

AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
CEDAR POINT FIVE

THE STATE OF TEXAS     §  
  §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF POLK         §

WHEREAS, under Clerk’s File No. 3200, Recorded at Volume 487, Page 335 et. seq. of the Real Property Records of Polk County, Texas, there is recorded that one certain instrument entitled Restrictions for Cedar Point Subdivision, Section Five (hereinafter referred to as the “Declaration”) imposing restrictions upon that one certain tract of land out of the John Burgess Survey, A-7, Polk County, Texas, as shown on Subdivision Plats entitled CEDAR POINT, Section Five, Recorded in Volume 9, Pages 12 and 13 et. seq. of the Plat Records of Polk County, Texas; and

WHEREAS, pursuant to Paragraph 36 of the Declaration a majority of the current Owners, as said term is defined in Paragraph 22 of the Declaration, desires to amend and restate the terms and provisions of said Declaration in its entirety; and

WHEREAS, a majority of the current Owners, as said term is defined in Paragraph 22 of the Declaration, have expressed their aforesaid desire to amend and restate the Declaration in its entirety as reflected by their signatures attached hereto.

NOW, THEREFORE, the majority of Owners, as said term is defined in Paragraph 22 of the Declaration, do hereby adopt, establish and impose upon the Property defined hereinabove as Cedar Point Subdivision Section Five the following reservations, easements, restrictions, covenants and conditions applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property, and for the welfare and benefit of the Owners of Lots

in said Property, which reservations, easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and inure to the benefit of each Owner thereof for the welfare and protection of property values.

## ARTICLE I

### DEFINITIONS

Wherever used in this Declaration, the following words and/or phrases shall have the following meanings, unless the context clearly requires otherwise:

1.1 "Property" or "Properties" shall mean and refer to CEDAR POINT SUBDIVISION SECTION FIVE, a subdivision in Polk County, Texas, as more fully described hereinabove, and any additional properties made subject to the terms hereof pursuant to the annexation provisions set forth herein.

1.2 "Lot" and/or "Lots" shall mean and refer to the Lots shown upon the recorded Subdivision Plat(s) which are restricted hereby to use for residential purposes, excluding specifically any Common Area or Reserves.

1.3 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of 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 and those having any interest in the mineral estate.

However, the term "Owner" shall include any mortgagee or lien holder who acquires fee simple title to any Lot through judicial or non judicial foreclosure.

1.4 "Subdivision Plat" shall mean and refer to the Subdivision Plats entitled CEDAR POINT, SECTION FIVE, recorded in the Plat Records of Polk County, Texas as described hereinabove.

1.5 "Association" shall mean and refer to the CEDAR POINT PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns, as provided for in Article V hereof.

1.6 "Declarant" shall mean and refer to CEDAR POINT DEVELOPMENT COMPANY, a Texas corporation, the original developer of Cedar Point Subdivision Section Five pursuant to the Declaration, its respective successors and/or assigns, and shall further specifically mean and refer to Waterfront Development, L.L.C.

1.7 "Common Area" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plat, except the Lots shown thereon, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat.

1.8 "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Area, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of the Owners in the Subdivision, constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of this Declaration.

1.9 "Improvement to Property" shall mean, without limitation: (a) the construction,

installation or erection of any building, structure, fence, dwelling unit or other Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure, fence, or other Improvements; (c) the grading, excavation, filling, or similar disturbance to the surface of any Lot, including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation or changes to the landscaping on any Lot; and (e) any exterior modification, expansion, change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture not expressly permitted by this Declaration, or rules and regulations adopted by the Board of Directors of the Association.

1.10 "Improvements" shall mean all structures and any appurtenances thereto of every type or kind, which are visible on a Lot, including, but not limited to: a dwelling unit, buildings, outbuildings, swimming pools, spas, hot tubs, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, basketball goals, yard decorations, benches, flagpoles, or any other type of pole, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures, exterior lighting, recreational equipment or facilities, radio, conventional or cable or television antenna or, dish, microwave television antenna, and landscaping that is placed on and/or visible from any Lot.

## ARTICLE II

### RESERVATIONS, EXCEPTIONS AND DEDICATIONS

2.1 The Subdivision Plat dedicates for use as such, subject to the Limitations set forth

therein, the streets and easements shown thereon, and such Subdivision Plat further establishes certain restrictions applicable to the Properties, including, without limitation, certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein and made a part hereof, as if fully set forth herein, and shall be construed as being adopted by each and every contract, deed or conveyance executed or to be executed, conveying said property or any part thereof, whether specifically referred to in such contract, deed or conveyance.

2.2 All easements and right-of-ways as shown on the Subdivision Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, water, cable or any other utility installed and/or to be installed in, across and/or under the Properties shall be specifically reserved herein.

2.3 Neither Declarant nor any utility company using the easements or rights-of-way as shown on the Subdivision Plat, or that may otherwise be granted or conveyed covering the Properties, or any portion thereof, shall be liable for any damages done by them, or their assigns, agents, employees or servants, to fences, shrubbery, trees or flowers or other property of the Owner situated on the land covered by any such easements or rights-of-way, unless negligent.

2.4 It is expressly agreed and understood that the title to any Lot or parcel of land within the Properties conveyed by contract, deed or other conveyance shall be subject to an easement for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone or cable purposes and no deed or other conveyance of the Lot shall convey any interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto constructed by

or under any easement Owner, or their agents, through, along or upon the premises affected thereby, or any part thereof, to serve said Properties or other lands appurtenant thereto. The right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party, is hereby expressly reserved to Declarant.

### ARTICLE III

#### USE RESTRICTIONS

3.1 Land Use and Building Type. All Lots except those set out in Exhibit "A" attached hereto shall be known and described as Lots for single family residential purposes only (hereinafter referred to as "Residential Lots"), and no structure shall be erected, altered, placed or permitted to remain on any Residential Lot other than one detached single-family dwelling not to exceed two and one-half (2-1/2) stories in height and must have a detached or attached garage capable of housing not less than two (2) cars. As used herein, the term "single family residential purposes" shall be construed to prohibit the use of said Lots for camping trailers, motor homes, mobile homes, duplex houses, garage apartments or apartment houses; and no Lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes. The Lots identified in Exhibit "A" and Reserves further identified in Exhibit "B" shall be restricted for the exclusive use and enjoyment of members of the association.

