

INDIAN RIVER PLANTATION



HOME OWNERS' ASSOCIATION

DOCUMENTS

Indian River Plantation Home Owners' Association Documents
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**ARTICLES OF INCORPORATION
OF
INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.**

In compliance with the requirements of Chapter 10 of Title 13.1 of the Code of Virginia of 1950, as amended, the undersigned this day, for the purpose of forming a non-stock, non-profit corporation, does hereby certify:

ARTICLE I - Name and Principal Place of Business

The name of the corporation is Indian River Plantation Community Association, Inc., hereinafter called the "Association". The initial principal place of business of the Association shall be 1100 Eaglewood Drive, Virginia Beach, Virginia 23454.

ARTICLE II - Purpose and Powers of the Association

The Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purpose for which it is formed is to provide for the ownership of certain open spaces, parks, recreational areas, greenbelts, and other common areas (collectively the "Property"), the maintenance, preservation, management, operating of said Property and architectural control within the subdivision known as Indian River Plantation (the "Subdivision") located in the City of Virginia Beach, Virginia, all as further described in the Declaration of Covenants, Conditions and Restrictions for Indian River Plantation (the "Declaration") and amendments thereto, if any, recorded, or to be recorded, in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia; and to promote the health, safety and welfare of the lot owners within the Subdivision and for these purposes to:

(1) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and, as the same may be amended from time to time as therein provided, said Declaration being, by this reference, incorporated herein as if set forth at length; and, subject to any limitations set forth in the Declaration, to exercise the powers hereinafter enumerated;

(2) Enforce the covenants, restrictions, easements, charges, assessments and liens provided for in the Declaration to be enforced by the Association;

(3) Fix, levy, collect and enforce payment of by any lawful means, all charges or assessments pursuant to the terms of the Declaration and By-Laws of the Association; to pay all expenses in connection therewith and all office and other expenses incident to the conduct

of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Property;

(4) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of, real or personal property in *connection* with the affairs of the Association;

(5) Borrow money, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as secured for money borrowed or debts incurred; and

(6) Have and exercise any and all powers, rights and privileges which a corporation organized under the aforesaid statutes of the Commonwealth of Virginia by law may now or hereafter have or exercise.

ARTICLE III - Membership

(1) The Association shall be organized without any capital stock.

(2) Every Lot Owner (as that term is defined in the Declaration) shall automatically become a member upon his acquisition of title to any Lot within the Subdivision (as that term is defined in the Declaration) and said membership shall terminate automatically upon said Lot Owner being divested of title to such Lot, regardless of the means by which such ownership may be divested. Baymark Construction Corporation, a Virginia corporation, shall constitute the sole member of the Association until such time as the Declaration has been placed or recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, and some other person(s) has become Lot Owner(s), whereupon Baymark Construction Corporation shall continue as a member with reference to any Lots which it may own and/or any portion of the Indian River Plantation property which it may own. Notwithstanding the foregoing, the membership of Baymark Construction Corporation shall permanently terminate eight years from the date of recordation of the Declaration.

(3) No member shall have the power to convey, assign, mortgage, hypothecate or transfer in any manner, except as an appurtenance to his Lot, any part of, or any interest in, the Association or the real property or other funds and assets of the Association.

(4) The Association shall have one class of members. The voting by the members of the Association shall be on the basis of one vote per Lot owned by a member. The vote allocated to each Lot shall not be divisible.

ARTICLE IV - Board of Directors

The affairs of this Association shall be managed by a board of directors, who need not be members of the Association. The number of directors shall be fixed by, and may be changed by amendment of, the By-Laws.

ARTICLE V - Mergers and Consolidations

Subject to the provisions of the Declaration and to the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of more than two-thirds of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.


ARTICLE VI - Registered Agent

The post office address of the initial registered office is 4560 Columbus Loop, Virginia Beach, Virginia, 23462. The name of the City in which the initial registered office is located is Virginia Beach. The name of the initial registered agent is Carl S. Markowitz, who is a resident of Virginia, a member of the Virginia State Bar, and whose business address is the same as the initial registered office of the Association.

ARTICLE VII - Initial Directors

Name:	Address:
Richard S. Foster	3344 Eagle Nest Point Virginia Beach, Virginia 23452
S. Scott Foster	1604 Gampoint Court Virginia Beach, Virginia 23454
Jeffery A. Foster	1308 Boardwalk Way Virginia Beach, Virginia 23454

Dated this **24th** day of **January 1997**.



Richard S. Foster, Incorporator

STATE OF VIRGINIA

City of Virginia Beach, to-wit:

I, Carl S. Markowitz, a Notary Public in and for the City and State aforesaid, do hereby certify that Richard S. Foster, whose name is signed to the foregoing Articles of Incorporation of Indian River Plantation Community Association, Inc., bearing date on the **24th** of **January, 1997**, has personally appeared before me and acknowledged the same in my jurisdiction aforesaid.

Given under my hand this **24th** day of **January, 1997**


Notary Public

My Commission expires: **October 31, 1998**

Commonwealth of Virginia



STATE CORPORATION COMMISSION

Richmond, January 27, 1997

This is to Certify that the certificate of incorporation of

INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION,
INC.

*was this day issued and admitted to record in this office
and that the said corporation is authorized to transact its business
subject to all Virginia laws applicable to the corporation and its
business. Effective date:*

January 27, 1997



State Corporation Commission

William J. Bridge
Clerk of the Commission

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
INDIAN RIVER PLANTATION**

THIS DECLARATION, made this 17th day of March, 1991, by **BAYMARK CONSTRUCTION CORPORATION, A Virginia Corporation**, being referred to hereinafter as the "Declarant" GRANTOR.

WITNESSETH:

WHEREAS, the Declarant is the Owner of certain property ("Existing Property") in the City of Virginia Beach, Commonwealth of Virginia, which is described on attached Exhibit A on which the Declarant desires to develop into a residential community known as "INDIAN RIVER PLANTATION" with open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described Exhibit B to the covenants, conditions and restrictions, hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the Declarant desires that such real property be subdivided into lots upon which are or will be constructed residential dwellings, which lots and dwellings will be individually owned and the Declarant desires that such open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community property and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has incorporated **INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.**, under the Non stock Corporation Law of the state of Virginia for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Declarant, for itself, its successors and assigns, declares that the real property described in Section 2.01 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

ARTICLE I - Definitions

Section 1.01. Definitions.

The following words, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

A. "Association" shall mean and refer to the **INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.**, its successors and assigns.

B. "Common Area" shall mean all real property (including the improvements thereto and the lakes therein) owned by the Association for the common use and enjoyment of the owners.

C. "Declaration" shall mean and refer to this document of Covenants, Conditions and Restrictions as it may from time to time be supplemented, extended, or amended in the manner provided for herein.

D. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the City of Virginia Beach or (ii) shown as a separate Lot upon any recorded or filed subdivision map.

E. "Declarant" shall mean and refer to **Baymark Construction Corporation, A Virginia Corporation**, its successors and assigns.

F. "Developer" shall mean a builder, contractor, investor or other person or entity who purchases an undeveloped lot for the purpose of constructing improvements thereon for resale to a public purchaser.

G. "Member" shall mean and refer to each holder of a membership interest in the Association, as such interests are set forth in Article III of this Declaration.

H. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The

foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner" shall not include one who has merely contracted to purchase a single-family residence. For the purpose of the enforcement of the rules and regulations of the Association including but not limited to this Declaration and the Bylaws, "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any other person or parties holding any possessory interest granted by such Owner in any Lot.

I. "Property" shall mean and refer to all properties as are subject to this Declaration.

J. "FHA" and "VA" shall mean the Federal Housing Administration and the Department of Veterans Affairs, respectively.

K. "Public Purchaser" shall mean any person or other legal entity who becomes an Owner of any developed Lot within Indian River Plantation.

L. "Single Family Residence" shall refer to a structure containing dwellings located on a separate Lot where the individual dwellings are attached to a boundary line.

M. "Subdivision Plat" shall mean a recorded plat covering any or all the property referred to in this Declaration or annexed thereto.

N. "Tract" means any parcel of land, which becomes part of Indian River Plantation and which contains a subdivision of one or more Lots and may **not** contain Common Area.

O. "Tract Declarations" shall mean any Declarations of Covenants, Conditions and Restrictions which may be recorded by the Declarant, relating to all or part of Indian River Plantation, whether such documents is referred to as a Declaration, Amendment or supplement, which document may amend the Declaration or subject additional Tracts to the scheme of this Declaration, both as provided in this Declaration.

P. "Visible from Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE II - Property Subject To This Declaration Additions Thereto

Section 2.01. Property.

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Virginia Beach and State of Virginia, all of which property shall be hereinafter referred to as "property". The real property initially subject to this Declaration is known as and is described in Exhibit B attached hereto.

Section 2.02. Additional Property.

Other lands ("Additional Property") in addition to the lands described in Exhibit B, may become subject to this Declaration in the following manner:

- a. Lands added by Declarant without consent of Owners.

The Declarant may, without the consent of Lot Owners, within seven (7) years of the date of recording of this Declaration, bring within the scope of this Declaration all or any portion of the lands described in Exhibit A and Exhibit C of this Declaration.

- b. Lands added with consent of Owners.

The Owners of any lands who desires to add such lands to the scope of this Declaration and to subject them to the jurisdiction of the Association may do so upon (i) approval in writing of the Association pursuant to a vote of its Members as provided in its By-Laws and (ii) an amendment to this Declaration.

Such additional lands shall be added to this Declaration by the recording of a supplemental extending declaration, which shall extend the scope of the covenants and restrictions of this Declaration to such additional lands and thereby subject to such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration.

Any buildings or other improvements on such lands or to be constructed on such lands must be harmonious in style to those improvements on lands initially covered by this Declaration. This Section may not be amended to alter or abridge the Declarant's right to bring lands within the scope of this Declaration prior to seven (7) years from the date of recording of this Declaration without the written consent of the Declarant.

Section 2.03. Mergers.

Upon a merger or consolidation of this Association with another Association as provided in its Articles of Incorporation or By-Laws, its properties, rights and obligations may, by

operation of law, be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association *may* administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

ARTICLE III – The Association Structure, Membership, Voting Rights and Directors

Section 3.01. Formation of the Association.

Pursuant to the Non Stock Corporation Law of Virginia, the Declarant has formed Indian River Plantation Community Association, Inc. (the "Association"), to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Articles of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Articles of Incorporation, the Association shall have all the powers and be subject to the limitations of a non stock corporation as contained in the Virginia Non Stock Corporation Law as the same may be amended from time to time.

Section 3.02. Membership.

The Association shall have as members only Owners and the Declarant. All Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Owner" and "Declarant" as found in Article I of this Declaration.

The Association shall have one (1) class of voting membership with an equal vote per Member.

Notwithstanding the foregoing, the Declarant membership shall permanently terminate after eight years from the date of the recording of this Declaration and shall not thereafter be reactivated.

Upon the termination of Declarant membership, no action may be taken by the Association which would serve to impede the installation of Common Area facilities substantially represented in plans of public record particularly as they may have been required and/or approved by public agencies except with the assent of such principal parties including the Declarant, the Federal Housing Administration, the Department of Veterans Affairs, and the City of Virginia Beach.

Section 3.03. Voting; Mortgagee's Control of Votes.

Each Owner, including the Declarant, shall be entitled to one (1) vote for each Lot owned in any portion of the Property covered by this Declaration. There are 48 lots on the property initially covered by this Declaration. Accordingly, there shall initially be 48 votes in the Association. Notwithstanding anything to the contrary which may be contained in this Declaration, if a mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Interest in More Than One Lot.

If any person or entity owns or holds more than one Lot such Owner shall be entitled to the appropriate number of votes for each Lot.

Section 3.05. Lots Owned or Held by More than One Person or by a Corporation.

When any Lot is owned or held by more than one person as tenants by the entirety, in joint or in common ownership or interest, such Owners shall collectively be entitled to only that number of votes prescribed therein for such Lot and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot. In the case of a corporate Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.06. Holder of Security Interest Not a Member.

Any person or entity, which holds an interest in a Lot merely as security for the performance of an obligation, shall not be a Member.

Section 3.07. Assigning Right to Vote.

Subject to the consent of not less than two-thirds (2/3) of all Lot Owners other than the Declarant (except for a transfer to a wholly owned subsidiary of the Declarant) and the filing of an amendment to the offering plan pursuant to which the Declarant has offered interests in the Association, the Declarant may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee of such membership, may make successive like assignments.

Any other Owner shall be entitled to assign his right to vote, by power of Attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.08. Meeting and Voting Regulations.

The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration, the Articles of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the state of Virginia as it may deem advisable for any meeting of its Members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties inspectors of votes, registration of Members for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.09. Selection of Directors.

The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.10. Powers and Duties of Directors.

The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.11. Indemnification of Officers and Directors.

Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

Section 3.12. Declarant's Written Consent Necessary for Certain Actions Taken by Board of Directors.

Notwithstanding anything to the contrary contained in this Declaration, so long as the Declarant or its successor owns or has under construction on lands described in Exhibit A to

this Declaration (whether or not covered by this Declaration) lots equal in number to 25% or more of the number of Lots to which title has been transferred to purchasers for occupancy, but in no event more than three (3) years from the date of recording of the Declaration, the Board of Directors may not, without the Declarant's written consent (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to Association property; (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the relevant phase or phases of the development; (iii) hire any employee in addition to the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the property. Until three (3) years from the date of recording of this Declaration, if the Declarant owns or has under construction on lands described in Exhibit A to this Declaration (whether or not such lands are then subject to this Declaration) lots equal in number to 25% or more of the number of Lots to which title has been transferred to purchasers for occupancy, this Section shall not be amended without the written consent of the Declarant.

