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Doc Bk Vol Pg # of Pgs  
00002100 05 4365 1 20  
Jan 29, 2014

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ROCKINGHAM COUNTY TAX MAP NO.: 95-A-54 (PORTION)

### DECLARATION OF COVENANTS FOR CEDAR POINT TOWNHOMES

THIS DECLARATION (as amended from time to time, the "Declaration") is made as of January 27, 2014 by FSC DEVELOPMENT LLC, a Virginia limited liability company (together with its successors and assigns "Declarant").

A. Declarant is the owner of all those certain lots or parcels of land, with improvements, together with all rights, privileges, appurtenances, easements and rights-of-way thereunto belonging or in anywise appertaining, located on the northwest side of U.S. Route 11 in Linville District, Rockingham County, Virginia, being Cedar Point Townhomes, Section 1, including Lots 1, 2, 3 and 4 (collectively, the "Property") shown and described by plat entitled "Final Plat Cedar Point Townhomes Phase One" and metes and bounds description dated September 7, 2013, made by Jeffrey S. Simmons, L.S., to be recorded in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia, prior hereto (the "Plat").

B. The Property is a portion of that certain lot or parcel of land comprised of 5.4447 acres, more or less, acquired by Declarant by deed dated June 7, 2013, from Jerry A. Shifflett and Brenda S. Shifflett, of record in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia in Deed Book 4258, page 140, being more particularly shown and described by plat and metes and bounds description dated January 5, 1995, made by Fred S. Price, of record in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia in Deed Book 1323, page 621 (the "Expansion Property").

Declarant is developing a townhome community to be known as Cedar Point Townhomes on the Property, with reserved rights to expand such community to include all or any portion of the Expansion Property, and so hereby declares that the Property shall be held, sold and conveyed subject to the easements, covenants, restrictions and conditions set forth in this Declaration, which shall run with the Property and shall be binding on all parties having or acquiring any rights, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner as defined below.

## **ARTICLE ONE DEFINITIONS**

1.1 "Access Easement" means the access easement reserved by Declarant to access the Expansion Property from U.S. Route 11, across the entrance and street improvements now or hereafter constructed on the Property as shown on the Plat.

1.2 "Association" shall mean and refer to the Cedar Point Townhomes Property Association, its successors and assigns. The Association will be an unincorporated association unless the Board of Directors later decides to incorporate the Association.

1.3 "Common Area" shall mean all property and easements or other interests owned or leased by the Association, or which the Association is obligated to maintain, for the common use and enjoyment of the members of the Association. The Common Area includes, without limitation, the entrance signage, the Access Easement and roadway affording access to the Lots, the shared parking lot (subject to assignment of specific parking spaces as exclusive to one or more townhomes), and any private utility and access improvements benefiting the Lots.

1.4 "Declarant" has the meaning assigned to it in the initial paragraph of this Declaration. Owners acquiring one or more Lots from Declarant are not a successor "Declarant" unless specifically designated by FSC Development, LLC as a successor declarant in a recorded instrument.

1.5 "Declaration" means this Declaration of Covenants as it may be amended or supplemented from time to time in accordance with its terms.

1.6 "Expansion Property" has the meaning given to it in Recital B above, and refers to the real property that may be later added to the community in future phases.

1.7 "Governing Documents" means this Declaration, any bylaws adopted to govern the Association, and if the Board of Directors elects to incorporate the Association, its Articles of Incorporation.

1.8 "Lot" means and refers to any plot of land shown and designated by number upon the Plat, as it may be amended or modified in the future, and includes Lots 1, 2, 3 and 4 as shown on the Plat...

1.9 "Member" or "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot, whether acquired by purchase, gift, inheritance, foreclosure or otherwise, but excluding persons or entities having an interest merely as a security for the performance of an obligation.

1.10 "Plat" means the subdivision plat for Cedar Point Townhomes, Section 1, as more particularly described in Recital A above, as it may be amended in accordance with the terms hereof and applicable law, and all subdivision plats for future sections or phases of the Cedar

Point Townhome project on all or any part of the Expansion Property added to this Declaration as provided in Article Twelve below.

1.11 "Property" has the meaning given to it in Recital A above.

1.12 Unit shall mean and refer to any townhome situate upon a Lot.

## **ARTICLE TWO** **ASSOCIATION**

2.1 Association. The Association will be an unincorporated association (unless later incorporated by act of its Board of Directors) governed by this Declaration and the provisions of the Property Owners Association Act as in effect in the Commonwealth of Virginia.

### **2.2 Purposes and Powers.**

(a) The Association's purposes are to: (i) manage, operate, construct, improve and maintain the Common Areas, as necessary or appropriate; (ii) administer and enforce the covenants, conditions, restrictions, reservations and easements created by this Declaration; (iii) levy, collect and enforce the assessments, liens, charges and penalties imposed pursuant hereto; (iv) take any action reasonably necessary or appropriate to protect the general welfare and safety of Owners and residents of the community and their guests, and (v) regulate and manage Cedar Point Townhomes with the goal of enhancing and protecting its value.

(b) Unless expressly prohibited by law or any of the Association's Governing Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes.

(c) Insurance. The Association shall maintain general liability insurance in an amount determined by the Board of Directors from time to time, and such other insurance as is required by law or deemed appropriate by the Board of Directors.

(d) Rules and Regulations. The Board of Directors shall have the authority to adopt and modify from time to time reasonable rules and regulations to govern use of the Common Areas.

