

*Declaration  
Of  
Covenants, Conditions & Restrictions*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE OAKS ON HENRY HOMEOWNERS ASSOCIATION, INC.**

**AMENDED AND RESTATED APRIL 2006**

The following is a complete compilation of articles from The Oaks' founding "Declaration of Covenants, Conditions, and Restrictions" from 17 January 1984, as amended on 17 April 2006 by 79% of the Association membership. Both original documents are recorded at the Williamsburg/James City County Court House. This restatement of the combined 1984 Declaration and its 2006 Amendment (minus the opening recitals) is designed as a handy alternative to navigating two separate documents.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to The Oaks on Henry Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners and conveyed to the Association by deed from Shellis, Inc.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to The Oaks on Henry Homeowners Association, Inc., a Virginia corporation, its successors and assigns.

Section 7. "Good-standing" shall mean and refer to the status of an Owner in which he is current and in compliance with all obligations of Owners set forth in the Declaration, the by-laws of the Association, and the rules and regulations adopted from time to time by the Association applicable to the use of the Properties.

Section 8. The term "Member" when used in this Declaration in the context of voting or giving assent, consent, or agreement, shall mean an Owner. In this context, each Member shall be entitled to give only one assent, consent, agreement or vote for each Lot owned. In the event an Owner is composed of more than one person or entity, those constituting the Owner by having an ownership interest in a Lot, upon agreement between them, may give one assent, consent or agreement, or cast one vote.

**ARTICLE II**  
**PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations and of these declarations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two thirds (2/3) of members in good standing has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to members of his/her family, tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. The Association may in accordance with the Bylaws, delegate the use of all parking spaces allocated for the development.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the living units situated upon the Properties.

Section 3. Maximum Annual Assessment.

- (a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) The maximum annual assessment may be increased above five percent (5%) by assent of a majority of members in good standing who are voting in person or by proxy at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any Common Areas Maintenance, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of members in good standing who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies of the majority of the membership in good standing shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected only on a monthly basis.

Section 7. Annual Assessment; Due Dates. 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. Written notice of the annual assessment shall be sent to every Owner subject thereto. Payments for the annual assessment shall be made in monthly installments due on the first day of each month. The Association shall, upon demand by an Owner, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within 30 days from the date due shall result in assessment of a late charge against the Lot for which the assessment was not paid of \$25.00, or such other amount as the Board of Directors of the Association may establish from time to time, and such unpaid assessments shall bear interest at eighteen percent (18%) per annum until paid. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V  
ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI  
OCCUPANCY OF LOTS

Section 1. Definition of Family. For purposes of this Article, "Family" shall include the following: (1) an individual, whether male or female; (2) two or more persons related by blood, adoption, marriage or guardianship, living and cooking together as a single housekeeping unit; (3) a number of persons, not exceeding two, living and cooking together as a single housekeeping unit though not related by blood, adoption, marriage or guardianship; (4) not more than two unrelated persons living and cooking together as a single house-keeping unit, along with one or more dependents related to either of them by blood, marriage, adoption or guardianship; (5) one or more individuals who have not attained the age of eighteen years being domiciled with (i) a parent or other person having legal custody of such individual or individuals, or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. For purposes of this definition, the term "legal custody" shall include the status of a person who is in the process of securing legal custody of an individual who has not attained the age of eighteen years of age. "In the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such individual in a court of competent jurisdiction.

Section 2. Lots to Include Structures. For purposes of this Article, "Lot" includes the real estate by which that term is otherwise defined in the Declaration as well as all structures, dwellings and improvements upon that real estate.

Section 3. Lots Restricted to Family Use. No Owner shall occupy nor permit to be occupied any Lot by other than one Family.

Section 4. Definitions Related to Rental. For purposes of this Article "rental" shall mean a Lot occupied by a person or persons other than the record Owner and not occupied by the Owner. For purposes of this Article the terms "rent", "renting" and "rented" shall be construed to conform with the definition of rental. For purposes of this Article, the term "tenant" shall mean the occupants of a Lot that is a rental.

