

STATE OF KANSAS

CROSS REFERENCE:

Volume 3012

COUNTY OF JOHNSON

Page 59

Volume 4967

Page 544

**FIRST AMENDMENT TO THE**  
**AMENDED AND RESTATED DECLARATION OF COVENANTS**  
**FOR THE CEDAR CREEK COMMUNITY**

THIS AMENDMENT is made this 25th day of June, 1998, by Cedar Creek Community Services Corporation, a Kansas not-for-profit corporation.

**BACKGROUND STATEMENT**

WHEREAS, Cedar Creek Properties, Inc. ("Declarant") executed that certain Declaration of Covenants for the Cedar Creek Community which was recorded on July 3, 1989, in Volume 3012, Page 59, et seq., of the Johnson County, Kansas public records and which covered certain property shown on Cedar Creek Village I, First Plat, recorded on March 15, 1989, at Plat Book 72, Page 22, ("Original Declaration"); and

WHEREAS, additional property has been made subject to the Declaration by certain Supplemental Declarations recorded in the Johnson County, Kansas, public records, which property is more fully described on Exhibit "A" attached hereto (the "Supplemental Declarations"); and

WHEREAS, the Original Declaration was amended by certain amendment recorded on April 2, 1991, in Volume 3326, Page 299, of the Johnson County, Kansas, public records and on December 27, 1994, in Volume 4495, Page 254, of such public records; and

WHEREAS, the Original Declaration, as so amended, was amended and restated in its entirety by that Amended and Restated Declaration of Covenants for the Cedar Creek Community recorded on August 21, 1996, in Volume 4967, Page 544, of the Johnson County, Kansas, public records (the "Amended Declaration"); and

WHEREAS, Article XII, Section 2, of the Amended Declaration provides that it may be amended upon the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) of the total Class "A" votes in the Corporation, the consent of the Class "B" member, so long as such membership exists, and the approval of the Nonresidential Association; and

WHEREAS, Article XIII, Section 4(b) of the Amended Declaration also requires the consent of the Declarant, so long as it owns any land subject to the Declaration, and the approval of "eligible holders" of first Mortgages on Units to which at least 51% of the votes of Units

subject to a Mortgage held by an eligible holder appertain, in order to materially amend certain provisions of the Amended Declaration; and

WHEREAS, Cedar Creek Village I Association, Inc., a Kansas corporation ("Village I Association"), is the sole Class "A" member of the Corporation at this time and is entitled to exercise all of the Class "A" votes in the Corporation; and

WHEREAS, Declarant is the sole Class "B" member of the Corporation; and

WHEREAS, at this time, there is no Nonresidential Association or owners of Units with voting rights therein; and

WHEREAS, the Village I Association and Declarant desire to amend the Amended Declaration to eliminate the easement in favor of the Owners of Nonresidential Units for use of trails on Common Recreational Parcels and the obligation to share in expenses related to such trails, and to correct printing errors in the Amended Declaration and to provide greater flexibility to the Corporation's Board in allocating various Common Expenses of the Corporation in a fair manner among the Members; and

WHEREAS, the Village I Association and Declarant have evidenced their consent to this amendment by their execution below; and

WHEREAS, this amendment has also received the requisite approval of "eligible holders", if any, of Mortgages on Units;

NOW, THEREFORE, the Amended Declaration is hereby amended as follows:

1.

Article I, Section 24, is amended by deleting the parenthetical phrase in the first sentence of the definition of "Recreational Assessment" which reads, "(other than the trail system located thereon, the expenses of which shall be shared by all Class "A" Members)", so that the term Recreational Expenses, as defined therein, shall include the expenses associated with the trail system located on Common Recreational Parcels.

2.

Article II, Section 1, is amended by deleting the words "shall have a right and easement of enjoyment in and to the trails lying within the Common Recreational Parcels, but" from the paragraph immediately following subsection (g) of that Section, so that such paragraph now reads as follows:

The Owners of Units subject to the jurisdiction of the Nonresidential Association shall not have any right or easement to use Shadow Lake or any

other recreational facilities within the Common Recreational Parcels except as may be specifically granted herein or in other recorded instruments.

3.