The following specific restrictions and requirements shall apply to all Lots in the Property:

(a) Outbuilding. Provided the express written consent of the Architectural Control Committee is secured prior to installation and placement on a Lot, one (1) lawn storage building and/or one (1) children's playhouse, each limited in maximum height to eight (8) feet from the

ground to the highest point of the structure, may be placed on a Lot. In no case can the outbuilding be permanently placed in a utility easement.

Additionally, no outbuilding structure of any type is permitted unless the specific Lot involved is completely enclosed by fencing in accordance with paragraph 3.13. Otherwise, no building or structure of any kind shall ever be moved onto or erected on any Lot. It is intended hereby that, unless otherwise specifically approved pursuant to Article IV hereof, only new construction shall be placed and erected on any Lot within the Property. No carports of any kind shall be built, placed, or constructed on any Lot.

(b) Garages. No garage shall ever be changed, altered or otherwise converted for any purpose inconsistent with the housing of a minimum of two (2) automobiles at all times. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

(c) Exterior Wall. No residence shall have less than fifty-one (51) percent masonry construction or natural cedar wood on its exterior wall area. As used in this paragraph, the term masonry construction shall include brick, stone, artificial stone, stucco or equivalent material acceptable to the Architectural Control Committee. Fibrous cement siding (i.e. Hardiplank) may be included within the term masonry construction with the approval of the Architectural Control Committee. Detached garages may have natural cedar wood siding of a type and design approved by the Architectural Control Committee.

(d) Roof Materials. Unless otherwise approved in accordance with the last sentence of this subsection (d), the roof of all buildings on the Property shall be constructed or covered with

asphalt composition shingles or fiberglass composition shingles. The color of any composition shingles shall be of wood tone, earthtone, forest green or in harmony with earthtone and shall be subject to written approval by the Architectural Control Committee prior to installation. Any other type roofing material may be used only if approved in writing prior to installation by the Architectural Control Committee.

(e) Air Conditioners. No window or wall type air conditioners shall be permitted to be used, erected, placed, or maintained on or in any building or on any Lot, except in temporary buildings and then only if approved in writing by the Architectural Control Committee prior to installation or placement.

3.2 Minimum Square Footage Within Improvement. Each dwelling constructed on a Lot shall contain a minimum of One Thousand (1,000) square feet of livable area, exclusive of open porches and garages.

3.3 Landscaping. The Owner or builder of each Lot, as a minimum, prior to completion of the construction of a residential dwelling shall solid sod with grass the area between its residential dwelling and the curb line(s) of the abutting street(s). At no time may any area of any Lot covered with sod be used for parking of any vehicle.

3.4 Sidewalk. No sidewalk, walkway, improved pathway, deck, patio, driveway or other improvement shall be constructed on any Lot unless and until the plans and specifications therefor are submitted to and approved by the Architectural Control Committee as provided by Article IV below.

3.5 Location of the Improvements Upon the Lot. No building shall be located on any



Lot nearer to the front line or nearer to the street side line than the minimum building setback line shown on the recorded Subdivision Plat or replat(s) thereof. Subject to the provisions of Section 3.6 below, no part of the house building or garage shall be located nearer than five (5) feet to an interior side Lot line or ten (10) feet to any exterior Lot line on a corner Lot. Any detached garage located a distance of sixty (60) feet or more from the front property line of a Lot may be located not less than five (5) feet from an interior side Lot line. Notwithstanding any provision hereof to the contrary, no building or structure constructed on a Lot shall be allowed to encroach upon another Lot or to be situated closer than ten (10) feet to a building or structure on any adjoining Lot. Unless otherwise approved in writing by the Architectural Control Committee, each main residential building shall face the front of the Lot. For the purpose hereof, the term "front Lot line" shall mean the property line of a Lot that is adjacent and continuous to a street or road shown on the, Subdivision Plat, or if two or more property lines are adjacent to a street, the "front Lot line" shall be the property line adjacent to a street that has the shortest dimension, and the term "street side Lot line" shall mean and refer to all property lines of any Lots that are adjacent to a street except the front Lot line, and the "interior side Lot line" shall mean and refer to all property lines other than the front Lot line and the street side Lot line. For the purposes of this covenant, eaves, steps, and unroofed terraces shall not be considered as part of a building provided, however, this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot. Unless otherwise approved in writing by the Architectural Control Committee, each main residential building shall face the front building line.

3.6 Composite Building Site. Subject to the approval of the Architectural Control

Committee, any Owner of one or more adjoining Lots or portions thereof may consolidate or re divide such Lots or portions into one or more building sites with the privilege of placing or constructing improvements on such resulting sites, in which case the front footage at the building setback lines shall be measured from the resulting side property lines rather than from the Lot lines indicated on the recorded plats. Any such resulting building site must have a frontage at the building setback line of not less than forty-five (45) feet. If an Owner consolidates two or more adjoining Lots, each original Lot shall continue to be assessed for maintenance as provided in Article VII. If an Owner redivides a Lot, the resulting Lots shall be assessed for maintenance as provided in Article VII as if each resulting Lot were an original Lot.

3.7 Prohibition of Offensive Activities. No activity, whether for profit or not, shall be carried on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may; be or become an annoyance or a nuisance to the neighborhood. This restriction is not applicable in regard to the normal sales activities required to sell new homes in the Subdivision and the lighting effects utilized to display the model homes.

3.8 Use of Temporary Structures. No structure of temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, with the exception of lawn storage or children's playhouses which are constructed with prior express written consent of the Architectural Control Committee; provided, however, Declarant reserves the right to grant the exclusive right to erect, place and maintain such facilities in or upon any portions of the Lots or Reserves as in its sole

discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily be limited to, sales and construction offices, storage areas, model units, signs and portable toilet facilities. Garages, if used during the development phase or new home construction as a sales office, are permissible provided it is converted to a regular garage capable of housing a minimum of two (2) automobiles prior to conveyance for occupancy by an Owner.

