

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR
CEDAR CREEK CONDOMINIUM, PHASE V,
AND BY-LAWS FOR CEDAR CREEK CONDOMINIUM OWNERS' ASSOCIATION**

This Declaration is made this 20th day of December, 2006, by United Built Homes, LLC, a Georgia limited liability company, (sometimes hereinafter referred to as "Developer").

Developer is the owner of certain real property known as Cedar Creek Condominium, Phase V, and as shown on plat of record in Plat Book 20, Page 257-260 in the Office of the Clerk of the Superior Court of Catoosa County, Georgia, and, by recording a Declaration of Condominium in Deed Book 1335, page 549 in the Office of the above said Clerk, has created a residential Condominium Community known as Cedar Creek Condominium (the "Condominium") created pursuant to the Georgia Condominium Act (O.C.G.A. §44-3-70, et seq; Ga. L. 1975, pp. 609, 611), together with the Common Elements for the benefit of the Condominium; and

Developer desires to provide for the preservation of values and amenities in the Condominium and for the maintenance and upkeep of said Common Elements and, to this end, desires to subject the real property described in Article II hereof to the covenants, restrictions, easements, affirmative obligations, charges, and liens, hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of the Property and each and every Owner of any and all parts thereof; and

Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Condominium, to delegate and assign to the Owners of the Dwelling Units of the Cedar Creek Condominium the power and authority of maintaining and administering the Common Elements and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

Developer herein establishes an association, to be called Cedar Creek Condominium Owners' Association, for the purpose of exercising the above functions and those which are more fully set out hereafter.

DECLARATION

NOW, THEREFORE, the Developer subjects the real property described in Article II hereof to the terms of this Declaration and declares that the same is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (sometimes referred to as "the Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and terms, when used in this Declaration or any supplemental Declaration (unless the context shall clearly indicate otherwise), shall have the meanings set forth below. Any term which is not defined in this Declaration shall be deemed to have the meaning set forth in the provisions of O.C.G.A. §44-3-71.

1.01 **Association.** "Association" shall mean Cedar Creek Condominium Owners' Association.

CATOOSA COUNTY, GEORGIA
Filed and recorded in this office

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Dec. 20, 2006 at 2 ^{AM}_{PM} 577
Recorded in Deed Book 1335 Page 577
NORMAN L. STONE, Clerk

1.02 **Board of Directors.** "Board of Directors" or "Board" shall mean the governing body of the Association established and elected pursuant to this Declaration.

1.03 **Common Expense.** "Common Expense" shall mean and include (i) expense of administration, maintenance, repair or replacement of the Common Elements; (ii) expenses agreed upon as Common Expenses by the Association; (iii) expenses declared Common Expenses by the provisions of this Declaration; and (iv) all other sums assessed by the Board pursuant to the provisions of this Declaration.

1.04 **Common Elements.** "Common Elements" shall mean those easements and common and mutual appurtenances which are shown on the Recorded Plat, and easements appurtenant thereto, and required to be maintained by the Association, and which are intended for the common use and benefit of all Owners. The Common Elements are all of the portions of the Condominium which do not include the interior areas of the Dwelling Units. Common Elements include, but are not limited, to a pedestrian/walking trail easement, utility (including sewer and other utilities) easements, detention pond/area easements, signage and sign easement, entrances, gates, roads, parking areas, fences, retaining walls, landscaping, the club house and swimming pool as shown on the Recorded Plat.

1.05 **Condominium.** "Condominium" shall mean the Cedar Creek Condominium, as depicted on the Recorded Plat, as described in that certain Declaration of Condominium recorded in Deed Book 1335, page 549 in the Office of the above said Clerk and as shown on the Floor Plan.

1.06 **Covenants.** "Covenants" shall mean the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens set forth in this Declaration.

1.07 **Declaration.** "Declaration" shall mean this Declaration of Covenants and Restrictions for Cedar Creek Condominium, Phase V, and By-Laws for Cedar Creek Condominium Owners' Association and any supplemental declaration filed pursuant to the terms hereof.

1.08 **Developer.** "Developer" shall mean United Built Homes, LLC, a Georgia limited liability company.

