

Commonwealth of Virginia



STATE CORPORATION COMMISSION

Richmond, March 26, 1997

This is to Certify that the certificate of incorporation of

ASHBRIAR HOMEOWNERS ASSOCIATION

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:

March 26, 1997



State Corporation Commission

William J. Bridge
Clerk of the Commission

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

March 26, 1997

The State Corporation Commission has found the accompanying articles submitted on behalf of

ASHBRIAR HOMEOWNERS ASSOCIATION

to comply with the requirements of law, and confirms payment of all related fees.

Therefore, it is ORDERED that this

CERTIFICATE OF INCORPORATION

be issued and admitted to record with the articles of incorporation in the Office of the Clerk of the Commission, effective March 26, 1997.

The corporation is granted the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By



Commissioner

CORPACPT
CIS20436
97-03-26-0072

ARTICLES OF INCORPORATION
FOR
ASHBRIAR HOMEOWNERS ASSOCIATION

This is to certify that I, the undersigned, do hereby establish a corporation under the provisions of the Virginia Non-Stock Corporation Act, Chapter 10 of Title 13.1 of the Code of Virginia, for the purpose and in the name hereafter stated and to that end set forth the following:

ARTICLE I

NAME

The name of this corporation is **ASHBRIAR HOMEOWNERS ASSOCIATION** (the "Association") which is hereby incorporated as a nonstock corporation pursuant to Chapter 10 of Title 13.1 of the Code of Virginia (1950) as amended (the "Act"). The duration of the corporation is perpetual. The corporation shall be a community association, as that term is defined in the Act.

ARTICLE 2

INTERPRETIVE PROVISIONS

Article 2.1. Definitions. Terms used herein without definition shall have the meanings specified for such terms in Article 13.1-803 of the Act. Capitalized terms used herein or in the Bylaws shall have the meanings specified for such terms in the Declaration for the Ashbriar subdivision made by Ashbriar, LLC, a Virginia limited liability company and recorded, or to be recorded, in the Clerk's Office of the Circuit Court of the County of Loudoun, Virginia.

Article 2.2. Construction of Association Documents.

(a) **Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the document in which used or any provision thereof.

(b) **Pronouns.** The use of the masculine gender shall be deemed to include the feminine and neuter genders, and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

(c) Severability. Each provision of an Association Document is severable from every other provision and the invalidity of any one or more provisions shall not change the meaning of or otherwise affect any other provision. To the extent that any provision of the Association Documents is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent practicable, the provision shall be enforced.

(d) Interpretation. If there is any conflict between the Association Documents, the Declaration shall control, except as to matters of compliance with the Act, then the Articles of Incorporation shall control. Particular provisions shall control general provisions, except that a construction consistent with the Act shall in all cases control over any construction inconsistent therewith. The provisions of the Bylaws shall control over the provisions of any rule, regulation or other resolution adopted pursuant to any of the Association Documents.

(e) Complementarity of Association Documents and Incorporation by Reference. The Association Documents shall be construed together and shall be deemed to incorporate one another. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. Any provision of any Association Document referenced in any other Association Document with the intent to incorporate the provisions of the Association Document into the other Association Document, shall be deemed incorporated therein.

ARTICLE 3

PURPOSE

The Association does not contemplate pecuniary gain or profit to its Members. The purposes for which the Association is organized is to:

- (1) provide for the Upkeep of the Common Area and, to the extent provided in the Association Documents, of the Lots;
- (2) establish and administer the architectural standards governing the Property;
- (3) exercise all powers and perform all duties and obligations of the Association as set forth in the Association Documents with respect to all or any portion of the Property; and
- (4) exercise the powers now or hereafter conferred by law on Virginia nonstock corporations necessary or desirable to accomplish the above purposes.

ARTICLE 4

MEMBERSHIP AND VOTING

Article 4.1. Membership. Members of the Association shall at all times be, and be limited to, the Declarant and the Persons who constitute Owners of the Lots. If more than one Person owns a Lot, then all of the Persons who own such Lot shall collectively constitute one owner and be one Member of the Association. Each such Person is entitled to attend all meetings of the Association. Membership in the Association is mandatory and terminates automatically with termination of ownership of a Lot.

Article 4.2. Class of Members; Voting Rights.

(a) **Classes; Voting Rights.** The Association shall have the following classes of Members:

- i. The Class A Members shall be the Owners of Lots, other than the Declarant, and shall have one vote for Lot owned by such Owner.
- ii. The Class B Member shall be the Declarant, and shall have three votes for each Lot owned by the Declarant.
- iii. When all the Lots have been conveyed to Owners other than the Declarant, the Class B membership shall expire.

(b) **Additional Provisions Governing Voting.** Additional provisions governing voting rights and procedures shall be as set forth in the Bylaws.

Article 4.3. Required Vote. A Majority Vote of the Members shall be necessary for the adoption of any matter voted upon, except that: (1) at least a Sixty-seven Percent Vote of the Members shall be necessary to adopt any amendment of these Articles or to dissolve the Association; (2) the vote required to approve any amendment to these Articles or the Bylaws which would impair the rights of the Declarant under the Association Documents or to dissolve the Association must include the affirmative vote of the Class B Member; and (3) directors shall be elected in accordance with Article 5.1 below. Voting shall not be conducted by class. The Association shall not take any action in violation of the provisions of the Declaration.

ARTICLE 5

BOARD OF DIRECTORS

Article 5.1. Election of Directors and Term of Office.

