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MAINTENANCE ASSESSMENT INCREASE FOR
CANDLELIGHT HILLS SUBDIVISION,
SECTIONS FOUR (4), FIVE (5) AND SIX (6)

STATE OF TEXAS *

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HARRIS *

WHEREAS, On November 19, 1979, T.D. Gardner, Trustee, being the owner of certain property in Harris County, Texas, which had been platted and subdivided into that certain Subdivision known as Candlelight Hills, Section Four (4) according to the Map or Plat of said Subdivision recorded under Volume 276, Page 140 of the Map Records of Harris County, Texas, executed and caused to be filed an instrument entitled "Candlelight Hills, Section Four Restrictions, Covenants, Conditions and Maintenance Charge", said Restrictions being filed under County Clerk's File No. F907136 at Film Code No. 110-82-1032 through 110-82-1049, of the Real Property Records of Harris County, Texas, thereby encumbering said property with certain reservations, restrictions, agreements, covenants, easements and maintenance charge; and

WHEREAS, on December 20, 1978, T.D. Gardner, Trustee, being the owner of certain property in Harris County, Texas, which had been platted and subdivided into that certain Subdivision known as Candlelight Hills, Section Five (5), according to the Map or Plat of said Subdivision recorded under Volume 276, Page 147 of the Map Records of Harris County, Texas, executed and caused to be filed an instrument entitled "Candlelight Hills, Section Five Restrictions, Covenants, Conditions and Maintenance Charge", said Restrictions being filed under County Clerk's File No. F914695 at Film Code No. 116-92-1996 through 116-92-2014, of the Real Property Records of Harris County, Texas, thereby encumbering said property with certain reservations, restrictions, agreements, covenants, easements and maintenance charge; and

WHEREAS, on December 21, 1978, T.D. Gardner, Trustee, being the owner of certain property in Harris County, Texas, which had been platted and subdivided into that certain Subdivision known as Candlelight Hills, Section Six (6), according to the Map or

Plat of said Subdivision recorded under Volume 277, Page 1 of the Map Records of Harris County, Texas, executed and caused to be filed an instrument entitled "Candlelight Hills, Section Six Restrictions, Covenants, Conditions and Maintenance Charge", said Restrictions being filed under County Clerk's File No. F907135 at Film Code No. 116-82-1013 through 116-82-1030, of the Real Property Records of Harris County, Texas, thereby encumbering said property with certain reservations, restrictions, agreements, covenants, easements and maintenance charge; and

WHEREAS, the Restrictions for Candlelight Hills Subdivision, Sections Four (4), Five (5) and Six (6), as above referenced, provide for restrictions on land use and building type, the creation of an Architectural Control Committee, the creation of a Texas Non-Profit Corporation for the purpose of benefiting the residents and/or lot owners within Candlelight Hills, Sections Four (4), Five (5) and Six (6) and, further, provide for the payment of a mandatory annual maintenance charge to the referenced Texas Non-Profit Corporation, the Candlelight Hills Civic Association, Inc., successor in interest to Candlelight Hills Maintenance Fund, Inc. (hereinafter sometimes referred to as the "Association"); and

WHEREAS, the Restrictions for Candlelight Hills Subdivision, Sections Four (4), Five (5) and Six (6) contain the following provision:

The maintenance charge may be adjusted by the Association, its successors and assigns, from year to year as the needs of the Subdivision may, in its or their judgment require. Adjustments in the maintenance charge in excess of \$60.00 per year may be recommended by the Trustees to the members of the Association, and shall become effective at such time as the owners of at least eighty percent (80%) of the lots in the Subdivision have voted in favor of such adjustments.

WHEREAS, on February 3, 1988, the Board of Trustees of the Candlelight Hills Civic Association, Inc., at a duly called meeting, elected as follows:

- a) To purchase the clubhouse, swimming pool and tennis court facility from the Candlelight Hills Recreation

Center, Inc., a Texas Corporation, for the approximate sum of Ninety Thousand and No/100 Dollars (\$90,000.00), subject to the approval of the owners of the requisite number of lots within the Candlelight Hills Subdivision of an increase in the annual maintenance charge sufficient to acquire and maintain said recreational facility, the facility to be known as "the Candlelight Hills Recreational Park";

- b) To make the Candlelight Hills Recreational Park available for use by all members in good standing of the Candlelight Hills Civic Association, Inc., a "member in good standing" being defined as a member who is not delinquent in the payment of annual maintenance charges and/or other charges properly assessed by the Candlelight Hills Civic Association, Inc.; and
- c) To increase the annual maintenance charge, effective January 1, 1989, applicable to all Sections within Candlelight Hills Subdivision from One Hundred Eighty and No/100 Dollars (\$180.00) per year to Three Hundred Fifty and No/100 Dollars (\$350.00) per year.

