

ORIGINAL COVENANTS

**ORIGINAL COVENANTS WERE REINSTATED
THROUGH AMENDMENT #2. THESE COVENANTS
NOW GOVERN OLDE HERMITAGE PROPERTIES**

27831

DECLARATION BOOK 2156 PAGE 1856

27831

OF COVENANTS, CONDITIONS AND RESTRICTIONS

OLDE HERMITAGE SUBDIVISION

THIS DECLARATION, made this 1st day of September, 1988, by THREE CHOPT ESTATES CORP., 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 County of Henrico, State of Virginia, which is more particularly described and set forth on SCHEDULE A hereof, attached hereto and by this reference made a part hereof.

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

Section 1. "Association" shall mean and refer to Olde Hermitage 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 Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Subdivision" means and refers to that certain real property described on Schedule A.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area is more particularly described on Schedule B attached hereto and by this reference made a part hereof.

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

Section 6. "Declarant" shall mean and refer to Three Choct Estates Corp., a Virginia corporation, its successors and assigns.

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 Common Area 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;

(c) the right of the Association to dedicate or transfer all of 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 two-thirds (2/3) of each class of the members; provided, however, that for so long as Declarant owns a Lot, Declarant shall have the unilateral right 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 Declarant deems appropriate.

(d) the right of the Association to promulgate reasonable rules and regulations relating to the use of the Common Area.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have two classes of

voting membership:

BOOK 2156 PAGE 1859

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on January 1, 1993.

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 Subdivision, 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: (a) annual assessments or charges; and (b)

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' fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

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 of the Subdivision and for the improvement and maintenance of the Common Area.

The Association shall pay any real and personal property taxes and other charges assessed against the Common Area.

The Association shall maintain a policy or policies of liability insurance, insuring the Declarant, the Association and its agents, guests, permittees, and invitees and the Owners of the Lots against liability to the public or to the Owners, their guests, permittees or invitees incident to the ownership or use of the Common Area, in an amount not less than Two Hundred Fifty Thousand (\$250,000.00) Dollars for any one person injured, One Million (\$1,000,000.00) Dollars for any one accident and One Hundred Fifty Thousand (\$150,000.00) Dollars for property

damage. Said limits shall be reviewed at reasonable intervals and adjusted if necessary to provide such coverage and protection as the Association may deem prudent.

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 Thirty Five Dollars (\$35.00) 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.

Notwithstanding any of the foregoing to the contrary, there shall be no assessment against any Lot until it has been conveyed by the Declarant.

Section 4. Special Assessment 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 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 vote 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 and 4 shall be sent to all members not less than twenty (25) 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 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 preceding meeting. No 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.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall be due and payable on January 1 of each year; provided, however, that upon the

conveyance of a Lot by the Declarant the purchaser of the Lot shall pay to the Association at that time his pro-rata portion of the annual assessment for that calendar year. The annual assessments provided for herein shall commence on the date of the conveyance of the first Lot. The Board of Directors shall fix the amount of the annual assessment against each Lot by November 30 of each year and written notice of the annual assessment shall be sent to every Owner subject thereto. 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.

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 eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclosure the lien against the Lot subject to the lien of any first deed of trust recorded against the Lot. 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 and Taxes. The lien of the assessment provided for herein shall be subordinate to the lien of any bona fide duly recorded first mortgage and real estate taxes, and the Association shall have a lien upon the proceeds from foreclosure junior only to the

foreclosed first mortgage and aforementioned taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure on a first mortgage 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

LOT RESTRICTIONS

Section 1. No use shall be made of the Lots, or any part thereof that will constitute a nuisance or injure the value of the neighboring Lots. No stables, swine, cows, sheep or the like shall be permitted in the Subdivision. No fence shall be permitted to project closer to the front street line than the line of the front main walls of the respective dwellings on said Lots and no chain link fences or board fences shall be permitted within ten (10) feet of a side street in the case of a corner lot. Lattice, picket or ranch fences shall not be construed as being board fences. No fence shall be permitted over four (4) feet high unless around a patio, tennis court, or swimming pool.

Section 2. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or

other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3. All of the Lots shall be known and described as residential lots, and no structures shall be erected on any Lot other than one detached single family dwelling, provided, however, that the usual outbuildings, including a private garage, may be erected on any Lot. Storage sheds must be of the same type and quality construction as the dwelling on any respective Lot.

Section 4. No structure of a temporary character, trailer, recreational vehicle, basement, tent, shack, garage, barn, or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently. No trailer, motor home, or recreational vehicle with sleeping accommodations over five (5) feet in height shall be parked on any Lot closer to the street than the rear line of the dwelling on the Lot.

