

4.05 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE

DATES: The annual assessments provided for herein shall commence as to all improved Lots on January 1, 2000. The annual assessments shall be due and payable quarterly on the 1st day of the month of January, April, July and October of each year unless otherwise established by resolution of the Board of Directors of the Association. The Board of

Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; but in the absence of such action by resolution of the Board of Directors, the annual assessment shall be in the amount last fixed.

Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed by an

officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to

have been paid.

4.06 SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the

assessments provided for A herein shall be subordinate to the lien of any first mortgage or first deed of trust on any Lot. Foreclosure of any such first mortgage or first deed of trust shall extinguish such lien for assessments due prior to such foreclosure (but such assessment lien shall attach to any excess proceeds of the foreclosure), and no such foreclosure shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

4.07 EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE

ASSOCIATION: Any assessment which is not paid when due shall be deemed delinquent,

and the balance of the annual assessment for the year in which delinquency occurs shall also be deemed delinquent. If the assessment, or any part thereof, is not paid within 30 days after

the due date, the Board of Directors of the Association may impose a late payment fee equal to ten percent (10%) of said delinquent amount or \$20.00, whichever is greater, and the assessment and late payment fee shall bear interest from the due date at the rate of eight percent (8%) per annum (or such greater per annum rate as may hereafter, from time to time, be permitted by applicable regulations of the Veterans Administration or by law). No Owner may waive or otherwise escape liability for the assessments provided for herein by non-participation in the activities of the Association or by abandonment of his Lot. In the event of default in the payment of any assessment when due, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, including without limitation, by either or both of the following procedures:

(1) Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against any Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with late payment fees, interest thereon at the rate hereinabove provided from the date of delinquency, and costs of collection, including actual attorney's fees incurred.

(2) Enforcement of Lien. This Declaration creates a lien, with power of sale, on each and every Lot within the Property, to secure payment to the Association of any and all assessments and other sums levied against any and all Owners together with late payment fees, interest thereon at the rate hereinabove provided from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including actual attorney's fees incurred. If such assessment is not paid when due, the Association may elect to record a memorandum of lien on behalf of the Association against the Lot of which such assessment is

delinquent, said memorandum of lien to be recorded in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia. Such a memorandum of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

(i) The name of the Owner at the time of the recording;

(ii) A brief legal description and the street address of such Lot;

(iii) The total amount claimed to be due on the lien for the amount of the delinquency, late payment fees, interest thereon, costs of collection and attorney's fees;

(iv) A statement that the memorandum of lien is filed by the Association pursuant to Article IV of the Declaration;

(v) A statement that a lien is claimed against said Lot in the amount equal to the amount therein stated.

Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the judicial foreclosure of a judgment lien, mortgage or deed of trust as set forth by the laws of the Commonwealth of Virginia, as the same may be modified or amended. The lien provided for in the Declaration shall be in favor of the Association and shall be for the benefit of all Members. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any such Lot. In the event such foreclosure is by action in court, actual attorney's fees incurred, court costs, title search fees, interest and all other costs and expenses shall be allowed. Each Owner, by becoming an

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot, including contract sellers, which is subject by the Declaration to assessment by the Association, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of any

MEMBERSHIP
ARTICLE V

4.09 ASSESSMENT CERTIFICATES: Upon written demand of an Owner or lessee with respect to a Lot which he or she owns or leases, or any prospective purchaser, lessee, occupant, 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 certificates, 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, lessee or title insurer of, or lender on the Lot or Unite on which such certificate has been furnished.

4.08 UNIFORM RATE OF ASSESSMENT: Annual and special assessments must be fixed at a uniform rate for all Lots.

Owner of any Lot expressly consents, and waives any objection to the notice, enforcement and foreclosure of this lien in the manner above provided.

obligation. No Owner shall have more than one membership (although an Owner may have more than one vote as hereinafter set forth). Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment, as aforesaid, by the Association. Ownership of such Lot shall be the sole qualification for membership.

MEMBERSHIP MEETINGS
ARTICLE VI

SECTION 1. ANNUAL MEETING. The first annual meeting of the members shall be held within one (1) year of the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on a date to be determined by the Board of Directors.