3.9 Playhouses or Other Amenity Structures. Playhouse or fort style structures are limited to a maximum overall height of eight (8) feet. Additionally, playground equipment of any type or amenity structures of any type are permitted only when the specific Lot involved is completely enclosed by fences in accordance with paragraph 3.13.

3.10 Storage of Automobiles, Boats, Trailers and Other Vehicles. No vehicle with or without motor may be parked or stored on any part of any Lot, easement, right-of-way, or Common Area unless such vehicle is concealed from public view inside a garage provided the doors may be closed and secured or other approved enclosure, except passenger automobiles, passenger vans or pick-up trucks that: (1) are in operating condition; (2) have current license plates and inspection stickers; (3), are in daily use as motor vehicles on the streets and highways of the State of Texas; and (4) which do not exceed six feet six inches in height, or seven feet six mches in width or twenty-one feet in length, and may be parked in the driveway on such Lot. No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored, on any part of any Lot, easement, right-of-way, or Common Area unless such object is concealed from public view inside a garage provided the doors may be closed and secured or other approved

enclosure. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or any portion of the Properties. No motor bikes, motorcycles, motor scooters, "gocarts" or other similar vehicles shall be permitted to be operated in the Properties, if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance or jeopardize the safety of the Owners, their tenants, and their families. The Board of the Association may adopt rules for the regulation of the admission and parking of vehicles within the Common Areas, including the assessment of charges to Owners who violate, or whose invitees violate, such rules. If a complaint is received about a violation of any part of this section, the Board of Association will be the final authority on the matter. This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of subdivision facilities or of a house or houses in the immediate vicinity.

3.11 Mineral Operations. No derrick or other structures designed for the use in boring for oil or natural gas or their minerals shall be erected, maintained, or permitted upon any Lot, nor shall any tanks be permitted upon any Lot.

3.12 Animal Husbandry. No animals, snakes, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats or other common household pets may be kept provided they are not kept, bred or maintained for commercial purposes. No more than two common household pets will be permitted on each Lot. If common household pets are kept, such pets must be restrained and confined on the Owner's Lot. It is the pet owner's responsibility to keep the Lot clean and free of pet debris. Pets must be on a leash when away from the Lot. At no time shall any

animal be kept, bred or maintained on any Lot which is deemed to be inherently dangerous in the sole and exclusive opinion of the Association nor any animal which is trained and/or utilized for fighting. For purposes of this paragraph, the breeds of dogs commonly known as pit bull terriers and rottweilers are presumptively deemed to be inherently dangerous.

3.13 Walls, Fences, and Hedges. No hedge in excess of five (5) feet in height, wall or fence shall be erected or maintained nearer to the front Lot line than the walls of the dwelling existing on such Lot. No side or rear fence, wall or hedge shall be more than six (6) feet in height except fencing around the perimeter of the Subdivision may be no more than eight (8) feet, unless otherwise approved in writing by the Architectural Control Committee. All fences and walls shall be of wood construction or better. No chain link fence type construction will be permitted on any Lot.

3.14 Visual Obstruction at the Intersections of Streets. No object or thing which obstructs site lines at elevations between two (2) feet and eight (8) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points ten (10) feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

3.15 Maintenance of Lots and Improvements. The Owners or occupants of all Lots shall at all times maintain the Lot and all improvements thereon in a sanitary, healthful and attractive manner. Such maintenance shall include but not be limited to:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Lawn mowing;
- (c) Tree and Shrub pruning;
- (d) Watering;

- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keep lawn and garden areas alive and attractive, free of weeds;
- (g) Comply with all governmental health and safety requirements, as well as direction of county officials;
- (h) Repair any damages to exterior components; and
- (i) Repaint (with approved colors) improvements.

In no event shall any Lot be used for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, which materials and equipment shall be stored so as not to be visible from any street. The drying of clothes in public view is prohibited. The Owner or occupants of any Lot shall construct and maintain a fenced enclosure to screen drying clothes from public view. Similarly, all yard equipment, wood piles, or storage piles shall be kept screened by a fenced service yard or other similar facilities so as to conceal them from view of neighboring Lots, any street or other property. No Lot shall be used or maintained as a dumping ground for trash, nor will the accumulation of garbage, trash or rubbish of any kind thereon be permitted. Burning of trash, garbage, leaves, grass or anything else will not be permitted without the prior, express, written consent from the Association. Trash, garbage or other waste materials shall be kept in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids or as required by Polk County. Equipment for the storage or disposal of such waste materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. In the event of default on the part of the Owner or occupant of any Lot in observing any of the above requirements, such default continuing after ten (10) days' written

notice thereof from the Association, being placed in the U. S. mail without the requirement of certification, Association may, without liability to the Owner or occupant, enter upon said Lot and initiate any such maintenance deemed needed to the Lot or Improvement, and/or remove or cause to be removed any such Improvement, garbage, trash and/or rubbish, or do any other thing necessary to secure compliance with these restrictions so as to place said Lot and Improvements in a neat, attractive, healthful, and sanitary condition, and may reasonably charge the Owner or occupant of such Lot for the cost of the work. Said charges shall become an assessment against the Lot as provided in Article VII. Minimum standards are defined for any property wherein the grass exceeds the height of six (6) inches or wherein the Directors or their agent determines weeds not to be consistent with the standard of surrounding properties. Further, Declarant or its assignee reserves the right to contract or arrange for regular garbage pick up service for the Lot Owners. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the property to pay for such work or service immediately upon receipt of a statement, the amount thereof may be added to the annual maintenance charge assessed against such Lot and become a charge thereon in the same manner as the regular annual maintenance charge provided for herein.

3.16 Signs, Advertisements, Billboards. No signs, billboards, posters or advertising devices of any character shall be erected on any Lot except one sign of not more than five (5) square feet, advertising the property for sale or rent or signs used by a builder to advertise the property for sale during the construction and sales period. Association shall have the right to remove any nonconforming sign, advertisement or billboard or structure which is placed on a Lot and in so doing shall not be subject to any liability or damages for trespass, tort or otherwise in connection therewith

arising from such removal. The right is reserved for builders, provided, consent is obtained from the Association, which cannot be unreasonably withheld, to construct and maintain signs, billboards, or advertising devices for the purpose of advertising for sale dwellings constructed by the builders and not previously sold by such builder.

