



Doc ID: 005130280012 Type: AMEND
Recorded: 10/18/2016 at 02:27:12 PM
Fee Amt: \$26.00 Page 1 of 12
Jackson County, NC
Joe Hamilton Register of Deeds

BK **2166** PG **561-572**

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
CEDAR POINT LANDING

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR

CEDAR POINT LANDING

WHEREAS, the original Declarant, Cedar Point, LLC, caused to be recorded the original Declaration of Covenants, Conditions, Restrictions and Easements for Cedar Point Landing on September 17, 1996 at Book 932, page 294, Jackson County Registry; and

WHEREAS, the Original Declarant's right to control the development, use and maintenance of the property subject to the Declaration ended upon the sale of all Dock sites, at which time such control passed to the Cedar Point Landing Owners Association, Inc. which passage has occurred and the Association has assumed control of the property subject to the Declaration and Cedar Point, LLC, the original Declarant has been dissolved by filing with the North Carolina Secretary of State January 15, 2004; and

WHEREAS, the members of Cedar Point Landing Owners Association, Inc conducted a mail ballot on September 23, 2016, and by majority vote approved and adopted the following Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements pursuant to Article VII, Section 5 of the Original Declaration;

NOW THEREFORE, Cedar Point Landing Owners Association, Inc., does hereby amend and restate the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS previously recorded as follows:

PREAMBLE

THIS IS A NON-RESIDENTIAL DEVELOPMENT. NO PORTION OF THE PROPERTY AS DEFINED HEREIN SHALL BE USED FOR ANY RESIDENTIAL PURPOSE EITHER TEMPORARILY OR PERMANENTLY. THE USE OF ANY PORTION OF THE PROPERTY FOR RESIDENTIAL PURPOSES IS A VIOLATION OF THIS DECLARATION.

All property described in the "Description of Property", and such other property as may be added thereto by appropriate amendment to this Declaration, shall be held, leased, transferred, sold, conveyed, encumbered, used, improved and occupied subject to the following Covenants, Conditions, Restrictions and Easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property, and which shall run with the land as an appurtenance thereto and be binding upon all persons having or acquiring any right, title or interest in the described property or any portion thereof, and shall inure to the benefit of each owner thereof. While the Development is not subject to NCGS Chapter 47F, certain portions of that statute are incorporated herein.

I. DESCRIPTION OF PROPERTY

The property subject to this Declaration is all of the property shown on a plat recorded at Plat Cabinet 7, slide 87, Jackson County Registry, including all of tracts, A, B and C, shown thereon, together with all plats subsequently recorded of said property or portions or subdivisions thereof (subsequent plats include, without limitation, cabinet 8, slide 421; cabinet 9, slide 635; cabinet 9, slide 681; Cabinet 9, slide 722; cabinet 10, slide 37; cabinet 10, slide 213; cabinet 10, slide 214; cabinet 10, slide 388; cabinet 10, slide 339; Cabinet 12, slide 219; cabinet 13, slide 426). The property subject to this Declaration also includes all boat docks and "slips" which are attached to and/or accessed from the lands shown on the referenced plat, regardless of the name in which the permits for those docks and slips are held.

Together with such other properties, if any, as the Association may from time to time cause to be submitted to this Declaration by properly adopted and recorded amendment hereto.

II. DEFINITIONS

Unless a specific definition is set forth below, as used in this Declaration, all words shall have their usual English meaning as commonly understood and found

in usual dictionaries or legal dictionaries, or in some instances as defined by Courts in North Carolina or the United States Federal Courts, are as follows:

1. "Association" shall mean Cedar Point Landing Owners Association, Inc., a North Carolina non-profit corporation.
2. "Declarant" shall mean Cedar Point Landing Owners Association, Inc.
3. "Dock lot" or "boat dock lot" means any lot, or interest therein, as depicted on a plat recorded in the Jackson County Registry identified as a portion of Cedar Point or Cedar Point Landing;
4. "Slip" shall mean an individual space within a designated boat dock within which an owner has the specific, deeded right to park a watercraft.
5. "Dock" shall mean the water borne structure for parking and accessing boats and watercraft. Although attached to the land at a particular "dock lot", it is not part of the dock lot but exists pursuant to license from Duke Energy Corp (previously Nantahala Power & Light co.) Note: "docks" may have single or multiple "slips";
6. "Owner" means any person holding a deeded interest in any "dock lot", whether individually or in common with other owners. All regulations and restrictions herein applicable to Owners shall also apply to their invitees, guests and family member and lessees;
7. "Member" means any person owning a dock lot or any interest therein; membership and the obligations thereof conferred by any ownership interest in a dock lot may not be disclaimed or renounced by any act or non-user of the dock lot.
8. "Development" means all of the lands depicted on the plat recorded at Cabinet 7, slide 87, Jackson County Registry, the improvements, structures and facilities thereon.

III. ASSOCIATION'S RIGHT/OBLIGATION TO MAINTAIN AND IMPROVE THE PROPERTY

1. As a general rule, the obligation to keep, maintain and repair and replace any dock, or the access structure thereto, shall be that of the individual owner or owners having the right to use of that particular dock, jointly and severally in the case of multiple owners of rights to boat slips on any one dock. In instances where individual owners do not fulfill the obligation to keep the dock, and its individual slips, and access in clean, good and safe repair, the Association shall have the right, but expressly not the obligation, to enter upon the dock structure and access to perform the needed repair, maintenance or replacement and to bill the individual owner(s) the reasonable cost of such work, plus reasonable administrative fees.
2. The Association shall maintain, repair and replace all structures and improvements located within any area designated as "common area" or "common use area" or similar term on any plat showing all or any part of the development, including but not limited to: rest room facilities, gazebos, decks, picnic facilities, parking areas, garbage cans, landscaping and entrance gates.
3. Only the Association shall be empowered to undertake any new construction within any common areas, and no construction (other than routine maintenance and repair) shall be undertaken by any owner or member on any portion of the lands subject to this Declaration without the express, prior, written approval of the Association.
4. Owners/members are hereby notified that any alteration, expansion or modification of any existing dock structure which alters the former structure by adding or subtracting more than 10% of the former structure requires the express approval of Duke Energy Co. in addition to approval by the Association.
5. The Association, acting through its Board of Directors, shall have the obligation to prepare an annual budget and to impose annual and/or special assessments sufficient for the upkeep, maintenance, repair and

replacement of the common areas and the improvements and structures thereon. In addition, the Association may impose individual assessments and/or fines for work necessarily performed for the benefit of one owner, or the Association, due to negligence or failure to properly maintain, repair and/or replace individual docks or slips or interests therein, or for conduct causing damage to common areas improvements or structures. All such assessments, special assessments and fines shall be imposed and collected pursuant to NCGS 47F-3-116, which is incorporated herein by this reference as though full set forth. Any such charge, dues, assessment, individual assessment or special assessment remaining unpaid for a period of 30 days after the billing date thereof, shall be deemed delinquent and shall bear interest at the rate of 18% per annum.

IV. OWNERS RIGHTS TO EASEMENTS AND COMMON AREAS

1. Each owner of a dock lot, or any interest therein, in the development shall be entitled to use of the dock accessed therefrom, and of the slip or assigned slip thereto, the walkways and easements for ingress and egress crossing other lots as a means of access to the dock lot, the common areas and the structures and improvements thereon for the purpose of landing and taking out watercraft, picnicking in the common areas and other non-offensive recreational activity. In all instances, concern must be given to the close nature of the development and of the rights of others to similar use.
2. Parking is allowed only in designated areas as shown on the various recorded plats, or on Tract C.
3. Owners/members shall be entitled to no more than 10 guests utilizing the pavilion or common areas or easements on any day. Members must notify the Association in advance of such intended usage and must pay any cost incurred to clean up or haul away trash.
4. Access easements are shown on the various recorded plats of the Development, and are reserved and provided from the 3100 foot contour line reserved by Nantahala Power & Light Co. (now Duke Energy

- Co.) to a line approximately parallel to said contour and 15 feet away from said contour. In some instances, where necessary, are 15 feet in width, centered upon the actual walkway as constructed.
5. Any easement lying wholly or partially within a dock lot shall be maintained by the owner of the dock lot. No owner shall place any impediment to free passage within any designated easement.