1.09 **Dwelling Unit.** "Dwelling Unit" shall mean a condominium unit situated upon the Properties designated and authorized for use and occupancy by a single family. "Dwelling Unit" shall include, in addition to the building structure of the unit, the perpetual and unrestricted right of ingress and egress to and from the Dwelling Unit.

1.10 **Existing Land.** "Existing Land" shall mean the real property described in Article II hereof.

1.11 **First Mortgage.** "First Mortgage" shall mean a recorded Mortgage with priority over all other mortgages.

1.12 **First Mortgagee.** "First Mortgagee" shall mean a beneficiary, guarantor, creditor or holder of a First Mortgage.

1.13 **Floor Plan.** "Floor Plan" or "Plan" shall mean those certain Floor Plan Drawings of the Condominium, as prepared by Brian L. Tunc, Georgia Registered Architect, and recorded in Plat Book 20, page 257-269 in the Office of the above said Clerk.

- 1.14 **Member or Members.** "Member or Members" shall mean any or all Owners who are Members of the Association.
- 1.15 **Mortgage.** "Mortgage" shall mean a security deed, as well as a Mortgage.
- 1.16 **Mortgagee.** "Mortgagee" shall mean a beneficiary, guarantor, creditor or holder of a Security Deed, as well as a holder of a Mortgage.
- 1.17 **Owner or Owners.** "Owner or Owners" shall mean the recorded Owner or Owners, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Dwelling Unit situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to a Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of any Owner. The Developer may be an Owner.
- 1.18 **Property or Properties.** "Property or Properties" shall mean the Existing Land which is subject to this Declaration or any supplemental declaration under the provisions hereof.
- 1.19 **Record or To Record.** "Record or To Record" shall mean to record pursuant to the laws of the State of Georgia relating to the recordation of deeds and other instruments conveying or affecting title to real property.
- 1.20 **Recorded Plat.** "Recorded Plat" shall mean that certain survey plat of the Cedar Creek Condominium prepared by C. Barton Crattie, Georgia Registered Surveyor, dated November 29, 2006, recorded in Plat Book 20, page 257-26 in the Office of the above said Clerk.

ARTICLE II

PROPERTIES, COMMON ELEMENTS, AND IMPROVEMENTS THEREON

- 2.01 **Existing Land.** The real property which is, and shall be, held, transferred, sold, conveyed, leased and occupied subject to these Covenants is located in Catoosa County, Georgia, and is more particularly described as follows:

All that tract or parcel of land lying and being in Original Land Lot Number 51, in the 9th District and 4th Section of Catoosa County Georgia and being known and designated as Unit Numbers 1202-1204 of Unit L, Unit Numbers 1403-1404 of Unit N, Unit Numbers 1603-1604 of Unit P and Unit Numbers 1802-1804 of Unit R of the Cedar Creek Condominium, Phase V, as shown on plat recorded in Plat Book 20, page 257 in the Office of the Clerk of the Superior Court of Catoosa County, Georgia, which said plat is by reference incorporated herein.

- 2.02 **Common Elements and Improvements Thereon.** Being those easements and common and mutual appurtenances which are shown on the Recorded Plat, and easements appurtenant thereto, and which are required to be maintained by the Association, and are intended for the common use and benefit of all Dwelling Unit Owners. The Common Elements are all of the portions of the Condominium which do not include the interior area of the Dwelling Units. Common Elements include but are not limited to a pedestrian/walking trail easement, utility (including sewer and other utilities) easements, detention pond/area easements, signage and sign easement, entrances, gates, roads,

parking areas, fences, retaining walls, landscaping, the club house and swimming pool as shown on the Recorded Plat. The Board may, with a simple majority vote, improve the Common Elements with such other improvements as they deem desirable. Each Dwelling Unit is hereby granted a non-exclusive easement for the use of the Common Elements, subject to the regulations adopted by the Board concerning use of the Common Elements and subject to the suspension of the right to use the Common Elements for failure to pay the Assessments described in this Declaration. Any attempted conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be null and void unless the Dwelling Unit to which the interest is allocated is also transferred.