(a) **Declarant-Controlled Board of Director.** The initial Board of Directors shall consist of three persons; thereafter, the number of directors may be increased to not more than five directors pursuant to this subsection and the Bylaws. Except as provided in this section, all directors shall be appointed by the

Class B Member who shall appoint, remove and replace all such directors at will, and designate the terms thereof, until the meeting described in Subsection 5.2(b). The term of office of at least one but less than three of the directors first appointed by the Class B Member shall expire at the third annual meeting following their appointment, the term of office of at least one but less than three of the directors shall expire at the second annual meeting following their appointment and the term of office of at least one but less than three of the directors shall expire at the first annual meeting following their appointment. The actual number of directors whose term of office expires at each of the three annual meetings described in the preceding sentence shall be one-third (or a fraction as near to one-third as possible) of the total number of directors. Thereafter, each director shall serve for a three-year term. If the aggregate number of directors is increased pursuant to this Article, terms shall be established so that one-third (or a fraction as near to one-third as possible) of the total number of directors is appointed/elected each year.

All Members with voting rights (including the Class B Member) shall elect the directors representing the Members. No positions on the Board are reserved for representatives of either the Class A or Class B Members.

Article 5.3. Qualifications. No person shall be eligible for election as a member of the Board of Directors unless such person is an Owner, an Owner's spouse, the Declarant (or a designee of the Declarant) or a Mortgagee in possession (or a designee of a Mortgagee in possession). No Owner or representative of such Owner shall be elected as a director or continue to serve as a director if such Owner is more than sixty days delinquent in meeting financial obligations to the Association.

Article 5.4. Action by Board of Directors. At all meetings of the Board of Directors a majority of the total number of directors shall constitute a quorum for the transaction of business, and a Majority Vote of the directors while a quorum is present shall constitute a decision of the Board of Directors, unless otherwise provided in the Act, these Articles of incorporation or the Bylaws. The Bylaws may be amended solely in accordance with the Bylaws. The Board of Directors may not mortgage, pledge or dedicate to the repayment of indebtedness or otherwise transfer, convey or encumber any or all of the Association property without the approval of the Members and Mortgagees as required by Article 13.4 of the Declaration.

Article 5.5. Removal or Resignation of Directors. Except with respect to initial directors, directors elected by the Class B Member and replacements thereof, at any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by Members entitled to cast a majority of the total number of votes and a successor may then and there be elected by the Members to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given at least ten days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. The notice given to Members of such meeting shall state that one of the purposes of the meeting is to remove such director. The Class B Member may remove and replace any initial director or any director elected by the Class B Member or a replacement thereof at will pursuant to Article 5.2 hereof. A director may resign at any time giving notice to the Board of Directors, the President or the Secretary. Unless otherwise specified, such resignation shall take effect upon the receipt thereof and the acceptance of such resignation shall not be necessary to

make it effective. Except for an initial director, any director elected by the Class B Member or replacement thereof, a director shall be deemed to have resigned upon disposition by the Owner of the Lot which made such person eligible to be a director, or if not in attendance at three consecutive regular meetings of the Board, if the minutes reflect the Board's decision to remove the director for such absences. No director need be a resident of the Property, but beginning at such time as the directors are elected by all Members entitled to vote rather than elected solely by the Class B Member and at all times thereafter, if any director was a resident when elected by all the Members such director shall be deemed to have resigned at such time as such director ceases to be a resident.

Article 5.6. Vacancies. Vacancies on the Board of Directors caused by any reason other than the removal of a director by the Members, or the Class B Member, if appropriate, shall be filled by a Majority vote of the remaining directors at the meeting of the Board held for such purpose promptly after the occurrence of such vacancy or, if the directors remaining in office constitute fewer than a quorum, an affirmative vote of the majority of the directors remaining in office even though the directors present at such meeting constitute less than a quorum. Each person so elected shall be a director until a successor shall be elected at the next annual meeting of the Association. Vacancies caused by removal of a director by the Members shall be filled by a vote of the Members, pursuant to Article 5.5 hereof, and shall serve the remainder of the term of the director being replaced. The Class B Member shall designate the successor to an initial director or any director elected by the Class B Member. The term of the replacement directors shall expire so that the staggered terms shall remain unaffected.

ARTICLE 6

INITIAL REGISTERED OFFICE

The registered office of the Association is located at 11800 Sunrise Valley Drive, Suite 424, Reston, Virginia 22091 located in the county of Fairfax, Reston, Virginia 22091. The name and address of the resident agent of the Association is Michael M. Mannix, Suite 1000, 8300 Greensboro Drive, McClean, Virginia; the resident agent is a Member of the Virginia bar.

ARTICLE 7

AMENDMENT

These Articles may not be amended unless the amendment is adopted by at least a sixty-seven percent Vote of the Members. pursuant to Article 13.1-886 of the Act. No amendment to these Articles may diminish or impair the rights of the Declarant without the affirmative vote of the Class B Member, if any. The Association may not make any amendment in violation of the Declaration.

ARTICLE 8
DISSOLUTION

The Association may not be dissolved unless the resolution to dissolve is adopted by Members entitled to cast at least eighty percent of the total number of votes, including the affirmative vote of the Class B Member, if any. The Association may not be dissolved except in accordance with Article 13.4 of the Declaration.

ARTICLE 9
LIMIT ON LIABILITY

In every instance in which the Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation or its Members, the directors and officers of the Association shall not be liable to the Association or its Members.

ARTICLE 10
INDEMNIFICATION

The Association shall indemnify the directors, officers and Members of the Covenants Committee (in their agency capacity) to the extent that it is contemplated a nonstock corporation may indemnify its directors, officers and employees pursuant to Sections 13.1-875 through 13.1-883, inclusive, of the Act; Provided, however, that before the Association uses association funds for indemnification, all insurance proceeds must be obtained and applied toward such indemnification.

INCORPORATOR:


Jan A. Zachariasse

Dated: March 13, 1997