2.3 Board of Directors. The business of the Association shall be managed by its Board of Directors. The members of the Board of Directors shall be appointed by Declarant for so long as Declarant owns any Lot or any portion of the Expansion Property, unless earlier transition of control is required by Virginia's Property Owners Association Act. Upon transfer of control of the Association by Declarant, the Board of Directors shall be elected by the Owners as provided in Article 3 below.

2.4 Books and Records. Upon request, the Association shall allow Owners and mortgagees to inspect current copies of the Association's Governing Documents, published rules

and regulations, and the books, records, budgets and financial statements of the Association at reasonable times and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials as well as for the time of Association members associated with such inspection.

**2.5 Personal Liability and Indemnification.** No officer, director, employee, or committee member of the Association shall be personally liable to the Association or any Owner for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, director, employee, agent or committee member unless a court of competent jurisdiction finds that such officer, director, employee, agent or committee member engaged in willful misconduct or knowing violation of criminal law. The Association shall indemnify and hold harmless its present and future officers and directors to the maximum extent permitted by law and its Governing Documents.

### **ARTICLE THREE** **MEMBERSHIP AND VOTING**

**3.1 Membership.** Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one membership. Each Member shall have the rights, duties and obligations set forth in the Association's Governing Documents. Any attempt to transfer a membership apart from transfer of ownership of a Lot shall be null and void.

**3.2 Meetings.** All meetings at which the Owners will be presented with matters to vote on shall be called by the Board of Directors of the Association upon such notice as is required by the Governing Documents of the Association and applicable law.

**3.3 Voting.** Unless otherwise provided in the Association's Bylaws (if any), any matter coming before the Members for vote at any properly called meeting shall be approved only if it receives the affirmative vote of Members holding more than fifty percent (50%) of membership interests who are voting in person or by proxy at a meeting duly called meeting at which a quorum is present (or such higher percentage as is required by the Governing Documents or applicable law). A quorum shall be twenty-five percent (25%) of the Members. Notwithstanding anything herein to the contrary, when determining whether a requisite percent vote has been obtained, the total number of Members shall be based on the Lots to which membership is appurtenant, rather than the total number of Members.

**3.4 Election of Directors.** The members of the Board of Directors shall be appointed by Declarant for so long as Declarant owns any portion of the Property or Expansion Property or, if earlier, the time that Declarant elects to waive its right to appoint directors and calls for an election by the Association (as to any one or more directors). At the initial election of directors by the Association's members, the person receiving the highest number of votes shall serve a term of three (3) years; the person receiving the next highest number of votes shall serve a term of two (2) years; and the person receiving the third highest number of votes shall serve a term of one (1) year. Thereafter, all directors elected shall serve for a term of three (3) years.

The Association shall give written notice to all Owners of the election of members of the Board of Directors. The notice shall be hand delivered or mailed first-class at least thirty (30) days in advance of the proposed election to each improved Lot (or if a Lot is unimproved, to the address for the Owner of such Lot in the real property tax records of the County). The notice shall include a ballot containing the names of at least one nominee for each open Board seat and space for write-in candidates if an Owner desires to nominate and vote for an alternative candidate. The notice may be written as a proxy allowing the Owner to check off his or her desired vote(s) and return that to the Association to be counted as a proxy vote.

#### **ARTICLE FOUR** **ARCHITECTURAL CONTROLS**

4.1 No building, fence or other improvement shall be erected or placed on any portion of the Property, nor shall any exterior addition, change or alteration to any existing improvement on any portion of the Property be made until approved by the Board of Directors of the Association, acting as an architectural control committee (or, if the Board so elects, by a third party architect or company retained by the Association to provide architectural review services for a fee) (in such capacity, the "ACC"). Plans and specifications showing the nature, kind, shape, height and materials and a plat showing the location of the same shall be submitted to the ACC, which shall review the same as to the harmony of external design and location in relation to surrounding structures and topography. Without limitation, ACC has the authority to approve changes of exterior finishes or colors, storm or screen door style and color, installation of basketball hoops, exterior lighting changes and installation of fences, walls or hedges.

4.2 The ACC shall have full and complete discretion to approve or reject any proposed building, fence or other improvement or alteration on any Lot. The ACC may base its approval or rejection of plans and specifications upon any grounds it deems sufficient, including purely aesthetic considerations. The ACC shall not be bound to approve any proposed building or improvement solely because it complies with the restrictions and covenants herein or is comparable in cost, value or appearance to existing buildings and improvements on other Lots. The ACC may, however, approve any proposed building or improvement that does not meet the requirements of this Declaration if, in the ACC's opinion, such deviations are not harmful to the value of adjoining Lots. The ACC shall have no duty to exercise this power, nor shall the ACC have authority to permit deviations from Section 5.1 of this Declaration. The ACC shall determine all matters by majority vote.

4.3 The ACC shall, within thirty (30) days after submission of plans and other required items to the ACC for review, notify the requesting Owner, in writing, that the plans are (i) approved, (ii) approved with conditions, (iii) rejected (with the reasons for rejection clearly stated), or (iv) that additional information is required to permit the ACC to make its decision. If the ACC fails to act within thirty (30) days after receiving a submission, the submission shall be deemed approved; provided however, the ACC's failure to act shall not be construed as a waiver of any violation of this Declaration. If the ACC requests additional information, a new thirty (30) day period shall commence when all requested additional information is received by the ACC.

4.4 Representatives of the ACC may inspect any building or other improvements during construction to ensure that it conforms to the approved plans and specifications. If discrepancies exist, the ACC may require corrective work or issue a notice to cease construction until conformity is assured to its satisfaction. Failure to heed such a notice from the ACC shall be a default under this Declaration.

