

**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
CEDAR POINTE
MASON, OHIO**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (the "Declaration") is made this _____ day of _____, 2005 (the "Effective Date"), by **THE MALLARDS OF MASON, LTD.**, an Ohio limited liability company (the "Developer") and approved by the **CITY OF MASON, OHIO**, an Ohio municipal corporation (the "City") (collectively, the "Parties") under the following circumstances:

WITNESSETH

WHEREAS, Developer is currently the fee simple owner of the real estate located at the northeast corner of the intersection of Mason-Montgomery Road and Cedar Village Drive in the City of Mason, Warren County, Ohio and more particularly described in **Exhibit A (not provided this draft)** attached hereto (the "Property"); and

WHEREAS, Developer's application to zone the Property to a Planned Unit Development District (PUD) per the Zoning Ordinance of the City was recommended for approval by Planning Commission on _____, 2005 and then approved by City Council on _____, 2005 per Ordinance _____; and

WHEREAS, Developer intends to subdivide, improve and develop the Property in material conformance with a set of documents, enumerated herein under Section 2.1 (collectively, the "PUD Documents") which have been approved by the City.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer **HEREBY DECLARES** that the Property and all portions thereof are and shall be held, transferred, sold, conveyed, leased, mortgaged, occupied, used and otherwise disposed of subject to the covenants, restrictions, easements, charges and liens set forth hereinafter (collectively, the "Covenants"), which Covenants are for the purpose of protecting and enhancing the value and desirability of the Property, and which shall run with the land and be binding on all parties having or hereafter acquiring any right, title or interest in the Property or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of each "Owner" as hereinafter defined thereof and to the benefit of the heirs, successors and assigns of each of them.

FURTHER, the City **HEREBY APPROVES** this Declaration and acknowledges that the Covenants set forth herein are consistent with the purpose of a PUD District as stated in Section 1161.1 of the Zoning Ordinance of the City and will promote the highest and best use of the Property.

ARTICLE 1

DEFINITIONS

- 1.1 As used herein, the following terms shall have the meaning indicated:
- 1.1.1 “Lot” shall mean any tract of land which is a separate tax parcel within the Property and any tracts which are or may be subject to this Declaration.
 - 1.1.2 “Owner” or “Lot Owner” shall mean each person or entity which is a record owner of a fee interest in any Lot within the Property and shall include the heirs, successors and assigns of such person or entity.
 - 1.1.3 “Tenant” shall mean any person or entity from time to time entitled to the use and occupancy of any Lot or portion thereof under any lease, sublease, license, concession or other similar agreement with the Owner of such Lot or portion thereof.
 - 1.1.4 “Cedar Pointe” shall be the name of and shall refer to the Planned Unit Development (PUD) established on the Property.
 - 1.1.5 “Zoning Ordinance” shall mean Titles Three, Five and Seven of Part Eleven – Planning and Zoning Code of the Codified Ordinances of the City of Mason, Ohio in effect as of the date hereof.
 - 1.1.6 “Planning Commission” shall mean the Planning Commission of the City of Mason, Ohio as established by Article VII, Section 7.01 of the Charter of the City of Mason, Ohio.
 - 1.1.7 “City Council” shall mean the legislative body of the City of Mason, Ohio.
 - 1.1.8 “Permittee” shall mean all officers, directors, employees, agents, contractors, customers, vendors, guests, suppliers, visitors, invitees, licensees, subtenants and concessionaires of any Lot Owner or any Tenant insofar as their activities relate to the intended use of such Lot or portion thereof.
 - 1.1.9 “Development Period” shall mean the period from the date this Declaration is recorded until the later of the date that is twenty (20) years thereafter or the date Developer records a notice indicating neither Developer nor any of its affiliates has an ownership interest or leasehold interest in or to any Lot.
- 1.2 Other capitalized terms utilized throughout this Declaration have meanings assigned to such terms in various sections of this Declaration.