VII. THE ASSOCIATION

1. The Association is a North Carolina non-profit corporation, organized and existing pursuant to NCGS Chapter 55B.
2. The Association shall be responsible for operation, repair, maintenance and upkeep of all common areas, or common use areas or similarly designated areas as shown on the plats, and such other responsibilities as it is authorized, but not required to undertake.
3. The Association shall have Members as defined herein. Voting rights of Members and all fees, dues, assessments, special assessments and other charges imposed uniformly upon Members shall be based on the number of slips owned by the Member. All such uniform charges shall be the responsibility and liability of the Member. In addition, the Association shall have "Associate Members" who shall be those persons having deeded rights to the use of the common property within Cedar Point Landing, but are not owners of a lot or dock lot or slip therein. Associate members shall not have voting rights in the Association. Fines may be charged by the Association to members or associate members for violation of this Declaration or the bylaws and collected and enforced in the same manner as dues and assessments. Annual fees for Associate Membership shall be set by the Board. In the case of a special assessment for capital improvement to the common area, Associate Members may also be assessed.
4. The affairs of the Association shall be managed by a Board of Directors consisting of no less than three (3) persons, as determined from time to time by the Board of Directors, who shall be at least 21

years of age and members of the Association. Directors shall be elected and serve terms of 3 years as set forth in the Bylaws. The Board of Directors shall have the right to establish uniform rules and regulations governing the use of the property which shall be written, but not necessarily in one document, and kept in the custody of the Secretary and furnished to any member upon request.

5. The Association shall meet at times and places as set forth in the Bylaws. The manner of calling meetings and notice thereof, voting, and participation therein shall be as set forth in the Bylaws.
6. The Association shall have all powers set forth in NCGS 47F-3-101, et seq., which is by this reference incorporated herein as though fully set forth. The Association shall have power to establish and collect annual dues or assessments which shall be equal as to all members, and special assessments for unanticipated capital expenses which also shall be equal as to all members. In addition, the Association shall have the power and authority to levy and collect unequal special assessments and fines against members for misconduct or specific damage to the common property and for particular expense incurred by the Association in relationship to particular member or members but not the entire membership. All of the foregoing dues, assessments, special assessments, individual assessments and fines shall be charged, collected and enforced pursuant to the provisions of NCGS 47F-3-116, as amended from time to time, which are by reference incorporated herein as though fully set forth. Any dues, assessment, special assessment individual assessment or fine remaining unpaid for a period of 30 days after the due date thereof shall bear interest at the rate of 18% per annum, or such higher amount as may be allowed by law, and, if placed into the hands of an attorney for collection or filing of lien, shall also include reasonable attorney fees and costs incurred.
7. All rights and privileges of use of the common areas and easements are subject to suspension for non-payment of dues, assessments, special assessment, individual assessments and fines.