4.5 Neither Declarant nor the ACC shall be liable to any Owner or other person for any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or other person arising out of or in any way related to the subject matter of any required review, acceptance, inspection, permission, consent or approval, whether given or withheld.

4.6 Any purchaser for value of a Lot and any lender who secures a lien on a Lot may assume that any improvements on the Lot completed for more than six (6) months are satisfactory to the ACC.

4.7 The ACC shall not be responsible for reviewing, nor shall its approval of any project be deemed approval of, any proposed construction from the standpoint of safety, whether structural or otherwise. Approval of plans and specifications pursuant to this Declaration shall not relieve any Owner of the responsibility to comply with all applicable governmental laws or regulations.

4.8 The ACC may establish a reasonable processing and review fee to defer its costs in considering requests, which fee shall be paid at the time the request for approval is submitted.

4.9 Notwithstanding anything to the contrary herein, Declarant and the construction by Declarant of any buildings, structures or improvements on the Property shall be exempt from ACC review and shall not be subject to the provisions of this Article.

## **ARTICLE FIVE**

### **USE RESTRICTIONS**

5.1 Residential Use. No Lot shall be used except for residential purposes for one (1) single family dwelling. Declarant may use a Unit as a model home and otherwise use Lots for business purposes in connection with development, sale and operation of the Property and Expansion Property. The restriction to use for residential purposes does not prohibit (a) rental of property to individuals who use such improvements for residential purposes so long as such rentals are subject to a written lease of at least twelve (12) months' duration, nor (b) use of a portion of a dwelling as a home office approved under Section 5.2 below.

5.2 Home Occupations. No profession or home occupation shall be conducted in or on any part of a Lot unless approved by the Board of Directors and compliant with applicable zoning regulations.



5.3 Temporary Residences. No trailer, tent or other outbuilding erected on any Lot shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

5.4 Structures. No mobile home, double-wide manufactured home, house trailer or modular home shall be constructed or placed on any Lot. Modest construction trailers shall be permitted with ACC approval during the period of construction.

5.5 Garages. Dwellings may have an attached garage, homogeneous in design to the dwelling as a part of initial construction, but may not be modified to provide for an attached garage after such townhome has been built. No detached garage or carport shall be permitted on any Lot.

5.6 Completion of Construction once Begun. Other than original dwellings constructed by Declarant, the exterior of any dwelling or building on any Lot shall be completed within nine (9) months after construction commences.

5.7 Antenna and Satellite Dishes. No antennae or satellite receiving device of any kind larger than 18 inches in diameter shall be erected on any Lot or on any structure thereon. The location of any permitted satellite receiving device must be approved by the ACC. This paragraph is subject to federal regulations and if necessary to comply with federal regulations shall be interpreted to afford the Association the maximum regulatory power permitted with respect to satellite dishes and antennae.

5.8 Fences and Hedges. No fence or hedge shall be constructed or erected on any Lot without prior approval from the ACC. This restriction is not applicable to fences or hedges constructed by Declarant. Neither chain link nor wood fences shall be permitted.

5.9 Swimming Pools. Above-ground swimming pools (not including hot tubs, Jacuzzis or portable "kiddie" pools) are prohibited.

- 5.10 Signs. No sign of any kind shall be displayed to public view on any Lot except:
- (a) one (1) sign not exceeding five (5) square feet advertising the Lot for sale or for rent;
  - (b) signs used by a builder to advertise the Lot during construction;
  - (c) signs required by law or for legal proceedings; and
  - (d) one (1) sign not exceeding one-half (½) square foot displaying the name of the Owner or occupant of the Lot.

5.11 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose or in excessive or unusual numbers. Whenever animals are permitted outside, they must be secured by a leash or lead and be under the control of a responsible person and obedient to that person's command at all times. No dogs shall be left outside unattended. Owners are responsible for cleaning up after their pets, including the immediate removal of droppings from Common Areas.

5.12 Condition. All Lots and the improvements thereon shall be kept at all times in a neat, attractive, safe and structurally sound condition (with some leeway during periods of construction). Weeds, grass and dead trees shall be routinely cut and building exteriors shall be routinely painted (provided that any change of exterior colors shall require prior approval of the ACC).

5.13 Trash. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary enclosed containers. All containers shall be appropriately screened from view from any street, except on days of garbage collection. Trash removal is subject to the rights of the Association to arrange for service as provided above. No incinerator or burning of trash shall be permitted on any Lot

5.14 Repair of Damage. If any building on any Lot is totally or partially damaged by fire, wind or other hazard, the Owner shall, within a period of three (3) months thereafter, (a) commence repairs of the damage or (b) tear the building down and remove the debris from the Lot, subject to party wall rights of any adjoining Owner.

5.15 Association Right to Repair. If any Owner fails to make any required repairs or maintenance, the Association may, after giving ten (10) days' written notice to that Owner, make or cause such repairs or maintenance to be made on behalf of the Owner. The costs thereof shall be recoverable from the Owner as a default assessment as provided in Section 8.1 and Section 10.2(b) below.

5.16 Vehicles. No motor vehicle shall be kept on any Lot unless it bears a valid state license plate and current inspection sticker unless within a structural enclosure. No vehicle shall be parked in an area other than designated parking spaces within the Common Area or driven in any area within the community other than roads and thoroughfares intended for vehicle traffic.