VOTING RIGHTS
ARTICLE VII

The Association's voting membership:

Class A Members (the exception of the Class A Members required for membership by Article VI. When more than one person holds such interest in any Lot, all such persons shall be Members, and the vote or votes for such Lot shall be exercised by the majority of such persons among themselves as they may determine. At any meeting of the Members, a representation by any of such persons that a majority of such persons have

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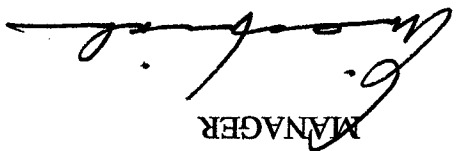
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agreed as to the vote or votes for such Lot shall be conclusive unless another of such persons contest such representation at such meeting prior to the casting of such vote or votes.

Class B. Class B Members shall be the Declarant and builders. Class B Members shall be entitled to three (3) votes for each Lot in which it (they) hold(s) the interest required for membership by Article VI, provided that the Class B membership shall cease and be converted to Class A membership (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (b) on December 31, 2005; whichever shall first occur. Notwithstanding anything herein contained to the contrary, if the Declarant shall, at any time or from time to time, convey one or more undeveloped Lot(s) to any person, firm or corporation, including builders, the Declarant shall continue to have and exercise voting rights with respect to each such Lots to the same extent as if it continued to own such Lots until such Lots are developed and either conveyed to a purchaser for occupancy, or occupied as a dwelling.

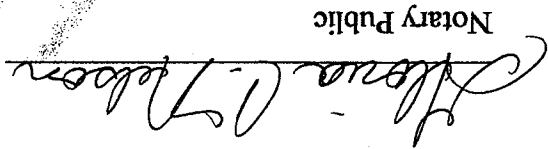
IN WITNESS WHEREOF, Bayberry Associates, LLC has caused this Declaration to be signed in its name on its behalf by its manager thereunto duly authorized this 17th day of August, 1999.

BAYBERRY ASSOCIATES, LLC
By: GALBERRY CORPORATION,
MANAGER


Emil A. Viola, President

STATE OF VIRGINIA
CITY OF Charlottesville, to-wit:

The foregoing instrument was acknowledged before me this 17th day of August, 1999, by Emil A. Viola, President of Galberry Corporation, Manager of Bayberry Associates, LLC, a Virginia limited liability company, on behalf of the company. My commission expires: October 31, 2001


Notary Public

INSTRUMENT #590010284
RECORDED IN THE CLERK'S OFFICE OF
SUFFOLK ON
AUGUST 18, 1999 AT 01:14PM
HENRY C. MURDEN, CLERK

Henry C. Murden
BY: *Henry C. Murden*

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All of that certain tract or parcel of land, situated in Sleepy Hole Borough, in the City of Suffolk, State of Virginia, containing 37.332 acres, more or less and designated Parcel D, Tax Section 12, Parcel 27, on that certain plat entitled "Plat Showing Subdivision of Property Owned by William L. Sawyer and Juanita W. Sawyer and Edward Rabey III and Constance E. Rabey," made by BOUNDARY FIRST, P.C., SURVEYORS, ENGINEERS & PLANNERS, dated September 16, 1996, revised October 10, 1996, and duly recorded in Plat Cabinet 1 and Slide 186-C, D, E & 187-A & B in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia. Reference to said plat being made for a more particular description of said property.

PARCEL TWO:

All of that certain tract or parcel of land, situated in Sleepy Hole Borough, in the City of Suffolk, State of Virginia, containing 51.128 acres, more or less and designated Parcel B, Tax Section 12, Parcel 27, on that certain plat entitled "Plat Showing Subdivision of Property Owned by William L. Sawyer and Juanita W. Sawyer and Edward Rabey III and Constance E. Rabey," made by BOUNDARY FIRST, P.C., SURVEYORS, ENGINEERS & PLANNERS, dated September 16, 1996, revised October 10, 1996, and duly recorded in Plat Cabinet 1 and Slide 186-C, D, E & 187-A & B in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia. Reference to said plat being made for a more particular description of said property.

PARCEL ONE:

EXHIBIT "A"