Article X, Section 1, is amended to correct a printing error by striking the second, partial paragraph (consisting of two lines following the first paragraph of that Section) and substituting the following in their place as the second paragraph of that Section:

Base Assessments shall be levied on all Members as described in Section 2 of this Article. Recreational Assessments shall be levied on each Village Association in the same proportion as the number of Residential Units subject to assessment by the Village Association bears to the total number of Residential Units subject to assessment by all Village Associations. Special Assessments shall be levied as provided in Section 4 below.

4.

Article X, Section 2, is amended by striking the first sentence of the second paragraph of that Section and substituting in its place the following:

The Base Assessment to be levied for the coming year against each Member shall be computed as follows: if there is a Nonresidential Association, the budgeted Common Expenses, excluding any Recreational Expenses, shall first be allocated between the Nonresidential Association and the Village Associations, as a group, in proportion to the relative linear feet of frontage on arterial roadways within the Community of property subject to the jurisdiction of each (i.e. the Nonresidential Association and the Village Associations, as a group).

5.

Article X, Section 4(b), is amended by striking that subsection in its entirety and substituting in its place the following:

(b) Less Than All Members. Notwithstanding the provisions of Article X, Section 2, the Board shall have the power, in the exercise of its reasonable judgment, to specially assess certain Common Expenses as follows:

(i) Expenses incurred on behalf of a Member at the request of the Member or pursuant to specific authority under the Declaration, any amendments thereto, the Articles, the By-Laws, or the Corporation's rules, may be specially assessed against the Member in the amount actually incurred;

(ii) Expenses incurred in bringing a Member (or properties within the jurisdiction of the Member) into compliance with the terms of this Declaration or the declaration applicable to the properties administered by the Member may be specially assessed against the Member in the amount actually incurred; provided, the Board shall not take any action necessitating costs to be incurred under this clause except on petition of another Member and approval of a majority of the total Board after notice to the affected Member and an opportunity for a hearing;

(iii) Expenses of the Corporation which benefit less than all of the Members or Units may be specially assessed equitably among only those Members and Units benefited according to the benefit received, as the Board may reasonably determine;

(iv) Expenses of the Corporation which benefit all Members or Units, but for which the benefit bears no reasonable relationship to the relative linear feet of frontage on arterial roadways within the Community of property subject to the jurisdiction of each Member, may be assessed equitably among all Members and Units according to a formula which better reflects the relative benefit received, as the Board may reasonably determine.

The Board may exercise its authority under this Section 4(b) as it, in its business judgment, deems appropriate, provided it is not acting in an arbitrary or capricious manner. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. If the Corporation expects to incur costs on a regular basis which benefit less than all Members, such benefited Members may be assessed regularly for such costs pursuant to this Section 4(b).

The Amended Declaration shall remain in full force and effect except as expressly set forth herein.

[Signatures on Next Page]

IN WITNESS WHEREOF, the undersigned officers of Cedar Creek Community Services Corporation hereby certify that the foregoing Amendment has received the requisite approval of the Members and eligible holders, if any, of Mortgages on Units, as of this 25th day of June, 1998.

STATE OF KANSAS )  
COUNTY OF JOHNSON )  
FILED FOR RECORD  
1998 JUN 29 P 4: 33 .1  
SARA F. ULLMANN  
REGISTER OF DEEDS

CEDAR CREEK COMMUNITY SERVICES CORPORATION, a Kansas not-for-profit corporation

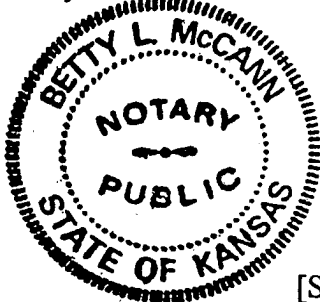
By: Charles T. Sunderland  
Charles T. Sunderland, President

Attest: Gary L. Church  
Gary L. Church, Secretary

STATE OF KANSAS )  
COUNTY OF JOHNSON ) SS

BE IT REMEMBERED that on this 25th day of June, 1998, before me, the undersigned, a Notary Public in and for said County and State, came Charles T. Sunderland, President, and Gary L. Church, Secretary, of Cedar Creek Community Services Corporation, a Kansas not-for-profit corporation, who are personally known to me to be the same persons who executed the foregoing instrument in writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of same corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Betty L. McCann  
Betty L. McCann, Notary Public

My Commission Expires: April 10, 2002

[Signatures Continued on Next Page]

STATE OF KANSAS )  
COUNTY OF JOHNSON )  
FILED FOR RECORD

200 1998 JUL -2 P 4: 26 .1  
SARA F. ULLMANN  
REGISTER OF DEEDS

CONSENT OF DECLARANT

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amendment indicating its approval hereof this 25th day of June, 1998.

