

DRAFT DATE 04/30/96

STATE OF KANSAS

CROSS REFERENCE: VOLUME 3012

PAGE 59

COUNTY OF JOHNSON

**AMENDMENT TO THE DECLARATION OF COVENANTS
FOR THE CEDAR CREEK COMMUNITY**

THIS AMENDMENT is made this 20th day of June, 1996, 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 has previously been amended by that certain amendment recorded on April 2, 1991, in Volume 3326, Page 299, of the Johnson County, Kansas, public records and by that certain amendment recorded on December 27, 1994, in Volume 4495, Page 254, of such public records; and

WHEREAS, Article XII, Section 2, of the Original Declaration, as amended, 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 and the consent of the Class "B" member, so long as such membership exists; and

WHEREAS, Article XIII, Section 4(b), of the Original Declaration, as amended, 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 appertain, in order to materially amend certain provisions of the Declaration; and

STATE OF KANSAS
COUNTY OF JOHNSON
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SARA E. ULLMANN
REGISTER OF DEEDS

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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, the Village I Association and Declarant desire to amend the Original Declaration in various respects and 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 Original Declaration is hereby amended by striking it in its entirety (but leaving in place Exhibit "B" attached thereto, being the By-Laws of Cedar Creek Community Services Corporation, and all of the Supplemental Declarations) and substituting in place of the Original Declaration the following Amended and Restated Declaration of Covenants for the Cedar Creek Community:

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

HYATT & STUBBLEFIELD, P.C.

Attorneys and Counselors

**1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303**

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"A"	Land Initially Submitted	1

3613/Ca Docs/A&RCCR Cedar Creek/043096/JPS

AMENDED AND RESTATED
DECLARATION OF COVENANTS
FOR THE
CEDAR CREEK COMMUNITY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS is made this 20th day of June, 1996, by Cedar Creek Community Services Corporation, a Kansas not-for-profit corporation.

Cedar Creek Properties, Inc., a Kansas corporation (hereinafter referred to as "Declarant"), as the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference, filed this Declaration intending to impose upon the Community (as defined herein) mutually beneficial covenants under a general plan of improvement for the benefit of all owners of real property within the Community. This Declaration is intended to provide a flexible and reasonable procedure for the overall development of the Community, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such real property as is now or hereafter subjected to this Declaration.

All of the property described in Exhibit "A" and any additional property which has previously been or is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of Kan. Stat. Ann. § 58-3101, et seq.

Article I
Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Community Properties, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any Member become the responsibility of the Corporation. The office of any property manager employed by or contracting with the Corporation, if located in the Community, or any public rights-of-way within or adjacent to the Community, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Cedar Creek Community Services Corporation, as filed with the Secretary of State of the State of Kansas.

Section 3. "Association Declaration" shall refer to any declaration of covenants, conditions, and restrictions or similar instrument applicable to a portion of the Community which is recorded in the public records of Johnson County, Kansas, and which provides for a mandatory membership owners association to exercise jurisdiction over the property subject thereto, if such instrument is executed or acknowledged in writing by Declarant or the Corporation and designates such association as a Member of the Corporation.

Section 4. "Board of Directors" or "Board" shall be the elected body of Cedar Creek Community Services Corporation having its normal meaning under Kansas corporate law.

Section 5. "Base Assessment" shall mean and refer to assessments levied against all Members to fund Common Expenses.

Section 6. "By-Laws" shall mean and refer to the Amended and Restated By-Laws of Cedar Creek Community Services Corporation, attached hereto as Exhibit "B" and incorporated herein by reference, as they may be further amended from time to time.

Section 7. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2, of the By-Laws.

Section 8. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Corporation for the general benefit of the Members, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation, but shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction and installation of infrastructure, original capital improvements or other initial construction costs unless approved by a majority of the Members.

Section 9. "Community" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 10. "Community Properties" shall mean all real property and facilities which the Corporation owns, leases and/or controls for the common use and enjoyment of the Owners. The term shall include any Common Recreational Parcels, as defined in Section 24. The Declarant reserves the right, acting on behalf of the Association, to dedicate all or any portion of the Community Properties to the City of Olathe or Johnson County, Kansas, at any time in its sole discretion and without the consent of any Member or other Person.

Section 11. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Community, as such standard may be more specifically determined by the Board of Directors.

Section 12. "Corporation" shall refer to Cedar Creek Community Services Corporation, a Kansas not-for-profit corporation, its successors or assigns.

Section 13. "Declarant" shall mean and refer to Cedar Creek Properties, Inc., a Kansas corporation, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibit "A" or in Article VIII of this Declaration for the purpose of development and sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 14. "Master Land Use Plan" shall mean and refer to the plan for the development of the Community and that portion of the property described in Article VIII, Section 1 of this Declaration, which is owned by Declarant from time to time and subject to annexation to the Community, which plan was prepared by Gary Corser for Declarant and is subject to modification from time to time in the sole discretion of Declarant.

Section 15. "Member" shall mean and refer to the Declarant, so long as it has any rights under this Declaration or the By-Laws, the Cedar Creek Village I Association, Inc., a Kansas not-for-profit corporation, Cedar Creek Nonresidential Association, Inc., a Kansas not-for-profit corporation, and any other mandatory membership owners association(s) having jurisdiction over a portion of the Community pursuant to an Association Declaration, or their respective successors and assigns ; provided, no such association shall be a Member hereunder until such time as it is incorporated under Kansas law.