ARTICLE 2

THE DEVELOPMENT PLAN

2.1 The PUD Documents

- 2.1.1 The PUD Documents which set forth the development plan for Cedar Pointe consist of the following documents which have been approved by Planning Commission on _____, 2005 as Case No. _____ and are hereby incorporated into this Declaration by reference and made a part hereof as if attached in full:
- 2.1.1.1 A *Final PUD Plan* prepared by Henderson and Bodwell dated March ____, 2005.
 - 2.1.1.2 A *Final Plat* titled "Cedar Pointe" prepared by _____, approved by City Council on April ____, 2005 by Ordinance _____ and recorded in Plat Book ____, Pages ____ and ____ in the Recorder's Office, Warren County, Ohio.
 - 2.1.1.3 A set of *Public Improvement Plans for Cedar Pointe* prepared by _____ and approved by the City Engineer _____, 2005.
 - 2.1.1.4 A set of *Water Main Plans for Cedar Pointe* prepared by _____ and approved by the City Engineer _____, 2005.
 - 2.1.1.5 A set of *Private Improvement Plans for Cedar Pointe* prepared by _____ and approved by the City Engineer _____, 2005.
 - 2.1.1.6 A *Master Landscape Plan* prepared by Warren H. Klink, registered Landscape Architect dated March ____, 2005.
 - 2.1.1.7 A *Signage Plan* prepared by _____ dated _____, 2005.
 - 2.1.1.8 This *Declaration of Covenants, Restrictions and Easements for Cedar Pointe*.
 - 2.1.1.9 An *Estimate of Development Costs* prepared by _____ dated _____, 2005.
 - 2.1.1.10 A *Projected Development Schedule* prepared by _____, dated _____, 2005.
- 2.1.2 Prior to the development of any Lot within Cedar Pointe, the Owner of such Lot shall first obtain Site Plan approval from Planning Commission pursuant to the procedure set forth in Section 1135.5 of the Zoning Ordinance and the Final PUD Plan shall be updated and amended accordingly. Nothing contained in this Declaration shall be deemed to supersede this requirement of Site Plan approval from the Planning Commission, and development of any Lot shall require the approvals contained in this Declaration and Site Plan approval from the Planning Commission.

- 2.1.3 The City and the Developer shall each maintain on file a complete set of the approved PUD Documents along with any amendments thereto.
- 2.1.4 The Parties agree that the development of Cedar Pointe as set forth in the PUD Documents is consistent with the City's Comprehensive Plan and will not have an adverse effect on the City. Therefore, no development impact fees shall be assessed by the City against the Property or any portion thereof.

2.2 **Construction of Public and Private Improvements**

- 2.2.1 For the benefit of the citizens of the City, the Lot Owners and the public, the Developer shall construct or cause to be constructed certain public improvements (the "Public Improvements") as set forth in the Public Improvement Plans for Cedar Pointe [bs1]referenced in Section 2.1.1.3 above. Upon completion of construction, final inspection by the City and the posting of any required bonds, the Developer shall dedicate the Public Improvements to the City for public use, and the City shall accept the same. Upon acceptance, the City shall assume responsibility for maintenance of the Public Improvements except for sidewalks which shall be the responsibility of the abutting Lot Owner.
- 2.2.2 For the benefit of the Lot Owners and the proper use and operation of Cedar Pointe, the Developer shall construct or cause to be constructed certain private improvements (the "Private Improvements") as set forth in the Private Improvement Plans for Cedar Pointe referenced in Section 2.1.1.5 above. Upon completion of construction and final inspection by the City, responsibility for maintenance of the Private Improvements shall be as set forth herein.

ARTICLE 3

LOT DEVELOPMENT STANDARDS

3.1 **Permitted Uses**

3.1.1 The following uses shall be permitted within Cedar Pointe:

3.1.1.1 ~~Lot 1~~**All lots** shall allow any use identified as a principally permitted use for the ~~HT-1 District, and Districts~~ as set forth in the Zoning Ordinance. Drive-through facilities shall be allowed on Lot 1 provided that such facilities comply with the standards set forth in Section 1172.8 of the Zoning Ordinance.

~~3.1.1.2 Lots 2 and 3 shall allow any use identified as a principally permitted use for the HT-1 and Districts as set forth in the Zoning Ordinance.~~

~~3.1.1.3~~**3.1.1.2** Other uses shall be permitted for the Lots provided that Planning Commission determines that such uses are consistent with the purposes of the

Cedar Pointe PUD District and the purposes set forth in Section 1161.1 of the Zoning Ordinance.