ARTICLE IV – Property Rights and Easements

Section 4.01. Dedication of Association Property.

The Declarant intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Members. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Common Area". The Association must accept any such conveyance made by the Declarant provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property.

Every Member (and such Member's quests, licensees, tenants and invitees) shall have a right and easement of enjoyment in and to all Association Property, subject however, to the rights of the Association as set forth in Section 4.03 herein and the right of the Declarant as set forth in Section 4.04 herein. Such easements shall be appurtenant to and shall pass with the interests of an Owner, as defined in Article I, Section 1.01 hereof.

Section 4.03 Rights of Association.

With respect to the Association Property owned, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to:

a. promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interest of the Members;

b. grant easements or rights of way to any public or private utility corporation, governmental agency or political subdivision with or without consideration;

c. dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit the Members) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of two thirds (2/3) of all Lot Owners other than the Declarant who shall vote by written ballot which shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association not less than thirty (30) days nor more than fifty (50) days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance that they are opposed to such conveyance, which opposition must not be unreasonable;

d. enter into agreements, reciprocal or otherwise, with other homeowners' and residents' associations, condominiums and cooperatives for the use of or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Members voting upon written ballot which shall be sent to every Member not less than ten (10) days nor more than sixty (60) days in advance of the date or initial date of the canvass thereof.

Section 4.04. Rights of Declarant.

With respect to Association Property, the Declarant shall have the right, until the completion of the construction, marketing and sale of all dwelling Lots to be constructed on lands described in Exhibit A to this Declaration to:

a. grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes and conduits, including, but not necessarily limited to, water, gas, electric, telephone and sewer.

b. connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property.

c. use the Association Property for ingress and egress to those portions of the Property (as described in Section 2.01 of this Declaration) and any Additional Property added pursuant to this Declaration;

d. operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property, including, but not necessarily limited to, the parking spaces; and

e. grant to itself or to others such easements and rights of way as may be reasonably needed for the orderly development of any Additional Property added pursuant to this Declaration.

The easements, rights-of-way and other rights reserved herein shall be permanent, shall run with the land and shall be binding upon and for the benefit of the Association, the Declarant and its successors and assigns. With respect to its exercise of the above rights, the Declarant agrees (i) to repair any damages resulting within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs, and (ii) until development has been completed, to hold the Association harmless from all liabilities which are a direct result of the Declarant's exercise of its rights hereunder. This Section shall not be amended without the written consent of the Declarant.

Section 4.05. Maintenance of Association Facilities.

In order to preserve and enhance the property values and amenities of the Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

Section 4.06. Right of Association to Contract Duties and Functions.

The Association may contract with any person, corporation, firm, trust company, bank or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums and cooperatives.

Any decision to discontinue independent professional management of certain Association duties and functions and establish self-management therefore shall require the prior written consent of 67% of all Lot Owners, written notice of which proposed decision shall be sent to all Lot Owners and to all lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon. No such decision shall be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing

prior to the date set for voting on the proposed change that they are opposed to such change, which opposition shall not be unreasonable.

Section 4.07. Environmental Considerations.

In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VI and VII herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.08. Easements Reserved to Declarant for Benefit of Additional Property.

Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property in Section 2.01 of this Declaration for the following purposes:

- a. ingress and egress over roadways; and
- b. use and connection with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer and cable television. This easement shall not include the right to consume any water, gas, or electricity for which individual Lot Owners are billed directly without the consent of the individual Lot Owners affected.

Section 4.09. Distribution of Condemnation Awards.

In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article VIII of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the state of Virginia.

ARTICLE V – Assessments and Right of Association To Borrow

Section 5.01. Imposition, Personal Obligation, Lien.

Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

a. Annual assessments or charges for the maintenance and operation of (i) Association Property, (ii) the green areas, (iii) traffic control signage and signage posts, and (iv) the community entrance building, all located within the bounds of Indian River Plantation ("Maintenance Assessments"); and

b. Special assessments for capital improvements ("Special Assessments"); together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Section 5.02. Purpose of Maintenance Assessment.

The purpose of the Maintenance Assessment shall be to fund the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Members of the Association, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance covering the Property, and the Association's officers, directors, Members and employees obtained pursuant to Article VIII of this Declaration, for the maintenance, repair and replacement of all facilities commonly servicing the Members, whether on or off the Lots, such as landscaped areas and management. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages of the Lots. The purpose of the Maintenance Assessment shall also be to fund the replacement of all traffic control signage and signage posts within Indian River Plantation, as the same may be required by the appropriate official(s) of the City of Virginia Beach, including but not limited to the maintenance of the posts and the supply of adequate inventory(ies) of the posts with the City of Virginia Beach. The purpose of the Maintenance Assessment shall also be to fund any necessary repairs to the community entrance building.

Section 5.03. Date of Commencement and Notice of Assessments and Changes in Annual Assessments.

The Assessments provided for herein shall commence on the day on which the developed Lot is conveyed to a Public Purchaser or on such date thereafter as determined by the Declarant. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least thirty (30) days in advance of the beginning of each fiscal year. . The Assessments shall be due and payable quarterly unless the Board of Directors establishes other periods for payment. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least thirty (30) days before due. Written notice of the annual Assessments shall be sent to every Owner subject thereto.

Section 5.04. Assessments for Specific Lots.

Once Assessments have commenced pursuant to Section 5.03 above, the Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments, and Special Assessments.

Section 5.05. Basis for Maintenance Assessment.

Subject to Section 5.04 above, the annual Maintenance Assessment shall be the same for all Lots subject to this Declaration so that the number of Assessed Lots divided into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained) shall determine the annual Maintenance Assessment for each Lot.

Section 5.06. Change in Basis of Assessments.

The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than two thirds (2/3) of the total votes of all Lot Owners, excluding the Declarant, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon, except that: (i) until seven (7) years from the date of recording of this Declaration, if the Declarant owns or has under construction on lands described in Schedules to this Declaration (whether or not such lands are the subject to this Declaration) lots equal in number to 15% or more of the number of all Lots to which title has been transferred to purchasers for occupancy, any change in the basis of Assessment which adversely affects a substantial interest or right of the Declarant with respect to unsold lots shall require the specific consent of the Declarant in writing, which consent shall not be unreasonably withheld; and (ii) no such change shall be made if lending institutions which together are first mortgagees on 33 1/3% or more of the Lots advise the Association in writing,

prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the Court.

Any change in the basis of Assessments shall be equitable and nondiscriminatory.

Section 5.07. Special Assessments for Capital Improvements.

In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto, provided that for any Special Assessment for the construction (rather than the reconstruction or replacement of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, the consent is obtained of two-thirds (2/3) of the total votes of Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Lot Owners at least thirty (30) days in advance, setting forth the purpose of the meeting. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least thirty (30) days prior to the first such due date.

Section 5.08. Non-Payment of Assessment.

If an Annual Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then the balance of the annual assessment shall be deemed delinquent. Any delinquent assessment payment, together with such interest thereon, accelerated future installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessment shall remain such Owner's personal obligation and shall not pass to such Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within ten (10) days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitable and uniformly applied.

If the Assessment or any installment thereof, is not paid within thirty (30) days after the due date, (i) the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, and, if not paid within thirty (30) days after the due date; (ii) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law; (iii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Owner; and (iv) the Association may bring legal action against the Owner personally obligated to pay the same or foreclose the lien against the property, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Owner shall be applied in the following order: Attorney's fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Owner.

There is hereby created a lien, with power of sale, on each and every Lot within the Development to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under the Restrictions, together with Interest thereon. If any assessment remains delinquent for thirty (30) days the Association may elect to record in the deed records a lien on behalf of the Association against the Lot of the defaulting Owner in the appropriate Clerk's office. Such a claim of lien shall be executed by any officer or managing agent of the Association, and shall contain substantially the following information:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address of the Lot against which claim of lien is made;
- (iii) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset thereof);

- (iv) That the claim of lien is made by the Association pursuant to this Declaration;
and
- (v) That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such a lien shall have a priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing body, and the liens, which are specifically described hereinafter. Any such lien maybe foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the Commonwealth of Virginia, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey such Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest, and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in the Development, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 5.09. Notice of Default.

The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.10. Right to Maintain Surplus.

The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates.

Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or any mortgagee or title insurer of such Lot, the Association shall, within a reasonable period

of time, issue and furnish a certificate in writing signed by an officer Or designee of the Association setting forth with respect to each Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, e.g. for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, or title insurer of, or lender on the Lot on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages.

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 5.13. Right to Borrow and Mortgage.

In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the discretion, except that (i) any member of the Board of Directors of the Association who has been elected or appointed *by* the Declarant shall not be permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Declarant; and (ii) any consent of the Declarant as required by Section 3.12 of this Declaration must be obtained.

Section 5.14. Repayment of Monies Borrowed.

In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power to:

a. assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the maintenance assessments hereunder;

b. enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:

- (1) assess the maintenance assessments on a given day in each year and to assess the same at a particular rate or rates;
- (2) establish sinking funds and/or other security deposits;
- (3) apply all funds received by it first to the payment of all principal and interest on such when due, or to apply the same to such purpose after providing for costs of collection;
- (4) establish such collection, payment and lien enforcement procedures as may be required by the note holders;
- (5) provide for the custody and safeguarding of all funds received by it.

ARTICLE VI – Land Use Classifications, Permitted Uses and Restrictions

Section 6.01 Land Use Classifications.

As each Tract or portion thereof within Indian River Plantation is developed and annexed, the use classifications, restrictions, easements, rights of way, and other matters including new or different uses and restrictions thereof, including any number of sub-classifications thereof for any special uses, shall be fixed by the Declarant in any Tract Declaration which may be recorded for that Tract, subject to the approval of FHA and VA. In exercising such authority as granted herein, Declarant shall not impose any new land use classifications or new restrictions which are not generally in consonance with existing uses and restrictions applicable to Indian River Plantation. When property is annexed to Indian River Plantation the use classifications thereof shall be established by the Tract Declaration covering said Property. No restrictive covenants set forth herein nor any other provisions shall in any way apply to land of Declarant not described herein nor annexed by following the procedures set forth herein.

Section 6.02 Permitted Use and Restrictions Single Family.

The permitted uses, easements and restrictions for all property in this classification with Indian River Plantation covered by this Declaration, except for Common Area, shall be as follows:

a. **Single Family Residential Use.**

All property in this classification shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, professional, trade or other non-residential use shall be conducted on any such Property. Nothing herein shall be deemed to

prevent the leasing of all such property to a single family from time to time by the Owner thereof subject to all of the provisions of the Declaration.

b. Building Structure Requirements.

All homes located within Indian River Plantation must be built in compliance with the following:

(i) All homes to be built on a crawl or minimum raised slab with finished floor equal to crawl which shall be wrapped in brick or drivit and shall be constructed a minimum of twenty-four (24'1) inches above finished ground level.

(ii) No roofs (whether home or shed) to be constructed with seventy (70%) percent of the roof with a pitch shallower than 5:12 for a ranch style home or 7:12 for a two-story home. All plans must be approved by the Architectural Committee prior to construction. Minimum standard will be twenty-five (25) year architectural style.

(iii) Wooden or latticework front steps and front porches is prohibited.

(iv) Minimum square footage for homes shall be 2,400 (not including the room over the garage) for ranch style homes and 2,800 for two-story homes.

(v) The exterior colors of the home must be submitted and approved by the Architectural Committee. Established colors shall not be changed without prior approval.

(vi) Mechanical equipment to be located in the rear of the home. If equipment must be placed on the side of the home it must be screened with screening approved by the Architectural Committee.

(vii) The main structure of the home shall not exceed a three (3)-car garage. Detached garages must meet Architectural Standards and must be submitted to and approved by the Architectural Committee prior to construction. No front-loading garages will be permitted.

c. Animals.

No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on the Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to, be visible from Neighboring Property. Upon written request of any Owner, the Board,

which is hereinafter defined, shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is generally recognized as a house or yard pet, or a nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.

d. Protective Screening and Fences.

Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic. Any fence constructed within the community other than the "Delgard Fence" ("Avalon" style which is four feet in height) must be submitted to and approved by the Architectural Committee prior to installation. Fence must be installed with a minimum setback of ten (10) feet from front foundation line of home. Modifications to this standard must be approved by the Architectural Committee.

e. Swimming Pools.

Above ground swimming pools are prohibited.

f. Mailboxes.

Mailboxes shall be black with brick or drivit utilized as an enclosure for the mailbox (to match house) with oval or boxed shape. Mailbox design to be submitted to and approved by the Architectural Committee prior to installation.

g. Garbage and Refuse Disposal.

Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Architectural Committee so as to provide access to persons making such pick-up. The Architectural Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. In no event shall containers be maintained in the front or side yard of any Lot so as to be visible from neighboring property except to make the same available for collection and then, only the shortest time reasonable necessary to effect such collection.

h. Antennae/Satellite Dishes.

To the extent permitted by applicable law, no antenna, satellite dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoor on the Property, whether attached to a building or structure or otherwise, unless approved by the Architectural Committee. Satellite dishes shall not exceed eighteen (18") inches in diameter, shall not be attached to the roof and shall not be visible from the street.

i. Signs.