Section 16. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 17. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 18. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 19. "Nonresidential Association" shall refer to Cedar Creek Nonresidential Association, Inc., a not-for-profit corporation currently existing or hereafter to be organized under Kansas law, or its successors or assigns.

Section 20. "Nonresidential Unit" shall refer to a portion of the real property now or hereafter made subject to that certain Declaration of Covenants, Conditions and Restrictions for Cedar Creek Nonresidential Properties recorded or to be recorded in the Johnson County, Kansas, public records ("Nonresidential Declaration"), which is intended for independent ownership, development and use for any permitted nonresidential purpose, including, without limitation, offices, retail stores, neighborhood businesses and Private Recreational Parcels located within the Community, as more particularly described in the Nonresidential Declaration.

Section 21. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit which is part of the Community, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Corporation.

Section 22. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 23. "Private Recreational Parcel" shall mean any parcel of land within or adjacent to the Community which is privately owned by Cedar Creek Properties, Inc., its successors, successors-in-title, or assigns, and which is operated as a private membership club or on a commercial basis for recreational purposes, which may include, but shall not be limited to, golf courses, clubhouses, pools, tennis courts and any and all related and supporting facilities and improvements.

Section 24. "Recreational Assessment" shall refer to assessments for the following expenses (hereinafter collectively referred to as "Recreational Expenses") (a) expenses associated with the maintenance, repair, replacement and insurance of that portion of the Community Properties identified as "Common Recreational Parcels" herein, on any unilateral amendment hereto filed by Declarant, or on any recorded plat filed by Declarant for a portion of the Community (other than the trail system located thereon, the expenses of which shall be shared by all Class "A" Members), and (b) expenses associated with benefits or services provided by the Corporation exclusively to the Village Associations. The Common Recreational Parcels shall initially include that property located in Johnson County, Kansas known as Shadow Lake and the shoreline thereof to a distance of thirty (30) feet above the higher of (a) the 860 foot elevation as shown by U.S.G.S. Datum, or (b) the actual water's edge. Recreational Assessments shall be levied only upon the Village Associations.

Section 25. "Residential Unit" shall mean a portion of the Community, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Community. The term shall include all portions of the lot owned as well as any structure thereon. In the case of an apartment building or other structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Residential Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Residential Units designated for residential use for such parcel on the Master Land Use Plan or the site plan approved by Declarant, whichever is more recent, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Residential Unit or Units as determined above and the number of Residential Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Notwithstanding anything to the contrary herein, upon written notice to the Board of Directors setting forth such information as the Board may reasonably require, an Owner who owns two (2) adjoining single family lots as shown on a recorded subdivision plat filed by Declarant, with no more than one (1) dwelling constructed on such adjoining lots, may have such lots treated as a single Unit for all purposes including, but not limited to, assessments and voting. An Owner who owns more than two (2) adjoining lots may have two (2) of such lots treated as a single Unit as provided herein, but each additional lot owned shall constitute a separate Unit. The Owner of such adjoining Units shall not be required to prepare and record plats altering Unit boundaries in order for adjoining Units to be treated as a single Unit. In the event that title to any one of the adjoining lots treated as a single Unit pursuant to this Section is transferred or if construction of more than one (1) dwelling is commenced on the adjoining lots, then such adjoining lots shall cease being treated as a single Unit and shall thereafter be treated as two (2) separate Units for all purposes. The Owner of adjoining lots treated as a single Unit hereunder shall give written notice to the Board of Directors at least ten (10) days prior to (a) transfer of title to either lot, or (b) commencement of construction of more than one (1) dwelling on such lots. This Section shall not apply to Units owned by the Declarant or any builder holding title to one or more lots primarily for purposes of constructing a dwelling or dwellings thereon for resale.

Section 26. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 4 of this Declaration.

Section 27. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Corporation pursuant to Article VIII, Section 2 of this Declaration to subject additional property to this Declaration.

Section 28. "Unit" shall be an inclusive term referring to both Nonresidential and Residential Units.

Section 29. "Village Associations" shall refer to Cedar Creek Village I Association, Inc., a Kansas not-for-profit corporation, any other Member having jurisdiction over Residential Units pursuant to an Association Declaration, or their respective successors and assigns.

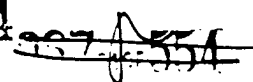
Article II Property Rights

Section 1. General. Every Owner shall have a right and easement of enjoyment in and to the Community Properties, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Corporation;
- (b) the right of the Village Associations and their members to the exclusive use of the Common Recreational Parcels, subject to any easements specifically granted therein by this Declaration or other recorded instruments;
- (c) the right of the Corporation to limit the number of guests who may use the Community Properties, and to adopt rules regulating the use and enjoyment of the Community Properties;
- (d) the right of the Corporation to suspend the right of an Owner to use any recreational facilities within the Community Properties for a period not to exceed thirty (30) days for each violation of the Declaration, By-Laws, or rules of the Corporation after notice and a hearing pursuant to the Article III, Section 20 of the By-Laws;
- (e) the right of the Corporation to dedicate, transfer, or grant easements over all or any part of the Community Properties pursuant to Article XII, Section 5 hereof or otherwise, subject to any limitations set forth in this Declaration;
- (f) the right of the Corporation to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Community Properties; and
- (g) the right of the Corporation to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

The Owners of Units subject to the jurisdiction of the Nonresidential Association shall have a right and easement of enjoyment in and to the trails lying within the Common Recreational Parcels, but 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.