5.17 Large Vehicles and Equipment. No trailer, bus, camper, boat, motor home, truck larger than three-quarter ton, commercial equipment, commercial vehicle (including, but not limited to, any tractor trailer or combination of tractor and trailer) or disabled or unlicensed vehicle, or any portion thereof may be parked or stored on any Lot except commercial equipment and vehicles temporarily located therein for the purpose of performing necessary construction or repairs. No stripped down or junk vehicles (licensed or unlicensed) or any sizable parts thereof shall be parked on any Lot or the Common Area.

5.18 Noxious or Offensive Activities. No noxious or offensive use or activity shall be carried on upon any Lot, nor shall any practice be engaged in by any Owner or occupant of a Lot that is an annoyance or nuisance to the neighborhood.

5.19 Clotheslines. Drying of clothes in public view is prohibited, but is permitted on temporary clotheslines within fenced areas screened from view. No permanent clothes lines shall be erected on any Lot.



5.20 Skateboard Ramps. No skateboard ramps or similar structures shall be constructed, placed or used on any Lot.

5.21 Exterior Lights. No exterior watch light shall be erected on any Lot without the prior approval by the ACC. As used herein, a "watch light" is an exterior light typically mounted on a telephone, utility or street light pole or any other light which casts an unacceptable level of light on neighboring Lots.

5.22 ATVs. No dirt bikes, ATVs, three or four wheelers or other non-licensed vehicles shall be operated on any Lot or the Common Area.

5.23 Storage Tanks. No propane, oil or other storage tank or cylinder shall be permitted on any Lot unless buried or adequately screened as determined by the ACC.

5.24 No Further Subdivision. No Lot shall be subdivided into smaller lots; no portion of any Lot shall be sold or conveyed; boundary lines between Lots shall not be removed or altered; and no Lot or any portion thereof shall be used as an access way or right-of-way for ingress or egress to any other Lot or parcel of land (excluding the Access Easement) without the prior written consent of the Owners of a majority of the Lots. Such consent shall in no way eliminate the need to obtain any necessary local government approval.

5.25 No timeshares. No portion of the Property may be submitted to timeshare or similar arrangement in which fractional ownership is associated with designated occupancy or use rights, without the prior discretionary approval of the Association's Board of Directors.

## **ARTICLE SIX**

### **PROPERTY RIGHTS AND EASEMENTS**

6.1 Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of one or more designated automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association shall maintain a list of the parking space(s) designated for each Unit.

6.2 Reserved Easement. Declarant reserves a perpetual, non-exclusive easement across the Common Areas as well as all utility easements shown on the Plat for the installation, repair, maintenance and use of public and private utility facilities serving the Property, the Expansion Property and any other land now or hereafter owned by Declarant. The Association has an easement over and across all Lots for the performance of its duties under this Declaration.

6.3 Drainage Easement. Declarant reserves to itself, its successors and assigns, and hereby conveys to the Association for the benefit of the Lots, all drainage easements created by the Plat, as well as the right to connect to such drainage facilities for the installation,

maintenance, repair and replacement of stormwater drainage and detention facilities benefitting the Expansion Property.

6.4 Access Easement. Declarant reserves to itself, its successors and assigns, and hereby conveys to the Association for the benefit of the Lots, the Access Easement created by the Plat. The Access Easement shall serve and benefit the Expansion Property regardless of whether all or any portion of that Expansion Property is ever added to the Cedar Point Townhomes community. If the Expansion Property is developed other than as an extension of the Cedar Point Townhomes community and the Access Easement is used to provide access to such unaffiliated development, Declarant shall require the owners of lots in such unaffiliated development to share in the costs of maintenance of the Access Easement on an equitable basis with the Members of the Cedar Point Townhome Association unless the access improvements so shared have been dedicated to and accepted into the public street system.

6.5 Easement for Encroachments. Each Lot shall be subject to an easement for encroachments (including maintenance and repairs thereto) created by overhangs of abutting structures on adjacent Lots. If a dwelling on one Lot is partially or totally destroyed and then rebuilt, minor encroachments by parts of the adjacent dwelling shall be permitted and a valid easement shall exist for such encroachment and the maintenance and repair thereof. Every portion of any building contributing to the support of an abutting building shall be burdened with an easement of support for the benefit of the abutting building.

## **ARTICLE SEVEN**

### **PARTY WALLS**

7.1 Each wall built as a part of the original construction by Declarant of the improvements upon the Lots and placed on the boundary line between the Lots shall be a party wall, subject to the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions to the extent not inconsistent with the provisions of this Declaration.

7.2 Reasonable costs of repair and maintenance of party walls shall be shared by the Owners who make use of the walls in proportion to their use. If an Owner fails to pay his or her share, the Association may levy a default assessment as herein provided, after notice and an opportunity to be heard in accordance with the Property Owners Association Act.

7.3 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to their use without prejudice, subject however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4 Notwithstanding any other provision of this Article, any Owner who causes a party wall to be exposed to the elements by his negligent or willful acts or those of members of his household, his guests, invitees or tenants, shall bear the entire cost of furnishing the necessary protection against the elements.

7.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and pass with title to the Lot entitled to contribution.

## **ARTICLE EIGHT**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

8.1 Creation of the Lien and Personal Obligation of Assessments. The Owner of any Lot by acceptance of a Deed to such Lot, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association; (i) annual or regular assessments or charges, and (ii) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided, and (iii) default assessments arising from a default of such Owner under this Declaration. The assessments, together with interest thereon and costs of collection thereof, 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 such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them. However, the lien shall remain attached to the real estate until paid.

With respect to any Default Assessment, the Owner of the Lot against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard in accordance with the Virginia Property Owners Association Act. Owners of Lots against which Default Assessments have been levied shall pay such assessments as required by the Association.

