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NC Real Estate TX: \$00

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SEE BOOK 5478 PAGE 157

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR CORNWALLIS HILLS  
SUBDIVISION**

Prepared by and Return to:  
Cornwallis Hills Property Owners Association, Inc.  
c/o Property Manager, CHPOA  
407 Patriot Place  
Hillsborough, NC 27278

**Amendment to Declaration of Covenants, Conditions and Restrictions for Cornwallis Hills Property Owners Association**

This declaration made this 17<sup>th</sup> day of April, 2008 by Cornwallis Hills Property Owners Association, Inc., herein after referred to as CHPOA.

WITNESSETH:

WHEREAS, CHPOA is comprised of owners of certain properties in Hillsborough Township, County of Orange, State of North Carolina, described as Cornwallis Hills, which properties are more particularly described in Exhibit A attached hereto and by reference made a part hereof, and which said properties are shown and delineated, and are on file at the Orange County Registry.

WHEREAS, this Declaration replaces all previous Declarations made at any time for any phase or part in said subdivision known as Cornwallis Hills; and

WHEREAS, this Amended Declaration is intended to supplant those Declarations, Covenants and Restrictions recorded in Book 387, Page 472 and as amended in Book 385, Page 434; Book 387, Page 472; Book 601, Page 85; Book 752, Page 287; Book 1084, Page 586; Book 1211, Page 383; Book 1549, Page 574; Book 1742, Page 583; Book 1742, Page 593; and Book 1788, Page 174; and

WHEREAS, it is in the best interest of CHPOA, as well as to the benefit, interest and advantage of each and every person or other entity owning or hereafter acquiring any of the within described properties that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed and set forth and declared to be covenants running with the land; and

WHEREAS, CHPOA desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the real property in said subdivision and for the continued maintenance and operation of such recreational and Common Areas as may be provided; and

NOW, THEREFORE, CHPOA 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. "CHPOA" shall mean and refer to Cornwallis Hills Property Owners' Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina and applicable portions of NCGS §47F, 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 property described in Exhibit A hereof, and shall further include the record owner of a fee simple title to any lot which is shown upon any subdivision map for any property hereafter subjected to the terms, provisions and conditions of this Declaration in accordance with the provisions therefore hereinafter provided.

Section 3. "Properties" shall mean and refer to that certain real property described to in Exhibit A and such additions thereto as may hereafter be brought within the jurisdiction of CHPOA.

Section 4. "Common Area" shall mean all real property owned by CHPOA for the common use and enjoyment of the Owners subject to the Declaration and the Association Bylaws. The Common Area to be owned by CHPOA is more particularly described in Exhibit A attached hereto and by 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 Properties with the exception of the Common Areas. It is understood that within the Properties there may only be single family detached Lots. A single family detached lot is defined to be a Lot which contains or is designed so as to contain a single family dwelling, each dwelling unit on its own individual lot of not less than 10,000 square feet.

Section 6. "Board of Directors" shall mean and refer to the governing body of CHPOA.

## **Article II Properties Subject To This Declaration**

Section 1. Properties Subject. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Hillsborough Township, County of Orange, North Carolina, and is more particularly described in Exhibit A attached hereto and by reference made a part hereof. Only the above-described property is hereby made subject to this Declaration, provided, however, CHPOA reserves the right to subject other real property in Cornwallis Hills to the restrictions set forth herein as provided below.

Section 2. Restriction of Other Property. Without further assent or permit, CHPOA hereby reserves the right exercisable from time to time, to subject other real property to the restrictions set forth herein in order to extend the scheme of this Declaration to the other property to be developed as part of Cornwallis Hills and thereby bring such additional property within the jurisdiction of CHPOA.

Section 3. Supplementary Declarations. Each addition herein authorized shall be made by filing of record one (1) or more Supplementary Declarations in respect to the property to be then made subject to this Declaration and thereby extend the jurisdiction of CHPOA to such property and subject such addition to the



assessments herein provided for a just and proportionate share of CHPOA expenses. Each supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character of the added properties, provided, however, any such Supplemental Declaration or any such other Declaration shall not revoke or otherwise amend the provisions of this Declaration as pertained to the properties subject thereto.