Any Owner of a Residential Unit may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable. Any Owner of a Nonresidential Unit may delegate his or her right of enjoyment to its employees, lessees, or lessees' employees. Any such delegation shall be subject to reasonable regulation by the Board

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and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

Section 2. Private Recreational Parcels. Access to the Private Recreational Parcels within or adjacent to the Community is strictly subject to the terms, conditions, rules and procedures established by the respective owners of the Private Recreational Parcels. No Owner or occupant of any Unit gains any right to enter or to use those facilities by virtue of ownership or occupancy of a Unit.

Article III **Membership and Voting Rights**

The Corporation shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". The Class "A" Members shall be all Members except the Class "B" Member, if any .

Class "A" Members shall be entitled to one (1) equal vote on all matters requiring a vote of the membership hereunder, except as otherwise specifically provided in this Declaration, the By-Laws or the Articles of Incorporation. In the event of a tie vote on any matter requiring a vote of the membership, a second vote shall be taken and in such event, each Class "A" Member shall be entitled to cast one vote weighted in accordance with that percentage share of the Corporation's budget for the current fiscal year which such Member is responsible for paying. The board of directors of each Class "A" Member shall determine the manner in which such Member's vote is to be cast. Such vote shall be cast on behalf of each Class "A" Member by the individual designated in a proxy duly executed and filed with the Secretary of the Corporation from time to time.

(b) Class "B". The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2, of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and any committee as provided in Article III, Section 3, of the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or

(ii) when the Declarant no longer owns any property subject to this Declaration or subject to annexation under Article VIII hereof;

unless the Declarant voluntarily terminates the Class "B" membership on an earlier date by written, recorded instrument.

Article IV **Maintenance**

The Corporation shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including all private streets, if any, situated upon the Community Properties, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any recorded plat, or any contract or agreement for maintenance thereof entered into by the Corporation.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair, replacement and insurance of Community Properties shall be a Common Expense to be allocated among all Members as part of the Base Assessment. All costs associated with maintenance, repair, replacement and insurance of Common Recreational Parcels, as defined in Article I, Section 24 hereof, shall be assessed as a Recreational Assessment solely against the Village Associations. Notwithstanding anything to the contrary contained herein, Declarant shall have the unilateral right to amend this Declaration to designate, or to file plats of record which designate, additional property and/or facilities as Common Recreational Parcels, at any time and from time to time, as long as Declarant owns any property subject to this Declaration or subject to annexation pursuant to Article VIII hereof, and to grant or reserve easements therein.

The Corporation may also assume the maintenance responsibilities of any Member pursuant to the declaration of covenants, conditions and restrictions governing the property subject to such Member's jurisdiction, either by agreement with the Member or because, in the opinion of the Board, the Member is failing to perform its responsibilities as required under such declaration; provided, in the latter case the Corporation shall not undertake to perform any such maintenance responsibilities of a Member except upon written petition of another Member and approval of such action by a majority of the total number of directors on the Board of Directors. All costs of maintenance pursuant to this paragraph shall be assessed as a Special Assessment only against the Member to which the services are provided. The provision of services in accordance with this paragraph shall not constitute discrimination within a class.

The Corporation may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Article V
Insurance and Casualty Losses

Section 1. Insurance. The Corporation's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk property insurance, if reasonably available, for all insurable improvements on the Community Properties. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Corporation shall have no insurance responsibility for any part of any Private Recreational Parcel.

The Board shall also obtain a general liability policy covering the Area of Common Responsibility, the Corporation, its Members and their respective members for all damage or injury caused by the negligence of the Corporation or any of the above or their agents. The general liability policy shall have at least a Three Million (\$3,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Five Million (\$5,000,000.00) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit, or an aggregate limit of not less than Three Million (\$3,000,000.00) Dollars.

Premiums for all insurance obtained by the Corporation shall be Common Expenses of the Corporation and shall be included in the Base Assessment, as defined in Article I and as more particularly described in Article X, Section 1; provided, premiums attributable to insurance on improvements maintained through Recreational Assessments shall be included in the Recreational Assessment and assessed solely against the Village Associations. The policies may contain a reasonable deductible, and, in the case of property insurance, the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Corporation. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Kansas which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) Exclusive authority to adjust losses under policies obtained by the Corporation shall be vested in the Corporation's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Corporation's Board of Directors hereunder be brought into contribution with insurance purchased by any Member, individual Owners, occupants, or their Mortgagees.

(d) All property insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Johnson County, Kansas, area.

(e) The Corporation's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Corporation's Board of Directors, its manager, its Members, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any one or more Members or Owners;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Corporation or its duly authorized manager without prior demand in writing delivered to the Corporation to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Corporation, its manager, any Member, Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy exclude Members' and Owners' policies from consideration; and

(vi) a statement that the Corporation will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Corporation's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' installments of the Base Assessments against all Members, plus reserves on hand. Fidelity bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Corporation of any cancellation, substantial modification, or non-renewal.