3.2 Coverage: Setback & Height Requirements

- 3.2.1 Projected impervious surface coverage for each Lot is conceptually shown on the Final PUD Plan, but actual coverage shall be determined by the specific requirements of end users and shall be subject to approval during the design review process required under this Declaration.
- 3.2.2 Unless a variance is granted by the City, all principal structures, accessory structures and vehicular use areas shall comply with the setback requirements indicated on the Final Plat.
- 3.2.3 Unless a variance is granted by the City, no principal ~~or accessory~~ structures shall exceed ~~three (3) stores or~~ sixty feet (~~60~~’) in height (as measured per Section 1133.20 of the Zoning Ordinance), except as provided in Chapter 1181 of the Zoning Ordinance.

3.3 Building Design

~~3.3.1~~ Wherever practical building design should strive for an architectural character that is consistent throughout Cedar Pointe by complementing with building design and materials previously of previously constructed buildings within Cedar Pointe. ~~Notwithstanding the preceding sentence, to the extent that Lot _____ is developed as an Irish Pub themed restaurant, Lot 3 shall be allowed design flexibility to execute such theme.~~

3.3.1

3.3.2 Exterior building materials shall be approved by the Developer pursuant to the requirements of Section 4.1. Acceptable materials shall include, but may not be limited to:

3.3.2.1 Brick: Pine Hall – Winestone Velour. Each building to incorporate Pine Hall – Winestone Velour brick at a minimum of seventy five percent (75%) of each building elevation, excluding glazing.

3.3.2.2 Stone: authentic or imitation as approved by Developer.

3.3.2.3 Stucco: authentic or E.I.F.S. as approved by Developer.

3.3.2.4 ~~Shingle roof: Metal roof: standing seam or equal as approved by Developer~~ architectural grade asphalt or fiberglass shingles as approved by the developer.

3.3.2.5 Slate roof: authentic or imitation as approved by Developer.

3.3.3 Either pitched roofs or flat roofs are permitted for the main roof on all buildings within Cedar Pointe.

- 3.3.4 Mechanical equipment such as fans, vents, HVAC units grease traps and other similar equipment or structures shall be adequately screened from view from the public right-of-way and from adjoining Lots.

3.4 **Vehicular Access; Circulation; Parking & Loading**

- 3.4.1 The Property shall be permitted at least two (2) curb cuts onto Cedar Village Drive (a public right-of-way). All Lots shall have access to the public right-of-way via access easements (to-be-granted). All ~~C~~curb cut locations shall require Planning Commission approval.
 - 3.4.1.1 Curb cuts shall be located to maintain proper sight distance between curb cuts and intersections as approved by the City Engineer.
 - 3.4.1.2 Curb cuts on opposite sides of the public streets shall align or shall be offset a sufficient distance as approved by the City Engineer.
- 3.4.2 All vehicular use areas shall be paved with asphalt, concrete, interlocking pavers or other approved material to provide a dust-free surface which can be driven in all weather conditions.
- 3.4.3 All vehicular use areas shall have Type 2 concrete combined curb and gutter (per Mason Standard Drawing R-2B) or Type 3 concrete straight 18" curbs (per Mason Standard Drawing R-2B).
- 3.4.4 Off-street parking spaces shall be provided for each Lot per the minimum requirements of Section 1175.5 of the Zoning Ordinance unless waived by planning Commission. Each parking space shall have minimum dimensions of 9 feet by 18 feet, exclusive of access drives or aisles.
- 3.4.5 Loading spaces, when required, shall be provided per the minimum standards set forth in Section 1175.1 of the Zoning Ordinance and shall be sufficiently screened from the public right-of-way and adjoining properties as determined by Planning Commission to be necessary to conceal the loading and unloading activities from view.
- 3.4.6 Each Lot shall be connected to the public sidewalk system or City bike path with a 5-foot wide (minimum) paved sidewalk.

3.5 **Landscaping**

- 3.5.1 Any Owner seeking Site Plan approval from Planning Commission for any individual Lot within Cedar Pointe shall also submit for approval a Landscape Plan which complies the minimum requirements of the City's Landscaping and Street Tree Ordinance and coordinates with the Master Landscape Plan.
- 3.5.2 Landscape design should strive for a character that is consistent with previously installed landscaping on other Lots within Cedar Pointe.