3.17 Antennas, Satellite Dishes and Related Masts. Any antenna, satellite dish and related masts are permitted to be placed on a Lot only in accordance with guidelines, conditions, standards and requirements adopted by the Board of Directors of the Association from time to time and as may be amended by the Board of Directors of the Association from time to time.

3.18 Noise. Except in an emergency or when unusual circumstances exist (as determined by the Board of Directors), outside construction work or noisy interior construction work shall be permitted only after 6:00 a.m. and before 9:00 p.m.

3.19 Intentionally Blank

3.20 Deviations in Restrictions. The Association, at its sole discretion, is hereby permitted to approve deviations in the restrictions set forth herein in instances where in its sole judgment, such deviation will result in a more common beneficial use. Such approvals must be granted in writing. Any deviations granted must be in the spirit and intent of the welfare of the overall community.

3.21 No Liability. Neither Board of Directors of the Association, nor the respective agents, employees and architects of each, shall be liable to any Owner or any other party for any loss, claim or demand asserted on account of the administration of these restrictions or the performance of the duties hereunder, or any failure or defect in such administration and performance. These



restrictions can be altered or amended only as provided herein and no person is authorized to grant exceptions or make representations contrary to the intent of this Declaration. No approval of plans and specifications and no publication of minimum construction standards shall ever be construed as representing such plans, specifications or standards will, if followed, result in a properly designed residential structure. Such approvals and standards shall in no event be construed as representing or guaranteeing any residence will be built in a good, workmanlike manner. The acceptance of a deed to a residential Lot by the Owner in the subdivision shall be deemed a covenant and agreement on the part of the Owner, and the Owner's heirs, successors and assigns, that Board of Directors of the Association, as well as their agents, employees and architects, shall have no liability under this Declaration except for willful misdeeds.

3.22 Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of one or more conflicting interpretations, the interpretation which is most nearly in accord with the general purposes and objectives of this Declaration shall govern.

3.23 Preexisting Camping Vehicle. Any and all now existing camping vehicles including, but not limited to, mobile camper, travel trailers, portable campers, motor homes, and mobile homes in place on a Lot as of the date of recordation of this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Cedar Point, Section Five recorded in Polk County, Texas Real Property Records, shall be permitted to remain in place on said Lot until such camping vehicle is no longer habitable. The determination of habitability shall be within the sole and exclusive discretion of the Board of Directors of the Association and factors to be considered in such determination shall include, but not be limited to, whether such camping vehicle is connected to

electrical service, water service, and sewer service. Upon the determination that such camping vehicles are no longer habitable in the opinion of the Board of Directors of the Association, such camping vehicle will then be subject to the provisions of Article 3.10 and 3.15 herein. Any and all preexisting camping vehicles must have skirting installed around the perimeter of the vehicle between the ground and the bottom of the vehicle of a type approved by the Architectural Control Committee of the Association.

3.24 Registered Sex Offender. At no time may an Owner of a Lot enter into a contract for rental of the Lot and/or any Improvement located thereon to any individual who is at that time known to the Owner to be a registered sex offender as said term as defined in the Texas Penal Code.

3.25 Maximum Occupants of Improvements. At no time shall any improvement on Lot be occupied by more than three (3) adults and five (5) children claiming said Lot as his or her residential homestead pursuant to the laws of the State of Texas.

3.26 Ingress and Egress to Subdivision. At no time shall any Owner of any Lot, their licensee or invitee make entry into and/or exit from the Subdivision over, across and/or through any portion of the Property other than the then existing, designated private streets in the Subdivision.

3.27 Speed Limits on Private Streets. The Board of Directors of the Association shall have the sole and exclusive right to establish maximum and/or minimum speed limits for vehicular traffic over and across the private streets in the Subdivision and shall further have the sole and exclusive right to establish and impose fines to be imposed on any violator of such speed limits in the initial amounts of \$50.00 per infraction.

3.28 Painting and Yard Art. No painting of trees, stones or any other yard art shall be

permitted.

3.29 Religious Use of Lots. No improvement on nor any Lot shall be utilized primarily for the purpose of the promotion of any religion or religious activity irrespective of faith.

3.30 Outside Toilet Facility. No outside toilet facilities shall be permitted.

3.31 Firearms. Discharge of any firearm on any Lot shall be prohibited.

3.32 Garage Sales. No more than two (2) garage sales may be conducted by any owner in any given calendar year.

3.33 Boats in Ponds. No boats are permitted in ponds and/or any other common area.

3.34 Fishing in Ponds. Fishing is allowed in ponds and/or other common areas only for those owners and/or guest under the age of 17 years of age and over the age of 65 years of age in reserves A and B inclusive.

3.35 Swimming in Boat Ramp Areas. No swimming shall be allowed in the area of boat launch identified as Number 5 in Section 5, Reserve G.

3.36 Fireworks. Fireworks are not allowed in the Subdivision at any time except July 4<sup>th</sup> and December 31<sup>st</sup> 6:00 p.m. through 1:00 a.m. at Boat Launch Number 5 in Section 5, Reserve G.

3.37 Golf Carts. If operated after dark, must have lights.

3.38 FEMA. At no time shall any Lot be utilized for the storage, by the Federal Emergency Management Agency (FEMA), of any trailer or mobile home nor shall any such trailer or mobile home ever be placed on any Lot by FEMA for residential occupancy.

3.39 Leases. For any Lot which is utilized for rental property, the owner of such Lot must file a copy of the Lease Agreement with Tenant with the Association prior to the Lease

commencement date and said Lease will be kept among the Association's records.

3.40 Fines for Violations of Article III. Any violation of the provision of Article III hereinabove shall be subject to a fine imposed by the Board of Directors of the Association in its sole and exclusive opinion in an amount not to exceed \$200.00 per each violation. Such fines shall become a part of the maintenance assessments created pursuant to Article VII hereof and shall be subject to collection as expressly provided therein.

#### ARTICLE IV

##### ARCHITECTURAL APPROVAL

4.1 Architectural Control Committee. As used in this Declaration, the term "Architectural Control Committee" shall mean a committee of three (3) members, all of whom shall be appointed by Association, except as otherwise set forth herein. Members of the Architectural Control Committee appointed by Association may be removed at any time and shall serve until death, resignation or removal by the Association.