ARTICLE III

ASSOCIATION

3.01 **Membership.** Every person or entity who is a record Owner of a fee simple interest in any Dwelling Unit which is subject to this Declaration shall be a Member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall automatically be transferred to the new Owner upon the conveyance of any Dwelling Unit and recording of the Deed of Conveyance in the Office of the Clerk of the Superior Court of Catoosa County, Georgia, in addition to payment of any Association initiation fees, assessments, or dues. Membership shall be appurtenant to ownership of any Dwelling Unit which is subject to assessment.

3.02 **Voting Rights.** The Association shall have one class of voting membership which is as follows:

(A) Dwelling Unit Owners shall have full voting privileges at all Association meetings concerning all Common Elements, improvements, changes to this Declaration, changes of the Board of Directors, President of the Association, Vice President of the Association, Secretary-Treasurer, and any interest concerning the Association. Occupants who are not an Owner of a Dwelling Unit shall have no vote or voice in the affairs of the Association.

In no event shall more than one vote be cast with respect to any Dwelling Unit. When an Owner signs a proxy, such vote shall be counted when such proxy is contained in a written instrument delivered to the Secretary of the Association before the vote is counted. Any Owner who owns multiple Dwelling Units shall have one (1) vote for each Dwelling Unit owned.

ARTICLE IV

THE BOARD OF DIRECTORS AND OFFICERS

4.01 **Board of Directors.** The administration of the Property on behalf of the Association shall be conducted by a Board of Directors ("Board") which shall consist of five (5) natural persons of legal age, each of whom shall be a Member in good standing of the Association, and will maintain such representation during membership on the Board.

4.02 **Initial Board of Directors.** The Developer shall act as the Board of Directors during the first twenty-four (24) months following the date of this Declaration or until four (4) months after seventy-five (75%) of all Dwelling Units in the Condominium have been sold by Developer, whichever occurs last. The Developer shall have all powers and authority to act which are granted to the Board of Directors in this Declaration. However,

notwithstanding any provision herein to the contrary, Developer shall have the right to terminate its obligations as initial Board of Directors at any time upon giving notice of its intent to do so to all Owners and upon the election of the first Board of Directors and Officers as provided in this Declaration. Notwithstanding any provision of this Declaration to the contrary, as long as Developer is acting as the initial Board of Directors, Developer shall have the absolute power and right to amend, change, or alter the provisions of this Declaration.

4.03 Election. At each annual meeting, subject to the provisions hereof concerning filling vacancies of unexpired terms, the Association shall elect those members of the Board, President, Vice-President, and Secretary-Treasurer as required under Sections 4.01 and 5.05 who shall serve the terms set out under Sections 4.04 hereof. However, the members of the Board elected to succeed the prior elected officers may be elected at a special meeting duly called and specifically called for that purpose by the Board and the Board elected at said special meeting to serve until the first annual meeting of the Association held thereafter. Three members of the board shall be elected every other year. The President shall be elected in alternating years with the Vice-President.

4.04 Term. Members of the Board shall serve for a term of one year. Three members shall be elected every other year. The Members of the Board, President, Vice-President and Secretary-Treasurer shall serve until their respective successors are duly elected and qualified, or until their death, resignation or removal. The President, Vice-President and Secretary-Treasurer shall serve for a term of two years.

4.05 Resignation or Removal. Any member of the Board, President, Vice-President, and Secretary-Treasurer may resign at any time by giving written notice to the President or Vice-President should the resigning member be the President. Any Member of the Board or elected officer may be removed from elected office by a two-thirds (2/3) affirmative vote of the Association except that a vacancy on the Board shall be deemed to exist in the event of the death of a member, the disability of a member which, in the opinion of the majority of the Board, renders such member incapable of performing his elected duties, or in the event a member shall cease to be a Member of the Association. Whenever there shall occur a vacancy on the Board for any reason, the remaining Board members shall elect a successor member to serve until the next annual meeting of the Association or until a Special Meeting is called for filling vacancies at which time said vacancy shall be filled by the Association for the unexpired term.

4.06 Compensation. The members of the Board and elected officers shall receive no compensation for their services unless expressly provided for by the Association but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties.