Except for signs erected by or with the permission of the Declarant in connection with the initial development, lease or sale of Lots or homes, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portions of the Property except with the consent of the Architectural Committee. Only one (1) approved sign of this nature may be displayed.

j. No Above Surface utilities Without Approval.

No facilities, including without limitation, poles and wires for the transmission of electricity or telephone message, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Architectural Committee.

k. Noxious or Offensive Activities.

No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area to the residents or Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electromagnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare; (ii) be injurious to property, vegetation or animals; (iii) adversely affect property values or otherwise produce a public nuisance or hazard; or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

l. Dwelling in Other than Residential Homes.

No temporary building, trailer, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Architectural Committee.

m. Trees and Other Natural Features.

After the transfer of title by the Declarant to a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Architectural Committee. The Architectural Committee in its

discretion may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization.

n. Use and Maintenance of Slope Control Areas.

Within any slope control area shown on any filed map or plat, no improvements, planting or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels. The slope control areas of any Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property and all improvements thereon shall be maintained continuously by the Owner of said Lot or other portion of the Property, except in those cases where the Association or a governmental agency or other public entity or utility company is responsible for such maintenance.

o. Commercial and Professional Activity on Property.

No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Architectural Committee, except (i) by the Declarant in conjunction with the initial construction, development, lease and sale of Lots and homes; and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

p. Outside storage.

Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited.

q. Outdoor Repair Work.

With respect to a Lot or other portion of the Property to which title has been transferred by the Declarant, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Architectural Committee.

r. Oversized, Commercial and Unlicensed Vehicles.

Unless used in connection with the construction or sale of Lots by the Declarant, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property: unlicensed motor vehicles of any type, unless garaged.

s. Lake Use.

No motorized vehicles, boats of *any* type with or without a motor, jet skis or other type motor craft are permitted within the lakes or on the lake banks.

t. Improvements and Alterations.

No improvements, alterations, repairs, change of paint colors, excavations or other work which in *any* way alters the exterior appearance of the Property or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed by the Declarant or a Developer to a Public Purchaser or annexed to Indian River Plantation, whichever is later, shall be made or done without the prior written approval of the Architectural Committee, except as otherwise expressly provided in the Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee or any committee established by the Architectural Committee for the purpose. Pursuant to its rule making power, the Architectural Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement, subject to the Board's approval. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which is not suitable or desirable, in its opinion for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and, without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. All decisions of the Architectural Committee shall be final except for appeals from their decisions upheld by a two-thirds (2/3) vote of the Board and no Lot or other party shall have recourse against the Architectural Committee or the Board for their refusal to accept any such plans and specifications or plot plan, including lawn area and landscaping.

Should the Architectural Committee fail to either approve or disapprove any plans submitted to it within forty-five (45) days from the date applicant submitted such plans, then it shall be deemed that said plans have been approved and applicant may proceed with the same.

ARTICLE VII – Architectural Controls

Section 7.01. Control by Association.

After transfer of title by the Declarant to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance

of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Committee as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Committee.

a. Committee Composition.

The Architectural Committee shall consist of three (3) regular members and two alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board of Directors or an officer of the Association.

b. Alternative Members.

In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

c. Initial Members.

The following persons are hereby designated as the initial members of the Architectural Committee:

- Office No. 1 - Richard S. Foster
- Office No. 2 - S. Scott Foster
- Office No. 3 - Jeffrey A. Foster
- Office No. 4 - Virginia Sancilio
- Office No. 5 - Bonnie G. Herring

d. Terms of Office.

Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for the periods of time indicated below, and until the appointment of their respective successors:

- (i) The term of Office No.1 shall expire one (1) year from the date of the recording of this Declaration.

(ii) The term of Office No. 2 shall expire one (1) year from the date of the recording of this Declaration.

(iii) The term of Office No. 3 shall expire one (1) year from the date of the recording of this Declaration.

(iv) The terms of Office No.4 and Office No.5 shall expire two (2) years from the date of the recording of this Declaration.

Thereafter the term of each Architectural Committee member appointed shall be for the period of three years and until the appointment of his successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

e. Appointment and Removal.

The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board of Directors, provided, however that no regular or alternate member may be removed from the Architectural Committee by the Board of Directors except by the vote or written consent of two-thirds (2/3) of all the members of the Board of Directors. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the Recordation of a Declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed there from.

f. Resignations.

Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to Declarant or to the Board of Directors, whichever then has the right to appoint Committee members.

g. Vacancies.

Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board of Directors; whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

h. Duties.

It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties imposed upon it by the Restrictions. Declarant shall not be subject to the Committee's decisions.

i. Meetings and Compensation.

The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of the Section above, the vote or written consent of any two regular members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of the Restrictions. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the Architectural Committee shall not be entitled to compensation for their services.

j. Waiver.

The approval of the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under the Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

Section 7.03. Submission of Plans to Architectural Committee.

After transfer of title to any Lot or other portion of the Property by the Declarant, no exterior addition, modification or alteration shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and reviewed and approved by, the Architectural Committee. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee.

The Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons:

a. Failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;

b. Failure to include information in such plans as requested;

c. Objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking;

- d. Incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. Failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations:
- f. Any other matter which in the judgment and sale discretion of the Architectural Committee would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the property or portion thereof or with improvement or uses in the vicinity.

Section 7.05. Approval of Architectural Committee.

Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or portion of the Property; and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval.

In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Article VII. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act.

If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within forty-five (45) days after submission thereof, then it shall be deemed that said plans have been approved.

Section 7.08. Committee's Right to Promulgate Rules and Regulations.

Subject to the provisions of Section 7.12 below, the Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions.

The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Committee.

Section 7.10. Liability of Architectural Committee.

No Action taken by the Architectural Committee or any member, subcommittee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Owner, Member or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission.

Section 7.11. Architectural Committee Certificate.

Upon written request of any Owner, mortgagee, or title insurer) of a Lot or other portion of the property, title to which has been previously transferred from the Declarant, the

Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 7.12. Restrictions on Change of Architectural Controls, Rules or Regulations.

The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Owners (excluding the Declarant) voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least forty (40) days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 33 1/3% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

ARTICLE VIII – Insurance and Reconstruction

Section 8.01. Insurance to be Carried.

To the extent reasonably obtained and to the extent obtainable at a reasonable cost, and in such amounts as the Board of Directors of the Association shall determine to be appropriate unless otherwise required herein, the Board of Directors of the Association shall obtain and maintain (1) fire and casualty insurance on Common Areas, (2) liability insurance, (3) directors' and officers' liability insurance, (4) fidelity bond, and (5) workmen's compensation insurance, with coverage to be as follows:

1. Fire and Casualty.

The policy shall cover the interests of the Association, the Board of Directors and all Lot Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value.

2. Liability.

The liability insurance shall cover the directors and officers of the Association, the managing agent, if any, and all Owners, but not the liability of Owners arising from occurrences on such Owner's Lot. The policy shall include the following endorsements: (i) comprehensive general liability (including libel, slander, false arrest and invasion of privacy); (ii) personal injury; (iii) medical payments; (iv) cross liability under which the rights of a named insurer under the policy shall not be prejudiced with respect to such insured's action against another named insured; (v) "severability of interest" precluding the insurer from denying coverage to a Lot Owner because of negligent acts of the Association or any other Lot Owner; (vi) contractual liability; (vii) water damage liability; (viii) hired and non-owned vehicle coverage; (ix) liability for the property of others; (x) host liquor liability coverage with respect to events sponsored by the Association; (xi) deletion of the normal products exclusion with respect to events sponsored by the Association.

Coverage may not be canceled or suspended (including cancellation for nonpayment of premium) or substantially modified without at least thirty (30) days written notice to the insured, including all known mortgagees of Lots or Lots as shown on the records of the Association. Any deductible provision shall apply only to each occurrence rather than to each item of damage. The Board of Directors shall review such coverage at least once each year.

Until the first meeting of the Board of Directors elected by the Owners, this public liability insurance shall be in a combined single limit of \$1,000,000.00 covering all claims for bodily injury and property damage arising out of a single occurrence.

3. Directors' and Officers' Liability.

The directors' and officers' liability insurance shall cover the "wrongful" acts of a director or officer of the Association. The policy shall be on a "claims made" basis so as to cover all prior officers and members of the Board of Directors, and any deductible provision shall apply only to each occurrence and not to each item of damage. If obtainable at reasonable cost, the policy shall not provide for "participation" by the Association or by the officers or directors of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the directors' and officers' liability coverage shall be in the amount of \$250,000.00.

4. Fidelity Bond.

The fidelity bond shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as Obligee and be in an amount not less than the estimated maximum of funds, including reserves, in the custody of the Association or managing agent at

any given time, but in no event less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers or any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the bond may not be canceled or substantially modified (including cancellation for non payment of premium) without at least thirty (30) days' prior written notice to the Association and to all institutional first mortgagees of any Lot(s) whose names appear on the records of the Association.

Until the first meeting of the Board of Directors elected by the Owners, the coverage shall be \$10,000.00 for dishonest acts and \$5,000.00 for forgery. Notwithstanding the above, the Board of Directors shall, at the request of any Lot Owner, Lot mortgagee, or prospective Lot Owner or Lot mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insured of any mortgage made or to be made on any Lot.

5. Workmen's Compensation.

To the extent deemed reasonable and necessary by the Board of Directors, workmen's compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

a. Other Insurance.

The Board of Directors may also obtain such other insurance, as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

b. No Liability for Failure to Obtain Above Coverage.

The Board of Directors shall not be liable for failure to obtain any of the coverage required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is so available only at demonstrably unreasonable cost.

c. Deductible.

The deductible, if any, on insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as assessments under Article V of this Declaration.

Section 8.02. Restoration or Reconstruction After Fire or Other Casualty.

In the event of damage to or destruction of any Common Area insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the damaged property. Any repair or restoration as hereinabove described shall be in substantial accordance with the plans and specifications of the damaged improvements as originally built.

ARTICLE IX – Enforcement, Amendment and Duration of Declaration

Section 9.01. Declaration Runs With The Land.

Each person or entity acquiring an interest in a Lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges and may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 9.02. Enforceability.

a. Actions at Law or Suits in Equity.

The provisions of the Declaration shall bind the Property and shall be construed as running with the Land and shall be for the benefit of and be enforceable by the Declarant and the Association (being hereby deemed the agent for all of its Members), and by any Member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages, which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

b. Penalties and Fines.

In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation or of any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or occupant shall be deemed a Special Assessment against the Lot of such Owner or on which

the home occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 9.03. No Waiver by Failure to Enforce.

The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation, occurring prior or subsequent thereto. No liability shall attach to the Declarant, the Association (or any officer, director, employee, Member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 9.04. Obligation and Lien for Cost of Enforcement by Association.

If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Owner, or (2) any family member, tenant, guest or invitee of the Owner, or (3) a family member or guest or invitee of the tenant of the Owner, or (4) a guest or invitee of (i) any member of such Owner's family; or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot or other portion of the Property owned by such Owner, if any.

Section 9.05. Inspection and Entry Rights.

Any agent of the Association (or the Architectural Committee) may at any reasonable time or times, upon not less than 24 hours notice to the Owner, enter upon a Lot or other portion of the property to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location or the height to which or the manner in which it has been permitted to grow is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within thirty (30) days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 9.06. Default Notices to be Sent to Mortgagees.

The Association shall be notified by each Lot Owner or such Lot Owner's mortgagee of the name of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of any notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration. The Association shall give notice to any such mortgagee of any delinquency of greater than sixty (60) days.

Section 9.07. Amending or Rescinding.

The Declarant, during the time the Declarant owns any Lots, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Lot Owner without such Lot Owner's written consent. All other amendments or a rescission of this Declaration, unless otherwise specifically provided for herein, may be made by obtaining the consent in writing of the Owners of not less than two-thirds (2/3) of all Lots which are subject to this Declaration, not including those Lots Owned by the Declarant. In addition, and notwithstanding the above, until seven (7) years from the date of recording of this Declaration, so long as the Declarant owns or has under construction on lands described in Schedules of this Declaration (whether or not such lands are covered by this Declaration) lots equal in number to fifteen percent (15%) or more of the number of Lots to which title has been transferred to purchasers for occupancy, the written consent of the Declarant will be required for any amendment which adversely affects a substantial interest or right of the Declarant, which consent must not be unreasonably withheld.

In voting for such amendment or rescission, Owners shall have one (1) vote for each Lot owned.

The Owners of every Lot shall receive written notice of every proposed amendment or rescission at least thirty (30) days prior to the date or initial date set for voting on said proposed amendment or rescission.

In addition to the approval of the Owners and Declarant as provided for herein, no amendment or rescission which substantially affects the interest of any lending institution shall be effective if lending institutions which together are mortgagees on one-third or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment or rescission which substantially affects the interest of any lending institution first mortgagees shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least thirty (30) days prior to the date or initial date set for voting on the proposed amendment or rescission.

Section 9.08. Owner Responsible for Tenants.

Any lease of a Lot shall provide that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Lot which such tenant occupies in writing, certified mail, return receipt requested. If the violation is not cured or eviction proceedings commenced against the tenant within fourteen (14) days after the Owner has received notice of such violation, the Board of Directors may pursue any remedies, which it may have pursuant to this Declaration.

Section 9.09. When Amendment or Rescission Becomes Effective.