### **Article III Property Rights**

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

- (a) the right of CHPOA 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 to be determined by the CHPOA Board of Directors for any infraction of its published rules and regulations;
- (b) the right of CHPOA to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members in accordance with subsection (d) below
- (c) the right of CHPOA, with the assent of its members in accordance with subsection (d) below, to mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- (d) the rights of CHPOA and its memberships outlined in Article III, Section 1, subsections (a), (b), and (c) above can not be exercised unless and until all of the following conditions are met: (i) the matter is put forth to the membership for a vote in accordance with Article IV, Section 2, and (ii) two-thirds (2/3) of the membership votes in favor of exercising one or more of the rights listed, and (iii) the vote is documented in the form of an instrument signed by the members voting in favor, and (iv) the signed instrument has been recorded.

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

### **Article IV Membership and Voting Rights**

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

Section 2 Members shall be all Owners and shall be entitled to one (1) 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.

## **Article V Covenant for Maintenance Assessments**

**Section 1. Creation of the Lien and Personal Obligations of Assessments.** 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 with and agree to pay CHPOA; (1) annual assessments or charges, and (2) special assessments, 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 fees, shall also be the personal obligation of the Owner of each Lot, and such personal obligation, whether for any delinquent assessments and/or all future assessment, shall remain the personal obligation of such Owner and any successor in title in accordance with the provisions of ARTICLE VIII of this Declaration.

**Section 2. Purpose of Assessments.** The assessments levied by CHPOA shall be used to provide funds for such purposes as the CHPOA Board of Directors may determine, which purposes may include, but are not limited to, maintenance, landscaping and beautification of the Common Areas. Funds may also be used to provide other services for the CHPOA members to promote the health, safety and welfare of the residents of Cornwallis Hills, and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Areas, the procurement and maintenance of insurance on CHPOA-owned property, the procurement of services of attorneys, accountants and other professionals to represent CHPOA when necessary or useful, the employment or procurement of services of security personnel and the provision of any service which is not readily available from any governmental authority.

**Section 3. Maximum Annual Assessment.** The Maximum Annual Assessments shall be One Hundred, Sixty Five Dollars and Thirty Eight Cents (\$165.38) per Lot beginning January 1 in the year following the recordation of this Amended Declaration and:

- (a) may be increased each year by five percent (5%) above the Maximum Annual Assessment for the previous year. The Maximum Annual Assessment is the limit above which the CHPOA Board may not set the annual assessment.
- (b) From and after January 1 of the year following the recordation of this Amended Declaration, the Maximum Annual Assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting of the CHPOA membership duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the Maximum Annual Assessment.

**Section 4. Special Assessment for Capital Improvements.** In addition to the annual assessments authorized above, CHPOA may levy special assessments 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 Areas, including



fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the 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 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 entitled to cast sixty percent (60%) of all the votes of the eligible voting membership shall constitute a quorum. If the required quorum is not met, additional meetings may be called subject to the same notice requirement, and the required quorum at any or all subsequent meetings shall be one half of the required quorum of the initial meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. At no point shall the quorum be defined as less than thirty percent (30%) of the eligible voting membership.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed for each phase of the development at a uniform rate for all Lots. The said assessments may be collected on a regular basis as determined by the Board of Directors.

Section 7. Due Dates of Annual Assessments. 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. CHPOA shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of CHPOA setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of CHPOA. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate not to exceed the then maximum legal rate and to the extent permitted by law. CHPOA, its agent or representative, may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property and fees, late charges, fines, court costs, and interest, costs and reasonable attorney's fees of such action of foreclosure incurred in bringing such actions shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

Section 9. Subordination to the Lien of Mortgages. The lien of the assessments provided for herein shall be subordinate to any claim of lien filed in Orange County prior to this lien being filed. Sale or transfer of any Lot shall not affect the assessment lien.

Section 10. Exempt Property. The following shall be exempt from the assessments created herein:

- (a) All property dedicated to, and accepted by, a local public authority;
- (b) All property owned by CHPOA;



(c) Lot 96, Phase 7 (tax map number 4.53..96, commonly considered to be a Primitive Cemetery).