4.2 Approval of Improvements Required. Notwithstanding anything contained in the Declaration to the contrary, the approval of a majority of the members and the Chairman of the Architectural Control Committee shall be required for the construction of the initial dwelling unit on a Lot ("New Construction") and the approval of a majority of the Board of Directors of the Association (the "Board") (or the approval of any subcommittee appointed by the Board for such purpose) shall be required for any subsequent Improvement to Property following the construction of the initial dwelling unit on a Lot, ("Modification Construction"). For purposes of this Article IV, the Board and the Architectural Control Committee are each sometimes referred to as the "Approval

Entity".

4.3 Address of Approval Entity. The address of the Architectural Control Committee shall be 215 Cedar Point Drive, Livingston, Texas 77351.

4.4 Submission of Plans. Before commencement of work to accomplish any proposed Improvement to Property, the Owner proposing to make such Improvement to Property (the "Applicant") shall submit to the proper Approval Entity at its respective office copies of such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Approval Entity reasonably shall request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property, as may be more particularly described from time-to-time in any minimum construction standards and/or architectural guidelines adopted by the Architectural Control Committee (in the case of New Construction) or the Board (in the case of Modification Construction) (the "Architectural Guidelines"). The Approval Entity may require submission of additional plans, specifications, or other information before approving or disapproving the proposed Improvement to Property. Until receipt by the Approval Entity of all required materials in connection with the proposed Improvement to Property, the Approval Entity may postpone review of any materials submitted for approval.

4.5 Criteria for Approval. The proper Approval Entity shall approve any proposed Improvement to Property only if it determines in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Properties as a whole; that the appearance of the proposed Improvement to Property will be

in harmony with the surrounding areas of the Properties, including, without limitation, quality, and color of materials and location with respect to topography and finished grade elevation; that the Improvement to Property will comply With the provisions of this Declaration and any applicable plat, ordinance, governmental rule, or regulation; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Property or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. Each Approval Entity is specifically granted the authority to disapprove proposed Improvements because of the unique characteristics or configuration of the Lot on which the proposed Improvement would otherwise be constructed, even though the same or a similar type of Improvement might or would be approved for construction on another Lot. The Approval Entity may condition its approval of any proposed Improvement to Property upon the making of such changes thereto as the Approval Entity may deem appropriate.

4.6 Architectural Guidelines. Each Approval Entity from time to time may create, supplement or amend Architectural Guidelines. The Architectural Guidelines may serve as a guideline only and an Approval Entity may impose other requirements in connection with its review of any proposed Improvements; provided, however, that such other requirements are not inconsistent with this Declaration.

4.7 Decision of Approval Entity. The decision of the Approval Entity shall be made within thirty (30) days after receipt by the proper Approval Entity of all materials required by the Approval Entity. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Approval Entity

promptly shall be transmitted to the Applicant at the address furnished by the Applicant to the Approval Entity. The Owner, however, is responsible under all circumstances to conform to the provisions of these restrictions in their entirety.

4.8 Failure of Approval Entity to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved by the appropriate Approval Entity, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Approval Entity, within thirty (30) days after the date of receipt by the appropriate Approval Entity of all required materials; provided, however, that no such deemed approval shall operate to permit any Owner to construct or maintain any Improvement to Property that violates any provision of this Declaration or the Architectural Guidelines. The Approval Entity shall at all times retain the right to object to any Improvement to Property that violates any provision of this Declaration or the Architectural Guidelines.

4.9 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed Improvement to Property in the materials submitted to the Approval Entity. Failure to complete the proposed Improvement to Property within nine (9) months after the date of approval or such other period of time as shall have been designated in writing by the Approval Entity (unless an extension has been granted by the Approval Entity in writing) or to complete the Improvement to Property in strict conformity with the description and materials furnished, to the Approval Entity, shall operate automatically to revoke the approval by the Approval Entity of the proposed Improvement to Property. No Improvement to

Property shall be deemed completed until the exterior fascia and trim on the structure have been applied and finished and all construction materials and debris have been cleaned up and removed from the site and all rooms in the dwelling unit, other than attics, have been finished. Removal of materials and debris shall not take in excess of thirty (30) days following completion of the exterior.

4.10 Inspection of Work. The Approval Entity or its duly authorized representative shall have the right, not the obligation, to inspect any Improvement to Property before or after completion, provided that the right of inspection shall terminate once the Improvement to Property becomes occupied.

4.11 Notice of Noncompliance. If, as a result of inspections or otherwise, the Approval Entity finds that any Improvement to Property has been constructed or undertaken without obtaining the approval of the Approval Entity or has been completed other than in strict conformity with the description and materials furnished by the Owner to the Approval Entity or has not been completed within the required time period after the date of approval by the Approval Entity, the Approval Entity shall notify the Owner in writing of the noncompliance ("Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance within the period of time set forth therein.

4.12 Correction of Noncompliance. If the Approval Entity finds that a noncompliance continues to exist after such time within which the Owner was to remedy the noncompliance as set forth in the Notice of Noncompliance, the Association may, at its option but with no obligation' to do so, (a) record a Notice of Noncompliance against the Lot on which the noncompliance exists in



the Office of the County Clerk of Polk County, Texas; (b) remove the noncomplying Improvement to Property; and/or (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question), and, if the Board elects to take any action with respect to such violation, the Owner shall reimburse the Association upon demand for all expenses incurred therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board may levy an assessment for such costs and expenses against the Owner of the Lot in question and such assessment will become a part of the assessment provided for in Article 7 hereof. The permissive (but not mandatory) right of the Association to remedy or remove any noncompliance (it being understood that no Owner may require the Association to take such action) shall be in addition to all other rights and remedies that the Association may have at law, in equity, under this Declaration, or otherwise.

4.13 No Implied Waiver or Estoppel. No action or failure to act by an Approval Entity shall constitute a waiver or estoppel with respect to future action by the Approval Entity with respect to any Improvement to Property. Specifically, the approval by the Approval Entity of any Improvement to Property shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

4.14 Power to Grant Variances. Each Approval Entity may authorize variances from compliance with any of the provisions of Article III and Article IV of this Declaration including restrictions upon placement of structures, the time for completion of construction of any

Improvement to Property, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or other relevant considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Approval Entity. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of the Approval Entity other than with respect to the subject matter of the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot concerned.