4.07 Powers and Authority of the Board. The Board and elected officers, for the benefit of the Property and the Association, shall enforce the provisions of this Declaration, these By-Laws, and Rules and Regulations governing the Property. Subject to any provision herein, the Board and elected officers shall have the power and authority to acquire and pay for the following, which shall be deemed Common Expenses of the Association:

- (a) Water, sewer, electrical, lighting, and other necessary utilities for the Common Elements and Property.
- (b) Legal and accounting services necessary or advisable in the operation of the Common Elements and Property and the enforcement of this Declaration, these By-Laws, and any rules and regulations made pursuant thereto.

(c) Painting, maintenance, repair, replacement and landscaping of the Common Elements and Property. The Board shall also have the right from time to time to acquire and dispose of, by sale or otherwise, and without the necessity of approval by any Owner, furnishings and equipment and other personal property for the Common Elements and to provide maintenance, repair and replacement thereof, which shall include but not be limited to the maintenance of the common fencing, common signage, lighting, gates, entrances, landscaping, shrubs, grass, roads, sidewalks and detention areas.

(d) Hazard and flood insurance, liability insurance and fidelity insurance requirements for the Association, Condominium and Common Elements which the Board deems necessary, in its sole discretion, and/or which is required to be maintained by applicable Federal or State law.

(e) Any other materials, supplies, labor, services, maintenance, repairs structural alterations, insurance, taxes or assessments that the Board is required to secure or pay pursuant to the terms of this Declaration, these By-Laws or any Rules or Regulations promulgated thereunder or which, in its opinion, shall be necessary or advisable for the operation of the Common Elements and Property or for the enforcement of this Declaration, these By-Laws or the Rules and Regulations.

(f) The Board shall have the exclusive right to contract for all goods, services, including security, payment for which is to made from Common Expenses.

4.08 Additional Powers of the Board. The Board shall have the right to acquire, operate, lease, manage, trade and otherwise deal with the Common Elements as may be necessary or convenient in the operation and management of the said Common Elements, and in accomplishing the purposes set forth herein.

4.09 Maintenance and Inspection of Documents. The Board shall maintain current copies of the Condominium Declaration, the Articles of Incorporation of the Association, these By-Laws, any rules and regulations adopted pursuant to the authority of this instrument, financial statements of the Association and other corporate records of the Association. These documents shall be maintained by the Board at the Association's office and shall be available for inspection, during normal business hours, by any Owner or by any Mortgagee.

4.10 Audited Financial Statements. The Board shall cause an audited financial statement to be prepared for the Association at the end of each fiscal year, commencing at the time the Association has been in existence for one (1) full fiscal year. The audited financial statement shall be available within one hundred twenty (120) days of the Association's fiscal year-end. The audited financial statements of the Association shall be subject to inspection by any Owner during normal business hours and shall be made available to any Mortgagee upon written request.

4.11 Working Capital Fund. The Developer shall initially establish a working capital fund in order to meet unforeseen expenses of the Association or to purchase any additional equipment or services. The fund shall have an initial balance equal to at least two (2) months of estimated Common Expenses for each Dwelling Unit in the Condominium. The Owner of each Dwelling Unit shall reimburse the Developer for his/her share of the contribution to the working capital fund at the closing for each Dwelling Unit. The Developer shall not utilize any funds in the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while the Developer is in control of the Association. At the time control of the Association is relinquished by the Developer, the Board shall have the duty and responsibility to maintain the balance of the working capital fund in a segregated account

and shall have the duty and responsibility to monitor the maintenance and use of the working capital fund. Any amounts paid into the working capital fund by a Dwelling Unit Owner shall not be considered as an advance or credit toward the Assessments imposed hereunder.

4.12 Meetings of the Board. Meetings of the Board shall be held at such places within the State of Georgia as the Board shall determine, at least once per quarter. Three members of the Board, which shall include the President or Vice-President, and the Secretary-Treasurer (or his appointee from the Board) shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. Meetings of the Board shall be chaired by the President or Vice-President of the Association and the minutes shall be recorded by the Secretary-Treasurer of the Association (or an appointee of the Board). Any action required to be or which may be taken by the Board may be taken without a meeting of the Board pursuant to a written consent, setting forth the action so taken, signed by a majority of the members of the Board.

4.13 Special Meetings. Special meetings of the Board may be called by the President of the Association or by any two Board members.