Section 5. Rental Restrictions. The rental of Lots shall be subject to such reasonable rules and regulations as may be established from time to time by the Association, which shall not conflict with this Declaration. Rental of Lots shall be restricted as follows:

- a. Occupancy of Lots shall at all times be in accordance with the provisions of the Declaration.
- b. No Owner shall rent a Lot for hotel or transient purposes or for a term of less than twelve (12) months duration.
- c. No Owner shall rent less than all of a Lot.
- d. No Owner shall allow a tenant of his Lot to sublease the Lot. All leases must include a provision prohibiting sublease of the Lot.
- e. No Owner shall rent a Lot except to a Family with one or more members over eighteen (18) years of age.
- f. All rentals of Lots must be evidenced by a written lease.
- g. No more than eight (8) Lots within the Properties may be rented. The number of Lots that may be rented based on this calculation is referred to as the "Rental Cap" for purposes of this section.
- h. Owners desiring to rent a Lot shall make application to the Association pursuant to such rules and regulations adopted from time to time by the Association. The Association shall determine whether an Owner is eligible to rent a Lot taking into consideration the Rental Cap, the current number of rented Lots as of the application date, and the proposed provisions of the lease. No Owner shall rent a Lot until the lease has been approved by the Association. The Association shall not withhold approval if an Owner's application to rent does not violate the Declaration, as amended, or the rules and regulations set forth by the Association from time to time.
- i. In the event the number of rented Lots exceeds or equals the Rental Cap, the Association shall maintain a list of Owners desiring to rent their Lots. This waiting list shall establish the priority of Owners' eligibility to rent their Lots. The order of priority in the waiting list shall be the order in which Owners tender to the Association written requests to rent their Lots.
- j. In the event an Owner on the waiting list becomes eligible to rent his Lot, the Association shall notify that Owner of his eligibility. The eligible Owner shall submit his application to rent within sixty (60) days of his receipt of notice of his eligibility to rent. In the event the Owner does not submit application to rent or lease within sixty (60) days of his receipt of notice, his

eligibility to rent will cease and the next Owner on the waiting list shall be notified of his eligibility to rent.

- k. Owners of record of Lots on the date this Amendment is recorded shall be exempt from the Rental Cap restriction of this Article. Any rental of a Lot pursuant to this exemption shall in all other respects be subject to the Declaration and the rules and regulations issued by the Association.
- l. Within ten (10) days of the commencement of any rental of a Lot, the Lot Owner renting a Lot shall promptly provide the Association with a copy of the written lease agreement pertaining to that Lot and such reasonable information as the Association requires with respect to the tenant under the lease.
- m. For purposes of this Article, a Lot that is a rental as defined in this Article shall cease to be a rental upon expiration of sixty days after occupancy of the Lot ceases to meet the definition of rental in this Article.
- n. Any lease made in violation of this Declaration may be voided by the Association. In such event, the Owner shall evict the tenant.
- o. The Association may assess a processing and administrative fee of \$25.00, or such other amount as the Board of Directors may establish from time to time, for each application by an Owner to rent a Lot. This assessment is non-refundable and shall be added to the general revenues of the Association.
- p. No lease shall be made except upon a written form containing the following provisions requiring the tenant to comply with all governing documents of the Properties as if the tenant were the owner of the Lot: "The tenant's right to occupy the property is conditioned on full compliance with the Declaration of Covenants, Conditions and Restrictions, the Bylaws, the Rules and Regulations and the Architectural Guidelines of The Oaks. Any non-compliance shall be a breach of the terms and conditions of this Lease. The Oaks on Henry Homeowners Association, Inc. may, in the event of a tenant's non-compliance, undertake any enforcement action authorized by its Declaration, Bylaws and Rules and Regulations, including but not limited to imposing monetary penalties on the Lot Owner for which tenant shall be liable and for denial of access to the Common Areas of The Oaks."
- q. Owners of rented Lots shall be responsible for any damage caused by their tenants to Common Areas.
- r. Owners of rented Lots shall post in a prominent place on the Lot a copy of the Rules and Regulations established by the Association.



