 6 in the Clerks's Office of the Circuit Court of Virginia Beach, Virginia; thence following the northerly property line N 61degrees40minutes03seconds E, a distance of 38.38' to the point of beginning; thence, following the bounds of the Open Space,
 S 52 degrees32minutes53seconds E a distance of 131.30' to a point;
 thence S 47 degrees58minutes27seconds E a distance of 147.69' to a point;
 thence S 52 degrees32minutes53seconds E a distance of 182.79' to a point;
 thence S 37 degrees22minutes38seconds W a distance of 68.29' to a point; thence with a curve turning to the right with an arc length of 125.04', with a radius of 350.00', with a chord bearing of S 47 degrees36minutes43seconds W, with a chord length of 124.38',
 thence S 57 degrees50minutes48seconds W a distance of 86.49' to a point;
 thence N 32 degrees09minutes12seconds W a distance of 334.05' to a point;
 thence N 76 degrees44minutes19seconds W a distance of 110.00' to a point;
 thence S 62 degrees50minutes18seconds W a distance of 127.90' to a point;
 thence S 14 degrees29minutes28seconds W a distance of 141.66' to a point;
 thence S 41 degrees15minutes46seconds E a distance of 92.43' to a point;
 thence N 82 degrees08minutes10seconds W a distance of 92.63' to a point;
 thence S 62 degrees50minutes44seconds W a distance of 143.25' to a point;
 thence S 89 degrees22minutes51seconds W a distance of 90.12' to a point;
 thence N 72 degrees01minutes21seconds W a distance of 48.33' to a point;
 thence N 84 degrees03minutes23seconds W a distance of 162.06' to a point;
 thence S 68 degrees12minutes45seconds W a distance of 74.15' to a point;
 thence S 51 degrees35minutes54seconds W a distance of 66.85' to a point;
 thence S 17 degrees49minutes26seconds W a distance of 117.43' to a point;
 thence S 06 degrees29minutes20seconds W a distance of 80.76' to a point;
 thence S 09 degrees37minutes51seconds E a distance of 100.00' to a point;
 thence N 75 degrees39minutes58seconds W a distance of 55.39' to a point;
 thence N 05 degrees08minutes36seconds E a distance of 177.39' to a point;
 thence N 22 degrees07minutes27seconds W a distance of 52.72' to a point;
 thence N 36 degrees21minutes39seconds W a distance of 77.33' to a point;
 thence N 61 degrees40minutes03seconds E a distance of 397.71' to a point;
 thence S 28 degrees19minutes57seconds E a distance of 20.00' to a point;
 thence N 61 degrees40minutes03seconds E a distance of 48.85' to a point;
 thence with a curve turning to the left with an arc length of 409.93', with a radius of 425.00', with a chord bearing of N 61 degrees40minutes03seconds E, with a chord length of 394.22', thence N 61 degrees40minutes03seconds E a distance of 273.35' to a point; which is the point of beginning, having an area 5.164 acres

BK 4513PG0283

Exhibit "C"

Legal Description
for
Open Area Part Two

Commencing at a point situate lying and being in the city of Virginia Beach, Virginia at a point on the westerly right-of-way of Indian River Farm and at the southeasterly corner of Indian River Farm as recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia; in Map Book 293 at page 6, thence, following the northerly bounds of Lonnie L. Davis Property, Est. S 51degrees24minutes49seconds W a distance of 36.08' to the point of beginning; thence, following the Open Space S 51 degrees24minutes49seconds W a distance of 153.69' to a point; thence N 19 degrees55minutes15seconds W a distance of 112.82' to a point; thence N 52 degrees37minutes22seconds W a distance of 621.84' to a point; thence S 83 degrees59minutes39seconds W a distance of 99.96' to a point; thence N 32 degrees09minutes12seconds W a distance of 60.00' to a point; thence N 57 degrees50minutes48seconds E a distance of 14.21' to a point; thence N 47 degrees57minutes38seconds W a distance of 179.07' to a point; thence with a curve turning to the left with an arc length of 100.03', with a radius of 400.00', with a chord bearing of N 44 degrees32minutes30seconds E, with a chord length of 99.77', thence N 37 degrees22minutes38seconds E a distance of 10.32' to a point; thence S 52 degrees32minutes53seconds E a distance of 1043.98' to a point; which is the point of beginning, having an area of 2.426 acres .