4.14 Notice of Meetings. Regular meetings of the Board may be held without call or notice. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication to all Board Members. Such notice need not specify the purpose for which the meeting is called. If an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

4.15 Waiver of Notice. Any members of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member of the Board at any meeting thereof shall constitute a waiver of notice of such meeting unless a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and does so object by delivering a written document to that effect.

4.16 Fiscal Year. The fiscal year shall be determined by the Board.

4.17 Special Committees. Special committees shall be appointed by the President. The Board shall have rights to call for the formation of committees by motion.

4.18 Rules and Regulations. The Board shall have the power and right to adopt and amend rules and regulations for the purpose of governing details of the operation and use of the Common Elements and setting forth restrictions on, and requirements respecting the use and maintenance of the Common Elements. Copies of the Rules and Regulations shall be furnished to each Owner prior to the time the same shall become effective.

4.19 Limitation on Capital Additions, Etc. Except as permitted in other specific provisions set forth herein, and Article XI, the Board shall authorize no structural alterations, capital additions to, or capital improvements of the Common Elements, any of which require an expenditure in excess of One Thousand and no/100 (\$1,000.00) Dollars without approval of the majority vote of the Association; provided, however, that the Board shall have the power to make any such structural alterations, capital additions to, or capital improvements of, the Common Elements as are necessary, in the Board's reasonable judgement, to preserve or maintain the integrity thereof without obtaining such approval, if in the opinion of the Board an emergency exists upon which should be corrected before a meeting of the Association could be reasonably called and held.

4.20 **Failure to Insist on Strict Performance Not Waiver.** The failure of the Board or its agents to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions in this Declaration, or the By-Laws or the Rules and Regulations or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such terms, covenants, conditions or restrictions, rights, options or notices; but such terms, covenants, conditions or restrictions, rights, options or notices shall remain in full force and effect.

ARTICLE V

THE ASSOCIATION; MEETINGS, OFFICERS, ETC.

5.01 **Quorum.** The presence in person or by proxy at any meeting of the Association of a majority of the Owners of Units subject to assessment in response to notice to all Owners properly given in accordance with Sections 5.02 or 5.03 of the By-Laws, as the case may be, shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Association upon the affirmative vote of persons entitled to cast a simple majority of the votes which are represented at such meeting. Proxy vote representation shall be recognized and counted, should members not submit a proxy then a vote "for" the recommendation of the Board will be assumed.

5.02 **Annual Meeting.** There shall be an annual meeting of the Association on the first Monday of January at 6:00 o'clock pm at the Cedar Creek Condominium Clubhouse or at any place or time (but not more than thirty (30) days before or after such date) so designated by the Board. The Secretary-Treasurer shall present a review of the expenses for the prior year and a budget for the coming year or any pertinent actions passed by the Board.

5.03 **Special Meeting.** Special meetings of the Association may be held at any time and at any reasonable place to consider matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall be called by a majority of the Board, or at least by one-third (1/3) of the Owners by written notice, delivered to all Owners not less than fifteen (15) days prior to the date fixed for said meeting. The notice shall contain a description of matters to be considered.

5.04 **Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with this Declaration or other such rules adopted by the Board.

5.05 **Officers.** The Officers of the Association shall be a President, Vice-President, and Secretary-Treasurer. Each officer shall be required to be a Member in good standing; and the President must be a member of the Board. No Officer shall receive compensation for serving as such. Officers shall be annually elected by the Association and may be removed or replaced by same. The Board may, in its discretion, require that officers be subject to fidelity bond coverage.

(A) **President.** The President shall preside at all meetings of the Association and of the Board, and may exercise the powers ordinarily allocable to the presiding office of an association, including the appointment of committees. The President shall be authorized to provide payment for Association expenses not to exceed five hundred and no/100 (\$500.00) Dollars.

(B) **Vice-President.** In the absence or inability of the President, the Vice-President shall perform the functions of the President.

(C) **Secretary-Treasurer.** The Secretary shall keep the minutes of all proceedings of the Board and the Association and shall keep such books and records as may be necessary for the records of the Association and the Board, including the minute book wherein the resolutions shall be recorded. As Treasurer he/she shall be responsible for the fiscal affairs of the Board and the Association.