In addition to securing insurance as required by this Section, the Board shall require and monitor from all contractors retained by the Corporation certificates of insurance evidencing workers compensation, automobile liability, general liability and products/completed operations coverage, if and to the extent that the Board reasonably determines that such policies would be applicable to the contractor's activities under the contract, with policy limits in such amounts and provided by insurance companies of such financial size and rating as the Board deems prudent under the circumstances. The Board shall use reasonable efforts to have the Corporation designated as an additional named insured on the aforementioned policies with the insurance company providing thirty (30) days' prior written notice of any cancellation, substantial modification or non-renewal. Notwithstanding the above, the Board may, but shall not be obligated to, require such evidence of insurance with regard to any contract which involves payments to the contractor of less than Five Thousand (\$5,000.00) Dollars in any year, unless the contract involves the performance of an inherently dangerous activity.

Section 2. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other peril to all or any part of the Community Properties covered by insurance written in the name of the Corporation, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the improvements on the Community Properties shall be repaired or reconstructed unless the Members representing at least seventy-five (75%) percent of the total eligible Class "A" vote shall decide within sixty (60) days after the casualty not to repair or reconstruct. The Nonresidential Association shall have no vote with respect to repair or reconstruction of Common Recreational Parcels. No Member's vote shall be cast in favor of not repairing or reconstructing unless approved by seventy-five (75%) percent of such Member's board of directors. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Corporation within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Community Properties shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Community Properties shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Community Properties shall be restored to its natural state and maintained by the Corporation in a neat and attractive condition consistent with the Community-Wide Standard.

Section 3. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction. Any proceeds remaining after defraying such costs of repair or reconstruction to the Community Properties shall be retained by and for the benefit of the Corporation and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining shall be retained by and for the benefit of the Corporation and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 4. Repair and Reconstruction. If the damage or destruction to the Community Properties for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Members on the same basis as provided for Base Assessments; provided, if the damage or destruction involves the property maintained through Recreational Assessments, only the Village Associations shall be subject to assessment therefor. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VI **No Partition**

Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Community Properties or any part thereof, nor shall any Person acquiring any interest in the Community or any part thereof seek any judicial partition unless the property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VII **Condemnation**

Whenever all or any part of the Community Properties shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least seventy-five (75%) percent of the total eligible Class "A" vote in the Corporation and of the Declarant, as long as the Declarant owns any property subject to this Declaration or subject to annexation to this Declaration pursuant to Article VIII hereof) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Corporation as trustee for all Members to be disbursed as follows:

If the taking involves a portion of the Community Properties on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long

as the Declarant owns any property subject to this Declaration or subject to annexation pursuant to Article VIII hereof, and Members representing at least seventy-five (75%) percent of the total eligible Class "A" vote of the Corporation shall otherwise agree, the Corporation shall restore or replace such improvements so taken on the remaining land included in the Community Properties to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Corporation. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Community Properties, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Corporation and used for such purposes as the Board of Directors of the Corporation shall determine.

The Nonresidential Association shall not be eligible to vote on any matter requiring a membership vote under this Article which concerns only the Common Recreational Parcels or portions thereof.

Article VIII **Annexation of Additional Property**

Section 1. Annexation Without Approval of Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described below has been subjected to this Declaration or December 31, 2029, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Corporation all or any portion of the real property located in Johnson County, Kansas and owned by Declarant on the date this Declaration is recorded and/or any additional real property acquired by Declarant after the date this Declaration is recorded within a radius of two (2) miles from the outermost perimeter boundary of such property. Such annexation shall be accomplished by filing in the public records of Johnson County, Kansas, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Members or Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A" or in this Section and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Corporation may annex real property other than that described in Article VIII, Section 1, and following the expiration of the right in Section 1, any property described in Section 1, to the provisions of this Declaration and the jurisdiction of the Corporation. Such

annexation shall require the affirmative vote of Members representing a majority of the total Class "A" votes of the Corporation and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the public records of Johnson County, Kansas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Corporation, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

Section 3. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to this Article VIII, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the real property then owned by the Declarant or its affiliates or the Corporation from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Cedar Creek Community desired to be effected by the Declarant, including a decision to dedicate all or any portion of the Community Properties to any local government, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Cedar Creek.

Section 4. Acquisition of Additional Community Properties. Declarant may convey to the Corporation additional real estate, improved or unimproved, located within the properties described in Exhibit "A" or Article VIII, Section 1 which upon conveyance or dedication to the Corporation shall be accepted by the Corporation and thereafter shall be maintained by the Corporation for the benefit of its Members, subject to any restrictions or limitations set forth in this Declaration, the recorded plat of such property, or in the deed of conveyance.

Section 5. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" or Article VIII, Section 1 hereof.

Article IX

Rights and Obligations of the Corporation

Section 1. Community Properties. The Corporation, subject to the rights of the Members and Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Properties and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Corporation, through action of its Board of Directors, may acquire, hold, and dispose of tangible and

intangible personal property and real property. The Board, acting on behalf of the Corporation, shall accept any real or personal property, leasehold, or other property interests within the Community conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Corporation, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Community Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to use any recreational facilities within the Community Properties. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Corporation.