Section 5. The total floor area of the main structure, exclusive of one-story open porches, shall not be less than twelve hundred (1,200) square feet for a one-story dwelling, nor less than eighteen hundred (1,800) square feet for a dwelling of two or more stories with a minimum of eight hundred fifty (850) square feet on the first story level. If a story and a half house shall be built it shall contain a minimum of one thousand (1,000) square feet on the first story level and shall contain a minimum of fifteen hundred (1,500) total square feet.

Section 6. Declarant reserves unto itself, its successors and assigns, the right and privilege to lay gas, water, sewers, storm sewers, sewer pipes, electric light, telephone and telegraph poles, lines and wires, and other utilities in the streets and roads of the Subdivision and along the property line of the Lots and to install water and sewer connections under and in the Subdivision and lay such light, telephone and telegraph poles, lines and wires along the property lines of the Lots, and to give other persons, companies or corporations any or all of such rights and privileges, however, there being no obligation so to do, they reserving the right to make necessary charges upon the purchaser therefor.

Section 7. All plans for the construction and erection of any residences, outbuildings, or additions to any residences as hereinabove provided to be built on the Lots shall be submitted to the Declarant for its approval. Such conditions shall be strictly complied with and the Declarant shall have the full right and privilege to enforce this and all other restrictions and conditions herein by appropriate proceedings at law and damages and/or in equity for appropriate injunctive and restraining orders to prevent violations together with damages sustained. At such time as the Declarant has conveyed all the Lots in the Subdivision, this power shall be assigned to the Association.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, 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. In the event that the Declarant or the Association employs an attorney to advise, interpret or enforce the provisions of this Declaration, whether or not such actions result in litigation, the Declarant or the Association, as the case may be, shall be reimbursed for such attorneys' fees and for court costs, if any, by the person who is allegedly violating the 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 way affect any other provisions which shall remain in full force and effect.

Section 3. Term; Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded. Until Declarant has conveyed the last Lot in the Subdivision, this Declaration may be amended by Declarant, its successors or assigns; provided, however, that such amendment must be first approved by the County Attorney for the County of

Henrico, Virginia. Any amendment must be recorded in the Clerk's Office of the Circuit Court of Henrico County, Virginia.

IN WITNESS WHEREOF the undersigned Declarant has caused this Declaration to be executed by Somers M. Wilton, its President, as of this 3rd day of October September, 1988.

| |
|-----------------|
| APPROVED: |
| Subscribed: |
| Notary for Div. |
| Form: <u>16</u> |
| County Atty. |

THREE CHOPT ESTATES CORP.

By Bay A Wilton, Atty in - fact for
Somers M. Wilton
Somers M. Wilton, President

STATE OF VIRGINIA
~~CITY~~/COUNTY OF Henrico, to-wit: Bay Garry A. Wilton, Attorney

The foregoing instrument was acknowledged before me this 3rd day of October, 1988, by Somers M. Wilton, President of Three Chopt Estates Corp, on behalf of the Corporation.

My commission expires: December, 1988.

Clara A. Subar
Notary Public



| |
|-----------------|
| APPROVED: |
| Subscribed: |
| Notary for Div. |
| Form: <u>16</u> |
| County Atty. |

SCHEDULE A BOOK 2156 PAGE 1869

ALL those certain lots, pieces or parcels of land, together with all improvements thereon and appurtenances thereto belonging, located in Brookland District, Henrico County, Virginia, containing approximately 23 acres known as Olde Hermitage, as shown on the subdivision plat entitled "Olde Hermitage", dated February 12, 1988, made by Lewis & Associates, P.C., Consulting Engineers, Land Surveyors & Planners, Richmond, Virginia, to be recorded in the Clerk's Office, Circuit Court, Henrico County, Virginia.

ALL those parcels of land, containing approximately 5.6 acres, designated as "Common Area" on the subdivision plat of "Olde Hermitage," Henrico County, Virginia, dated February 12, 1988, made by Lewis & Associates, P.C., Consulting Engineers, Land Surveyors and Planners, Richmond, Virginia, to be recorded in the Clerk's Office, Circuit Court, Henrico County, Virginia.

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF HENRICO

This Deed was presented, and with the Certificate annexed admitted to record on OCT - 6 1988, at 9:09 o'clock A. M.

| | |
|---------------------|-----------------|
| State Tax | _____ |
| County Tax | _____ |
| Grantor's Tax (150) | _____ |
| (220-A) | _____ |
| Transfer Fee | <u>21.00</u> |
| Clerk's Fee | <u>21.00</u> |
| Total | <u>\$ 21.00</u> |

Margaret S. Clark
Clerk

Mail to: Three Christ Estates Corp.