8.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members and in particular for the improvement and maintenance of the Property, services, and facilities devoted to this purpose and relating to the use and enjoyment of the Common Area, and of the townhomes situate upon the Property. Specifically, the annual assessment shall be levied by the Board to each Lot equally to satisfy the obligations of each Owner to share equally in the repair and maintenance costs of the Common Areas.

#### **8.3 Maintenance of Common Areas.**

(a) The Association shall maintain the Common Area, including shared access roadway and parking areas, and arranging for snow removal (provided snow accumulation is at least three (3) inches), but excluding any areas that are public streets maintained by the applicable governmental authority. All costs incurred by the Association in that regard shall be shared equally by the Lots as a regular assessment levied by the Association. The regular assessment may include a reserve as deemed reasonable by the Association's Board to create a reserve fund for repaving, relining and other substantial repairs of such access and parking improvements.

(b) Notwithstanding the provisions of this Article, the cost of any common facility maintenance, repair or replacements made necessary by the negligent or intentional acts of any Owner or by members of his household or his tenants, shall be paid by the responsible Owner as a default assessment.

(c) If public trash service is not provided to the Lots, the Association will select and contract with a private contractor to collect garbage from a dumpster at the Property at least once per week, and the cost of such garbage collection will be allocated equally among the Lots at a shared cost financed by regular assessments in accordance with this Declaration. Lot Owners may not arrange for private trash pick-up.

**8.4 Basis of Annual Assessments.** The Declarant shall fix the time for initial assessment of Lots as herein provided. Thereafter, effective January 1 of each year, the Board of Directors may increase the regular assessment, after due consideration by the Board of the current and future maintenance costs and operational responsibilities for the Common Area. The assessment may be made on an annual basis, or on a quarterly, monthly or other periodic basis as determined by the Board of Directors from time to time. The Board of Directors may increase the annual assessment by up to five percent (5%) per year of the prior year's annual assessment. Such increase(s) may be made by the Board, without Member approval, after due consideration by the Board of the current and future maintenance costs and operational responsibilities for the Common Area. Any increase above the annual five percent (5%) must be approved by a majority of the eligible votes of Members represented in person or by proxy at a meeting duly called for this purpose, and at which a quorum is present, and by Declarant so long as Declarant owns any lot or the Expansion Property.

**8.5 Special Assessments for Capital Improvements.** In addition to the annual or regular assessments authorized above, the Board of Directors shall have the authority as provided by Va. Code § 55-514 to levy in any assessment year a special assessment applicable to that year only, if the purpose in so doing is found by the Board to be in the best interests of the Association and the proceeds of the assessment to be used primarily for the maintenance and upkeep, including capital expenditures, of the Common Area. A special assessment must receive the affirmative vote of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, and at which a quorum is present, written notice of which shall be sent to all Members in accordance with the Association's Governing Documents.

**8.6 Garden Maintenance Assessments.** The Association may levy a monthly garden maintenance assessment against each Lot to defray the costs of garden maintenance for such Lot. If the Association levies such garden maintenance assessments, then the Association shall, in addition to its other maintenance responsibilities under this Declaration, perform the following services on the subject townhome Lots: mowing, shrubbery trimming, mulching and other general landscaping maintenance. The Association may also elect, at its option, to include within the scope of its services the removal of snow from sidewalks (upon reasonable accumulation as determined by the Association in its sole discretion). Maintenance of unusual or excessive landscaping, as determined by the Association, and all areas within an approved

private enclosure or fence shall remain the Owner's responsibility. The Association's maintenance obligation under this paragraph shall apply only during fiscal years in which the Board of Directors elects to levy the garden maintenance assessment.

8.7 Declarant Exempt from Assessment. Notwithstanding anything to the contrary herein, Declarant shall not be assessed on any Lots owned by it unless such Lot is improved with an occupied Unit.

8.8 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual basis. Special assessments shall not be made more than once per year and shall not exceed the amount of the annual assessments unless approved by Owners entitled to cast 2/3 of the votes in the Association at that time.

8.9 Certificates. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8.10 Effect of Nonpayment of Assessment; remedies of the Association. Any assessments that are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall earn interest from the date of delinquency at the current legal rate, and the Association may bring an action at law against the Owner personally obligated to pay the same, or may perfect the lien against the subject Lot, pursuant to Va. Code § 55-514 or other applicable law. Interests, costs, and reasonable attorney's fees of any such action shall also 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 Area or abandonment of his Lot.

8.11 Subordination of the Lien to Deeds of Trust. Pursuant to Va. Code § 55-526, the lien of the assessments provided for herein shall be subordinate to (i) real estate tax liens on the Lot, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien; provided, however, that mechanics' and materialmen's liens shall not be affected by this Article 6.

## **ARTICLE NINE**

### **TOWNHOME ROOFING ASSESSMENT**

9.1 Creation of Townhome Roofing Assessment Lien. Each Owner of any Lot by acceptance of a Deed, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association; (i) all annual townhome roofing assessments, fees and charges, and (ii) all special townhome roofing assessments for major and/or extraordinary roofing and gutter work. The annual and special townhome roofing assessment, together with interest as hereinafter provided, costs of collection, and reasonable



attorneys' fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made as hereinafter provided.