CEDAR CREEK PROPERTIES, INC., a Kansas corporation

By: Charles T. Sunderland  
Charles T. Sunderland, President

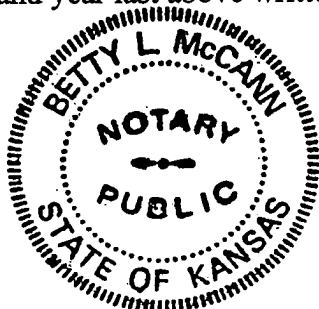
Attest: Eileen F. Sollars  
Eileen F. Sollars, Secretary

[SEAL]

STATE OF KANSAS       )  
                                  )     SS  
COUNTY OF JOHNSON   )

BE IT REMEMBERED that on this 25th day of June, 1998, before me, the undersigned, a Notary Public in and for said County and State, came Charles T. Sunderland, President, and Eileen F. Sollars, Secretary, of Cedar Creek Properties, Inc., a Kansas corporation, who are personally known to me to be the same persons who executed the foregoing instrument in writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of same corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Betty L. McCann  
Betty L. McCann, Notary Public

My Commission Expires: April 10, 2002

[Signatures Continued on Next Page]

CONSENT OF CEDAR CREEK VILLAGE I ASSOCIATION, INC.

IN WITNESS WHEREOF, the undersigned officers of Cedar Creek Village I Association, Inc. have executed this Amendment indicating approval hereof this 25<sup>th</sup> day of June, 1998.

CEDAR CREEK VILLAGE I ASSOCIATION,  
INC., a Kansas not-for-profit corporation

By: Charles T. Sunderland  
Charles T. Sunderland, President

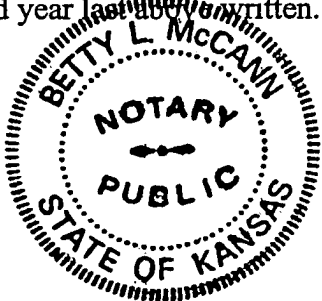
Attest: Maureen Coulter  
Maureen Coulter, Assistant Secretary

[SEAL]

STATE OF KANSAS       )  
                                  )     SS  
COUNTY OF JOHNSON   )

BE IT REMEMBERED that on this 25th day of June, 1998, before me, the undersigned, a Notary Public in and for said County and State, came Charles T. Sunderland, President, and Maureen Coulter, Assistant Secretary, of Cedar Creek Village I Association, Inc., a Kansas not-for-profit corporation, who are personally known to me to be the same persons who executed the foregoing instrument in writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of same corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Betty L. McCann  
Betty L. McCann, Notary Public

My Commission Expires: April 10, 2002

3613/CADocs/CSC/1stAmend/020998/jps

## EXHIBIT "A"

### Real Property Subject to Declaration

All those tracts or parcels of land lying and being in the City of Olathe, Johnson County, Kansas, and being more particularly described on those Cedar Creek Village I subdivision plats recorded in the Johnson County, Kansas public records as follows (as such plats may be amended):

<u>PLAT NO.</u>	<u>PLAT BOOK/PAGE</u>	<u>PLAT RECORDING DATE</u>
First Plat	72/22	03/15/89
Second Plat	72/23	03/15/89
Third Plat	72/24	03/15/89
Fourth Plat	72/25	03/15/89
Fifth Plat	72/26	03/15/89
Sixth Plat	72/27	03/15/89

(Excluding that part of the plat released by Document 1964779, recorded August 6, 1990 at Volume 3216, Page 489, as described on attached Exhibit "A-1".)