However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## **Article VI Architectural Control, Maintenance and Use Restrictions**

**Section 1. Approval of Plans and Architectural Committee.** No building, fence, wall or other external structure or improvement of any nature whatsoever 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, per the current architectural guidelines, as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of CHPOA, 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. The said Board, or its designated committee, shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an amount not to exceed Twenty-Five Dollars (\$25.00). The said Board, or its designated committee, shall have the right to enter upon said lot during the application and construction phases for the purpose of rendering a decision regarding the application and/or to ensure that the construction is in conformity with the approved plans. Such entry shall not be considered a trespass. Upon giving approval to such plans and specifications, construction shall be started and completed promptly and in strict conformity with such plans as have been previously approved. The CHPOA, or its designated architectural committee, shall be entitled to stop any construction which is in violation of these restrictions.

**Section 2. Land Use and Building Type.** The primary use of each Lot shall be residential. Home-based businesses must comply with Article VI, Section 3 and must be approved by the CHPOA Board of Directors or its designated committee, prior to operating within Cornwallis Hills. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family dwelling plus other associated outbuilding(s) as approved by the Architectural Committee referenced in Article VI Section 1.

**Section 3. Nuisance.** No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. This shall include activities which create disturbing noise levels, odors, and/or traffic, taking into consideration the time of day or night. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by governmental and other similar garbage and



trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds or underbrush in a manner satisfactory to a majority of the Board of Directors of CHPOA, CHPOA may, through its agent or representative, five (5) days after posting a notice on such Lot or mailing a notice to the Owner thereof at his property requesting the Owner to comply with the requirements of this Section, enter and remove any and all unsightly objects, debris or other vegetation at Owner's expense. Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by CHPOA in the enforcement of this Section promptly upon demand. No such entry as provided herein shall be deemed a trespass.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes, and provided that such pets shall at all times be under the control of the owner.

Section 5. Outside Antennas. The maximum satellite dish size shall be one (1) meter nominal diameter. Satellite dishes shall be placed to minimize their visibility from adjoining street(s) and homes. No other type of external-antenna, other than television antennas regulated by the FCC, shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of CHPOA or its architectural control committee.

Section 6. Signs. No signs of any kind shall be displayed to the public view on any Lot except:

- (a) one sign of not more than five (5) square feet advertising the property for sale or rent
- (b) signs required by federal, state or municipal government (e.g., beware of dog, quarantine)
- (c) decorative signs as described as described by the CHPOA Architectural Guidelines,
- (d) security company signs limited to no more than two (2) signs of one square foot each per lot.

Other informational signs, including but not limited to warning signs, may not be erected unless and until permission for the same has been granted by the Board of Directors of CHPOA. Display of political signs is to comply with Town ordinance.

Section 7. Use of Common Areas. No planting or gardening shall be done upon any Common Area unless authorized or permitted by the Board of Directors of CHPOA. No signs other than those approved by the Board of Directors shall be placed on Common Areas. No unauthorized motorized vehicles will be allowed on the Common Areas. Damage caused by any vehicles or vandalism to real or personal property may be subject to fines, repair costs and civil penalties. Rules and regulations of the use and times of the Common Area park will be posted. Violation of these rules may result in fines and/or civil penalties.

Section 8. Maintenance. All Lots, together with the exterior or all improvements thereon, shall be maintained in a neat, attractive, and orderly condition by their respective Owners, including, but not limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks or other exterior improvements. In the event an Owner shall fail to maintain his respective Lot





and the improvements thereon in a manner satisfactory to the Board of Directors of CHPOA, CHPOA may, through its agent or representative, after approval by two-thirds (2/3) vote of the Board, have the right to levy fine(s) and/or enter upon said Lot and repair, maintain and restore the Lot and the exterior of the buildings and other improvements thereon. The cost of such fines and/or exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Owner shall be personally liable to CHPOA for the fine and/or cost of such maintenance. The fines and/or cost, until paid, shall be a permanent charge and lien upon such Lot, enforceable to the same extent and collectible as provided for in ARTICLE V of this Declaration. Any entry as provided herein shall not be a trespass, nor shall CHPOA be liable for doing anything reasonably necessary or appropriate in connection with carrying out these provisions, provided such entry shall be at reasonable hours on any day except Saturday or Sunday so as not to interfere with the right of quiet enjoyment of the individual Lot Owner.

Section 9. Preservation of Wooded Areas. No healthy trees in excess of eight (8) inches in diameter shall be removed or destroyed without approval of the Board of Directors or its designated committee. The Owner of each Lot shall be responsible for the prompt removal of any diseased or dead trees. The stumps of any tree removed shall also be removed or cut to ground level.