WHEREAS, the Board of Trustees of the Candlelight Hills Civic Association, Inc. recommended to the membership thereof that the above referenced action be taken by the Association, whereupon said proposals were presented to the membership within Candlelight Hills Subdivision, Sections Four (4), Five (5) and Six (6), via written ballots, and approved by the requisite eighty percent (80%) of the membership within Sections Four (4), Five (5) and Six (6). The lot owners within Candlelight Hills, Sections One (1), Two (2) and Three (3) have also approved the referenced increase in the maximum annual maintenance charge and a similar document is filed simultaneously herewith relative to Sections One (1), Two (2) and Three (3); and

WHEREAS, on or about March 14, 1988, a lawsuit was filed by a resident/lot owner of Candlelight Hills, Section One (1) against

the Candlelight Hills Civic Association, Inc. seeking to prevent the proposed acquisition, being Cause No. 88-13981; Gerald L. Goodwin v. Candlelight Hills Civic Association, Inc., in the 270th Judicial District Court, Harris County, Texas. Trial on the merits was held on Thursday, April 28, 1988 and a Declaratory Judgment was signed on May 16, 1988 holding, in pertinent part, as follows:

- (1) That the Restrictions, Covenants, Conditions and Maintenance Charges for each of the six sections of Candlelight Hills Subdivision do not provide for the use of the funds of Candlelight Hills Maintenance Fund, Inc. to acquire real property;
- (2) That the Restrictions, Covenants, Conditions and Maintenance Charges for each of the six sections of Candlelight Hills Subdivision provide that the votes of the owners of the lots in each section shall be tabulated separately, by each section, for any proposed increase in maintenance assessments;
- (3) That the Restrictions, Covenants, Conditions and Maintenance Charges for each of the six sections of Candlelight Hills Subdivision do not require that a meeting be held to conduct a vote of the members of Candlelight Hills Civic Association for any proposed increase in maintenance assessments.

A true and correct copy of the referenced "Judgment" is attached hereto as Exhibit "A" and is incorporated herein by reference as if set forth in verbatim. On April 28, 1988, the requisite percentage requirements for approval of the maintenance charge increase for the purpose of implementing the property acquisition had been met in all Sections, with the exception of Section Four (4). Subsequent to the entry of the Judgment, and without further solicitation or action by the Candlelight Hills Civic Association, Inc., the final vote for approval needed in Section Four (4) was received. Thus, the vote conducted pursuant to the February 3, 1988 Board action referenced herein, currently complies with items "2" and "3" contained in the Declaratory Judgment. Item "1", however, precludes the acquisition of real property with Association funds.

WHEREAS, on Thursday, June 2, 1988 the Candlelight Hills Civic Association, Inc. perfected its appeal of the trial Court's decision in Cause No. 88-13981 to the Court of Appeals, 14th

Supreme Judicial District of Texas. In this regard, it is the intention of the Candlelight Hills Civic Association, Inc. to refrain from acquiring real property with maintenance funds, unless and until the trial Court's Judgment is reversed on appeal and said reversal becomes final.

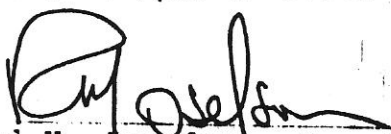
NOW, THEREFORE, should Cause No. 88-13981 be reversed on appeal and should such reversal become final, beginning January 1, 1989, the maximum annual maintenance charge relative to each lot within Candlelight Hills, Sections Four (4), Five (5) and Six (6) shall be Three Hundred Fifty and No/100 Dollars (\$350.00). Should the final outcome of the appeal not be known prior to January 1, 1989, the rate increase and the property acquisition may be implemented at such later time as a reversal on appeal, if such occurs, becomes final at which time a supplemental statement for the applicable increase will be forwarded to all lot owners within the Candlelight Hills Subdivision. Should the final outcome of appeal affirm or uphold the trial Court's Judgment, the Candlelight Hills Civic Association, Inc. shall cause to be filed in the Real Property Records of Harris County, Texas, a document revoking this "maintenance assessment increase" and effectively rendering this document null and void.

We certify that we have reviewed the results of the voting as referenced herein and the results are as follows:

- a) 32 in favor and 2 against out of 39 lots within Candlelight Hills Subdivision, Section Four (4);
- b) 41 in favor and 4 against out of 50 lots within Candlelight Hills Subdivision, Section Five (5); and
- c) 56 in favor and 5 against out of 64 lots, within Candlelight Hills Subdivision, Section Six (6).

The requisite signed ballots evidencing the results of the vote have been placed in the permanent records of the Candlelight Hills Civic Association, Inc.

SIGNED ON THIS THE 14th day of June, 1988.



Raymond H. Josefson, Board Member and President, Candlelight Hills Civic Association, Inc.

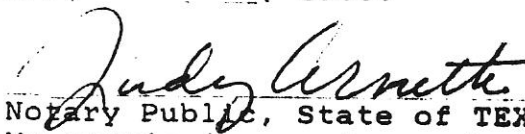


James M. Chamiok, Board Member and Secretary, Candlelight Hills Civic Association, Inc.

STATE OF TEXAS *
COUNTY OF HARRIS *

BEFORE ME, the undersigned authority, on this day personally appeared Raymond H. Josefson, who, being by me duly sworn on his oath deposed and said that he is a member of the Board of Trustees and the President and the duly authorized agent for Candlelight Hills Civic Association, Inc., that he has read the above and foregoing Maintenance Assessment Increase for Candlelight Hills Subdivision, Sections Four (4), Five (5) and Six (6) and that every statement contained therein is within his knowledge and true and correct.