9.2 Purpose of Townhome Roofing Assessment. The initial annual townhome roofing assessment of One Hundred Dollars (\$100.00) per Lot per year shall commence upon the conveyance of a Lot from the Declarant and shall be prorated for the remainder of the assessment year from the time of such conveyance. Thereafter, the Board of Directors may increase the annual townhome roofing assessment, after due consideration by the Board of the current and anticipated costs and needs of the Association for the purpose of providing the periodic roofing and gutter work for all townhomes of the Cedar Point Townhomes. The Townhome Roofing Assessment shall apply ONLY to Lots improved with a townhome Unit, and shall not apply to vacant Lots, Lots under construction, or Lots owned by Declarant. The Board may elect, in its discretion, to establish separate reserve funds for different building groupings within the community, and may charge different roofing assessments to those different groupings based on differences in the age, condition or other factors differentiating the roofs of those different groupings.

9.3 Special Townhome Roofing Assessment. In addition to the annual townhome roofing assessment, the Board may levy a special townhome roofing assessment applicable to that calendar year only for the purpose of defraying, in whole or in part, the costs of any major and/or extraordinary roofing and guttering work of any townhome, provided that any such special townhome roofing assessment must be approved by the affirmative vote of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, and at which a quorum is present, written notice of which shall be sent to all Members in accordance with the Association's Governing Documents.

## ARTICLE TEN MAINTENANCE

10.1 Maintenance by the Association. Subject to other provisions hereof, the Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the Common Areas, including the parking lots, and shall maintain, repair and replace the roofing and guttering of the townhomes when and to the extent determined by the Association to be necessary to maintain the appearance and condition of the same.

### 10.2 Maintenance by Unit Owner.

(a) Each Owner shall maintain, repair, and replace, at his expense, all portions of his Lot and Unit except the roof and guttering. Without limiting the generality of the foregoing, lawn and fence maintenance shall be the responsibility of the Owner, except as otherwise provided herein if a garden maintenance assessment has been levied against and paid by such Owner.

(b) In the event an Owner of any Lot shall fail to maintain a Lot or Unit in a satisfactory manner, the Association shall have the right, through its agents and employees to enter and repair, maintain, and restore the Lot and the exterior of the buildings and any other

improvements, without liability to the Owner, after reasonable prior notice to the Owner and at least ten days' prior written notice that the Association will be undertaking such work. The cost of such exterior maintenance with statutory interest, as well as all costs incurred by the Association to collect such cost (including but not limited to reasonable attorneys' fees) shall be added to and become part of the assessments to which such Lot is subject, as a default assessment, and such assessment if unpaid upon demand shall become a lien upon the subject property. Any assessments under this Section 10.2 shall constitute liens and shall be subject to the provisions of Va. Code § 55-516.

**10.3 Right of Entry.** Whenever it is necessary to enter any Lot for the purpose of inspection, including inspection to ascertain an Owner's compliance with the provisions of this Declaration, or for performing any cleaning, maintenance, alteration or repair to any portion of the Common Areas or parking lot, the Owner shall permit an authorized agent of the Association to enter such Unit and Lot so long as such entry is made only at reasonable times and with reasonable advance notice. In the case of emergency such as, but not limited to, fire, flood or running water, entry may be made into a Unit without prior notice or permission.

## **ARTICLE ELEVEN** **ENFORCEMENT**

**11.1 Enforcement of this Declaration.** The Association, Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or any Owner to enforce any covenant or restriction herein contained shall not constitute waiver of the right to do so thereafter. Without limiting the generality of the foregoing, the Association, Declarant or any Owner shall have the right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

**11.2 Right of Entry.** In the event of a violation or breach of any provision of this Declaration, Declarant or the Association may, after giving ten (10) days' written notice to the Owner in breach, enter any Lot or Unit on which, or as to which, a violation or breach exists and summarily abate, provide upkeep to or remove at the expense of the defaulting Owner, any structure, thing or condition that causes the violation or breach, in which case the Declarant or Association shall not be deemed guilty or liable in any manner for trespass.

## **ARTICLE TWELVE** **RIGHT TO INCLUDE EXPANSION PROPERTY AND RESERVATION OF NAME**

**12.1 Right to Include Expansion Property.** For so long as Declarant owns any portion of the Property or the Expansion Property, Declarant may add all or any part of the Expansion Property to this Declaration by recording in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia, an instrument signed by Declarant setting forth the following: (a) a statement that the real property to be added is owned by Declarant and is adjacent to the Property, (b) a statement that Declarant has determined that such real property should be included as a part of the Cedar Point Townhome community, (c) the legal description of the real

property to be added, and (d) a statement that the property to be added shall be subject to and governed by the provisions of this Declaration. Upon the recording of such instrument, (i) the real property described therein shall thereafter be part of the Property and shall be governed by all of the provisions herein, and (ii) the Declaration shall be deemed amended to add such additional property to the definition and description of the Property herein.

12.2 Cedar Point Name. The name "Cedar Point" may be used by Declarant, its members and their respective affiliates to refer to all or any part of the Expansion Property or other nearby properties, regardless of whether such property is ever made subject to the Declaration. The name "Cedar Point" is proprietary to Declarant and may not be used without Declarant's written authorization.

### **ARTICLE THIRTEEN MISCELLANEOUS**

13.1 Severability. Invalidity 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.

13.2 Amendment. 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 Lot subject to the Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended by the affirmative vote of not less than two-thirds (66.67%) of the votes allocated to all Members, with approval of the Declarant required for any such amendment so long as Declarant owns any Lot or any portion of the Expansion Property. Any amendment must be properly recorded.

Notwithstanding anything to the contrary herein, Declarant reserves the right to unilaterally execute and record a corrective amendment or supplement to this Declaration (to correct a math mistake, inconsistency or scrivener's error or to clarify an ambiguity), or any amendment necessary to ensure that the community complies with the requirements of the secondary mortgage market (such as Fannie Mae) within five (5) years after the date of recordation of this Declaration, without the consent of any Owner.