Any amendment or rescission to the Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the Court. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 9.10. Duration.

The provisions of this Declaration unless amended or rescinded as hereinbefore provided, shall continue with full force and effect against both the Property and the Owners thereof until, and shall, as then in force, be automatically, and without further notice, extended for successive periods of 10 years.

Section 9.11. Construction and Interpretation.

The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interest of the Owners and residents of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 9.12. Conflict with Municipal Laws.

The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 9.13. Change of Conditions.

No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 9.14. Invalidity of Agreement or Declaration.

The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE X - General

Section 10.01. Headings and Captions.

The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretations of the content thereof.

Section 10.02. Right Reserved to Impose Additional Protective Covenants.

The Declarant reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 10.03. Notice.

Any notice required to be sent to the Declarant or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as the Declarant, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 10.04. Right of Association to Transfer Interest.

Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor non profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be

subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the extent as if the successor corporation or trust had been an original party and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the Successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a non profit corporation or trust to take over the duties and responsibilities of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 10.05. Right of Association to Transfer Functions.

Unless otherwise specifically prohibited herein or within the Articles of Incorporation or By-Laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

Section 10.06. Rights of Mortgagees, etc.

The holder, insurer, or guarantor of the mortgage of any Lot in the Development shall be entitled to timely written notice of:

- a. Any condemnation or casualty loss that effects either a material portion of the Property or the Lot securing the mortgage.
- b. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, and
- c. Any proposed action that requires the consent of a specified percentage of the eligible mortgage holders.

The Association shall have no duty to provide the forgoing unless such parties keep the Association advised in writing as to their mailing address and the address of the Lot in which they have an interest.

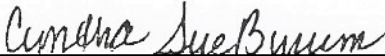
IN WITNESS WHEREOF, BAYMARK CONSTRUCTION CORPORATION has caused this instrument to be executed in its name by its authorized President.

BAYMARK CONSTRUCTION CORPORATION,
a Virginia corporation

By: 
Richard S. Foster, President

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Richard S. Foster, as President of Baymark Construction Corporation, a Virginia corporation, whose name as such is signed to the foregoing writing, has acknowledged the same before me this **29th** day of **April, 1997**.



Notary Public

My Commission Expires: **June 30, 1999**.

**EXHIBIT A TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
INDIAN RIVER PLANTATION**

ALL THOSE CERTAIN five pieces or parcels of land, with the buildings and improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the City of Virginia Beach, Virginia, and being known and designated as "Now Or Formerly Mary Ellen Britt, Et Al (D.B. 184, P. 359)(W.B. 40, P. 567)", "202.672 Acres, Property of Indian River Plantation, Inc.", "13.00 Acres, Property of Indian River Plantation, Inc.", "60.865. Acres, Property of Indian River Country Club Estates" and "16.000 Acres, Property of Robert F. Ripley, Jr. & Thomas Vance", all as shown on that certain plat entitled "BOUNDARY SURVEY OF PROPERTY FOR BAYMARK CONSTRUCTION CORPORATION, JULY 22, 1996, PRINCESS ANNE BOROUGH-VIRGINIA BEACH, VIRGINIA", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 253, at *Page 52*.

**EXHIBIT B TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
INDIAN RIVER PLANTATION**

ALL THOSE CERTAIN lots, pieces or parcels of land, with the building and improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the City of Virginia Beach, Virginia, and being known, numbered and designated as Lots 1 through 13, inclusive, 85, 86, 143 through 157, inclusive, 170, 171, 208, 209, 210, and 225 through 237, inclusive, as shown on that certain plat entitled "SUBDIVISION OF INDIAN RIVER PLANTATION, PHASE ONE - SECTION 1, PROPERTY OF BAYMARK CONSTRUCTION CORPORATION, A VIRGINIA CORPORATION, D.B. 3645, P. 1362, D.B. 3638, P. 1983, PRINCESS ANNE BOROUGH -VIRGINIA BEACH, VIRGINIA", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 259, at pages 27 through 42, inclusive.

**EXHIBIT C TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
INDIAN RIVER PLANTATION**

The lands, or any portion of which, that may be brought within the scope of the Declaration in addition to those lands described in Exhibit A pursuant to Article II, Section 2.02(a) thereof:

- 1) Now or formerly James L. Miller, Trustee
GPIN 1493-75-4622 (197 acres ±)
- 2) Now or formerly Courthouse Estates Associates
GPIN 1493-55-1771 (16 acres ±)
- 3) Now or formerly Courthouse Estates Associates
GPIN 1493-34-4669 (10 acres ±)
- 4) Now or formerly Courthouse Estates Associates
GPIN 1493-44-1938 (10 acres ±)

5) Any and all other properties contiguous to the aforesaid properties and/or contiguous to the property described in Exhibit A, as aforesaid, including, but not limited to, such other properties now or formerly in the name of Courthouse Estates Associates fronting on the north side of Indian River Road or fronting on Riddick Lane.

THIS DEED OF EASEMENT, made this 19th day of March, 2001, by and between MONACO HOMES, INC., a Virginia corporation, ("Monaco") and JSW, L.C., a Virginia limited liability company, ("JSW"), both GRANTORS; and BAYMARK CONSTRUCTION CORPORATION, a Virginia corporation. ("Baymark"), GRANTEE, 1100 Eaglewood Drive, Virginia Beach, Virginia 23454.

WITNESSETH:

WHEREAS, Monaco is the owner in fee simple of certain real property situate in the City of Virginia Beach, Virginia, (hereinafter the "Lots") and more particularly described as follows:

ALL THOSE CERTAIN lots, pieces or parcels of land, with the building and improvements thereon and the appurtenances thereunto belonging, situate, lying and being in the City of Virginia Beach, Virginia, and being known, numbered and designated as Lots 97, 99, 101, 103, 105, 107 and 109, as shown on that certain plat entitled "SUBDIVISION OF INDIAN RIVER PLANTATION, PHASE ONE - SECTION 4, PROPERTY OF BAYMARK CONSTRUCTION CORPORATION, A VIRGINIA CORPORATION, D.B. 3645. P. 1362. D.B. 3638. P. 1988. D.B. 3734. P. 1737, VIRGINIA BEACH. VIRGINIA", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 282, at pages 26 through 33, inclusive.

WHEREAS. JSW is the owner in fee simple of certain real property situate in the City of Virginia Beach, Virginia, (hereinafter the "Lots") and more particularly described as follows:

ALL THOSE CERTAIN lots, pieces or parcels of land, with the building and improvements thereon and the appurtenance, thereunto belonging, situate, lying and being in the City of Virginia Beach, Virginia, and being known, numbered and designated as Lots 96. 98. 100. 102. 104. 106 and 108, as shown on that certain plat entitled "SUBDIVISION OF INDIAN RIVER PLANTATION, PHASE ONE - SECTION 4, PROPERTY OF BAYMARK CONSTRUCTION CORPORATION, A VIRGINIA CORPORATION, D.B. 3645, P. 1362. D.B. 3638, P. 1988, D.B. 3734, P. 1137, VIRGINIA BEACH. VIRGINIA", which said plat is duly recorded in the aforesaid Clerk's Office in Map Book 282, at pages 26 through 33, inclusive.

WHEREAS, Baymark is the owner in fee simple of certain real property situate in the City of Virginia Beach, Virginia, abutting the western, or rear boundary line of the Lots, which property constitutes a portion of the golf course presently under construction by Baymark in the subdivision known as "West Neck" (the "Golf Course Tract"); and

WHEREAS, the Grantors wish to establish, create, and dedicate unto Baymark, certain perpetual easements upon the Lots for drainage, for landscaping and for the installation and maintenance of a concrete golfcart pathway, which easements shall be for the benefit of Baymark and its successors and/or assigns, in conjunction with the construction, maintenance and operation of the golf course upon the Golf Course Tract;

- GPINs: 1493-74-3062, 1493-73-3930, 1493-73-3800, 1493-73-2669,
- 1493-73-2529, 1493-73-1499, 1493-73-1358, 1493-73-1218,
- 1493-73-0118, 1493-73-0047, 1493-72-0907, 1493-62-9877,
- 1493-62-9726, 1493-62-8696

Prepared by:
 ATTORNEY AT LAW
*Conrad, Markowitz
 & Webb, PLLC*
 LAWYERS COMPLIANT COUNSEL # - 3486100
 780 LANSING AVENUE
 VIRGINIA BEACH, VIRGINIA 23452-7825

NOW, THEREFORE, for in consideration of the mutual benefits accruing to the Grantors and the Grantee, Monaco and JSW hereby declare, create, establish and dedicate unto Baymark, and its successors and/or assigns, [1] a perpetual drainage easement and a perpetual landscape easement, all being over and across the westernmost or rear, ten (10) feet of all of the aforesaid Lots, and [2] a perpetual easement for the construction and maintenance of a concrete golfcart pathway over and across the westernmost, or rear, ten (10) feet of Lots 104, 105 and 106.

The Grantors, on their behalf and on behalf of all future owners of the aforesaid Lots, acknowledge that [a] no structure of any kind impeding the natural flow of groundwater within the easement area shall be permitted without the consent of Baymark and/or its successors and/or assigns, [b] decorative landscape shrubs and trees may be planted by Baymark within the easement area as part of the landscaping of the Golf Course Tract and, if so planted, will be maintained by Baymark as herein set forth, and [c] the golfcart pathway shall be used for ingress and egress by Baymark, its successors and/or assigns, in and about the construction and maintenance of the golf course upon the Golf Course Tract and for the use of those guests and invitees of the future owner(s) of the Golf Course Tract engaged in playing rounds of golf thereon and operating golfcarts, upon the golf course during said rounds.

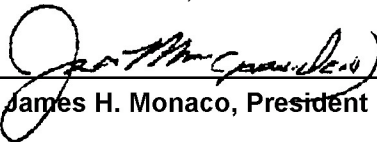
The Grantee, on its behalf and on behalf of its successors and/or assigns, as evidenced by its acceptance and recordation of this instrument, hereby agrees to [a] maintain the concrete golfcart pathway in sound condition, free from rubbish and debris at all times, [b] maintain those decorative landscape shrubs and trees that it causes to be planted within the easement area, and [c] have the option to keep the grass in the easement area mowed and trimmed, as part of the general maintenance of the Golf Course Tract, in the event that the owners of the Lots fail to do so.

The easements hereinabove granted shall run with the land and shall be for the benefit and use of the Grantee and its successors and assigns.

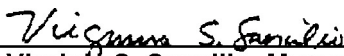
IN WITNESS WHEREOF, Monaco Homes, Inc., a Virginia corporation, and JSW, L.C., a Virginia limited liability company, have caused this instrument to be executed by duly authorized corporate officer and manager, respectively.

PREPARED BY:
RETURN TO:
*Consolidated, Markham
& Webb, PLLC*
LIMITED LIABILITY COMPANY # - 5286787
780 Lakeside Parkway
Virginia Beach, VA 23452-7825

MONACO HOMES, INC.

By: 
James H. Monaco, President

JSW, L.C.

By: 
Virginia S. Sancilio, Manager

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, the undersigned, a Notary Public in and for the City and State, do hereby certify that James H. Monaco, as President of Monaco Homes, Inc., a Virginia corporation, whose name as such is signed to the foregoing writing, has acknowledged the same before me this **21st** day of **March, 2001**.



Notary Public

My Commission Expires: **July 31, 2004**.

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, the undersigned, a Notary Public in and for the City and State, do hereby certify that Virginia S. Sancilio, as Manager of JSW, L.C., a Virginia limited liability company, whose name as such is signed to the foregoing writing, has acknowledged the same before me this **20th** day of **March, 2001**.



Notary Public

My Commission Expires: **July 31, 2004**.

RECORDED WITH
CERTIFICATE ANNEXED

2001 MR 23 AM 9: 56

\$ 50.00 TAXES PAID \$ _____
VIRGINIA BEACH, VA.