ARTICLE VII  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land. This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners and recorded among the land records of the City of Williamsburg, Virginia.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of Members in good standing.

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE OAKS

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions and Restrictions of The Oaks is made the 22nd day of March, 2006 by THE OAKS ON HENRY HOMEOWNERS ASSOCIATION, INC., a Virginia non-stock corporation (the "Association") on behalf of the following, who are to be indexed as Grantors:

Frederick W. ANDREWS, Marilyn J. ANDREWS, James ANTHONY, Vivian C. ARNEY, David B. BATES, Edward E. BATES, Edward E. BATES, Jr., Kyle M. BRITT, Chong S. BROOKS, Philip H. BURCHER, Jr., Trustee of the PHILIP H. BURCHER REVOCABLE LIVING TRUST, Anne M. BURKE, Trustee of the ANNE M. BURKE REVOCABLE TRUST, Doris H. CAPSTAFF, Dianne T. CARTER, Jacqueline S. CHUTTER and Reinald J. CHUTTER, Trustees under the REINALD J. CHUTTER & JACQUELINE S. CHUTTER REVOCABLE LIVING TRUST, Lisa J. COLLIGAN, Geraldine CONRADI, Alexandra CURRAN, Robert DOARES, Deborah A. EICHELBERGER, William Joseph FAVREAU, Jodi FISLER, Beverly H. FOLEY and William R. FOLEY, Trustees under the WILLIAM R. FOLEY & BEVERLY H. FOLEY LIVING TRUST, Mary T. FRY, Connie D. GALLOWAY, Barbara M. GAY, Jane E. GEISLER, John S. GEISLER, Donna P. GRIFFITH, Kathy L. HADLEY, Elizabeth HAGY, Joseph HAGY, Wallace N. HARDING and Patricia C. HARDING, Trustees under the WALLACE N. HARDING LIVING TRUST, Mary Rogers N. HILL, Doug J. KEELER, Susan S. KEELER, Georgiana W. KORNWOLF, Bruce E. KRAL, Eileen D. KRAL, Franklin R. LEMON, Barbara B. LISH, Juanita J. MATKINS, Timothy P. MCCOMAS, MOUNTAIN REHABILITATION, L.L.P., Clyde V. NORDSTROM, Jr., Julie V. NORDSTROM, Mary C. OBERC, Becky O. O'CONNELL, Michael S. O'CONNELL, James PATTIS, Janice PATTIS, Harriett J. POLK, Sherri L. POWERS, Bradley J. PRYOR, Carol M. RABUSH, Donald R. RABUSH, John G. RANSFORD, Sandra R. RICHARDS, Joanna L. ROUZIE, John E. ROUZIE, Michael G. SAMS, Sharon E. SAMS, Catherine SCHLESINGER, Raymond D. SHORT, Jr., Joyce B. SMITH, Thomas A. SMITH, Timothy A. STEWART, Donald N. TSCHAN, Joann Thrall TURNELLE, Hugh M. WEAVER, Pauline C. WEAVER, Hazel M. WILLIAMS, Ronald W. WILLIAMS, James Conrad WOOD, Geraldine N. YEATTS, Mark D. YEATTS, George A. ZAVODNICK and Patricia J. ZAVODNICK

RECITALS

WHEREAS, by Declaration of Covenants, Conditions and Restrictions dated January 17, 1984 (the "Declaration") and recorded in the Office of the Clerk of Circuit Court for the City of Williamsburg, Virginia in Deed Book 66 page 581 on March 6, 1984, Shellis, Inc., a Virginia corporation, subjected certain real estate located in the City of Williamsburg particularly described in Exhibit A attached hereto to the covenants, conditions and restrictions set forth therein; and

WHEREAS, the Association is the association which has membership composed of all owners of Lots within the Properties subjected to the Declaration and referred to in the Declaration as the "Association"; and

WHEREAS, Article VII, Section 3 of the Declaration provides that beginning twenty years after the date the Declaration was recorded, the Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners; and

WHEREAS, as evidenced by their execution of the written consents attached hereto as Exhibit B, the owners of not less than seventy-five percent (75%) of the lots subject to the Declaration wish to amend the Declaration in certain respects, and agree to the amendments set forth herein; and

WHEREAS, Article VII, Section 5 of the Declaration provides the prior approval of the Federal Housing Administration or the Veterans Administration is required for amendments to the Declaration as long as there is a Class B membership; and

WHEREAS, there is no Class B membership.