ARTICLE VI

LIABILITY AND INDEMNIFICATION

6.01 Liability of Members of the Board and Officers. The members of the Board, the officers and any agents and employees of the Association shall: (i) not be liable to the Members or Association as a result of their activities as such for any mistake of judgment, or otherwise, except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (ii) have no personal liability to a Member or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Members in their capacity as such; (iii) have no personal liability in tort to a Member or any other person or entity, direct or imputed, by virtue of acts performed by them as Board members and/or officers except for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and (iv) have no personal liability arising out of the use, misuse or condition of the Property, or which might in any other way be assessed against or imputed to them as a result or by virtue of their capacity as such Board members and/or officers.

6.02 Indemnification by Association. To the extent now or hereafter permitted by applicable law, the Association shall indemnify and hold harmless any person, his heirs and personal representatives, from and against any and all personal liability, and all expenses, including without limitation counsel fees and court costs, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative instituted by any one or more Members or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was a member of the Board or an officer or agent or employee of the Association; provided, in the case of any settlement, that the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or by vote of the Association of the Board, or otherwise. The indemnification by the Association set forth in this Article VI shall be paid by the Board on behalf of the Association and shall constitute a Common Expense.

6.03 Costs of Suit in Actions Brought by One or More Members on Behalf of All Members. No suit shall be brought by one or more but less than all Members on behalf of all Members without approval of a majority of Members and, if approval is obtained, the plaintiffs' expenses, including reasonable counsel's fees and court costs, shall be a Common Expense unless such suit is brought by one or more Members against other Members, the Association or against the Board, the officers, employees, or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all Members as defendants, in which event the plaintiffs' expenses, including counsel's fees and court costs, shall not be charged as a Common Expense.

6.04 Notice of Suit and Opportunity to Defend. Suits brought against the

Association, or the Board, or the officers, employees or agents thereof, in their respective capacities as such, or the Common Elements as a whole, shall be directed to the President of the Association, who shall promptly give written notice thereof to the other members of the Board and any Mortgagees, and shall be defended by the Board, and the Association and all Members shall have no right to participate other than through the Board in such defense. Suits against one or more, but less than all Members shall be directed to such Member, who shall promptly give written notice thereof to the Board and to the Mortgagees of the Dwelling Units affected, and shall be defended by such Members at their expense.

ARTICLE VII

PURPOSE, USES AND RESTRICTIONS

7.01 **Common Elements.** The Common Elements shall not be used except for one or more of the following purposes:

- (A) For the installation and maintenance, of drainage systems, water lines, sewer lines, gas lines, telephone lines, power lines, cable tv lines, lighting, and all other utility and/or service lines;
- (B) Ingress and Egress, including parking;
- (C) Construction and maintenance of security fences, gates, alarms, signage, etc.;
- (D) Recreational purposes, including but not limited to pedestrian activities, swimming, social functions and other similar purposes;
- (E) The Common Elements shall remain permanently as open space and there shall be no development of same. Other than the clubhouse, no building, structure or facility shall be placed, installed, erected or constructed in or on said Common Elements unless it is purely incidental to one or more of the uses above specified. Notwithstanding any other provision of this Declaration to the contrary, no amendment shall be made which impairs or diminishes the rights of the Members of the Association in the Common Elements.

7.02 **Dwelling Unit.** A Dwelling Unit shall be occupied and used only for a single-family private residence. A Dwelling Unit may be leased, subject to the terms of this Declaration, provided that any lease or rental agreement is made in writing and that a copy is provided to the Association.

7.03 **Restrictions.**

1. All of the Property, with the exception of the Common Elements, shall be known, described and used for residential purposes only and no structure shall be erected, altered, placed or permitted to remain on any portion of said Property except a Dwelling Unit to be utilized only as a single family residence. No portion of the Property shall be used for business or professional purposes of any kind or for any commercial activity including, but not limited to, day care centers or traditional home business.
2. *Architectural Control.* No Dwelling Unit shall be erected or placed upon any portion of the Property until the construction plans and specifications and a plan

showing the location of the building or structure are approved in writing by Developer.