4.15 Compensation of Architectural Control Committee. The members of the Architectural Control Committee shall be entitled to reimbursement by the Association for reasonable expenses incurred by them in the performance of their duties hereunder as the Board from time to time may authorize or approve.

4.16 Non-liability for Approval Entity Action. None of the members of the Architectural Control Committee, the Association, any member of the Board of Directors, or shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of any Approval Entity except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Approval Entity shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, the Improvement to

Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes, or other governmental laws or regulations. Furthermore, none of the members of the Architectural Control Committee, any member of the Board of Directors, shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Association, the Architectural Control Committee, the Board of Directors, or otherwise. Finally, neither the Association, the Board, the Architectural Control Committee, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements, or portion thereof, or for failure to repair or maintain the same.

4.17 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Approval Entity may temporarily suspend certain provisions of this Declaration as to the Lot upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Property.

4.18 Existing Construction Exception. Any Improvement determined to be in violation of Article IV of this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Cedar Point, Section Five as of the date of its recordation in the Real Property Records of Polk

County, Texas, shall be deemed to be exempt from compliance with such Article unless and until such Improvement is determined to be uninhabitable in the sole and exclusive opinion of the Board of Directors of the Association or upon the sale of such Lot and Improvement by its then Owner whichever is sooner.

## ARTICLE V

### CEDAR POINT PROPERTY ASSOCIATION OWNERS, INC.

5.1 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. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Lot owned by an Owner.

(a) Each Owner is required at all times to provide the Association with proper mailing information should it differ from the property address relative to ownership. Further, when an alternate address exists, Owner is required to render notice of tenant, if any, or agency, if any, involved in the management of said property. The Owner is required and obligated to maintain current information with the Association or its designated management company at all times.

5.2 The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant 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.

Class B. The Class B member(s) shall be the Declarant or its successors and assigns. Class B members 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 Class B equal less than ten percent (10%) of the total authorized votes; or
- (b) January 1, 2014.

The Class A and Class B members shall have no rights as such to vote as a class, except as required by the Texas Non-Profit Corporation Act, the Articles of Incorporation or the Bylaws of the Association or as herein provided, and both classes shall vote upon all matters as one group. Notwithstanding the prior provisions of Section 5.2 above, if additional property is made subject to the jurisdiction of the Association pursuant to a Supplemental Declaration such that Declarant owns more than ten percent (10%) of the total of all Lots, then Class B membership and this Section 5.2 shall be automatically reinstated ipso facto.

5.3 Non-Profit Corporation. CEDAR POINT PROPERTY OWNERS ASSOCIATION, INC., a non-profit corporation has been organized; and it shall be governed by its Articles of Incorporation and Bylaws. All duties, obligations, benefits, liens and rights hereunder in favor of the Association, shall be vested in said corporation. The Association, by a majority vote of the Board of Directors of the Association, shall have the authority to borrow money for the purpose of making capital improvements on property owned by the Association.

5.4 Bylaws. The Association may make and establish such rules or bylaws as it may choose to govern the organization and administration of the Association, provided, however, that such rules or bylaws are not in conflict with the terms and provisions hereof. The right and power to alter, amend or repeal the bylaws of the Association, or to adopt new bylaws is expressly reserved by and delegated by the members of the Association to the Board of Directors of the Association.

5.5 Inspection of Records. The members of the Association shall have the right to inspect the books and records for the Association at reasonable times during the normal business hours by appointment.

## ARTICLE VI

### PROPERTY RIGHTS

6.1 Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and common facilities, if any, 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 the recreation facility by an Owner; to suspend any other service provided by the Association for 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 each infraction of its published rules and regulations, or breach of any provisions of the Declaration.

(c) The right of the Association to dedicate or transfer all or any part of the

Common Area, if any, 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 signed by two-thirds (2/3) of each class of the members agreeing to such dedication or transfer has been recorded in the Official Public Records of Real Property of Polk County, Texas; provided, however, the Board of Directors by majority vote of the Board is authorized and empowered to cause the dedication and conveyance of utility easements and easements for similar purposes without submitting such matter to a vote of the members, and to authorize any officer of the Association to execute the documents required for such dedication or conveyance.

(d) The right of the Association to collect and disburse those funds as set forth in Paragraph 7.1.

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to the approval of sixty-seven percent (67%) of the votes of all Owners.

6.2 Delegation of Use. Any Owner may delegate in accordance with the bylaws the Owner's right of enjoyment to the Common Area and facilities, if any, to the members of the Owner's family, tenants or contract purchasers who occupy the residential dwelling of the Owner's Lot.

## ARTICLE VII

### MAINTENANCE ASSESSMENTS

7.1 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; (1) annual assessment or charges, and (2) special assessments for capital improvements, and (3) other charges assessed against an Owner and his Lot as provided in Sections 3.15, 4.12 and 8.2 of this Declaration, such assessments and charges to be established and collected as herein provided. The annual and special assessments, as well as the other charges described in Sections 3.15, 4.12 and 8.2 of this Declaration, together with interest, collection costs and reasonable attorney's fees, shall be a charge on the Lot and shall be secured by a continuing lien upon the Lot against which each such assessment is made. Each such assessment and other charges, together with interest, collection 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, and the personal obligation for delinquent assessments shall not pass to subsequent Owners of the concerned Lot unless expressly assumed in writing.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents in the Property, for the improvement, maintenance and management of any Common Area and Common Facilities of the Association as well as any esplanades or landscaped areas within street rights-of-way designated by the Board of Directors of the Association as being appropriate for maintenance by the Association, and to enable the Association to fulfill its responsibilities. The responsibilities of the Association shall include, but not be limited to, the maintenance and repair of the Common Area and Common Facilities, if any; constructing and maintaining parkways, green belts, detention areas, right-of-ways, easements, esplanades, Common Areas, sidewalks, paths, and other public areas; construction and