3.6 Signage

- 3.6.1 ~~All lots shall be permitted one (1) ground mounted sign, Lot 1 shall be permitted () ground signs, Lot 2 shall be permitted () ground signs and Lot 3 shall be permitted () ground signs,~~ as defined in Section 1187.2 (A) (44) of the Zoning Ordinance.
- 3.6.1.1 Ground signs shall consist of masonry constructed of brick or stone as specified in Section 3.3.2 and be of a character similar to the principal structure on the Lot.
- 3.6.1.2 Ground signs shall comply with the Zoning Ordinance.
- 3.6.1.3 All ground signs shall be set back a minimum of ~~ten feet (10')~~ from ~~the Mason Montgomery Road~~ rights-of-way, ~~a minimum of feet () from the Cedar Village Drive right of way~~ and a minimum of ~~twenty feet (20')~~ from any adjoining Lot. Any ground sign located near an intersection shall comply with site triangle requirements as approved by the City Engineer.
- 3.6.1.4 If illuminated, all ground signs shall be externally lit with shielded lights.
- 3.6.2 Each Lot shall be permitted wall signage, as defined in Section 1187.2 (A) (92) of the Zoning Ordinance.

3.7 Miscellaneous

- 3.7.1 No materials, supplies, parts or finished products shall be stored or permitted to remain on any Lot outside of a permanent structure.
- 3.7.2 Dumpsters shall be completely screened on three sides within an enclosure constructed of masonry building materials which match the principal structure. The fourth side shall contain a lockable gate made of wood or other decorative, opaque materials.
- 3.7.3 Exterior illumination shall be shielded so as to eliminate direct glare onto the public right-of-way, onto adjoining Lots and especially onto any adjacent residential district. Pole-mounted lighting in vehicular use areas shall be Emco Lighting - Avalume Sight Lighting in black with metal halide lamps mounted on black poles. The mounting height of such pole-mounted fixtures shall not exceed twenty-four feet (24') as measured vertically from the adjacent grade to the lens. All site lighting shall comply with the Zoning Ordinance.

3.8 Maintenance

- 3.8.1 Each owner of any Lot or portion thereof shall continuously and at its sole expense: (i) keep the premises, structures, vehicle use areas and all other improvements thereon in a safe, clean and first-class condition; (ii) keep grass areas cut (including areas within each Lot's adjoining right-of-way), trees and shrubs pruned and all plant material watered and healthy; (iii) contain and remove all trash and litter; (iv) re-lamp inoperable exterior light fixtures and (v) comply with all requirements of governmental agencies having

jurisdiction over the Property including, but not limited to health, police, fire and building departments.

3.9 **Variances**

3.9.1 Notwithstanding any other provision of this Declaration to the contrary, prior to the expiration of the Development Period, any variances from the specific requirements imposed by this Article 3 shall require the prior written approval of the Developer, in addition to any approvals required from the City or the Planning Commission, as the case may be.

ARTICLE 4

ARCHITECTURAL REVIEW

- 4.1 In order to maintain consistency and quality of architectural design and to protect and enhance the value and desirability of the Property, during the Development Period, no structure, sign or other improvement of any kind shall be erected or placed on any Lot or portion of any Lot, nor shall there be any addition to, or alteration of the exterior appearance of any such item until plans and specifications (the "Plans") showing the location, extent and character of proposed improvements, addition or alteration have been submitted to and approved in writing by the Developer. The Plans required for submission to the Developer shall include: (i) Site Plan, (ii) Floor Plan(s), (iii) all Exterior Elevations, (iv) Landscape Plan, (v) Signage Plan(s), and (vi) material samples.
- 4.2 Within fifteen (15) days after receipt of the Plans for a proposed improvement, addition or alteration, the Developer shall either: (i) approve, (ii) approve with modifications or (iii) disapprove the proposed improvement, addition or alteration. Developer's failure to render a decision within fifteen (15) days shall be deemed to indicate Developer's approval of the plans and specifications as submitted.
- 4.3 In rendering the decision required by Paragraph 4.2, the Developer shall consider the scale, harmony and consistency of design of the proposed improvement, addition or alteration relative to the PUD Documents including the effect, if any, which said improvement, addition or alteration may have on adjoining Lots and whether the same conform to the requirements imposed by this Declaration and the PUD Documents.
- 4.4 The Developer shall not be liable for damages to any person submitting Plans for approval or to any other person or entity by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of, or in connection with the approval or disapproval of any such Plans.
- 4.5 The approval required by this Article 4 shall not supersede but shall be in addition to Site Plan approval and permit requirements imposed by the City.
- 4.6 Improvements, additions or alterations which are limited entirely to the interior of an approved structure with no alteration of the exterior appearance of such structure shall be exempt from the requirements of this Article 4.