## AMENDMENTS

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Article I, Section 1, is amended to read in its entirety as follows:

Section 1. "Association" shall mean and refer to The Oaks on Henry Homeowners Association, Inc., its successors and assigns.

2. The following Section 7 is inserted in Article I of the Declaration:

Section 7. "Good-standing" shall mean and refer to the status of an Owner in which he is current and in compliance with all obligations of Owners set forth in the Declaration, the by-laws of the Association, and the rules and regulations adopted from time to time by the Association applicable to the use of the Properties.

3. The following Section 8 is inserted in Article I of the Declaration:

Section 8. The term "Member" when used in this Declaration in the context of voting or giving assent, consent, or agreement, shall mean an Owner. In this context, each Member shall be entitled to give only one assent, consent, agreement or vote for each Lot owned. In the event an Owner is composed of more than one person or entity, those constituting the Owner by having an ownership interest in a Lot, upon agreement between them, may give one assent, consent or agreement, or cast one vote.

4. Article II, Section 1, subparagraph (c) is amended to read in its entirety as follows:

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two thirds (2/3) of members in good standing has been recorded.

5. Article IV, Section 3, subparagraph (b) is amended to read in its entirety as follows:

(b) The maximum annual assessment may be increased above five percent (5%) by assent of a majority of members in good standing who are voting in person or by proxy at a meeting duly called for this purpose.

6. Article IV, Section 4 is amended to read in its entirety as follows:

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any Common Areas Maintenance, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, *provided that* any such assessment shall have the assent of a majority of members in good standing who are voting in person or by proxy at a meeting duly called for this purpose.

7. Article IV, Section 5 is amended to read in its entirety as follows:

Section 5. Notice and Quorum for Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies of the majority of the membership in good standing shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8. Article IV, Section 7 is amended to read in its entirety as follows:

Section 7. Annual Assessment; Due Dates. 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. Written notice of the annual assessment shall be sent to every Owner subject thereto. Payments for the annual assessment shall be made in monthly installments due on the first day of each month. The Association shall, upon demand by an Owner, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

9. Article IV, Section 8 is amended to read in its entirety as follows:

Section 8. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within 30 days from the date due shall result in assessment of a late charge against the Lot for which the assessment was not paid of \$25.00, or such other amount as the Board of Directors of the Association may establish from time to time, and such unpaid assessments shall bear interest at

eighteen percent (18%) per annum until paid. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

10. Article V is amended to read in its entirety as follows:

#### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

11. Article VI is amended to read in its entirety as follows:

#### OCCUPANCY OF LOTS

Section 1. Definition of Family. For purposes of this Article, "Family" shall include the following: (1) an individual, whether male or female; (2) two or more persons related by blood, adoption, marriage or guardianship, living and cooking together as a single housekeeping unit; (3) a number of persons, not exceeding two, living and cooking together as a single housekeeping unit though not related by blood, adoption, marriage or guardianship; (4) not more than two unrelated persons living and cooking together as a single house-keeping unit, along with one or more dependents related to either of them by blood, marriage, adoption or guardianship; (5) one or more individuals who have not attained the age of eighteen years being domiciled with (i) a parent or other person having legal custody of such individual or individuals, or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. For purposes of this definition, the term "legal custody" shall include the status of a person who is in the process of securing legal custody of an individual who has not attained the age of eighteen years of age. "In the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such individual in a court of competent jurisdiction.

Section 2. Lots to Include Structures. For purposes of this Article, "Lot" includes the real estate by which that term is otherwise defined in the Declaration as well as all structures, dwellings and improvements upon that real estate.