- (a) Dwelling Units constructed in this development, irrespective of architectural type, shall have a minimum square footage of floor space and the heated living area thereof of at least 1050 square feet and a maximum square footage of floor space and the heated living area thereof of 1134 square feet. The square footage of any screened or enclosed porches shall not be included in the minimum square footage requirements stated herein.
 - (b) Heated living area having clear head room of less than 6 feet 8 inches shall not be included within any computation or calculation of heated living area of any Dwelling Unit for purposes of this covenant.
3. Unless constructed by Developer (or the Association after all Dwelling Units are constructed), no fence or wall of any type shall be placed, constructed or allowed to remain upon any portion of the Property. Other than the landscaping maintained by the Developer and/or the Association, no structures, plants, shrubs other obstacles shall be placed or kept on the Common Elements.
4. No noxious or obnoxious or offensive activity shall be carried on upon or within any Dwelling Unit or upon the Common Elements, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the other Owners or the neighborhood in general.
5. No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any portion of the Property or which may be visible from outside a Dwelling Unit except: (a) one sign not more than 6 square feet in surface area located only in a window advertising that particular Owner's Dwelling Unit on which the sign is situated is for sale or rent; (b) two security signs no more than 1 square foot in surface area, stating that the Dwelling Unit to which the signs apply is protected by a security system and/or stating the brand name of the security system. The right is reserved by Developer to itself or to a builder who acquires a Dwelling Unit or a portion of the Property from Developer for the purpose of constructing a Dwelling Unit thereon, to construct and maintain such signs, billboards or advertising devices as may in their sole discretion be deemed necessary in connection with the sale of Dwelling Units or a portion of the Property for the purpose of constructing Dwelling Units.
6. No more than one yard sale shall be held by the same Owner within any six month period. Such yard sale shall not exceed one week.
7. If any Dwelling Unit shall be used for rental purposes, the Dwelling Unit Owner or his agent shall insure that no objectionable or offensive activity is permitted which might disturb any other Dwelling Unit resident or Owner.
8. No animals, livestock, or poultry shall be raised or kept on any portion of the Property, except that one (1) dog or up to two (2) cats (with any pet not to exceed 30 pounds in weight) as a household pet and providing that they are not kept for breeding or commercial purposes. Pets shall be kept indoors. No pets are to be kept outside on any portion of the Property. Any and all pest control provided by the Association shall not include treatment of any Dwelling Unit for flea control. Any Dwelling Unit Owner with pets shall be responsible for their own flea control treatment.

9. Each Owner shall keep his Dwelling Unit and surrounding areas clean and orderly. No materials or equipment such as disabled autos or other unsightly objects shall be kept on any portion of the Property. Owners shall abide by all of the rules, regulations and ordinances duly enacted by Catoosa County and the City which relate to storage and disposal of garbage, rubbish, trash and refuse, which ordinances, as and when enacted, are incorporated herein by reference. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property so as to render the same unsanitary, unsightly or offensive. There shall be no burning of any type, including burning of garbage in 50 gallon drums, permitted on the Property. Garbage, rubbish, trash and debris shall be deposited in dumpsters located on the Property.

10. No antennae, towers of any kind, satellite signal receiving device or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic radiation shall be erected, used or maintained outdoors on any Dwelling Unit or portion of the Property, except for satellite dishes of 24 inches or less in diameter which shall only be mounted to the side of the building so as not to be visible from any street.

11. Access, drainage and utility easements are as shown on the Recorded Plat, and are to be kept open and free of obstacles.

12. No Dwelling Unit shall be altered on the outside including color of paint, masonry and/or roof unless written consent shall be given by the Developer (or the Association after construction of all Dwelling Units is complete).

13. No more than one bird bath shall be permitted by any Owner or Dwelling Unit and shall be located to the rear of the Dwelling Unit.

14. Each wall which is built as a part of the original construction of the Dwelling Units and designated as the dividing line/vertical boundary between the Dwelling Units shall constitute a party wall and the general rules of law regarding party walls and liability for property damage from negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who made use of the wall in equal proportions to such use.