operations of all street lights; insecticide services; purchase and/or operating expenses of recreation areas, if any; payment of all legal and other expenses incurred in connection with the collection and enforcement of all charges, assessments, covenants, restrictions, and conditions established under this Declaration; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments; employing policemen and watchmen, and/or security service, if desired; caring for vacant Lots and doing other thing or things necessary or desirable in the opinion of the Board of Directors to keep the Lots neat and hi good order, or which is considered of general benefit to the Owners or occupants of the Lots; and obtaining liability, workers compensation, property and Director and Officer liability insurance in amounts deemed proper by the Board of Directors of the Association. It is understood that the judgment of the Board of Directors in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith. All Lots in the Property shall commence to bear their applicable maintenance fund assessment simultaneously from the date of conveyance of the first Lot by Declarant to a resident Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Lots which are or at any time have been occupied, shall be subject to the annual assessment determined by the Board of Directors according to the provisions of Section 7.3. Lots which are not and have never been occupied, and which are owned by Declarant, a builder or a building company shall be subject to an annual assessment equal to one-half ( $\frac{1}{2}$ ) of the annual assessment applicable to occupied Lots. The rate of assessment for any calendar year for any individual Lot will change within that calendar year as the character of ownership and the status of occupancy changes, however, once any Lot has become subject to

assessment at the full rate, it shall not thereafter revert to assessment at the lower rate. The applicable assessment for each Lot shall be prorated for each calendar year according to the rate applicable for each type of ownership of the Lot during that calendar year.

7.3 Rate of Assessment. The current annual maintenance assessment is \$360.00 per Lot. For each additional Lot owned which has Improvements there is an additional annual assessment of \$24.00 per each such Lot. For each additional Lot owned which has no Improvements, there is an additional annual assessment of \$12.00 per each such Lot up to a total of ten (10) Lots to be assessed for any owner. Any Lot which is utilized for rental purposes shall be assessed at the rate of \$360.00 per Lot irrespective of the number of Lots owned.

(a) Thereafter, the Board of Directors of the Association (the "Board of Directors") shall fix the amount of the ensuing year's annual assessment (and the annual assessment for each subsequent calendar year) at least thirty (30) days in advance of the annual assessment period, which shall begin on the first day of January 1 of each year. Written notice of the annual assessment shall be sent to every Owner subject thereto at the address of each Lot or at such other address provided to the Association in writing pursuant to Section 5.1 (a). Maintenance fees are due on January 1st of each year and considered delinquent if not received by January 31 of that year. If for any reason the Board of Directors fails to fix the annual assessment for any year by December 2 of the preceding year, it shall be deemed that the annual assessment for such year will be the same as that established for the preceding year, and such annual assessment shall continue unchanged from year to year until the Board of Directors establish a new annual assessment in accordance with the provisions hereof.

(b) From and after January 1, the maximum annual assessment may be increased each

year by a majority vote of the Board of Directors of the Association only to an amount which is not more than ten percent (10%) above the maximum annual assessment for the previous year.

(c) From and after January 1, of the year immediately following the conveyance of the first Lot to a resident Owner, the maximum annual assessment may be increased by more than ten (10%) percent of the previous year's maximum annual assessment only if the increase is approved by the affirmative vote of a majority of those members of each class who are voting, in person or by proxy, at a meeting duly called for the purpose of considering such increase. Subject to the provisions of Section 7.5, the voting process for this action may also be handled by mail ballot as long as the ballots contain the name, property address, certification by the Secretary of the Association, alternate address of the member, if applicable, and the date and signature of the member. Ballots may be returned by U.S. mail in envelopes specifically marked as containing ballots for the special election, or may be collected by door to door canvas. Upon levying of any increased assessment pursuant to the provisions of this Section 7.3, the Association shall cause to be recorded in the Official Public Records of Real Property of Polk County, Texas, a sworn and acknowledged affidavit of the President (or any Vice President) and of the Secretary of the Association which shall certify, among other items that- play be appropriate, the total number of each class of members as of the date of the voting, the quorum required, the number of votes represented, the number of each class voting "for" and "against" the levy, the amount of the increased assessment and the date by which such increased assessment must be paid in order to avoid being delinquent.

7.4 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment

applicable to the current 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 any such assessment shall have the approval of two-thirds (2/3) of the votes of those members who are voting in person or by proxy at a meeting duly called for this purpose. Likewise, subject to the provisions of Section 7.5, the voting process for this action may also be handled by mail ballot as long as the ballots contain the name, property address, certification by the Secretary of the Association, alternate address of the member, if applicable, and the date and signature of the member. Ballots may be returned by U. S. mail in envelopes specifically marked as containing ballots for the special election or may be collected by door to door canvas. Upon the levying of any Special Assessment pursuant to the provisions of this Section 7.4, the Association shall cause to be recorded in the Real Property Records of the Polk County Clerk's Office a sworn and acknowledged affidavit of the President (or any Vice President) and of the Secretary of the Association which shall certify, among other items that may be appropriate, the total number of each class of members as of the date of the voting, the quorum required, the number of each class of votes represented, the number of each class voting "for" and "against" the levy, the amount of the special assessment authorized, and the date by which the special assessment must be paid in order to avoid being delinquent.

7.5 Notice and Quorum for any Action Authorized under Paragraphs 7.3 and 7.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3 and 7.4 shall be sent to all members not less than fifteen (15) 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 (60) percent of all the votes of all 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 ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the vote of the members is conducted by mail or door to door canvas, the approval of two-thirds ( $\frac{2}{3}$ ) of the total membership is required.

7.6 Effect of Nonpayment of Assessments. Any assessment, annual or special, or other charges assessed in accordance with Sections 3.15 and 4.1 not paid within thirty-one (31) days after its due date shall bear interest from the due date at a rate often percent (10%) per annum on the unpaid balance. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non judicial proceedings by the Association. As additional security for the payment of the assessments hereby levied, each Owner of a Lot in the subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non judicial

foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Polk County, Texas.

In the event that the Association has determined to non judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U. S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Polk County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including, reasonable attorney's fees and reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and, third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in

an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner, of such Owner's portion of any assessment, the Association may, acting through the Board, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the right of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association, deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7.6 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Polk County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

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. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above-described assessments.