*[Remainder of page intentionally left blank]*

FSC DEVELOPMENT, LLC,  
a Virginia limited liability company

By: Andy Shifflett (SEAL)  
Andy Shifflett  
Its: Manager

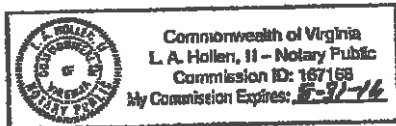
STATE OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2014, by Andy Shifflett, Manager of FSC Development, LLC, a Virginia limited liability company, on behalf of the company.

My commission expires: August 31, 2016

[SEAL]



L. A. Holler, II  
Notary Public  
Notary Public Registration No: 16248

### LIENHOLDER CONSENT

Kenneth R. Moran, Trustee under the Deed of Trust dated June 7, 2013, of record in the Office of the Clerk of the Circuit Court of Rockingham County, Virginia, in Deed Book 4258, page 143, and Jerry A. Shifflett and Brenda S. Shifflett, as Noteholders and beneficiaries of said Deed of Trust, acknowledge their consent to, and hereby subordinate said Deed of Trust to the foregoing Declaration of Covenants for Cedar Point Townhomes. The undersigned represent that they are the holders of such rights, which have not been assigned or transferred to any third party.

TRUSTEE:



Kenneth R. Moran, Trustee

STATE OF VIRGINIA

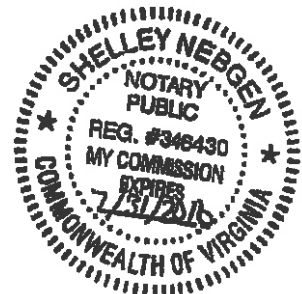
CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2014, by Kenneth R. Moran, Trustee.

My commission expires: 7/31/2016.

[SEAL]

  
Notary Public  
Notary Public Registration no. 346430





**BENEFICIARY:**

  
Jerry A. Shifflett

  
Brenda S. Shifflett

STATE OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2014, by  
Jerry A. Shifflett.

My commission expires: 9-30-2014.

[SEAL]





Notary Public

Notary Public Registration no. 4169603

STATE OF VIRGINIA

CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2014, by  
Brenda S. Shifflett.

My commission expires: 9-30-2014.

[SEAL]





Notary Public

Notary Public Registration no. 4169603

HB224790-2.DOC

THIS DOCUMENT WAS PREPARED BY:  
LISA ANNE HAWKINS (VSB# 44738)  
LENHART PETTIT PC  
90 NORTH MAIN STREET, SUITE 201  
HARRISONBURG, VIRGINIA 22802

100-58-461-PS-00000000  
10020256 DR 4451 323 3  
AUG 13 2014

TITLE INSURANCE UNDERWRITER INSURING THIS  
INSTRUMENT: NONE

TAX MAP NOS.: 95-(A)-L54 (PORTION)

**FIRST SUPPLEMENT AND AMENDMENT TO  
DECLARATION OF COVENANTS FOR  
CEDAR POINT TOWNHOMES**

This First Supplement and Amendment is made this 12<sup>th</sup> day of August, 2014, by FSC DEVELOPMENT, LLC, a Virginia limited liability company ("Declarant"), to be indexed as Grantor, and constitutes a supplement and amendment to the Declaration of Covenants for Cedar Point Townhomes, dated January 27, 2014, made by Declarant, of record in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in Deed Book 4369, page 41 (the "Covenants").

WHEREAS, under Article 12.1 of the Covenants the Declarant has the right to add additional real estate to the terms and conditions of the Covenants;

WHEREAS, Declarant has platted Phase Two of Cedar Point Townhomes ("Phase Two") upon a plat of survey entitled "Final Plat Cedar Point Townhomes Phase Two," made by Jeffrey S. Simmons, L.S., dated July 17, 2014, which plat is recorded in the aforesaid Clerk's Office in Deed Book 4451, page 202 (the "Phase Two Plat"); and

WHEREAS, the Declarant desires to add that portion of the Expansion Property included in Phase Two to the Cedar Point Townhomes community ("Community") and subject the same to the terms and conditions of the Covenants.

NOW THEREFORE, in the furtherance of the uniform development of the Community, Declarant hereby declares:

- (a) That Phase Two is currently owned by Declarant and adjoins the Property that is currently subject to the Covenants;
- (b) That Declarant has determined that Phase Two should be included as a part of the Community; and
- (c) That the legal description of Phase Two is set forth on the Phase Two Plat.

Given the foregoing, Declarant hereby declares that Phase Two comprised of twenty-three (23) townhouse lots, being shown and subdivided as Lots 5 through 14, inclusive, and Lots

69 through 81, inclusive, pursuant to the Phase Two Plat, shall at all times hereafter be owned, held, used, occupied, sold and conveyed subject to the provisions of the Covenants and to the covenants, conditions and restrictions, easements, reservations, assessments and charges contained in the Covenants (including without limitation easements reserved by Declarant for Expansion Property per Article 6 of the Covenants), which shall run with the Phase Two property and bind all parties having any right, title or interest in the Phase Two property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

Declarant reserves the right to withdraw all or any of such lots from the Community at any time prior to conveyance to a third party purchaser, by recordation of an instrument to that effect.

All capitalized terms not defined herein shall have the same meaning as defined in the Covenants.

This First Supplement and Amendment shall hereafter be deemed for all purposes as a part of the Covenants.