Section 10. Holiday-Specific Decorations. Exterior holiday-specific decorations must comply with standards set by the CHPOA Architectural Guidelines.

Section 11. Vehicles and Trailers. No motorized vehicles or trailers may be parked on any Lot subject to these declarations, other than those parked on a parking pad or driveway whose plans and application have been approved by the CHPOA Architectural Committee or the CHPOA Board of Directors as described under Article VI, Section 1. Under no circumstances may trailers be parked in any area of the property which is between the street and a straight line extending across the street-facing side of the house erected on said Lot unless a variance to this restriction is requested by the property owner and approved by the CHPOA Board of Directors.

#### **Article VII Easements**

Easements for installation and maintenance of utilities and drainage facilities are reserved in favor of CHPOA, and the Town of Hillsborough, as shown on the plat recorded. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. There is hereby reserved, without further assent or permit into the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and those employed or contracted by CHPOA and all similar persons to enter upon the properties or any portion thereof which is now or hereafter made subject to this Declaration in the performance of their respective duties.

CHPOA reserves the right to relocate easements for installation and maintenance of utilities and drainage facilities by so indicating on subsequent plats the new location of such easement over and across portions of said property owned by CHPOA, and to extinguish the



easements reserved across the old location by recordation of a declaration of withdrawal thereof in the Orange County Registry; provided however, that CHPOA may not withdraw, terminate, or relocate any easements in such a manner as would impair the vested rights of any lot owner. CHPOA also reserves an easement across a strip of land thirty (30) feet in width running along and on the north side of the southern boundary and the west side of the eastern boundary of Lot 1, section I, Cornwallis Hills for landscaping and the installation and maintenance of signs identifying the development to the general public.

#### **Article VIII Binding Nature of Declaration**

The covenants, conditions and restrictions contained in this Declaration, both negative and affirmative, and including but not limited to the covenants to pay dues and assessments, shall be construed to be covenants running with the land covered by this Declaration. Each lot and the Owner of each Lot covered hereby, or any other person or legal entity claiming an interest in any Lot, and his heirs, executors, administrators, successors and assigns, shall be subject to and bound by all of such covenants, conditions and restrictions, regardless of when, in what manner, or from whom any Lot is acquired.

In the event any Owner of a Lot covered by this Declaration sells his Lot, and does not obtain from the purchaser thereof a specific written assumption of the covenants, conditions and restrictions of this Declaration, which assumption must be filed with CHPOA, then such selling Owner shall be liable, jointly and severally, with his purchaser and all other successors in title, for performance thereafter of all such covenants, conditions and restrictions, including, but not limited to, the covenants to pay dues and assessments, until an express assumption is obtained from the Owner of that Lot and is filed with CHPOA.

#### **Article IX General Provisions**

Section 1. Enforcement. CHPOA, 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 CHPOA 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. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, from the date of recordation of this Amended Declaration of Covenants, Conditions and Restrictions for Cornwallis Hills. This Declaration may be amended provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. No amendment shall be effective unless all of the following conditions are met: (i) the matter is put forth to the membership for a vote in accordance with Article IV, Section, and (ii) seventy-five percent (75%) of the membership votes in favor of the amendment, and (iii) the




vote is documented in the form of an instrument signed by the members voting in favor, and (iv) the signed instrument has been recorded.

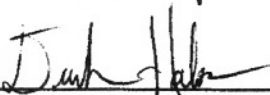
Section 4. Headings. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

IN WITNESS WHEREOF, CHPOA has caused this Declaration to be duly executed the day and year first above written.

Cornwallis Hills Property Owners Association  
407 Patriot Place  
Hillsborough, North Carolina

By: George Higgins  
President, CHPOA

By:   
President

Attest:   
Secretary

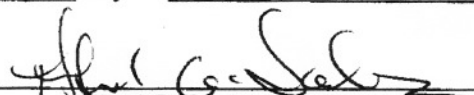


STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

I, Alfred G. Soulier, a Notary Public for Orange County, North Carolina, certify that Derek Hales personally came before me this day and acknowledged that he is secretary of Cornwallis Hills Property Owners Association, a corporation, and that authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its president, sealed with its corporate seal, and attested by himself as its secretary.

Witness my hand and official seal this, the 4<sup>th</sup> day of October 2008.



  
Alfred G. Soulier, Notary Public

My Commission Expires: 8/3/2010