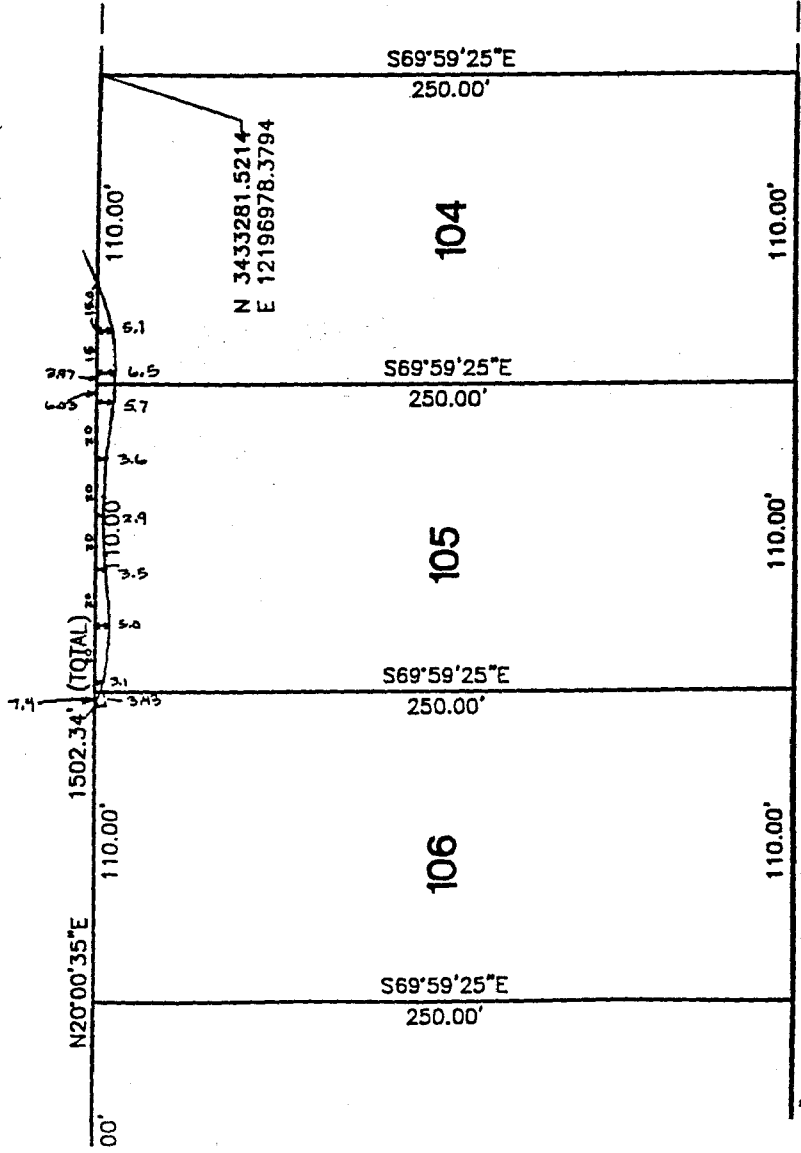
TESTE: 
CLERK, CIRCUIT COURT

3/20/01 Indian River Plantation

P. O. P. A. DAVENANT
DIRECTOR OF PUBLIC WORKS, CITY OF VIRGINIA BEACH, VIRG

SEE SHEET 7 OF 8

* Golf Cart
Encroachments on Lots 106, 105, 104 (within 10' easement)



SEE SHEET 4 OF 8

NESTLEBROOK TRAIL
(50' R/W)
(M.B. 264 P. 65-69)

LEGEND
○ PIN (SET)
● PIN (FOUND)

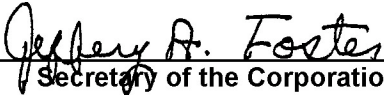
Certified to be
a true and correct
record in
Curtis Fru
Circuit Court
BY: *[Signature]*
De

CORPORATE RESOLUTION
of INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.

The following resolution was unanimously approved by the Board of Directors of INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC., a Virginia corporation, at a Special meeting of the Board held on the **21st** day of **August, 2000**, and remains a valid and subsisting resolution of the Corporation:

BE IT RESOLVED, upon acquisition of record title to a lot in the Indian River Plantation Subdivision by the First owner thereof, other than the Declarant, Baymark Construction Corporation, or a builder, a capital contribution shall be made by such owner, to the working capital of the Association in an amount equal to one fourth (1/4) of the annual Association assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the Association's operating account for use in meeting operating expenses and other expenses incurred by the Association in the discretion of the Board of Directors.

Given under my hand this **21st** day of **August, 2000**.


Secretary of the Corporation

Attest:


President of the Corporation

**BY-LAWS
OF
INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.**

ARTICLE 1 - General provisions

1.1. Identity -- Purpose.

These are the By-Laws of Indian River Plantation Community Association, Inc. (the "Association"). This Association has been organized for the purpose of administering the affairs of the Association.

1.2. By-Laws Subject to Other Documents.

The provisions of these By-laws are applicable to said Association and are expressly subject to the terms, provisions and conditions contained in the Articles of Incorporation of said Association, referred to herein as the "Articles"), and the Declaration of Covenants, Conditions and Restrictions for Indian River Plantation Community Association, Inc. (referred to herein as "Declaration") which will be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, at the time said property is submitted.

1.3. Applicability.

All Lot Owners, tenants and occupants, their agents, servants, invitees, licensees and employees and others that use the Property, or any part thereof, are subject to these By-laws and the documents referred to in Article 1.2 hereof.

1.4. Office.

The office of the Association shall be at the Property or such other place designated by the Board of Directors of the Association.

1.5. Seal.

The seal of the Association shall bear the name of the Association, the word "Virginia", and the year of incorporation.

1.6. Definitions.

All definitions set forth in the Declaration and Exhibits attached thereto are hereby adopted by reference as though set forth herein verbatim.

ARTICLE 2 – Membership; Voting; Proxies; Rules of Order

2.1. Qualification of Members, etc.

The qualification of members, the manner of their admission to membership and termination of such membership, and voting by members shall be as set forth in the Declaration, Articles and in these By-laws.

2.2. Corporate or Multiple Ownership of a Lot.

The vote of the owners of a Lot owned by more than one person or by a corporation, except Declarant, or other entity shall be cast by the person named in a certificate designating the "Voting Member". Such certificate will be signed by all of the owners of such Lot, or the proper corporate officer, filed with the Secretary of the Association, and shall be valid until revoked by subsequent certificate. If such a certificate is not so filed the vote of such owners shall not be considered in determining a quorum or for any other purpose unless a valid proxy is filed as provided below. In the absence of a certificate, in the event that any person appears at a meeting on behalf of a corporation or multiple owner and such person is not challenged by any co-owner present or corporate officer, then such person may cast votes as the representative of such Lot at such meeting.

2.3. Voting; Proxy.

Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated thereon, except as provided in Article 3.5 below, and must be filed with the Secretary before the appointed time of the meeting. Where a Lot is owned by more than one person or a corporation or other entity the proxy must be signed by the "Voting Member", or by all the owners of such Lot, or the proper corporate officer. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the lot owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid, or if the signatures of any of those executing the same has not been witnessed by a person who shall sign his full name and address. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person.

2.4. Voting.

Each Owner, subject to the provisions of Article 2.2 hereof, shall be entitled to cast the number of votes allocated to his Lot. The votes allocated to each Lot shall equal the numerator of the fraction constituting the Lot's Percentage Interest in the Common Area if expressed as a fraction. The vote of such Lot shall not be divisible.

2.5. Majority.

Except where otherwise required by the provisions of the Articles, these By-laws, the Declaration, or where the same may otherwise be required by law, the affirmative vote of the

Owners having a majority of the votes represented at any duly called meeting at which a quorum is present shall be binding upon the members.

ARTICLE 3 – Annual and Special Meetings of Membership

3.1. Annual Meeting.

The first annual meeting of the Members shall be held within one (1) year from the date of closing of the first Lot to a Public Purchaser within the Association and each subsequent regular annual meeting of the Members shall be held during the same month each year thereafter.

3.2. Special Meeting.

Special meetings of the Members may be called at any time by the President or the Board of Directors, or upon any written request of the Members who are entitled to vote one-fourth (1/4) of all the votes outstanding.

3.3. Notice of Meeting; Waiver.

Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting to each member, unless such notice is waived in writing. Such notice will be written and will state the time, place and object for which the meeting is called. Such notice shall be given or mailed to each member not less than twenty-one (21) (21) days nor more than sixty (60) days prior to the date set for a regular meeting. Such notice shall be given or mailed to each member not less than seven (7) days nor more than thirty (30) days prior to a special meeting. If hand delivered, receipt of such notice shall be deemed to be properly given when deposited in the United States mail, postage prepaid, addressed to the member at his post office address as it appears on the records of the Association.

3.4. Notice to Others.

The Declarant, for such time as it has not conveyed all of its interest in Indian River Plantation, (and Managing Agent, if any) shall be entitled to notice of all Association meetings, entitled to attend the Association meetings, and they may designate such persons as they desire to attend such meetings on their behalf and such persons may act with the full authority and power of Declarant.

3.5. Quorum and Adjournment of Meetings.

The presence at the meeting of Members, in person or by proxy, entitled to cast one-tenth (1/10) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members

entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

3.6. Chairman.

At meetings of membership, the President shall preside, or in his absence, the Board of Directors shall select a chairman.

3.7. Order of Business.

The order of business at annual members' meetings, and, as far as practical, at any other members' meeting, shall be:

- 3.7.1. Calling of the roll and certifying of proxies;
- 3.7.2. Proof of notice of meeting or waiver of notice; establishment of quorum
- 3.7.3. Reading of minutes;
- 3.7.4. Reports of Officers;
- 3.7.5. Reports of Committees;
- 3.7.6. Election of Inspector of the Election (when so required);
- 3.7.7. Election of Directors;
- 3.7.8. Unfinished business;
- 3.7.9. New business;
- 3.7.10. Adjournment.

ARTICLE 4 – Board of Directors

4.1. Management of Association.

The affairs of the Association shall be managed by a Board of Directors (hereinafter referred to as Board) consisting of three persons during the Period of Declarant control and five persons after the period Declarant control.

4.2. First Board.

The Board shall, during the period of Declarant's control, consist of three persons, none of whom need be members of the Association. The first Board shall consist of persons designated by the Declarant and they shall serve until replaced by the Declarant or until their successors are elected.

4.2.1. The Declarant shall have the absolute right, at any time, in its sole discretion, to remove any member of the Board designated by Declarant and replace any such person with another person to serve on the Board. Notice of such action shall be given to the Association.

4.2.2. "The period of Declarant's control" means the period ending on the earliest of (1) the date when the Declarant ceases to own Lots to which a total of at least three-fourths of the Common Areas are allocated, or (2) the date specified by the Declarant in a notice to each Lot Owner that the Declarant is relinquishing the rights reserved by the Declarant. Notwithstanding the foregoing, the resignation of all of the members of the Board of Directors at a meeting of the Association shall end the period of Declarant's control.

4.3. Election of Directors.

At the first annual meeting of the Members after transition from the Declarant Board, the members shall elect one (1) director for a term of one (1) year, two (2) directors for a term of two (2) years, and two (2) directors for term of three (3) years; and at each annual meeting thereafter the members shall elect the directors for a three (3) year term.

4.4. Nomination.

Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting subject to procedural rules adopted by the Board. Such rules shall not be established so as to exclude any Member desiring to be a candidate or desiring to submit the name of a candidate from so doing. The Nominating Committee shall consist of a Chairman, who may be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members and shall serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

4.5. Election.

Election to the Board of Directors shall be by secret ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are

entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.6. Organizational Meeting.

The organization meeting of a newly elected Board shall be held within ten (10) days of their appointment, at such time and at such place as shall be fixed by the directors at the meeting at which they were elected and no further notice of the organizational meeting shall be necessary, PROVIDED, a quorum shall be present.

4.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of the time and purpose of regular meetings shall be given to each director, personally or by mail, telephone or telegram, at least three (3) days prior to the day named for such meeting, unless notice is waived. Meetings shall be open to all Owners, and notice thereof shall be given by a newsletter or it shall be posted conspicuously on the Property at least three (3) days in advance, except in an emergency.

4.8. Special Meetings.

Special meetings of the Board may be called by the President or any other two officers. Except in an emergency the notice shall be given as provided in Article 4.7 above and shall state the time, place and purpose of the meeting.

4.9. Waiver.

Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance shall be deemed a waiver.

4.10. Quorum.

A quorum at a directors' meeting shall consist of the directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board except as specifically otherwise provided for in the Articles, these By-laws of the Declaration. If any directors' meeting cannot be convened because a quorum has not attended, or because the greater percentage of the directors required to constitute a quorum for particular purposes have not attended, (wherever the later percentage of attendance may be required as set forth in the Articles, these By-laws, or the Declaration) the directors who are present may adjourn the meeting, from time to time, until a quorum, or the required percentage of attendance if greater than a quorum, is present. At any adjourned meeting, any business, which might have been transacted at the meeting as originally called, may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for all purposes including determining a

quorum, provided that the same be accomplished within ten (10) days from the date of the meeting.

4.11. Presiding Officer.

The presiding officer at directors' meetings shall be the Chairman of the Board, if such an officer has been elected; and if not, then the President shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

4.12. Resignation and Removal.

A director may resign by giving written notice thereof. A director shall be deemed to have resigned upon his termination of membership in the Association (excepting the first Board) or upon his default for thirty (30) days of any of the provisions of covenants of the Declaration and Exhibits attached thereto. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of resignation, the remaining Members of the Board shall appoint a successor who shall serve for the unexpired term of his predecessor.

4.13. Compensation.

No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

4.14. Action Taken Without a Meeting.

The directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

4.15. Powers and Duties.

The powers and duties of the Association may, subject to the limitations set forth herein and in the Act, be exercised by the Board, in the Board's sole discretion. Such powers shall include without limiting the generality of the foregoing, the following:

4.15.1. To adopt the budget of the Association upon majority vote of the directors.

4.15.2. To make, levy and collect assessments against members and members' Lots to defray the costs of the Common Expenses, and to use the proceeds of said assessments in the exercise of the powers and duties granted to the Association.

4.15.3.To provide for the maintenance, repair, replacement, operation, improvement and management of the wherever the same is required to be done and accomplished by the Association for the benefit of its members.

4.15.4.It is understood that the assessments must be sufficient to provide for the payment of all anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Accordingly, the Board is given the power to adopt special assessments providing for any previously unanticipated expenses. Special assessments shall be limited to those items which *are necessary and all other items which can reasonably be deferred to the regular budgetary meeting shall be so deferred.

4.15.5.Upon consent of the membership to administer the reconstruction of improvements after casualty and the further improvement of the property, real and personal.

4.15.6.To adopt and amend administrative rules and regulations governing the details of the operation and use of the Common Areas, real and personal, in the Association, so long as such rules and regulations or amendments thereto do not conflict with the rights, privileges, restrictions and limitations which may be placed upon the use of such property under the terms of the Declaration and Exhibits attached thereto.