RECORDED WITH
CERTIFICATE ANNEXED

2001 SP 27 AM 8:42

§ 58.1 802 TAXES PAID
VIRGINIA BEACH, VA.

TESTE:


CLERK, CIRCUIT COURT

This instrument prepared
by Hofheimer Nusbaum, P.C.

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENT, made this 21st day of August, 2001, by

VIRGINIA PARTNERS, L.P., a Texas limited partnership, hereinafter called the "Grantor."

WHEREAS, the Grantor is the owner of certain property containing a total of 93.17 acres, more or less, in the City of Virginia Beach, Virginia, and more particularly described as follows:

Beginning at a point situate, lying and being in the City of Virginia Beach, Virginia, on the westerly right-of-way of Indian River Road at the intersection of the property line dividing the property owned now or formerly by M. R. Overholt and Willard A. White as shown and recorded in Map Book 57, at page 12, in the Clerk's Office of the Circuit Court of Virginia Beach, Virginia; thence following the aforementioned right-of-way of Indian River Road, S 52° 32' 53" E, 1565.18' to a point; thence, following the northerly bounds of the property in the Lonnie L. Davis Estate, S 51° 24' 49" W, 271.76' to a point; thence S 55° 10' 55" W, 119.13' to a point; thence S 55° 55' 34" W, 321.54' to a point; thence S 59° 58' 56" W, 45.47' to a point; thence S 57° 47' 32" W, 524.69' to a point; thence S. 63° 20' 57" W, 589.84' to a point; thence S 60° 46' 27" W, 974' more or less to a point; thence, following the city line dividing the City of Virginia Beach, Virginia, and the City of Chesapeake, Virginia, N 32° 08' 54" W, 1637' more or less to a point; thence, following the northerly bounds of the Annie Ruth Hale White property N 63° 05' 33" E, 1502' more or less to a point; thence S 26° 54' 27" E, 20.00' to a point; thence N 63° 05' 33" E, 804.15' to the point of beginning.

WHEREAS, the Grantor wishes to create a perpetual nonexclusive drainage easement for the benefit of the lots and parcels shown on the subdivision plat referenced above, which easement shall be for the purpose of installation and maintenance of private storm drainage facilities and for the collection and transmission of private storm water through and across the area designated 20' Private Drainage Easement on said plat.

GPIN(s) 1474-80-2839; 1474-80-1875;
HNI:311693.1 1474-80-0891; 1474-80-0732

NOW, THEREFORE, in consideration of the mutual benefits accruing to the Grantor and to future owners of the lots and parcels hereinabove described, the Grantor does hereby declare, create and constitute a perpetual nonexclusive drainage easement twenty (20) feet in width, over and across the side and rear of Lots 45 through 48 inclusive, as shown on the subdivision plat recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 299, at Page 31-34 for the purposes referenced in the second "WHEREAS" clause on page one (1) of this document.

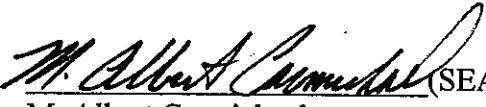
The owners of the above-referenced lot(s) shall use the rights granted by this instrument with due regard to the rights of others and their use of such easement, and shall not use the drainage easement in any way that will impair the rights of others to use it, and shall not obstruct drainage thereon.

The easement hereinabove granted shall run with the land and shall be for the benefit and use of the owners of the lots and parcels shown on the plat referenced above, his or her heirs and assigns, and to the benefit and use of the Grantor and its heirs, successors and assigns.

IN WITNESS WHEREOF, Virginia Partners, L.P., a Texas limited partnership, has caused this Declaration of Easement to be executed pursuant to due authority.

VIRGINIA PARTNERS, L.P.