Article 5

EASEMENTS^[bs2]

5.1 Entry Sign Easement

- 5.1.1 Developer hereby reserves, creates, establishes and grants to the Owners of Lots 1, 2 and 3 a perpetual non-exclusive easement (the "Entry Sign Easement") for the benefit of the

Owners of Lots 1, 2 and 3, and as an appurtenance to Lots 1, 2 and 3, on, over, under and through the area located at the southwest corner of Lot 1 as delineated on the Final Plat and labeled thereon as "Entry Sign Easement" (the "Entry Sign Easement Area") for the purposes of the construction, installation, use operation, maintenance, repair, replacement and removal of a ground sign used solely to identify the development as "Cedar Pointe" and associated landscaping and lighting (collectively, the "Entry Sign Improvements"). The Above described easement shall include the right to enter upon other portions of Lot 1 as may be reasonably necessary to fully enjoy the sign rights created hereby and to install under such other portions of Lot 1 electric or other energy lines to serve the Entry Sign Improvements, so long as any such entry or activity is conducted in a manner which will cause the least possible interference with the business or other activities on Lot 1 and, after any such entry or activity, the party conducting or causing to be conducted the same shall immediately restore any area or improvements on Lot 1 disturbed by such entry or activity to its original condition.

- 5.1.2 Developer shall initially construct or cause to be constructed the Entry Sign Improvements in accordance with the Signage Plan and as part of the Private Improvements set forth in Section 2.2.2.
- 5.1.3 Following the completion of construction of the Entry Sign Improvements, it shall be the responsibility of the Owner of Lot 1 to operate, maintain, repair and replace such Entry sign Improvements in a safe, clean, working, first-class condition. Each Owner of Lots 2 and 3 shall reimburse the Owner of Lot 1 for its proportionate share of any expenses actually incurred by the Owner of Lot 1 in fulfilling its responsibility hereunder plus a reasonable management fee not to exceed five percent (5) of such expenses (the "Entry Sign Expenses"). Each Owner's proportionate share of the Entry Sign Expenses shall be as follows: Lot 1- 100%, Lot 2- 0% and Lot 3- 0%. Each Owner of Lots 2 and 3 shall reimburse the Owner of Lot 1 for its proportionate share of the Entry Sign expenses within fifteen (15) days after receipt of an invoice for same from the Owner of Lot 1 given as set forth in Section 8.8 along with copies of all invoices receipts, cancelled checks, etc. evidencing the expenses actually incurred.
- 5.1.4 No building or structure (other than the Entry Sign Improvements) may be built nor may any deep-rooted tree or other material be planted within the Entry Sign Easement Area nor may any party physically alter the Entry Sign easement Area so as to: (i) impair the land support of the Entry Sign Improvements, (ii) reduce the visibility of the entry Sign Improvements, (iii) impair the ability to maintain the Entry Sign Improvements or (iv) create a hazard.
- 5.1.5 Subject to the provisions of Section 5.1.4, the Owner of Lot 1 shall retain the right to use the Entry Sign Easement Area for any legal purpose whatsoever, provided such use does not unreasonably interfere with the use of the Entry Sign Easement Area by the Owners of Lots 2 and 3 for the purposes set forth herein.

5.2 Access Easement

- 5.2.1 Developer hereby reserves, creates, establishes and grants to the Owners of Lots 1, 2 and 3 a perpetual, non-exclusive easement (the "Access Easement") for the benefit of the Owners of Lots 1, 2 and 3 and their respective Permittees, and as an appurtenance to Lots 1 and 2 on, over, under and through the area straddling the property line common to Lots 1 and 2 as delineated on the Final Plat and labeled thereon as "Access Easement"

(the "Access Easement Area") for the purposes of the construction, installation, use operation, maintenance, repair, replacement and removal of an access drive providing ingress and egress for pedestrian and vehicular traffic to and from Lots 1, 2 and 3 and the public right-of-way currently known as and shown on the Final PUD Plan as Cedar Village Drive and associated street trees and streetlights (collectively, the "Access Drive").