4.15.7.To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including Lots in the Association on behalf of the Association, as may be necessary or convenient in the operation and management of the Association and in accomplishing the purposes set forth in the Declaration.

4.15.8.To contract on behalf of the Association for the management of the Property and to delegate to such contractor such powers and duties of the Association as the directors deem fit, to lease or concession such portions thereof and to ratify and confirm any existing leases or concessions of any part of the Property.

4.15.9.To enforce, by legal means, the provisions of the Declaration and any Exhibits attached thereto and the Rules and Regulations promulgated governing the use of the Property.

4.15.10. To cause the Association to pay all taxes and assessments of any type which affect any part of the Property, other than Lots (unless owned by the Association) and the appurtenances thereto, and to assess the same against the members and their respective Lots.

4.15.11. To cause the Association to carry insurance for the protection of the members and the Association against casualty and liability as required by the Declaration.

4.15.12. To cause the Association to pay all costs of power, water, sewer and other utility services rendered to the Association, which is not the specific responsibility of the owners of the separate Lots.

4.15.13. To cause the Association to employ personnel, for reasonable compensation, to perform services required for proper administration of the purposes of the association, including accountants, attorneys, contractors and other professionals. 4

4.15.14. The Association shall have the right, when determined by the Board of Directors to be in the best interests of the Association, to grant exclusive licenses, easement, permits, leases, or privileges to any individual or entity, including Non-Lot Owners, which affect Common Areas and to alter, add to, relocate or improve Common Areas.

4.16. Authority of First Board.

The undertakings and contracts authorized by the first Board, including the first budget, shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by a Board duly elected by the membership.

4.17. Committees.

The Board may delegate portions of its responsibilities to committees established for that purpose.

4.18. Manner of Collection of Common Expenses.

The provisions of Article V of the Declaration setting forth the manner of collection of Common Expenses and other charges are incorporated herein by reference.

ARTICLE 5 - Officers

5.1. Generally.

The officers of the Association shall be a President, one or more Vice Presidents, a Treasurer, a Secretary, and, if desired, one or more Assistant Secretaries, all of whom shall be elected annually by the Board and who may be peremptorily removed by a majority vote of the directors at any meeting. Any person may hold two or more offices, except that the President shall not also be the Secretary or an Assistant Secretary. The Board may, from time to time, elect such other officers and designate to manage the affairs of the Association.

5.2. President.

The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an Association, including, but not limited to, the power to appoint committees from among the members, from time to time, as he may, in his discretion, determine appropriate to assist in the conduct of the affairs of the Association. The President shall be a member of the Board.

5.3. Vice-President.

The Vice President shall in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors or President.

5.4. Secretary.

The Secretary shall keep the minutes of all proceedings of the directors and the members, attend to the giving and servicing of all notices to the members and directors, have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed, keep the nonfinancial records of the Association, and shall perform all other duties incident to the office of Secretary of an Association and as may be required by the directors of President. The Assistant Secretary, if any, shall perform the duties of Secretary when the Secretary is absent.

5.5. Treasurer.

The Treasurer shall have custody of all of the funds, securities and evidence of indebtedness of the Association. He shall keep the assessment rolls and accounts of the members and the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of Treasurer.

ARTICLE 6 – Fiscal Management; Assessments; Liens

The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1. Manner and Notification.

The Board of Directors shall, fix and determine the sums necessary to pay all the Common Area expenses, and other fees of the Association, including maintenance of proper reserves, pursuant to the provisions of the Declaration, Articles and these By-laws. The same shall be assessed against the Owners as provided in the Declaration and all the Exhibits attached thereto. Assessments for the first years (or prorata portion thereof) of the operation of the Property shall be as set forth in a projected budget established by the Declarant as the same may be amended by the Board from time to time.

6.2. Payments of Assessments.

Except as specified to the contrary, funds for the payment of Common Expenses shall be assessed against the Owners in the Declaration. Said assessments notice, unless otherwise required proportions provided in shall be payable, without by the Board. Special assessments, should such be required by the Board, shall be levied in the same manner as hereinbefore provided for regular assessments, except notice thereof shall be given, and shall be payable in the manner determined by the Board. FAILURE TO PAY ANY ASSESSMENT WITHIN TEN (10) DAYS FROM THE DATE DUE, SHALL ENTITLE THE ASSOCIATION TO LEVY A LATE CHARGE AGAINST THE DEFAULTING LOT OWNER OF 10% OF THE AMOUNT OF SUCH ASSESSMENT, AND A LIKE AMOUNT EACH THIRTY DAYS THEREAFTER IF SUCH ASSESSMENT IS NOT PAID. THE PARTIES AGREE THAT THE LATE CHARGE IS NOT A PENALTY BUT IS VALID LIQUIDATED DAMAGES.

6.3. Proposed Budget.

A copy of the proposed one (1) year budget shall be mailed to Owners not less than thirty (30) days prior to the Board of Directors meeting at which the budget will be considered together with a notice of the meeting. If the proposed budget is not adopted prior to the start of the new budget period, an assessment shall be presumed to be made in the amount of the last prior assessment and monthly installments on such assessments shall be due upon each installment payment date until changed by an amended assessment. In the event the assessments prove to be insufficient, the budget and assessments shall be amended at a meeting called for that purpose. Upon adoption, the budget shall be mailed to each Owner within thirty days of the date of adoption.

6.4. Depository; Withdrawals.

The depository of the Association shall be such bank or banks as shall be designated, from time to time, by the directors and in which the monies from such accounts shall be only by

checks signed by such persons as are authorized by the directors. Should the Association employ a Managing Agent, and should in the course of such employment said Managing Agent be charged with any responsibilities concerning control of any of the funds of the Association, then, and in such event, any Agreement with such Managing Agent pertaining to the deposit and withdrawal of monies shall supersede the provisions hereof during the term of any such agreement.

6.5. Records.

The Association shall maintain those records and make available written summaries thereof as required by the Property Owners Act and the Declaration. In addition, an audited financial statement shall be prepared annually and supplied to the membership prior to the adoption of the next ensuing year's budget.

6.6. Fidelity Bonds: Proviso.

Fidelity bonds may be obtained by the Board for and all officers or responsible the Treasurer, Assistant Treasurer, if any, and employees of the Association handling for the Association's funds, and for any contractor handling or responsible for Association's funds. The amount of such bonds shall be determined by the directors. The premiums on such bonds shall be paid by the Association.

6.7. Fiscal Year.

The fiscal year of the Association shall begin on the first day of January of each year.

6.8. Acceleration of Payment of Installments of Assessments.

If an Owner shall be in default in the payment of an installment upon any assessment, the Board may in its sole discretion accelerate the remaining installments for the current fiscal period. Upon notice thereof to the Owner, the accelerated assessment shall immediately become due upon the date stated in the notice, which shall not be less than fifteen (15) (15) days after delivery of or the mailing of such notice to the Owner.

6.9. Default in Payment of any Assessment: Lien.

In the event of a default by an Owner in the payment of any assessment, the Association shall have all rights and remedies provided by law, including, but not limited to, those provided by the Act. A defaulting Lot Owner shall be liable for reasonable attorneys fees and for court costs incurred by the Association incident to the collection of such assessment or enforcement of its lien. Nothing herein contained shall bar a suit to recover a money judgment for unpaid assessments without waiving the lien securing the same.

ARTICLE 7 - Compliance

7.1. Violation by Member: Remedies.

In the event of a violation (other than the nonpayment of an assessment) by the Lot Owner of any of the provisions of the Declaration, these By-laws, or Rules and Regulations adopted pursuant to any of same, the Association shall notify the Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of ten (10) days from the date of notice, the Association shall have the right to treat such violation as an intentional, inexcusable and material breach thereof, and the Association may then pursue any remedy available. No action taken shall be deemed an "election of remedies". Any violations which are deemed by the Board to be a hazard to public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Owner as a specific item and shall be a lien against said Lot with the same force and effect as if the charge was a part of the Common Expenses attributable to such Owner. In the event of a noncontinuing default making the notice period impractical, the Association may take such punitive action, including, but not limited to, the suspension of privileges for reasonable periods of time without a corresponding reduction in assessments. The Association, through its Board of Director, shall have the power to assess reasonable charges against any lot owner for any violation of the instruments or Rules and Regulations by the Owner, his family members, tenants, guests or other witnesses. Before any such charges may be assessed, the Owner shall be given an opportunity to be heard and to be represented by counsel before the Board of Directors or such other tribunal as may be designated by the Declaration, Bylaws or the Board of Directors. Notice of such hearing shall, at least fourteen days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such owner at the address or addresses required for notices of meetings. The amount of any charges so assessed shall not exceed fifty dollars for a single offense or ten dollars per diem for any offense of a continuing nature, and shall be treated as an assessment against such owners' lot.

7.2. No Waiver.

The failure of the Association or of a Lot Owner to enforce any right, provision, covenant or condition which may be granted by any of the provisions of the Declaration shall not constitute a waiver of the right of the Association or Lot Owner to enforce such right, provision, covenant or condition in the future.

7.3. Surviving Liability.

Termination of membership in the Association shall not relieve said party from any liability, financial or otherwise, incurred by said party while a member and shall in no way impair any rights that the Association has, or may have had, against the terminating member.

ARTICLE 8 – Limitation of Liability

Notwithstanding the duty of the Association to maintain and repair the Property, the Association shall not be liable for injury or damage caused by a latent condition in the property nor the injury or damage caused by the elements, or by other owners or persons.

ARTICLE 9 – Parliamentary Rules

Roberts Rules of Order (latest edition) shall govern the conduct of Association proceedings when not in conflict with the Declaration, the Articles, these By-laws, or with the Act.

ARTICLE 10 – Amendments to By-Laws

Amendments to By-laws as hereinafter defined and provided for, shall be proposed and adopted in the following manner:

10.1. Proposal.

Amendments to these By-laws may be proposed by the Board acting upon vote of the majority of the directors or by members of the Association having twenty-five percent (25%) of the votes in the Association, whether meeting as members or by an instrument in writing signed by them.

10.2. Call for Meeting.

Upon any amendment or amendments to these By-laws being proposed by said Board or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Joint Meeting of the members of the Board and the membership for a date not sooner than fourteen (14) days or later than sixty (60) days from receipt by such officer of the Proposed amendment or amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the membership is required as herein set forth. Of as is

10.3. Vote Necessary: Recording.

In order for such amendment amendments to become effective, the same must be approved by or an affirmative vote of 66 2/3% of the entire membership of the Board and by an affirmative vote of the members having 75% of the votes in the Association. Thereupon, such amendment or amendments to these By-laws shall be transcribed, certified by the President or

a Vice President and Secretary or Assistant Secretary of the Association, and a copy thereof shall be recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, within ten (10) days from the date on which any amendment has been affirmatively approved by the directors and members.

ARTICLE 11 - By-Laws Pertaining to Use and Decorum

11.1. Definition.

"Use" and "Decorum" as used herein shall refer to matters pertaining to dress, decorum, noise, use of Lots and Use of Common Area.

11.2. Scope; Remedy for Violation.

These By-laws are reasonably calculated to promote the welfare of the Owners. The violation of such By-laws shall bar any Owner or his family and invitees from the use of the Common Area, as the Board may deem appropriate, and shall subject any person violating the same to any liability imposed by the Declaration and these By-laws.

11.3. Rules and Regulations.

The Association may promulgate Rules and Regulations concerning the use of the Property and shall have the dignity of By-laws.

ARTICLE 12 - Indemnification

12.1. Officers and Directors.

The Association shall and does hereby indemnify and hold harmless every director and every officer, including the first officers and directors, his heirs, executors and administrators, against all loss cost and expenses reasonably incurred by him in connection with any action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other rights to which such director or officer may be entitled.

12.2. Insurance.

The Association may, if available, at the Association's expense, purchase director's liability insurance and shall cause the directors, from time to time serving, to be named insured.

ARTICLE 13 – Owners Responsibility Concerning Liens and Taxes

13.1. Liens and Taxes.

All liens against a Lot, other than for permitted mortgages, taxes or special assessments, shall be satisfied or otherwise removed with ten (10) days of the date the lien attaches. All special assessments upon a Lot shall be paid at least thirty (30) days before becoming delinquent-or as provided in the Declaration, or these By-laws; whichever is sooner.

ARTICLE 14 - Conflict

In the event of any conflict between the By-laws contained herein, or from time to time amended or adopted, and the Declaration, the Declaration shall prevail.

Dated this **17th** day of **March, 1997**.

INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.

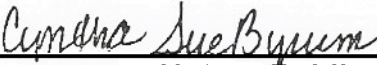
By: _____



Richard S. Foster, President and Director

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Richard S. Foster, as President and Director of Indian River Plantation Estates Community Association, Inc., whose name as such is signed to the foregoing writing, has acknowledged the same before me this **28th** day of **April, 1997**.



Notary Public

My Commission Expires: **June 30, 1999**

ARCHITECTURAL STANDARDS

Dear Resident:

The Indian River Plantation Community Association, Inc. Declaration of Covenants, Conditions and Restrictions requires homeowners to obtain prior approval of the Architectural Committee before undertaking improvements, alterations, repairs, change of paint colors, excavation, removal of trees, or any other work which in any way alters the exterior appearance of any property as it was originally constructed within Indian River Plantation.