The Corporation shall not be obligated to take any action to enforce the provisions of this Declaration, the By-Laws, or rules and regulations if the Board reasonably determines that the Corporation's position is not strong enough to justify taking such action or that the nature of the violation is minor or unobjectionable and thus does not warrant enforcement action. Such a decision shall not be construed as a waiver of the right of the Corporation to take enforcement action at a later time or under other circumstances or estop the Corporation from enforcing any other covenant, restriction or rule.

The Corporation, through its Board, by contract or other agreement, shall have the right to enforce city ordinances and county resolutions and to permit the City of Olathe and Johnson County, Kansas, to enforce ordinances and resolutions in the Community for the benefit of the Corporation and its Members.

Section 4. Implied Rights. The Corporation may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. The Corporation shall permit the Declarant reasonable authority to designate sites within the Community for fire, police, water, and sewer facilities, public schools and parks, and other public facilities.

Article X

Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Common Expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 7 of this Article. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Corporation; (b) Recreational Assessments for Recreational Expenses; and (c) Special Assessments as described in Section 4 below.

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.

The amount of assessments levied by the Corporation against each Member shall be included as a line item in the budget of each Member and shall have first priority for payment out of the income of each Member. Each Member shall be personally obligated for payment of such assessments; however, each Owner, by acceptance of a deed or recorded contract of sale on any Unit, agrees to be secondarily liable for payment of his pro rata share of the assessments due from the Member having jurisdiction over his Unit.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Kansas law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon every Unit subject to the jurisdiction of the Member against which each assessment is made. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Any Owner may satisfy his personal obligation and release the lien on his Unit for unpaid assessments due the Corporation by paying to the Corporation his pro rata share of the amounts due from the Village Association or Nonresidential Association of which he is a member.

The Corporation shall, upon demand at any time, furnish to any Member liable for any type of assessment a certificate in writing signed by an officer of the Corporation setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment to the Corporation of such assessment therein stated to have been paid. The Corporation may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration of the annual Base Assessment and any Recreational Assessment against a Member in the event that such Member is delinquent in paying any amount due. Unless the Board otherwise provides, the Base Assessment and Recreational Assessments shall be paid in quarterly installments in advance on the first day of each calendar quarter.

No Member or Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Community Properties or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Member and Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Corporation or Board to take some action or perform some function required to be taken or performed by the Corporation or Board under this Declaration or the By-Laws, or for

inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Corporation, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Corporation is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Corporation's expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses to be incurred by the Corporation during the coming year, excluding any Recreational Expenses. The budget shall include a capital contribution establishing a reserve fund for Community Properties other than Common Recreational Parcels, in accordance with a budget separately prepared.

The Base Assessment to be levied for the coming year against each Member shall be computed as follows: the budgeted Common Expenses, excluding any Recreational Expenses, shall first be allocated between the Village Associations, as a group, and the Nonresidential Association in the same proportion as the total acreage subject to the jurisdiction of each bears to the total acreage of the Community. That portion of such Common Expenses allocated to the Village Associations as a group shall then be allocated among the Village Associations by dividing the total dollars by the total number of Residential Units subject to assessment by all Village Associations, then multiplying the result by the number of Residential Units subject to assessment by each Village Association. The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Member for the following year to be delivered to each Member at least thirty (30) days prior to the beginning of the fiscal year.

The Declarant may, but shall not be obligated to, enter into an agreement with the Corporation to subsidize all or a portion of the Common Expenses, or to subsidize the assessment liability of some or all of the Members, for any fiscal year. Any such subsidy shall be conspicuously disclosed in or with the budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Corporation and the Declarant.

In the event the Board fails for any reason so to determine the budget for Common Expenses for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget and Base Assessments from time to time during the year in the same manner as provided herein.

Section 3. Computation of Recreational Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a separate

budget covering the estimated Recreational Expenses to be incurred during the coming year. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of any capital items within the Common Recreational Parcels. The Recreational Assessment to be levied for the coming year against each Village Association shall be computed by dividing the budgeted Recreational Expenses by the total number of Residential Units subject to assessment by all Village Associations ("assessable Residential Units"), then multiplying by the number of assessable Residential Units subject to the jurisdiction of such Village Association. The Board shall cause a copy of such budget and notice of the amount of the Recreational Assessment to be levied on each Village Association for the coming year to be delivered to each Village Association at least thirty (30) days prior to the beginning of the fiscal year.

The Declarant may, but shall not be obligated to, enter into an agreement with the Corporation to subsidize all or a portion of the Recreational Expenses, or to subsidize all or a portion of the assessment liability for some or all of the Members responsible for Recreational Expenses, for any fiscal year. Any such subsidy shall be conspicuously disclosed in or with the budget for Recreational Expenses. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Corporation and the Declarant.

In the event the Board fails for any reason so to determine the budget for Recreational Expenses for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget and Recreational Assessments from time to time during the year in the same manner as provided herein.

Section 4. Special Assessments.