- 5.2.2 The Owner of Lot 1 shall initially construct or cause to be constructed the Access Drive as a part of the Private Improvements set forth in Section 2.2.2. The Owner of Lot 2 shall have the right to connect to the Private Drive as substantially shown on the Final PUD Plan.
- 5.2.3 Until such date that the Owner of Lot 2 connects to the Access Drive by installing a curb cut and driveway (the "Lot 2 Connection Date"), it shall be the responsibility of the Owner of Lot 1, at its sole expense, to operate, maintain, repair and replace such Access Drive in a safe, clean, working, first-class condition. After the Lot 2 Connection Date, the Owner of Lot 2 - shall reimburse the Owner of Lot 1 for its proportionate share of any expenses actually incurred by the Owner of Lot 1 in fulfilling its responsibility hereunder (the "Access Drive Expenses"). Each Owner's proportionate share of the Private Drive Expenses shall be as follows: Lot 1 - ___% and Lot 2 - ___%. The Owner of Lot 2 shall reimburse the Owner of Lot 1 for its proportionate share of the Access Drive Expenses within fifteen (15) days after receipt of an invoice for same from the Owner of Lot 1 given as set forth in Section 8.8 along with copies of all invoices, receipts, cancelled checks, etc. evidencing the expenses actually incurred.
- 5.2.4 No building or structure (other than the Access Drive) may be built nor may any deep-rooted tree or other material be planted within the Access Drive Easement Area nor may any party physically alter the Access Drive Easement Area so as to (i) impair the land support of the Access Drive, (ii) impair the ability to maintain the Access Drive, (iii) restrict the ingress and egress of pedestrian and vehicular traffic to and from Lots 1 and 2 and the public right-of-way of Cedar Village Drive or (iv) create a hazard.
- 5.2.5 Subject to the requirements of Section 5.7.4, the Owner of Lots 1 and 2 shall retain the right to use the Access Drive Easement Area for any legal purpose whatsoever, provided such use does not unreasonably interfere with the use of the Access Drive Easement Area by the Owners of Lots 1, 2 and 3 and their respective Permittees for the purposes set forth herein, and, in any event, the Owners of Lots 1 and 2 shall not cause or permit any activity to occur on the Access Drive Easement Area that would interfere with pedestrian or vehicular ingress and egress over the same.
- 5.2.6 Except for the respective payment obligations of the Owners of Lots 1 and 2 as set forth in Section 5.7.3 above, the Owners of Lots 1, 2 and 3 hereby indemnify and hold each other harmless from all loss, liability, claims and expenses (including reasonable attorney's fees) arising from the acts or omissions of the indemnifying party or its Permittees in exercising its rights hereunder within the Access Drive Easement Area, including, but not limited to mechanic's liens, damage to persons (including death) or property or third party claims.

ARTICLE 6

ENFORCEMENT

- 6.1 If any Owner (a “Defaulting Party”) fails to perform, fulfill or observe any covenant, restriction or obligation contained in this Declaration, any other Owner benefited by such covenant, restriction or obligation (a “Benefited Party”) shall give written Notice to the Defaulting Party of its default setting forth with reasonable particularity the nature of such default and the specific action or actions required to remedy the default. If the Defaulting Party fails to take such specific action or actions within thirty (30) days after receipt of such notice, any Benefited Party may, at its election, cure such default on behalf of the Defaulting Party. In curing any default, the Benefited Party may enter upon the Defaulting Party’s property or within the area of any appurtenant easement to cure such default. The foregoing right to cure shall not be exercised if, within the thirty (30) day notice period: (i) the Defaulting Party or its mortgagee cures the default or (ii) if the default is curable by other than payment of money, but cannot reasonably be cured within that time period, the Defaulting Party or its mortgagee begins to cure such default within such time period and diligently pursues such action to completion. In the event of an emergency, the Benefited Party shall give whatever notice to the Defaulting Party as is reasonable under the circumstances.