VIII. RESTRICTIONS ON USE OF THE PROPERTY

1. All of the development as defined herein is for non-residential use only. No camping or other overnight use is permitted.
2. Use of the dock lot, the dock and slips thereon, common areas, parking areas and all facilities of the Association is restricted to members, their family and invitees only.
3. Any member may authorize the use of the pavilion or common facilities by a maximum of 10 persons at any one time. Members must notify the Association in advance of such intended usage and must pay any cost incurred to clean up or haul away trash.
4. No garbage, trash or other debris shall be stored or accumulated on any dock, slip, dock lot or the common area. All garbage, trash and debris shall be placed in receptacles provided.
5. Maintenance, repair and upkeep of the docks and slips are the responsibility of the member. All docks and slips shall be kept in clean, safe and good repair and condition at all times. No addition or alteration to a dock or slip shall be undertaken by any member without the express, prior, written approval of the Association and/or Duke Energy Co.
6. No animals other than usual household pets, dogs and cats, shall be permitted on the property. All such pets shall be reasonably controlled and restrained when on the property and the owner must clean up any waste left by such pet. Any member bringing such a pet onto the property shall hold the Association harmless for any injury or damage caused by such pet.
7. All vegetation, including landscaping, shall be installed, placed, maintained and replaced by the Association.
8. No member shall have any claim or action against the Association arising out of the use of the common elements or easements or performance of its usual or required duties.
9. Dock lot and slip owners may lease their lot and/or slip rights for periods of not less than 30 days, but must notify the Association

in writing of such lease, the tenant's name, address, phone number and any other required information. The Association may charge a fee for such lease. The leasing of a dock lot or slip shall not relieve the owner of any responsibilities for payment of Association charges. The Association shall not be required to furnish any lessee with separate entrance devices.

IX. DURATION AND AMENDMENT; SEVERABILITY

1. This Declaration shall remain in effect from the date of its adoption for a period of 20 years at which time it shall automatically renew and extend itself for successive periods of 20 years each, unless a majority of owners vote to terminate or replace the Declaration.
2. This Declaration may be amended by recommendation of the Board of Directors and the vote of a majority of the owners at an annual meeting or a meeting specially called for that purpose.
3. If any portion of the Declaration shall be determined to be unlawful, illegal, void, against public policy or otherwise unenforceable by any Court of competent jurisdiction, then such portion shall be deemed stricken and the remainder of the Declaration shall remain in full force and effect.

CERTIFICATION OF DECLARATION AMENDMENT

OF

CEDAR POINT LANDING

I certify that:

1. I am the currently serving Secretary of Cedar Point Landing Owners Association, Inc.

2. The foregoing proposal to Amend and Restate the Declaration of Covenants, Conditions, Restrictions and Easements for Cedar Point Landing was made to the membership by the Board of Directors on September 23 and 26, 2016.

3. That according to the Bylaws currently in effect, Article V, Section 1(1), the proposal was circulated to all members September 23, 2016, by first class mail to the member's address of record with the Association, and in addition by email September 26, 2016, if the member's email address is of record with the Association, giving each member at least thirty (30) days to respond.

4. That according to both the existing Declaration, recorded in Deed Book 932, Page 284 (Article VII, Section 5), Jackson County Registry, and the current Bylaws (Article X), a "simple majority of the members is necessary to amend or change the Declaration.

5. There are presently sixty-eight (68) members of Cedar Point Landing. Control of the Association, Cedar Point Landing Owners Association, Inc., has been turned over to the members by the Developer.

6. As of the date of this Certification, there have been forty-three (43) votes cast in favor of the Proposed Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Cedar Point Landing. This is more than a majority and the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easement for Cedar Point Landing is therefore adopted.

7. Records of voting are kept in the office of the corporation.

This the 14th day of October, 2016.

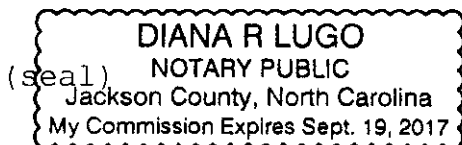
CEDAR POINT LANDING OWNERS
ASSOCIATION, INC.

By: Anita S. Gifford
Anita S. Gifford, Secretary

STATE OF North Carolina
COUNTY OF Jackson

I, Diana R. Lugo, a Notary Public, certify that Anita S. Gifford personally appeared before me this day and acknowledged that he/she is Secretary of CEDAR POINT LANDING OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, and that he/she, as Secretary, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

WITNESS my hand and notarial seal this 14th day of October, 2016.



Diana R Lugo
Notary Public

My Commission Expires:

9/19/2017