The covenants also charge the Architectural Committee to consider and act upon proposals submitted to it, to adopt architectural control rules and to perform other duties imposed upon it by the Indian River Plantation Community Association restrictions.

The enclosed guidelines have been written to help both the homeowner and the Architectural Committee carry out the obligations that we all assumed when we decided to live in the Indian River Plantation community. The guidelines explain how the Architectural Committee functions and provides the homeowner with specific guidance on what alterations are acceptable and unacceptable in the community.

A complete copy of the Articles of Incorporation, Declaration of Covenants, Conditions and Restrictions, and the Bylaws follows page 17 of the Architectural Standard Guidelines.

We, the Board of Directors, hope that all homeowners understand that the purpose of the covenants and these guidelines is to keep Indian River Plantation a desirable community to live in and to help maintain property values.

Thank you,

Board of Directors for
INDIAN RIVER PLANTATION COMMUNITY ASSOCIATION, INC.

Composition of the Architectural Committee

The Architectural Committee consists of three (3) regular and two (2) alternate members. A member is not required to be an Architect or to meet any other particular qualifications. In the absence or disability of any regular member or members the remaining member or members may designate the alternate members to act as substitutes.

The Architectural Committee members are appointed and removed by the Board of Directors identifying each new member appointed to or removed from the committee. The term of appointment is for a period of three (3) years and until the appointment of a successor. Any new member appointed to replace a member will serve that member's unexpired term.

The duties of the Architectural Committee are to consider and act upon applications for alterations submitted to it, to adopt Architectural Committee Rules and to perform other duties imposed upon it by Indian River Plantation Community Association, Inc. restrictions.

The Architectural Committee shall meet as needed to perform its duties. The vote or written consent of any two (2) regular members shall constitute an act of the committee. The committee shall keep and maintain a written record of all actions taken. Members are not compensated for their services. This is volunteer work by Association members.

For additional information about the Architectural Committee, refer to Indian River Plantation Community Association, Inc. Declaration of Covenants, Conditions and Restrictions dated March 17, 1997.

Applying for Approval of Exterior Alterations

1. Homeowner obtains application from the Association Manager.
2. Homeowner returns completed application to Association Manager.
3. Association Manager logs in application and supporting documents. If application is incomplete, the Association Manager should not accept it without warning the Homeowner that it may be rejected because it lacks required or needed information. If the application is complete, or the Homeowner insists, the Association Manager will accept the application, log it in the Architectural Committee Log Book and give the Homeowner the required receipt form. The Homeowner will be advised that an answer to his application will be due forty-five (45) days from the date of the receipt of the application. **(Covenants, Section 7.7)**

4. The Architectural Committee will meet as needed. The Association Manager will give all applications to the Architectural Committee prior to scheduled meetings

5. All applications will be returned to the Association Manager for retention in the Association's files. The Homeowner will receive notification of the approval or disapproval of his application from the Association Manager.

What Makes An Application Complete?

An application is complete when it provides the Architectural Committee with enough information to completely analyze the alteration applied for. Besides filling in all the required information on the application form, the homeowner will probably need to submit supporting documents. Some examples of supporting documents are as follows:

Description of Alteration:

Required for all applications, can be a detailed or simple statement depending on the complexity of the alteration and number of supporting documents.

Copy of Physical Survey:

Required for all applications proposing the addition of new structures, relocating structures or making landscaping changes. This will allow the Architectural Committee to see how the proposal will affect neighboring property.

Description of Materials:

This will allow the Architectural Committee to maintain uniformity within the area.

Contractor's Proposal:

This item is not required, however would provide the Architectural Committee with the maximum amount of information.

This list is not all-inclusive but shows some of the documents that the Architectural Committee may require to support the applications.

What To Do If Application Is Disapproved

If an application is disapproved, the homeowner has the right to appeal the decision to the Board of Directors. The homeowner should contact the Association Manager for the procedures to file an appeal. **(Covenants, Section 7.04)**

Before filing the appeal, however, the homeowner should first consider why the application was disapproved. If the homeowner is willing to accept changes recommended by the Architectural Committee (if they are made), the homeowner can submit an amended application using the previously submitted application as a supporting document, and indicating the changes that will be made to make the application acceptable. If information was missing from the application, the homeowner should resubmit the application with the required information. In any event, any applications resubmitted will start the forty-five (45) day period again. **(Covenants, Section 7.07)**

What If I Don't Wait for Approval?

If you start alterations without first obtaining written approval of your plans, you do so at your own risk. If you fail to submit an application, or if your application is turned down or modified, you may face the cost of removing the alteration plus the cost of litigation. These circumstances may also arise if your property has been altered without approval before you purchased it.

In cases such as those above, every effort is made to work out a reasonable solution to the problem.

What Is the Process for Covenant Enforcement

Enforcement of the covenants is the job of every resident, but the routines are carried out by the Architectural Committee and the Association Manager. When architectural complaints are brought to the attention of the Architectural Committee and the Association Manager, they are kept confidential and are reviewed as promptly as possible. If a complaint is found to be a violation, the property owner is contacted by a formal letter and asked to correct the problem, either by removal or submission of an application or by repair in case of a maintenance problem. Most problems are corrected at this stage.

How Closely Must I Adhere to the Guidelines in This Book?

The covenants give to the Architectural Committee the responsibility to set rules and procedures for architectural control, and the power to interpret the covenants and allow exceptions to their restrictions. The guidelines presented here have been written by the Architectural Committee as a part of their first responsibility.

Based upon the policies and previous decisions of the committees, the guidelines will tell what is most likely to be approved in typical circumstances, and also give you important information on how to prepare your application. (See sample application in the back)

Special circumstances regarding your property may allow the approval of an application, which might be denied at another location, or the denial of one, which might be, approved elsewhere. The fact that your plan has been approved for use at another location does not mean that it is automatically approved for you. **(Covenants, Section 7.05 sub-section (iii))**

Major Building Additions

A full application is required including drawings of the proposed addition and a copy of the homeowner's physical survey.

1. Major building additions include, but are not limited to, greenhouses, porches and room additions.

2. In order to be an esthetically pleasing, the design of major additions should be consistent with the existing shape, style and size of the dwelling in the following ways:

a. Siding, flooring and trim materials should be the same as, or compatible with, the existing materials of the dwelling in color and texture.

b. New windows and doors should be compatible with those of existing dwelling in style and color. These should also be located on walls at the same approximate height as those of the existing dwelling and be trimmed in a similar manner.

c. Roof eaves and fascias should be the same depth, style and approximate height as existing eaves and fascias. New roofs should be the same approximate slope as those existing on the dwelling.

3. The following conditions shall determine the acceptability of additional locations:

a. Additions should not significantly impair the view, amount of sunlight or ventilation of adjacent residences or the public's use or enjoyment of open space. New windows, doors or viewing areas from the addition should not infringe upon existing internal or external private areas of adjacent residences.

b. New additions should not create situations in which adjacent neighbors will have difficulty adding to, modifying or maintaining existing dwellings.

c. Additions must not adversely affect drainage conditions on adjacent properties through changes in grade or other significant run-off conditions.

4. Breaking Ground. Before any digging is initiated the applicant must call MISS UTILITY 1-800-552-7001 for existing locations of utilities.

Maintenance

No improvements, alterations, repairs, change of paint colors, excavations or other work which in any way alters the exterior appearance of any property can be made or done without the prior approval of the Architectural Committee.

No building or structure upon any property shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Please refer to Painting and Staining.

Definitions

Visible from Neighboring Property.

“Visible from Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Animals and Animal Shelters

“No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on the Property and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be visible from Neighboring Property.” **(Covenants, Section 6.02, paragraph c.)**

Antennas

“Antennae/Satellite Dishes. To the extent permitted by applicable law, no antenna, satellite dish or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoor on the Property, whether attached to a building or structure or otherwise, unless approved by the Architectural Committee. Satellite dishes shall not exceed eighteen (18”) inches in diameter, shall not be attached to the roof and shall not be visible from the street.” **(Covenants, Section 6.02, sub-section h.)**

Applications must show specifically the placement of the proposed device. Generally, these devices should not be visible from neighboring properties.

Attic Ventilators, Exterior

Because any attic ventilator exteriorly installed on a home will be visible from neighboring properties, all such ventilators require an application for variance. The following guidelines are intended to help balance individual economic interests with neighborhood esthetic concerns:

1. No part of the ventilator should be visible from a street.
2. The ventilator should protrude no more that twelve (12) inches above the roof surface.
3. To camouflage the ventilator, all exposed parts should be painted the color of the surface the ventilator penetrates.
4. Blocking airflow through the ventilator should be accomplished from the inside of the home.

Awnings and Trellises

Awnings and trellises can effectively control glare and excessive heat build-up on windows and doors. As a result, they may reduce both energy consumption and utility costs. However, these sun control devices can have a considerable effect on the appearance of both a home and the surrounding neighborhood. Hence, whenever the proposed awning or trellis will be visible from neighboring properties, a variance application must be filed.

The Architectural Committee will review these applications based on the following:

1. Compatibility with the home's architectural character, i.e., style, color and materials, preferable cloth and/or wood.
2. Design of the sun control device should be straightforward without decorative fringes, etc.
3. Consistency with the visual scale of the home to which the devices will be attached.
4. Effects of awning or trellises on views, sunlight and natural ventilation of neighboring properties.

Basketball Backboards

Use of basketball backboards are not permitted on any residential property within Indian River Plantation.

Boats, Trailers, Trucks, Recreational Vehicles & Motor Vehicle Repairs

The covenants state in **Article VI, Section 6.02:**

- p. Outside Storage. Outside storage or parking of commercial or recreational vehicles, camper bodies, boats and trailers shall be prohibited.
- q. Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Declarant, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Architectural Committee.
- r. Oversized, Commercial and Unlicensed Vehicles. Unless used in connection with the construction or sale of Lots by the Declarant, or maintenance of the Property, the following shall not be permitted to remain overnight on the Property:

- (i) unlicensed motor vehicles of any type, unless garaged.

s. Lake Use. No motorized vehicles, boats of any type with or without a motor, jet skis or other type motor craft are permitted within the lakes or on the lake banks.

Decks

“All subsequent additions to or changes or alterations in any building, fence, wall or **other structure**, including exterior color scheme, shall be subject to the prior written approval of the Architectural Committee.” **(Article VI, Section 6.02, paragraph t)**

Applications should include the following:

1. A description of the materials to be used.
2. An illustration of the proposed deck, including railings and stairs, dimensions and height above grade.
3. An explanation of any relocation of windows or doors, meters, and heating/air conditioning units.
4. A description of any changes in exterior lighting (refer to residential lighting).
5. A description of plantings to be removed for construction of or added in conjunction with the deck.

The City of Virginia Beach requires a building permit be obtained prior to constructing a deck. Contact the Permits and Inspections offices for more information.

Driveways

Owners of homes in Indian River Plantation are responsible for maintaining their respective homes driveways. Driveways are to be paved.

No application is required for driveway repairs, however, repairs must not alter driveway dimensions and they must be made with the same material as the original. In order to limit future maintenance problems, care should be taken to select the proper material.

Variance applications are required for any additional driveways or extensions of existing driveways. A physical survey should be submitted along with the application. This requirement does not apply to additions or extensions made by the builder at the original sale.

Fences and Protective Screening

Any screen planting, fence enclosures or walls initially developed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said parcel or other portion of the Property unless approved by the Architectural Committee. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic. Any fence constructed within the community other than the "Delgard Fence" ("Avalon" style which is four feet in height) must be submitted to and approved by the Architectural Committee prior to installation. Fence must be installed with a minimum setback of ten (10') feet from front foundation line of home. Modifications to this standard must be approved by the Architectural Committee. **(Covenants, Section 6.02, paragraph d.)**

Repairs to original or approved fencing does not require an application. However, damaged fencing should be repaired within thirty (30) days of damaged occurrence, and repairs must duplicate the original or approved fencing.

Permanent Grills

Permanent grills, which are visible from neighboring property, require an application to the Architectural Committee. If the grill is not visible from neighboring property, no application is necessary. In general, grills should be located behind the home's rear foundation line. For necessary city permits, contact the City of Virginia Beach Permits and Inspections offices.

Gutters and Downspouts

Proper home maintenance requires that gutters and downspouts be kept in good repair. When replacing existing gutters and/or downspouts or portions thereof, no variance application is necessary. However, an application is required if in any way altering, e.g. changing color or relocating the existing systems.

Prior to installing gutters and/or downspouts additional to those present at time of original sale, an application must be filed with the Architectural Committee.

Heating and Air Conditioning

Before installing an external heating and/or air conditioning unit additional to that installed by the builder, a variance application must be filed with the Architectural Committee. An application is also necessary when relocating the builder-installed unit. Window and wall units, which will be visible from neighboring property, are strongly discouraged.

Landscaping

Application is required if any deviations from the builders original landscaping plan is to be made. This does not mean the addition of plants to existing beds. Addition of new beds, trees or other significant landscaping requires approval.

It is the homeowners' responsibility to keep all shrubs, trees and grass neatly trimmed, properly cultivated and free from all trash, weeds, and other unsightly materials. The homeowner is also required to maintain the grass located behind fences and easement property.

The Architectural Committee will consider each application on an individual basis.

Lighting

1. The replacement of an existing light fixture if accomplished with a realistic match to the old fixture does not require approval from the Architectural Committee. If a change in style, size, shape, color or positioning is desired, or if additional light structures are to be installed on existing structures, an application is required.