Within thirty (30) days of written demand (including copies of all invoices, receipts, cancelled checks, etc. evidencing the expenses actually incurred) the Defaulting Party shall reimburse the Benefited Party for any amounts reasonably expended by the Benefited Party to cure the default, together with interest thereon at the lower of: (i) the rate of three percent (3%) per annum in excess of the “Prime Rate” of interest announced and in effect from time to time at _____ Bank (or its successor institution) or (ii) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall have become due to the date of payment in full.

- 6.2 Any Owner shall have the right by appropriate judicial proceedings to enforce any of the covenants and restrictions contained herein or to recover damages sustained as a result of any default of another Owner. It is hereby declared that irreparable harm will result by reason of any default, and therefore, any Owner shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.
- 6.3 In the event that any suit is brought for the enforcement of any provision of this Declaration or as a result of any alleged breach thereof or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect reasonable attorney’s fees from the losing party or parties, and any judgment or decree rendered shall include an award thereof.
- 6.4 The failure of any Owner, in any one or more instances, to insist upon compliance with any of the covenants or restrictions contained herein, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar covenant or restriction, right or privilege, including the right to cure any default, but the same shall continue and remain in full force and effect as if no such forbearance has occurred.
- 6.5 The City shall also have the right, but not the duty, to enforce any of the covenants and restrictions contained herein. Any costs or expense (including reasonable attorney’s fees or other

professional fees) actually incurred by the City to enforce these covenants and restrictions shall be paid by the Defaulting Owner.

- 6.6 Any Owner (the "Designating Owner") may (with the consent of the "Designated Tenant" hereinafter described and by written notice to the other Owners within Cedar Pointe), designate a Tenant (the "Designated Tenant") of its Lot as the party responsible for performing the obligations of such Owner under this Declaration. Thereafter, such Designated Tenant shall have the benefit of, and the right to enforce, all of the rights of the Designating Owner under this Declaration, and shall perform all of the obligations of, and be subject to the restrictions upon, the Designating Owner under this Declaration. Notwithstanding, the above designation of a tenant as a Designated Tenant shall not release the Designating Owner from its obligations under this Declaration.

Nothing in this Declaration shall prevent an Owner from imposing its obligations hereunder upon its Tenant, but such imposition shall not release the Owner from its obligations under this Declaration. In the event a provision of a Tenant's lease is more restrictive or imposes a higher duty, standard or requirement on the Tenant or the Owner than the provisions of this Declaration, as between the Owner and the Tenant, the provisions of such lease shall control and nothing in this Declaration shall be deemed to reduce or limit any Tenant's or Owner's obligations under such lease.

- 6.7 For each Lot as to which any amount charges pursuant to this Declaration is not paid when due, there shall be added to the amount due, from the date due unit paid, at an annual rate equal to the lesser of (a) the highest rate permitted by law or (b) three percent (3%) in excess of the so-called "Prime Rate" of interest then being charged by _____ Bank, or successor thereto, with each change in the Prime Rate effecting a change in the interest rate hereunder.
- 6.8 If any amount charged to any Lot is not paid when due, the amount thereof, together with interest thereon and the costs of collections and reasonable attorneys' fees shall constitute a lien on such Lot in favor of the Owner entitled to the payment prior to all other liens and encumbrances thereon whatsoever, excepting (a) real estate taxes and assessments, (b) liens of record or in fact of the United States of America, the State of Ohio and all other political subdivisions or governmental instrumentalities of the State of Ohio, to the extent made superior by applicable law, (c) all bona fide prior recorded first mortgages and (d) the lien of any first mortgagee who comes in possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The party entitled to such lien may record a notice of lien with the Recorder of Warren County, Ohio, in any legally recordable form. Nonpayment of an installment of any amount due hereunder shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate. If a Lot shall be owned by more than one Owner, all such Owners shall be jointly and severally liable for the entire amount due. If the amount due hereunder is not paid when due, the Owner of the Lot charged shall be obligated to pay, in addition to the interest thereon, all cost, including, without limitation, reasonable attorneys' fees incurred by the party in attempting to collect such amount.
- 6.9 Upon the request of any Owner or any mortgagee of any Lot or any prospective purchaser or mortgagee thereof, any other Owner shall furnish written evidence of the amount or the amounts charged to any Lot by it with respect thereto for the current year and the amount of any unpaid amount and interest, if any. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Lot.