Section 3. Lots Restricted to Family Use. No Owner shall occupy nor permit to be occupied any Lot by other than one Family.

Section 4. Definitions Related to Rental. For purposes of this Article "rental" shall mean a Lot occupied by a person or persons other than the record Owner and not occupied by the Owner. For purposes of this Article the terms "rent", "renting" and "rented" shall be construed to conform with the definition of rental. For purposes of this Article, the term "tenant" shall mean the occupants of a Lot that is a rental.

Section 5. Rental Restrictions. The rental of Lots shall be subject to such reasonable rules and regulations as may be established from time to time by the Association, which shall not conflict with this Declaration. Rental of Lots shall be restricted as follows:

- a. Occupancy of Lots shall at all times be in accordance with the provisions of the Declaration.
- b. No Owner shall rent a Lot for hotel or transient purposes or for a term of less than twelve (12) months duration.
- c. No Owner shall rent less than all of a Lot.
- d. No Owner shall allow a tenant of his Lot to sublease the Lot. All leases must include a provision prohibiting sublease of the Lot.
- e. No Owner shall rent a Lot except to a Family with one or more members over eighteen (18) years of age.
- f. All rentals of Lots must be evidenced by a written lease.
- g. No more than eight (8) Lots within the Properties may be rented. The number of Lots that may be rented based on this calculation is referred to as the "Rental Cap" for purposes of this section.
- h. Owners desiring to rent a Lot shall make application to the Association pursuant to such rules and regulations adopted from time to time by the Association. The Association shall determine whether an Owner is eligible to rent a Lot taking into consideration the Rental Cap, the current number of rented Lots as of the application date, and the proposed provisions of the lease. No Owner shall rent a Lot until the lease has been approved by the Association. The Association shall not withhold approval if an Owner's application to rent does not violate the Declaration, as amended, or the rules and regulations set forth by the Association from time to time.

- i. In the event the number of rented Lots exceeds or equals the Rental Cap, the Association shall maintain a list of Owners desiring to rent their Lots. This waiting list shall establish the priority of Owners' eligibility to rent their Lots. The order of priority in the waiting list shall be the order in which Owners tender to the Association written requests to rent their Lots.
- j. In the event an Owner on the waiting list becomes eligible to rent his Lot, the Association shall notify that Owner of his eligibility. The eligible Owner shall submit his application to rent within sixty (60) days of his receipt of notice of his eligibility to rent. In the event the Owner does not submit application to rent or lease within sixty (60) days of his receipt of notice, his eligibility to rent will cease and the next Owner on the waiting list shall be notified of his eligibility to rent.
- k. Owners of record of Lots on the date this Amendment is recorded shall be exempt from the Rental Cap restriction of this Article. Any rental of a Lot pursuant to this exemption shall in all other respects be subject to the Declaration and the rules and regulations issued by the Association.
- l. Within ten (10) days of the commencement of any rental of a Lot, the Lot Owner renting a Lot shall promptly provide the Association with a copy of the written lease agreement pertaining to that Lot and such reasonable information as the Association requires with respect to the tenant under the lease.
- m. For purposes of this Article, a Lot that is a rental as defined in this Article shall cease to be a rental upon expiration of sixty days after occupancy of the Lot ceases to meet the definition of rental in this Article.
- n. Any lease made in violation of this Declaration may be voided by the Association. In such event, the Owner shall evict the tenant.
- o. The Association may assess a processing and administrative fee of \$25.00, or such other amount as the Board of Directors may establish from time to time, for each application by an Owner to rent a Lot. This assessment is non-refundable and shall be added to the general revenues of the Association.
- p. No lease shall be made except upon a written form containing the following provisions requiring the tenant to comply with all governing documents of the Properties as if the tenant were the owner of the Lot: "The tenant's right to occupy the property is conditioned on full



compliance with the Declaration of Covenants, Conditions and Restrictions, the Bylaws, the Rules and Regulations and the Architectural Guidelines of The Oaks. Any non-compliance shall be a breach of the terms and conditions of this Lease. The Oaks on Henry Homeowners Association, Inc. may, in the event of a tenant's non-compliance, undertake any enforcement action authorized by its Declaration, Bylaws and Rules and Regulations, including but not limited to imposing monetary penalties on the Lot Owner for which tenant shall be liable and for denial of access to the Common Areas of The Oaks."