(a) Entire Membership. The Corporation may levy Special Assessments from time to time for expenditures in addition to or outside of its regular operating budget, provided such assessment receives the affirmative vote or written consent of Members representing at least seventy-five (75%) percent of the total Class "A" votes subject to such assessment and the affirmative vote or written consent of the Class "B" Member, if such exists. The obligation of the Members to pay Special Assessments shall be computed on the same basis as Base Assessments; provided, however, the Nonresidential Association shall be exempt from special assessments for Recreational Expenses. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Less Than All Members. The Corporation may levy a Special Assessment against any Member to reimburse the Corporation for costs incurred on behalf of the Member pursuant to the provisions of the Declaration, any amendments thereto, the Articles, the By-

Laws, or the Corporation's rules, which Special Assessment may be levied for costs incurred at the request of the Member or for costs incurred in bringing a Member into compliance with the terms of this Declaration or the declaration applicable to the properties administered by the Member; provided, in the latter case, the Board shall not take any action on behalf of a Member necessitating costs to be incurred except on petition of a Member and approval of a majority of the total Board after notice to the affected Member and an opportunity for a hearing. If the Corporation expects to incur costs on a regular basis which benefit less than all Members, such benefitted Members may be assessed regularly for such costs pursuant to this Section 4(b).

Section 5. Lien for Assessments. Upon filing with the Register of Deeds of Johnson County, Kansas, a certificate of nonpayment identifying the Units subject to the jurisdiction of any Member delinquent in paying any amounts due to the Corporation, there shall exist perfected liens in favor of the Corporation against each such Unit for unpaid assessments. The certificate of nonpayment shall be executed under oath by an officer of the Corporation and dated, and shall state the amount of such nonpayment. The lien evidenced thereby shall be prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; and (3) the lien for assessments by any condominium association having jurisdiction over the Unit. Such liens, when delinquent, may be enforced by suit, judgment, and foreclosure. Any action to enforce the lien for unpaid assessments on a Unit must be commenced within five (5) years of the date of recording of a notice of lien for such unpaid assessments against such Unit. The Corporation, acting on behalf of the Members, shall have the power to bid for any Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. The nonpayment of any assessment or other charge due hereunder shall create and give rise to the lien, and the filing of a certificate of nonpayment shall be for perfection of such lien and evidentiary purposes only and shall not be necessary for the creation of such lien.

Section 6. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of its replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Corporation, as shown on the budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and assessment pursuant to Sections 2 and 3 of this Article.

Section 7. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Class "A" Member on the first day of the third month following its incorporation under the laws of the State of Kansas. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year at the time the obligation for assessments commences.

Section 8. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Kansas law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the Mortgage, it shall not be liable for assessments chargeable to such Unit which became due prior to such acquisition of title. Such unpaid assessments shall be collectible from Owners of all the Units subject to the jurisdiction of the delinquent Member, including such acquirer, its successors and assigns.

Article XI

Use Restrictions

The Corporation, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Community Properties, in addition to those contained herein, and to impose reasonable user fees for use of facilities on the Community Properties.

Section 1. Signs. No sign of any kind shall be erected on the Community Properties without the written consent of the Board of Directors, except entry and directional signs installed by Declarant and such signs as may be required by legal proceedings. If permission is granted to any Person to erect a sign on the Community Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

Section 2. Vehicles.

(a) Motorcycles, motor bikes, mopeds and other motor vehicles, other than golf carts, shall be operated only by properly licensed drivers and only on paved streets unless otherwise authorized by the Board of Directors. Golf carts shall be operated only on paved streets or designated golf cart paths.

(b) Vehicles shall be parked on the Community Properties only in designated parking areas and then subject to such reasonable rules and regulations as the Board of Directors may adopt. No parking shall be permitted on road shoulders or streets within the Community Properties, except that the Declarant and/or the Corporation may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No vehicle shall be parked on the Community Properties overnight, except with the prior permission of the Board. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with Article III, Section 20 of the By-Laws.

Section 3. Persons Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern conduct on the Community Properties shall apply to all Owners, occupants, guests and invitees of any Unit. Every Owner shall cause all occupants, guests and invitees of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such persons and all damage to the Community Properties resulting therefrom, notwithstanding the fact that such persons are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Community Properties; provided, horses may be kept in areas, if any, designated by the Board for the stabling of horses and may be ridden on trails designated for horseback riding. Pets which are permitted to roam free, or, in the sole discretion of the Corporation, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other users of the Community Properties shall be removed upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. Dogs shall at all times be confined on a leash held by a responsible person when on the Community Properties. Nothing herein shall be construed to restrict the Corporation's right to designate areas within the Community Properties as bird sanctuaries, or to operate fish hatcheries, or otherwise to raise, breed, or encourage the propagation of wildlife.

Section 5. Quiet Enjoyment. No portion of the Community Properties shall be used, in whole or in part, for the storage of any personal property other than that of the Corporation; nor shall any substance, thing, or material be brought upon any portion of the Community Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other users of the Community Properties or the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Community Properties. No plant or animal or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community Properties shall be brought upon or left upon the Community Properties.

No burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Community Properties, except as may be specifically authorized by the Board of Directors. There shall be no littering on the Community Properties; all trash and garbage shall be disposed of in appropriate containers.

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other

mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Community Properties.

Section 6. Firearms. The discharge and display of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Corporation shall not be obligated to take action to enforce this Section.

Section 7. Hunting. Hunting and killing of wild animals is prohibited within the Community Properties except as may be necessary to prevent imminent harm to a person or persons using the Community Properties or except as otherwise may be approved by the Board of Directors.