Seventh Plat	72/43	04/10/89
Eighth Plat	74/9	09/01/89
Ninth Plat, a Replat of Lots 1, 2 & 3 of Cedar Creek Village I Sixth Plat	74/10	09/01/89
Tenth Plat	74/11	09/01/89
Eleventh Plat	74/12	09/01/89
Twelfth Plat	74/13	09/01/89
Thirteenth Plat, a Repat of Block 1 of Cedar Creek Village I Ninth Plat, a Replat of Lots 1, 2 and 3 of Cedar Creek Village I, Sixth Plat	75/12	01/09/90



<u>PLAT NO.</u>	<u>PLAT BOOK/PAGE</u>	<u>PLAT RECORDING DATE</u>
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Fourteenth Plat	78/12	04/05/91
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(Excluding that part of the plat released by Document 2446762, recorded November 16, 1994 at Volume 4470, Page 551, as described on attached Exhibit "A-1".)

Fifteenth Plat	78/13	04/05/91
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Sixteenth Plat	81/38	07/13/92
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Seventeenth Plat	86/28	02/16/94
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Eighteenth Plat	88/35	09/01/94
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Nineteenth Plat	89/11	10/12/94
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Twentieth Plat	92/49	10/05/95
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(Excluding that part of the plat released by Document 2543870, recorded November 15, 1995 at Volume 4728, Page 292, as described on attached Exhibit "A-1".)

Twenty-First Plat	93/1	10/09/95
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All those tracts or parcels of land lying and being in Cedar Glen, First, Second, Third, Fourth and Fifth Plats, a subdivision in the City of Olathe, Johnson County, Kansas, and being more particularly described on those subdivision plats recorded in the Johnson County, Kansas public records as follows (as such plats may be amended):

<u>PLAT NO.</u>	<u>PLAT BOOK/PAGE</u>	<u>PLAT RECORDING DATE</u>
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First Plat	84/48	08/24/93
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Second Plat	85/32	10/29/93
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Third Plat	88/49	09/19/94
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Fourth Plat	93/41	01/29/96
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Fifth Plat	95/2	05/01/96
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All those tracts or parcels of land lying and being in North Shore Estates, First Plat, a subdivision in the City of Olathe, Johnson County, Kansas, and being more particularly described on those subdivision plats recorded in the Johnson County, Kansas public records as follows (as such plats may be amended):

<u>PLAT NO.</u>	<u>PLAT BOOK/PAGE</u>	<u>PLAT RECORDING DATE</u>
First Plat	88/36	09/1/94

All those tracts or parcels of land lying and being in the Cottages of Glen View, First Plat, a subdivision in the City of Olathe, Johnson County, Kansas, and being more particularly described on those subdivision plats recorded in the Johnson County, Kansas public records as follows (as such plats may be amended):

<u>PLAT NO.</u>	<u>PLAT BOOK/PAGE</u>	<u>PLAT RECORDING DATE</u>
First Plat	99/35	05/27/97

All those tracts or parcels of land lying and being in Southglen of Cedar Creek, First Plat, a subdivision in the City of Olathe, Johnson County, Kansas, and being more particularly described on those subdivision plats recorded in the Johnson County, Kansas public records as follows (as such plats may be amended):

<u>PLAT NO.</u>	<u>PLAT BOOK/PAGE</u>	<u>PLAT RECORDING DATE</u>
First Plat	102/45	01/20/98

## **EXHIBIT "A-1"**

Lot 4 of Cedar Creek Village I, Sixth Plat, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof recorded in Plat Book 72, at Page 27, in the office of the Register of Deeds of Johnson County, Kansas (replatted as part of Shadow Glen Golf Course, Third Plat).

Lot 1 of Cedar Creek Village I, Fourteenth Plat (a Replat of Cedar Creek Village I, Seventh Plat), a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof recorded in Plat Book 78, at Page 12, in the office of the Register of Deeds of Johnson County, Kansas.

Tract GC-5, Tract GC-6, Tract 93A and Tract 94, Cedar Creek Village I, Twentieth Plat, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof recorded in Plat Book 92, at Page 49, in the office of the Register of Deeds of Johnson County, Kansas.