2. Permanent Exterior Lighting and Wiring. Permanent exterior lighting and wiring requires a full application. All exterior lighting should be installed so as not to shine on adjacent property or public space and should be esthetically planned for each location.

3. Security Lighting. Flood lights and various types of high output lights fall under this group. Exterior lighting of this group should be considered more carefully because of the impact on neighboring properties. Light fixtures of this type should be carefully aimed so that

they illuminate only a specific area, such as a doorway. Some high output light fixtures may have to be shielded in a manner similar to some street light installations to prevent unwanted or excessive intrusion of light from one property to another. A full application is required.

4. Temporary Lighting. Decorative holiday and festival lighting does not require approval, however, holiday lighting shall not be operative prior to the 26th of November in any year, not later than the following 7th of January. It must be totally removed by January 22nd.

5. Breaking Ground. The Architectural Committee requires that before any digging is initiated, the applicant must call Miss Utility at 1-800-552-7001 for existing location of utilities.

Mailboxes

Mailboxes shall be black with brick or drivit utilized as an enclosure for the mailbox (to match house) with oval or boxed shape. Mailbox design to be submitted to and approved by the Architectural Committee prior to installation.

Patios and Walkways

Patios and walkways should be of a natural color and/or natural wood. It should also disturb existing contours as little as possible. Walkways, which shall be extended outside of existing fences, will require an application.

Painting and Staining, Exterior

In accordance with the covenants and to ensure a continued attractive neighborhood appearance, exteriors of all homes and of accompanying structures must be kept neatly and adequately painted and/or stained.

If a home or other structure is to be repainted or restained with either the original builder color or a previous Architectural Committee approved color, no variance application is needed. However, the old and new colors must match; they must have both the same manufacturer and the identical name or number. If either manufacturer or name/number differs, then a color change is involved and an application is required.

Hence, to both avoid unusual colors and maintain visual harmony within Indian River Plantation, changes in either paint or stain colors generally are not permitted. There is an exception to this rule: if either or both the original paint or stain color is no longer available, a color change will be permitted. However, the Architectural Committee cannot approve a particular color change for a given home unless all other homes within the given home's neighborhood approve in writing the change.

Obtaining the necessary approvals is the responsibility of the applying homeowner. Approvals shall be submitted to the Architectural Committee along with the variance application. The Committee recommends that new stain and/or paint colors approximate the original colors as closely as possible. Decisions on stains will be based upon the "final color" (the product of the new stain over the existing color stain).

Any change in siding and/or trim color requires a variance application to be filed. This is true even if the old and new colors differ only slightly.

The Committee will consider color change applications on the basis of the following:

1. The material used to affect the change, i.e. the type of paint or stain to be used.
2. The effect of the proposed color combination on neighborhood appearance.

More specifically, the Committee will review the proposed combination itself, the new combination in conjunction with the home's original color, and the visual effect of the proposed colors on the immediate neighborhood. In general, the Architectural Committee recommends that proposed colors be of the same theme the subdivision of which the home is a part. The Committee also advises using no more than three (3) different colors on a particular home.

Residing and Restyling

The covenant requires all structures to be properly maintained. In addition to keeping siding adequately painted or stained, siding itself must be kept in good repair.

Whether siding is to be wholly or partially replaced, no application is necessary so long as replacement siding is identical to the original siding with respect to not only material but also dimension. If replacement siding will be a type other than the original, a variance application is required.

The Architectural Committee's primary concerns will be the suitability of the new proposed siding material and the visual effect of the new material on neighboring homes. To preserve visual continuity, new siding should resemble original siding as closely as possible.

Replacement siding must be painted or stained the original builder color or a previously approved color. Otherwise, an application for color change is necessary.

Restyling is any relatively permanent change, which alters the exterior appearance of a home. It includes the addition of or change in porches, porch railings, shutters, storm doors, security doors and windows, etc.

Unless the proposed alteration will not be visible from neighboring property, a variance application must be filed. The application should be thorough and should include a detailed plan specifying the materials to be used, paint and/or stain colors, dimensions and any other pertinent information. A sketch of the completed project should also be provided.

The Architectural Committee will review each plan based upon the appropriateness of the alteration, the suitability of the proposed materials, and both the physical effects and the visual impact of the alteration on neighboring properties.

The Committee advises fashioning alterations in accordance with the home's original style. Alterations should have minimal physical and visual effects on neighboring and adjacent properties. Finally, check with the City of Virginia Beach Permits and Inspections offices for necessary permits.

Signs

No more than two (2) sets of residential identification signs, i.e. house numbers, are permitted on a particular home. The total face area of each set of numbers may not exceed seventy—two (72) square inches.

In an emergency situation to aid police, fire and rescue personnel in locating a residence, the Architectural Committee recommends that each home have house numbers that are both prominently displayed at all times and adequately illuminated at night.

“Except for signs erected by or with the permission of the Declarant in connection with the initial development, lease or sale of Lots or homes, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portions of the Property except with the consent of the Architectural Committee. Only one (1) approved

sign of this nature may be displayed.” (**Covenants, Section 6.02, paragraph i.)**)

Sheds and Tool Storage

A shed or other storage structure in addition to that constructed by the builder requires a variance application only if it will be visible from neighboring property. The application should include a detailed plan specifying the proposed structure's lot placement, its dimensions, and the materials to be used. A sketch of the completed structure is also necessary.

The Committee recommends utilizing like building and roofing materials so that the shed style and the home style will be compatible. It should be unembellished.

The City of Virginia Beach requires that a permit be obtained prior to beginning construction. Contact the Permits and Inspections offices.

Smokestacks

Whenever an additional chimney or smokestack is to be built, an application must be filed with the Architectural Committee. In such instances, special care is needed to arrive at an architecturally suitable design. Due to differing home styles and placements, the Architectural Committee must consider applications on a case-by-case basis.

Solar Conductors

Due to the large visual impact solar panels can have on a community, solar collectors generally are discouraged.

The proposed panels should have a minimal visual effect on the immediate neighborhood. They should not be readily visible from a street. They also should lie flat on the home's roof.

Statues, Fountains and Ornaments

Any statue, fountain and/or ornament, including but not limited to window boxes, weather vanes, bird baths, etc., requires a variance application if it will be visible from neighboring property.

Proposed statues, fountains and ornaments should blend with the architectural style of the home and should have minimal visual and physical impact on neighboring properties.

Approval for the display of United States flags is not required so long as the following conditions are met:

1. Only United States flags of an appropriate size (no larger than four by eight feet) may be displayed.

2. Flag must be displayed in accordance with generally accepted rules for display of the flag.

Swimming Pools, Hot Tubs and Spas

If a pool, hot tub or spa is contemplated, a variance application must be filed. The Architectural Committee will examine planned excavation, drainage and, if the pool, hot tub or spa will be visible from neighboring property and surrounding landscaping. All pools, hot tubs and spas must comply with city codes.

Above ground swimming pools are prohibited.

The City of Virginia Beach requires one to obtain a building permit prior to installing a pool, hot tub or spa. Contact the Permits and Inspections office.

Remember that any structure to be built in conjunction with the proposed pool, hot tub or spa (e.g., trellises, decks, etc.), not only may require a building permit, but will also require a variance application if the structure will be visible from neighboring property.

Swing Sets, Sandboxes and Other Play Equipment

If the proposed equipment will be visible from neighboring property, a complete application is required. All play equipment should be located both behind the home's rear foundation line and within a fenced area.

Trash Storage and Collection

Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate outdoors on any portion of the property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Architectural Committee so as to provide access to persons making such pick-up. The Architectural Committee may, in its discretion, adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. In no event shall containers be maintained in the front or side yard of any Lot so as to be Visible from Neighboring Property except to make the same available for collection and then, only the shortest time reasonable necessary to effect such collection.

As far as incinerating leaves, etc., this is a violation of city code and is prohibited within Indian River Plantation.

Trees and Other Natural Resources

"After the transfer of title by the Declarant to a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Architectural Committee. The Architectural Committee in its discretion may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. The Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization."
(Covenants, Section 6.02, paragraph m.)

Woodpiles

All woodpiles must be located both behind their respective home's rear foundation line within a fence or screened area. They may not be "visible from Neighboring Property."

Other Alterations

When a guideline is not available for the project you are proposing, a complete application should be filed.

Architectural Guideline Clarification

The purpose of this memorandum is to help clarify some of the Architectural Standards set forth in the Indian River Plantation governing documents.

The Governing Documents give to the Architectural Committee the responsibility to set rules and procedures for architectural control, and the power to interpret the covenants. (*AC Standards, pg.6, "How Closely..."and Article VII, Section 7.08.*)

The Architectural Committee and the Board of Directors asked for and received, a legal opinion from our Association lawyer concerning Article VII, Section 7.08., and it is his opinion that the Committee may interpret and clarify the AC Standards, Covenants, Conditions and Restrictions, but may not add, change, waver or abandon any control, rule or regulation unless consented to by a vote of not less than two-thirds (2/3) of the membership. (*Article VII, Section 7.12) and (Pender & Coward Letter dated 11 June 2004).*)

Protective Screening and Fences (Article VI, Section 6.02.d)

Any installation of a fence within IRP requires AC approval. Fences constructed within IRP must be black aluminum, no more than 4 feet in height, and similar to the Delgard or Jerith fence. The Avalon style fence is recommended.

Screen plantings may be planted along a homeowner's property line. However, it is the homeowner's responsibility to replace any plants damaged if the easement is used for its intended purpose. There is no height restriction on screen plantings, but no screen planting may be maintained so as to obstruct sight lines for vehicular traffic.

Garbage and Refuse Disposal (Article VI, Section 6.02.g)

The City of Virginia Beach considers residue from lawn mowing, leaves, and trimmings from shrubbery to be waste material and requires that they be disposed of by placing them in your 90-gallon waste container or in clear plastic bags. These bags shall be placed at the curb no earlier than 5 pm of the evening prior to the regularly scheduled collection day. Limbs up to 4 feet long and 6 inches in diameter will be collected in a pile not to exceed 4X4X4feet.

Dwelling in Other than Residential Homes (Article VI, Section 6.02.1)

A temporary trailer may be placed on a Lot and used by a builder during the construction of a new residence, but a written request must be submitted and approved by the Architectural Committee. The Architectural Committee may limit the time that the builder may keep the trailer on the property or remove there permission at any time. The builder shall remove the trailer within 72 hours if permission is removed by the Architectural Committee. This trailer shall not be used at any time as a temporary or permanent dwelling.

Signs (Article VI, Section 6.02.i)

Advertising a product or service is prohibited within IRP. Contractors performing work in our community are not allowed to display their company signs on the property at any time. It is the homeowner's responsibility to inform them of this restriction.

No sign or advertising device of any nature shall be placed for display to the public view on any Lot except with the consent of the Architectural Committee. The Management Company or Architectural Committee shall have the right to enter onto the property without prior notice and to remove any nonconforming and/or unapproved signs from the property.

Trees and Other Natural Features (Article VI, Section 6.02.m)

No tree shall be removed from a Lot without permission from the Architectural Committee. If a tree poses a threat to your property or that of a neighbor, contact the Architectural Committee immediately for verbal permission to remove the tree. An AC application is still required but can be submitted after the tree is removed.

Permitted Use and Restrictions (Article VI, Section 6.02.b. (vi))

If an Emergency Generator is installed on the side of the residence it must be screened from view with screening approved by the Architectural Committee.

Outside Storage (Article VI, Section 6.02.p)

Parking of recreation vehicles, boats or trailers for extended periods of time is prohibited. The parking of these vehicles for short periods of time, no more than 24 hours, to clean, load or off-load items is authorized.

Mobile storage containers, commonly referred to as PODS, are becoming more popular with individuals who must place their personal effects in storage during a move. As a result residents moving in to IRP and utilizing PODS, must have them removed no later than two weeks after initial delivery. Residents unable to comply with this requirement must contact the Architectural Committee and request an extension in writing. An extenuating circumstance is required for an extension to be considered.

Improvements and Alterations (Article VI, Section 6.02.t)

All play equipment must be located behind the home's rear foundation line. Play equipment must be at least fifteen (15) feet from all property lines and shall not encroach on any drainage or maintenance easement. If a top other than unpainted or stained wood is installed, it shall be green in color, so as to blend with the surroundings.

Since awnings will be visible from neighboring properties, careful consideration should be given as to the choice of colors so as to blend with the surroundings and be ethically pleasing. The design of the awning should be straight forward without decorative fringes and be compatible with the home's architectural character.

The exterior materials (i.e. brick, roof, shingles, etc.) used on any additional building, wall or other structure shall be the exact grade, color and style as the exterior materials of the house.

If shutters are added to the exterior of a home, they shall match the color of the existing front door or exterior trim.

No modification, improvement, building, pool, fence, wall or other structure shall encroach upon any drainage or maintenance easement or upon any buffer area.

The City of Virginia Beach and the IRP Architectural Committee have established a procedure for requests to encroach upon the established Buffer areas. Contact the Architectural Committee for complete details and the required City application.

All installation and/or construction shall be in compliance with; your application, the Architectural Committee Guidelines, and the Indian River Plantation Community Association's Governing Documents as well as applicable Building and Zoning ordinances for the City of Virginia Beach and the State of Virginia. The owner/applicant must obtain all necessary permits, licenses and inspections required by the City of Virginia Beach, the State of Virginia and the Federal government, if applicable.

Owners are required to contact Miss Utility for marking their property, prior to commencing any work that requires digging.