Section 8. Tents, Trailers and Temporary Structures. No tent, trailer, recreational vehicle, camper, shack, hut or other structure of a temporary nature shall be placed or erected on any part of the Community Properties, except as may be permitted by the Board of Directors in conjunction with special events sponsored by the Corporation or approved by the Board. No overnight camping shall be permitted within the Community Properties.

Section 9. Tree Removal. No trees, shrubs, or other native vegetation, whether living or dead, including wood, tree limbs and other by-products thereof, shall be cut, disturbed or removed from any portion of the Community Properties without the prior consent of the Board of Directors.

Section 10. Lakes and Water Bodies. All lakes, ponds, and streams, and other bodies of water within the Community Properties, other than Shadow Lake, shall be aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors; provided, fishing from shorelines or banks shall be permitted with proper licenses. Under no circumstances shall swimming be permitted in any lake, pond or stream within the Community Properties. Recreational use of Shadow Lake shall be permitted subject to rules and regulations established by the Board, which rules may restrict any type of activity which the Board, in its discretion, determines inappropriate. The Corporation shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within the Community Properties. No docks, piers or other structures shall be constructed on or over any body of water within the Community Properties, except such as may be constructed by the Declarant or the Corporation.

Section 11. Playground. Any playground or other play areas or equipment furnished by the Corporation or erected within the Community Properties shall be used at the risk of the user, and the Corporation shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 12. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business shall be conducted on or from any portion of the Community Properties by any Person other than the Corporation, and no soliciting, posting of signs, or other advertising of any kind shall be permitted on the Community Properties, except with the prior written approval of the Board of Directors.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in on an isolated basis, or full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. This Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development within the Community and/or sale of Units, nor shall it apply to preclude any authorized home day care provider from using the Community Properties for their intended purposes while providing authorized home day care, subject to such rules and limitations as the Board may impose. Authorized home day care, as such phrase is used herein, shall refer to day care provided by the Owner or occupant of a Residential Unit from his or her Residential Unit with express authorization of the Village Association having jurisdiction over such Residential Unit.

Section 13. Golf Carts. No golf carts shall be operated within the Community Properties, except on golf cart paths and easements specifically designated for golf cart use in connection with golf course play, if any.

Section 14. Laws and Ordinances. Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Community and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Article XII

General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind all property in the Community, and shall inure to the benefit of and shall be enforceable by the Corporation or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. Prior to the conveyance of the first Unit in the Community, Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as it still owns property described in Exhibit "A" or Article VIII, Section 1 hereof, for development as part of the Community, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total Class "A" votes in the Corporation and the consent of the Class "B" Member, so long as such membership exists. In addition, any amendment which would materially adversely affect the Nonresidential Association or the Owners of Nonresidential Units shall require the approval of the board of directors of the Nonresidential Association; so long as a majority of the members of the board of directors of the Nonresidential Association are appointed by the Declarant, the Nonresidential Association shall not give its consent to any such amendment unless approved by Owners of Nonresidential Units entitled to cast a majority of the total Class "A" votes in the Nonresidential Association. The percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Johnson County, Kansas.

If any officer of a Member consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such officer has the authority so to consent on behalf of the Member and no contrary provision in the by-laws or articles of incorporation of such Member or in any Mortgage or contract between any Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Indemnification. The Corporation shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an

officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Corporation, and the Corporation shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Corporation shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Community Properties adjacent thereto due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Corporation.

Section 5. Easements for Utilities, Etc.

(a) There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" or in Article VIII, Section 1, of this Declaration, the Corporation, and to the designees of each (which may include, without limitation, Johnson County, the City of Olathe, and any utility), access and maintenance easements upon, across, over, and under all of the Community as reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of portions of the Community. Notwithstanding anything to the contrary herein, these easements shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing building on a Unit, and any damage to a Unit resulting from the exercise of these easements shall promptly be repaired. The exercise of these easements shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant thereof. Nothing in this Section 5(a) shall give any person a right to enter the dwelling on a Unit without the permission of the Owner or occupant of the Unit.

(b) There are also hereby reserved for all utility providers easements over the Community Properties for ingress, egress, installation, reading, replacing, repairing, and

) maintaining meter boxes; provided, the exercise of said easements shall not extend to permitting entry into the building on any Unit.

(c) Notwithstanding anything to the contrary contained in this Section 5, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Community Properties, except as may be approved by the Corporation's Board of Directors or as provided by Declarant.

(d) The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Community Properties to the City of Olathe, Johnson County, Kansas, or to any other local, state, or federal governmental entity; provided, after the expiration of the Class "B" Control Period, any dedication shall be subject to such approval requirements as may be contained in Article XIII, Section 2 of this Declaration.

Section 6. Easement for Golf Balls. The Community Properties are burdened with an easement permitting golf balls unintentionally to come upon the Community Properties immediately adjacent to the golf course and for golfers at reasonable times and in a reasonable manner to come upon the Community Properties to retrieve errant golf balls.

Section 7. Severability. Invalidation 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.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 9. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Corporation unless approved by a vote of seventy-five (75%) percent of the Class "A" Members. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or By-Laws of the Corporation to the contrary, a Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by seventy-five (75%) percent of the total Class "A" vote of its members. This Section shall not apply, however, to (a) actions brought by the Corporation to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Corporation in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 10. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those administered by each of the Corporation's Members and the Corporation may, upon petition of any Member and a majority vote of the total

Board, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the Corporation's By-Laws and Articles of Incorporation shall be superior and controlling. The foregoing priorities shall apply, but shall not be limited to, the lien for assessments created in favor of the Corporation.