- 6.10 If any amount charged to a Lot under this Declaration shall remain unpaid for a period in excess of (a) thirty (30) days after the due date or (b) in the event that bills therefore are mailed, thirty (30) days after the date on which bills are mailed, whichever is later, the party entitled to collect such amount shall give written notification of such non-payment to the Owner and any first mortgagee of the Lot in question which has requested notices of non-payment, provided that no such notice need be given to any first mortgagee of whose name and address such party has not been notified. Following the giving of such notice, any lien established under this Declaration may be enforced by the party entitled to payment in the same manner and to the extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and in accordance with the same procedures as in the case of foreclosure of a real property mortgage under the laws of Ohio. In any such enforcement proceeding, the amount which may be recovered by the collecting party shall include all costs of such proceeding, including attorneys' fees. In any such foreclosure sale, the collecting party may be purchaser.
- 6.11 During the Development Period, the developer shall have the same rights as any other Owner regarding the enforcement of any of the covenants, restrictions and obligations contained herein, even if Developer no longer owns any of the Lots.

ARTICLE 7

DURATION, AMENDMENT AND TERMINATION

- 7.1 The Covenants contained in this Declaration shall continue in full force and effect for thirty (30) years from the date on which this Declaration is recorded and shall be automatically renewed for successive ten (10) year periods unless amended or terminated as provided in this Article 7.
- 7.2 Any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by Owners whose combined acreage of land ownership totals 66-2/3% or greater of the total acreage of land within Cedar Pointe (net of dedicated right-of-way) and with the approval of Planning Commission, provided such amendment shall not terminate or abridge any right nor create or expand any responsibility of any Owner without such Owner's prior written consent. Any such amendment shall be effective upon its proper recording with the Warren County Recorder's Office. Notwithstanding the foregoing to the contrary, Developer's approval shall also be required for any amendments or terminations of this Declaration prior to the expiration of the Development Period.
- 7.3 This Declaration may be amended by the Developer without the consent of any Owner or the approval of the City by an instrument executed and recorded by the Developer for the purpose of: (i) eliminating any typographical or other inadvertent error therein or (ii) eliminating or resolving any ambiguity therein.
- 7.4 Nothing contained in the Declaration shall be deemed to prohibit or restrict Owners from creating or granting additional easements, or from modifying specific easements for the benefit of specific Lots, so long as the Owners of all affected Lots consent to the same

ARTICLE 8

GENERAL PROVISIONS

- 8.1 Governing Law. This Declaration shall be governed by the laws of the State of Ohio.
- 8.2 Time. Time is expressly declared to be of the essence in this Declaration.
- 8.3 Reverter. No covenant or restriction contained in this Declaration is intended to create, or shall be construed as creating a condition subsequent or a possibility of reverter.
- 8.4 Severability. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.
- 8.5 Construction. The Developer shall have the right to construe the provisions of this Declaration, and, in the absence of adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.
- 8.6 Effect Upon Other Ordinances. Except as expressly superseded by the provisions of this Declaration, all requirements of the City of Mason Codified Ordinances, Zoning Ordinance and Landscaping and Street Tree Ordinance shall be applicable to the Property and all portions thereof.
- 8.7 Headings. The headings of the Articles and Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.
- 8.8 Notices. All Notices, elections or other communications authorized, required or permitted under this Declarations shall be made in writing and shall be deemed given to the party at the last known address appearing on the most recent tax duplicate: (i) upon receipt by the party receiving the notice if given by personal delivery, (ii) 24 hours after being sent if given by overnight courier service, postage prepaid or (iii) 48 hours after being sent if given by U.S. certified mail, return receipt requested, postage prepaid.

- 8.8.1 Notice to the Developer shall be give to:

The Mallards of Mason, Ltd.
Attention: Martin S. Carney
4500 Bowling Blvd., Suite 250
Louisville, KY 40207

- 8.8.2 Notice to the City shall be give to:

City of Mason, Ohio
6000 Mason-Montgomery Road
Mason, Ohio 45040
Attention: City Manager

CITY: THE CITY OF MASON, OHIO

By: _____

Print Name: _____

Title: _____

Date: _____

AS TO THE CITY

STATE OF OHIO

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)SS:

COUNTY OF WARREN

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The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of The City of Mason, Ohio, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires: _____