7.7 Subordination of the Lien to Mortgages. As hereinabove provided, the title to each Lot shall be subject to a vendor's lien and power of sale and non judicial foreclosure securing the; payment of all assessments and charges due the Association, but said vendor's lien and power of sale

and non judicial foreclosure shall be subordinate to any valid purchase money lien or mortgage covering a Lot and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said vendor's lien or power of sale and non judicial foreclosure. However, the sale or transfer of any Lot which is subject to any valid purchase money lien or mortgage pursuant to a judicial or non judicial foreclosure under such lien or mortgage shall extinguish the vendor's lien and power of sale and non judicial foreclosure securing such assessment or charge only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of the Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

7.8 Future Sections. The Association shall use the proceeds of the assessments for the use and benefit of all residents of the Property, provided, however, that any additional property made a part of the Property by annexation under Section 8.7 of this Declaration, to be entitled to the benefit of this maintenance fund, must be impressed with and subjected to the annual maintenance charge and assessment on a uniform per Lot basis equivalent to the maintenance charge and assessment imposed hereby, and further, made subject to the jurisdiction of the Association.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Term. The covenants and restrictions of this Declaration shall run with and bind the



land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term of twenty (20) years from the date these covenants are recorded. During such initial term, the covenants and restrictions of this Declaration may be changed or terminated only by an instrument executed by the then Owners of seventy-five (75) percent of all the Lots within the Property, and properly recorded in the Official Public Records of Real Property of Polk County, Texas. Upon the expiration of such initial term, unless terminated as below provided, said covenants and restrictions (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods often (10) years each. At any time during the initial term above stated and at any time during any such ten (10) year automatic extension period, the covenants and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than sixty-seven (67%) percent of all the Lots in the Property and properly recorded in the Official Public Records of Real Property of Polk County, Texas. In addition, Declarant shall have the right at any time and from time-to-time, without the joinder or consent of any other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record in Polk County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity, or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the Federal Housing Administration (the "FHA"), the Veterans Administration (the "VA"), or any federal, state, county, or municipal governing body, or any agency or department thereof; provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme

of development as evidenced by this Declaration and any Supplemental Declaration taken collectively and shall not impair or effect the vested rights of any Owner or mortgagee.

8.2 Enforcement. The Association, any Owner, or the Declarant, and their respective successors and assigns, shall have the right to enforce by a proceeding at law or in equity all easements, restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and in connection therewith, shall be entitled to recover all reasonable collection costs and attorney's fees. Failure by the Association or by any other person entitled to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. It is hereby stipulated, the failure or refusal of any Owner or any occupant of a Lot to comply with the terms and provisions hereof would result in irreparable harm to other Owners, to Declarant and to the Association. Thus, the covenants, conditions, restrictions and provisions of this Declaration may not only be enforced by an action for damages at law, but also may be enforced by injunctive or other equitable relief (i.e., restraining orders and/or injunctions) by any court of competent jurisdiction, upon the proof of the existence of any violation or any attempted or threatened violation. Any exercise of discretionary authority by the Association concerning a covenant created by this Declaration is presumed reasonable unless the court determines by a preponderance of the evidence the exercise of discretionary authority was arbitrary; capricious or inconsistent with the scheme of the development (i.e., the architectural approval or disapproval for similar renovations relative to a given location within the Property).

The Association on its own behalf or through the efforts of its management company may initiate, defend or intervene in litigation or any administrative proceeding affecting the enforcement of a

covenant created by this instrument or for the protection, preservation or operation of the Property covered by this Declaration. Notification will be deemed to have been given upon deposit of a letter in the U. S. mail addressed to the Owner alleged to be in violation. Any cost that has accrued to the Association pursuant to this Section shall be secured and collectable in the same manner as established herein for the security and collection of annual assessments as provided in Article VII.

8.3 Severability. Invalidation of any one of these covenants by judgment or other court order shall in no way affect any of the other provisions which shall remain in full force and effect.

8.4 Intentionally Blank

8.5 Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

8.6 Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

8.7 Annexation. Additional residential property and "Common Area" may be annexed to the Properties:

- (a) With the consent of two-thirds (2/3) of each Class of Members: or
- (b) Notwithstanding anything contained in (a) above, additional land representing

future sections or phases of Cedar Point may be annexed from time to time by the Declarant, its successors or assigns, without the consent of other Owners, or their mortgagees;

(c) The annexation or addition may be accomplished by the execution and filing for record in the Real Property Records of Polk County, Texas by the owner of the property being added or annexed, of an instrument which may be called "Supplemental Declaration". Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area, if any. Such "Supplemental Declaration" may contain such other provisions which are not inconsistent with the provisions of this Declaration of Covenants, Conditions and Restrictions or the general scheme or plan of Cedar Point as a residential development. Nothing in this Declaration shall be construed to represent or imply that Declarant, its successors or assigns, are under any obligation to add or annex additional property to this residential development;

(d) At such time as the "Supplemental Declaration" is filed for record as hereinabove provided, the annexation shall be deemed accomplished and the annexed area shall be a part of the properties and subject to each and all of the provisions of this Declaration of Covenants, Conditions and Restrictions and to the jurisdiction of the Association in the same manner and with the same force and effect as if such annexed property had been originally included in this Declaration of Covenants, Conditions and Restrictions as part of the original development.

(e) After additions or annexations are made to the development, all assessments collected by the Association from the Owners in the annexed areas shall be commingled with the assessments collected from all other Owners so that there shall be a common maintenance for the Properties.

Declarant specifically reserves the right and authority to impose an assessment on Lots in any areas annexed to the development in excess of the annual assessments then currently being imposed upon existing Lots in the Association. Any and all such additional assessments over and above said amount shall be expressly reserved to and for the use of the newly annexed area.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**Lot \_\_\_\_\_, Block \_\_\_\_\_, Cedar Point, Section \_\_\_\_\_**  
**Address: \_\_\_\_\_**

\_\_\_\_\_  
Homeowner

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
Homeowner

\_\_\_\_\_  
(Printed Name)

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF \_\_\_\_\_§

BEFORE ME, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public in and for The State of Texas

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF \_\_\_\_\_§

BEFORE ME, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public in and for The State of Texas