Section 11. Compliance. Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Corporation. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Corporation, any Member, or, in a proper case, by any aggrieved Unit Owner or Owners.

Section 12. Security. The Corporation may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE CORPORATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, HOWEVER, AND NEITHER THE CORPORATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE CORPORATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY SECURITY OR SIMILAR SYSTEM OR MEASURES UNDERTAKEN MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY SUCH SYSTEMS OR MEASURES WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, ROBBERY, OR OTHERWISE, NOR THAT SUCH SYSTEMS OR MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE CORPORATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE CORPORATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

Article XIII
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Residential Units in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Corporation (such request to state the name and address of such holder, insurer, or guarantor and the Residential Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Corporation of any default in the performance by an Owner of a Residential Unit of any obligation under the Declaration or By-Laws of the Corporation which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Corporation; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Members representing at least sixty-seven (67%) percent of the total Corporation vote entitled to be cast thereon consent, the Corporation shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Community Properties which the Corporation owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Community Properties shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Member (A decision, including contracts, by the Board or

provisions of any declaration subsequently recorded on any portion of the property in the Community regarding assessments on Units subject thereto shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Community Properties (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Community Properties losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Community Properties and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of a Corporation policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Corporation.

Section 3. Other Provisions for First Lien Holders. To the extent possible under Kansas law:

(a) Any restoration or repair of the Community Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

(b) Any election to dissolve the Corporation after substantial destruction or a substantial taking in condemnation shall require the approval of the eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such eligible holders are allocated.

Section 4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or dissolution of the Corporation made as a result of destruction, damage, or condemnation pursuant to Section 3 (a) and (b) of this Article, or to the addition of land in accordance with Article VIII.

(a) The consent of Members representing at least sixty-seven (67%) percent of the Class "A" votes in the Corporation and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the eligible holders of first Mortgages on Units to which at least sixty-seven (67%) percent of the votes of Units subject to a Mortgage held by an eligible holder appertain, shall be required to dissolve the Corporation.

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(b) The consent of Members representing at least sixty-seven (67%) percent of the Class "A" votes in the Corporation and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of eligible holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to a Mortgage held by an eligible holder appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Corporation, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Community Properties;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Community Properties;
- (vi) responsibility for maintenance and repair of the Community Properties;
- (vii) expansion or contraction of the Community or the addition, annexation, or withdrawal of property, except upon dedication to local government as provided in Article XIII, Section 5;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Corporation where professional management has been required by an eligible holder; or
- (xii) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

Section 5. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Community Properties.

Section 6. Notice to Corporation. Upon request, each Owner shall be obligated to furnish to the Corporation the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 7. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Members or any Owner, may cause an amendment to this Article to be recorded to reflect such changes.

Section 8. Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Kansas law for any of the acts set out in this Article.

Section 9. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Corporation does not receive a written response from the Mortgagee within thirty (30) days of the date of the Corporation's request.

Article XIV **Declarant's Rights**

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Johnson County, Kansas. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property described in Article VIII, Section 1, hereof in any manner whatsoever.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue anywhere in the Community, whether being conducted by Declarant or others, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Community Properties such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned by the Declarant and any clubhouse, community center, or similar facilities which may be owned by the Corporation, as models, sales offices, administrative offices, or for other purposes.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium

Betty L. McCann
Print Name

CONSENT OF DECLARANT

CEDAR CREEK PROPERTIES, INC., a Kansas corporation


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

Attest: Teresa Hoffman
Teresa Hoffman, Secretary

[SEAL]

STATE OF KANSAS)) SS
COUNTY OF JOHNSON)

33



My Commission Expires: April 10, 1998

IN WITNESS WHEREOF, the undersigned officers of Cedar Creek Village I Association, Inc. have executed this Amended and Restated Declaration indicating approval hereof this 20th day of June, 1996.

INC., a Kansas not-for-profit corporation
By: Charles T. Sunderland
Charles T. Sunderland, President

Attest: Gregory F. Chirpich
Gregory F. Chirpich, Secretary

STATE OF KANSAS)
) SS
COUNTY OF JOHNSON)

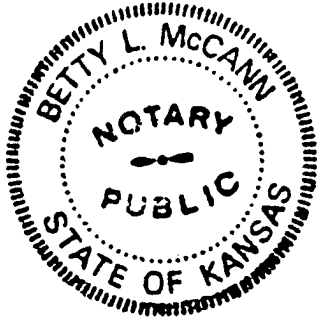
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year last above written.

Betty L. McCann
NOTARY PUBLIC

Betty L. McCann
Print Name

My Commission Expires: April 10, 1998



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EXHIBIT "A"

Land Initially Submitted

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, 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 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, more particularly described as:

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, more particularly described as:

First Plat	88/36	09/1/94
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Exhibit "A"
Page 2 of 2

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EXHIBIT "A-1"

(Shadow Glen Golf Club)

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.

(Lot 1, Fourteenth 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.

(Twentieth Plat)

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.