- q. Owners of rented Lots shall be responsible for any damage caused by their tenants to Common Areas.
- r. Owners of rented Lots shall post in a prominent place on the Lot a copy of the Rules and Regulations established by the Association.

12. Article VII, Section 3 is amended to read in its entirety as follows:

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land. This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners and recorded among the land records of the City of Williamsburg, Virginia.

13. Article VII, Section 4 is amended to read in its entirety as follows:

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of Members in good standing.

14. Article VII, Section 5 is deleted.

15. All capitalized terms used in this Amendment defined in the Declaration have the same definition as provided in the Declaration.

16. Except as amended herein, the Declaration shall remain in full force and effect.

[signature appears on following page]

DECLARATION

BOOK 66 PAGE 581

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE OAKS

THIS DECLARATION, made on the date hereinafter set forth by SHELLIS, INC., a Virginia corporation, hereinafter referred to as "Declarant",

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the City of Williamsburg, State of Virginia, which is more particularly described as:

All that certain piece or parcel of land lying and being situate in James City County, Virginia, formerly being in Jamestown Magisterial District, as set out and shown on a plat of survey entitled, "A SURVEY OF 14.1 AC. PLUS OR MINUS, FOR CONVEYANCE TO McCLURG CORPORATION, LYING IN JAMES CITY COUNTY, VIRGINIA," made by Architects and Engineers, Inc., dated April 7, 1978, from W. A. Thompson, et ux, to McClurg Corporation, said deed having been recorded in James City County Deed Book 188, at page 745, and to which said plat reference is here made for a more complete description of the property.

This conveyance is made subject to all conditions, covenants, restrictions and easements of record or apparent on the ground.

Being the same property conveyed unto the Grantor herein by Deed from McClurg Corporation, dated August 24, 1982, and recorded in the aforesaid Clerk's Office in Deed Book 225, page 501.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Oaks Homeowners Association, Inc., its successors and assigns.

Otey and Powell  
Attorneys at Law  
P.O. Box 192  
Williamsburg, Va. 23187

Original mailed or delivered to Otey and Powell Attys.

Wmsbg, Va.

3/22/84

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners and conveyed to the Association by deed from the Declarant, Shellis, Inc.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Shellis, Inc., a Virginia corporation, its successor and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period

during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations and of these declarations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. The Association may in accordance with the By-Laws, delegate the use of all parking spaces allocated for the development.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or

charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the living units situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Four Hundred Twenty and 00/100 Dollars (\$420.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capitol Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots except those owned by the developer, unless occupied as rental property, on

the first day of the month following the conveyance of the Common Area; The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waiver or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V  
ARCHITECTURAL CONTROL

BOOK

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No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI  
RENTAL RESTRICTION

The Owner of any Lot shall not rent said Lot nor allow any such Lot to be occupied by more than two (2) adults over the age of eighteen (18) except that a Lot may be occupied by two (2) adults over the age of eighteen (18) if the adults are related by blood and are part of a single family related by blood and occupying or renting said Lot.

ARTICLE VII  
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17<sup>th</sup> day of January, 1984.

SHELLIS, INC., a Virginia  
corporation

By: James S. Ellis  
James S. Ellis, President

STATE OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing Declaration of Covenants, Conditions and Restrictions was acknowledged before me this 17<sup>th</sup> day of January, 1984, by James S. Ellis, President of Shellis, Inc., a Virginia corporation, on behalf of the corporation.

My Commission Expires: June 7, 1987

Charles J. Merrow  
Notary Public

VIRGINIA: City of Williamsburg and County of James City, to-wit:  
In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City, of March 25<sup>th</sup> 1984, Platation was presented with certificate and admitted to record at 1:20 PM  
Noted before me, Clerk  
by [Signature]  
Clerk