By: MAC-GP, LLC, General Partner

By:  (SEAL)
M. Albert Carmichael
Manager

BRANCH BANKING AND TRUST COMPANY
OF VIRGINIA

By: [Signature] (SEAL)

By: [Signature] (SEAL)
Trustee

STATE OF VIRGINIA
CITY OF Norfolk, to-wit:

I, Lynda E. Aldridge, a Notary Public in and for the City and State aforesaid, do hereby certify that M. Albert Carmichael, Manager for MAC-GP, LLC, whose name is signed to the foregoing instrument, has acknowledged the same before me in my City and State aforesaid, as General Partner on behalf of Virginia Partners, L.P.

GIVEN under my hand this 21st day of August, 2001.

[Signature]
Notary Public

My Commission expires: 8/31/02

STATE OF VIRGINIA
CITY OF Norfolk, to-wit:

I, Elizabeth A. Goetz, a Notary Public in and for the City and State aforesaid, do hereby certify that Richard J. Rogers, Vice President of Branch Banking and Trust Company of Virginia, whose name is signed to the foregoing Instrument, has acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this 24 day of August, 2001.

[Signature]
Notary Public

My Commission expires: 11/30/02

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Elizabeth A. Goetz Notary Public in and for the City and State aforesaid, do hereby certify that SAMUEL G. SCOTT, Trustee, whose name is signed to the foregoing writing, has acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this 24 day of Aug, 2001.

Elizabeth A. Goetz
Notary Public

My Commission expires: 11/30/02.

RECORDED WITH
CERTIFICATE ANNEXED

2001 SP 27 AM 8:40

§ 58.1 BOX TAXES PAID
VIRGINIA BEACH, VA.

TESTE: [Signature]
CLERK, CIRCUIT COURT

**UNANIMOUS CONSENT IN LIEU OF MEETING
OF THE BOARD OF DIRECTORS OF
INDIAN RIVER FARMS OWNERS' ASSOCIATION**

Pursuant to Section 13.1-865 of the Code of Virginia, 1950, as amended, and Section 4.11 of the Bylaws of Indian River Farms Owners' Association, a Virginia nonstock corporation (the "Association"), the undersigned, being all of the members of the Board of Directors, do hereby authorize, approve and consent to the adoption of the following resolutions and actions contemplated therein, without meeting:

WHEREAS, the Bylaws of the Association were adopted by the Association's Board of Directors ("Board") on September 17, 2001; and

WHEREAS, transition of the Association from Declarant to Owner control is contemplated within the next ninety (90) days; and

WHEREAS, the Owners in the Association have appointed a Transition Committee comprised of Owners; and

WHEREAS, the Transition Committee has suggested, and the Board has approved, a series of amendments to the Articles of Incorporation, the Bylaws and the Architectural Review Board's Guidelines and Rules and Regulations ("Architectural Guidelines") to facilitate management and operation of the Association after transition from Declarant to Owner control; and

WHEREAS, the Board has reviewed the requested amendments, attached hereto as Exhibits A, B and C.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Articles of Incorporation shall be amended to fix the number of directors at five (5), as reflected in the Amendment to Articles of Incorporation attached hereto as Exhibit A; and
2. The Bylaws shall be amended to fix the number of directors at five (5) and to require terms of at least two (2) of the five (5) directors to continue for a term of three (3) years, as reflected in the Amendment to Bylaws attached hereto as Exhibit B; and
3. The Bylaws shall be amended to reduce the quorum of Class A members required to convene an Annual or Special meeting of Members from one-half (1/2) to twenty-five percent (25%), as reflected in the Amendment to Bylaws attached hereto as Exhibit B; and

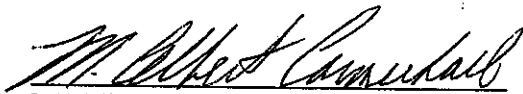
4. The Bylaws shall be amended to change the Annual Meeting of Members from December 1st of each year to a date in May of each year to be determined on an annual basis by the Board of Directors, as reflected in the Amendment to Bylaws attached hereto as Exhibit B; and
5. Rule 8 of the Architectural Guidelines of the Association shall be amended to change the fence guidelines for corner lots, as reflected in the attached Resolution of the Board attached hereto as Exhibit C.

Effective Date: June 10, 2004.

DIRECTORS:

VIRGINIA PARTNERS, L.P.,
a Texas Limited Partnership

By: MAC-GP, LLC,
General Partner

By: 
M. Albert Carmichael, Manager

June 10, 2004