SIGNED this the 14th day of June, 1988.

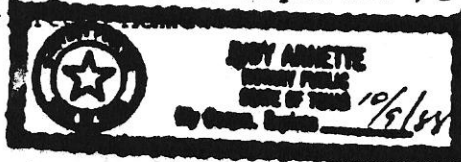


Notary Public, State of TEXAS

My commission expires: 10/9/88

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STATE OF TEXAS *
COUNTY OF HARRIS *



BEFORE ME, the undersigned authority, on this day personally appeared James M. Chamiok, who, being by me duly sworn on his oath deposed and said that he is a member of the Board of Trustees and the Secretary and the duly authorized agent, for Candlelight Hills Civic Association, Inc., that he has read the above and foregoing Maintenance Assessment Increase for Candlelight Hills Subdivision, Sections Four (4), Five (5) and Six (6) and that every statement contained therein is within his knowledge and true and correct.

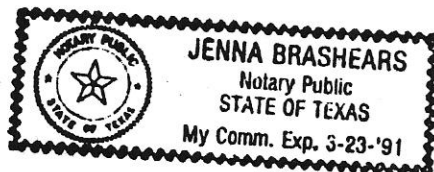
SIGNED this the 14th day of June, 1988.



Notary Public, State of TEXAS

My commission expires:

Printed name:



GERALD L. GOODWIN	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, T E X A S
	§	
CANDLELIGHT HILLS CIVIC	§	
ASSOCIATION, INC.	§	270TH JUDICIAL DISTRICT

JUDGMENT

On the 28th day of April, 1988, in its regular order came on to be heard the above-entitled and numbered cause. Plaintiff, GERALD L. GOODWIN, appeared in person and by and through his attorney of record, Andrea N. Moore. Defendant, CANDLELIGHT HILLS CIVIC ASSOCIATION, INC., appeared by and through their attorney of record, Michael T. Gainer. All parties announced ready for trial and all matters of dispute, claims and causes of action were stated to the Court. After due consideration the Court finds, as a matter of law, that Plaintiff, GERALD L. GOODWIN, has standing to sue and that his claims against the Defendant, CANDLELIGHT HILLS CIVIC ASSOCIATION, INC., are not barred by waiver, estoppel or laches. The Court further finds, as a matter of law, *and orders this declaratory judgment as follows:* ~~the following:~~

- (1) That the Restrictions, Covenants, Conditions and Maintenance Charges for each of the six sections of Candlelight Hills Subdivision do not provide for the use of the funds of Candlelight Hills Maintenance Fund, Inc. to acquire real property;
- (2) That the Restrictions, Covenants, Conditions and Maintenance Charges for each of the six sections of Candlelight Hills Subdivision provide that the votes of the owners of the lots in each section shall be tabulated separately, by each section; *and, for any proposed increase in maintenance assessments;*

EXHIBIT "A"
PAGE 1

- (3) That the Restrictions, Covenants, Conditions and Maintenance Charges for each of the six sections of Candlelight Hills Subdivision do not require that a meeting be held to conduct a vote of the members of Candlelight Hills Civic Association *for any proposed increase in maintenance assessments.*

Additionally, the Court makes the following findings of fact:

- (1) That FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00) is a reasonable fee for Plaintiff's attorney of record;
- (2) That FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00) is a reasonable fee for Defendant/Counter-Plaintiff's attorney of record.
- (3) That the ~~reasonable~~ attorney's fees of ~~\$5,500.00~~, found by the Court, are allocated between each of the trial *and appellate* issues as follows:

(a)	Acquisition of real property	80% / \$4,400.00
(b)	Waiver/Estoppel	5% / \$ 275.00
(c)	Standing	5% / \$ 275.00
(d)	Holding of meeting	5% / \$ 275.00
(e)	Pooling of votes	5% / \$ 275.00

The Court also finds that Plaintiff, ~~GERALD L. GOODWIN, should be awarded conditional attorney's fees of TWO THOUSAND FIVE HUNDRED and NO/100 DOLLARS (\$2,500.00)~~ *is a reasonable attorney's fee*, in the event of an appeal to the Court of Appeals and ~~an additional TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00)~~ *is a reasonable attorney's fee*, in the event of an appeal to the Supreme Court of Texas.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff, GERALD L. GOODWIN, do have and recover of the Defendant, CANDLE-

EXHIBIT "A"
PAGE 2

DOLLARS (\$5,225.00); that Plaintiff be awarded conditional attorney's fees of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) in the event of an appeal to the Court of Appeals and an additional TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) in the event of an appeal to the Supreme Court of Texas; and, that the costs of Court be adjudged against the Defendant for which let execution issue if not timely paid.

SIGNED the 16th day of May, 1988.

Ann Spruell Cochran
JUDGE PRESIDING

APPROVED:

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ATTORNEY FOR DEFENDANT

EXHIBIT "A"
PAGE 3