IN WITNESS WHEREOF, Declarant has executed this First Supplement and Amendment as of the 12<sup>th</sup> day of August, 2014.

FSC DEVELOPMENT, LLC,  
a Virginia corporation

By: Andy Shifflett

Name: Andy Shifflett

Title: Manager

STATE OF VIRGINIA  
CITY OF HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this 12<sup>th</sup> day of August, 2014, on behalf of FSC Development, LLC, by Andy Shifflett, its Manager.

My commission expires: 12/31/15

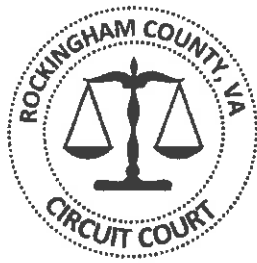
(SEAL)



HB268823.DOCX

Mary Elisabeth Richards  
Notary Public

Notary Public Registration No. 7510026



Rockingham Circuit Court  
Clerk's Office  
80 Court Square  
Harrisonburg, VA 22802  
(540) 564-3126

**Receipt: 17-4392**

| Product                                | Name                                       | Extended   |
|--|--|--|
| DG                                     | Deed of Gift                               | \$23.00  |
|  | # Pages                                    | 3  |
|  | Document #                                 | 2017-06466   |
|  | Document Info:                             | B: 4854 P: 299   |
|  | Document Info:                             | Grantor: FSC DEVELOPMENT LLC Grantee: CEDAR POINT TOWNHOMES PROPERTY ASSOCIATION |
| Rec - Pages Fee 301                    |  | \$14.50  |
| Rec - Virginia State Library Fund 145  |  | \$1.50   |
| Rec - Technology Trust Fund 106        |  | \$5.00   |
| Rec - Transfer Fee County 212          |  | \$1.00   |
| Rec - Virginia Outdoors Foundation 035 |  | \$1.00   |
| <b>Total</b>                           |  | <b>\$23.00</b>   |
| Tender (Check)                         |  | \$23.00  |
| Check #                                | 1051                                       |  |
| Paid By                                | CEDAR POINT TOWNHOMES PROPERTY ASSOCIATION |  |

Thank You  
Chaz W. Haywood - Clerk of Court

County Tax Map No: 95F-(1)- LA

Consideration/Actual Value: N/A

Title insurer: Unknown

Grantee's Address:

2340 South Main Street  
Harrisonburg, VA 22801

Prepared by:

Dale A. Davenport, Attorney/ VSB#16268

Hoover Penrod PLC

342 South Main Street

Harrisonburg VA 22801

DAD/rs:2012433/CedarPointHOAdeed.doc

2017-06466 B: 4854 P: 299

03/08/2017 12:21 PM Pages: 3

Chaz W. Haywood, Clerk of Court  
Rockingham County, VA



THIS DEED OF GIFT is made this 26th day of January, 2017, by and between FSC Development, LLC, a Virginia limited liability company, GRANTOR, and CEDAR POINT TOWNHOMES PROPERTY ASSOCIATION, a Virginia non-stock corporation, GRANTEE; *this conveyance is exempt from recordation taxation pursuant to §58.1-811D of the Code of Virginia, 1950, as amended;*

WITNESSETH:

That for and in consideration of the sum of ONE DOLLAR (\$1.00) cash in hand paid by the Grantee to the Grantor, the receipt of all of which is hereby acknowledged, and the business association between the two, the Grantor does hereby grant and convey with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE unto CEDAR POINT TOWNHOMES PROPERTY ASSOCIATION, Grantee, all that certain lot or parcel of land containing 23,403 square feet, more or less, together with improvements and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situate on the west side of North Valley Pike (U.S. Rt. 11) in Linville District, Rockingham County, Virginia, being known as designated as COMMON AREA ONE upon the FINAL PLAT, CEDAR POINT TOWNHOMES, PHASE



**ONE**, by Jeffrey S. Simmons, L.S., dated September 7, 2013, which plat is recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 4369, Page 34.

This is a portion of the property acquired by the Grantor by deed dated June 7, 2013, from Jerry A. Shifflett and Brenda S. Shifflett, husband and wife, recorded in the Clerk's Office in Deed Book 4258, Page 140.

This conveyance is made expressly subject to, and the Grantor reserves to the benefit of itself and other lot owners (all Phases, present and future), all those rights and easements shown or referenced on the aforementioned plat of the subdivision, and in the terms and restrictions set forth in the Declaration of Covenants dated January 27, 2014, recorded in the Clerk's Office in Deed Book 4369, Page 41. Specifically reserved for the benefit of the Grantor, its successors and assigns, are the variable width access easement on Cedar Point Lane, the water line and sanitary sewer easements, the variable drainage easement and the storm water management easement, all of which are shown on the said plat. All easements hereby reserved shall be appurtenant to the lands of the Grantor adjacent to the property platted as Phase One and shall run with the land.

This conveyance is also made subject to any and all easements, conditions, restrictions and reservations contained in other duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title to the property hereby conveyed which have not expired by limitation of time contained therein or otherwise become ineffective.

Reference is hereby made to the deed and plat above mentioned for further description and derivation of title to the property herein conveyed.

WITNESS the following signature.

FSC DEVELOPMENT, LLC  
a Virginia limited liability company

By   
Gerald A. Shifflett, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Rockingham, to-wit:

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day  
of March, 2017, by Gerald A. Shifflett, Manager on behalf of  
FSC Development, LLC, a Virginia limited liability company.

Commission expiration: March 31, 2020  
Notary Registration No: 7519830  
(Affix visible Seal)



  
Notary Public