15. Each Owner shall perform promptly any maintenance and repair work within his Dwelling Unit which, if permitted, would affect the Property in its entirety or in any portion belonging to other Owner(s) and each Owner is expressly responsible for damages and liability which result from his failure to promptly perform such maintenance and repair work. Unless otherwise provided in other Articles of this Declaration, each Owner shall be responsible for the costs of performing all such maintenance and repair work. Maintenance and repairs needed outside the living area of a particular Dwelling Unit shall be the responsibility of and at the expense of the Association as a Common Expense to be paid from the Assessments described herein, which includes painting, roofing, grounds, parking areas, fences and all other outside repairs and maintenance needs, whether by normal usage, weather related, preventive or incidental repairs, unless a particular Owner shall have agreed to make such repairs and maintenance. To the extent necessary, each Dwelling Unit Owner hereby grants to the Association an easement and right of entry into each Dwelling Unit for the purpose of maintenance and/or emergency repairs to any Dwelling Unit.

16. If a party wall is destroyed or damaged by fire or other casualty, any Owner

who uses the wall may restore it. If other Owners make use of this wall, they shall contribute to the restoration cost in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the Owner under any rule of law regarding liability for negligent or willful acts or omissions.

17. If a Dwelling Unit is destroyed or damaged by fire or other casualty, the Owner may re-build said Dwelling Unit subject to the terms of this Declaration. In the event the re-construction or movement results in a Dwelling Unit encroaching on any portion of the Common Elements, or vice versa, a valid easement shall be deemed to have been created for said encroachment, provided the encroachment does not materially alter the boundaries of the Dwelling Unit and/or Common Elements as described in the Declaration.

18. Notwithstanding any other provisions herein to the contrary, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary repairs as needed.

19. In the event of any dispute arising concerning a party wall, or under the provisions of this Declaration, the Board of Directors shall govern and decide said dispute, with its decision to be final and conclusive.

20. Each Owner shall obtain fire and extended coverage insurance on his Dwelling Unit in an amount which shall be equal to the maximum insurable replacement value as determined annually and shall annually provide a certificate evidencing the existence of insurance to the Secretary of the Association. Each Owner shall purchase public liability insurance in an amount not less than \$300,000.00 to protect himself against claims due to accidents within his Dwelling Unit and on the outside ground of his Dwelling Unit and annually provide a certificate evidencing the same to the Secretary of the Association. Payment of any claim for damage or loss to a Dwelling Unit shall be used exclusively for the cost of repair and restoration of such damaged Dwelling Unit in its entirety.

21. Each Owner shall pay his property tax as billed. If any taxing authority shall levy and tax against any of the Common Elements, then each Owner shall pay an equal share of said tax.

22. Annual Termite Contracts are to be kept in force by each Owner with a Pest Control Company of their choice, and annually provide a certificate evidencing the same to the Secretary of the Association. This is to insure that no termite damage will occur between Dwelling Units. However, the Association may, in its discretion, include termite treatment in its pest control contract as a Common Expense.

23. Owners shall promptly remove any deposits or wastes made by their pets upon the Common Elements or the properties of other Owners. All pets must be either leashed, if walking on any portion of the Property. Pets shall not be permitted to be a nuisance to the neighboring property owners.

24. No structure shall be erected on any portion of the Property nearer than the building set back lines as shown on the recorded plat, and further Developer shall have full authority, in its sole and independent discretion, to reduce the minimum setback frontage of front and side street lines and/or to reduce the minimum setback frontage of any rear line, as long as it meets local, county or state requirements.

25. All exterior designs, colors, roof brand and colors, as built and established by Developer shall not be changed or altered without Developer's written consent.

26. No house trailers or mobile homes, campers or other habitable motor vehicles of any kind, school buses, trucks or commercial vehicles over one (1) ton capacity, shall be kept, stored, or parked overnight on the Property. No recreational vehicles, boats, boat trailers, go-carts, motorcycles, 4-wheel vehicles, toys, playground equipment or other vehicles or items, other than passenger cars and/or pickup trucks, shall be parked outside any Dwelling Unit. No overnight parking of any vehicles whatsoever shall be permitted on the streets of the development. Owners may not park their vehicles upon the Property or driveways reserved for the use by a particular Dwelling Unit without the other Owners' permission.

27. When not in use, vehicles shall be parked in the designated parking areas and parking spaces of the Condominium designated to the particular Dwelling Unit for which the vehicle is used.

28. No outside clothes lines shall be placed outside of any Dwelling Unit.

29. Holiday lighting decorations shall be limited to indoor window decorations and such outside Christmas decorations, in moderation, on the front porch of a Dwelling Unit only. Except as provided herein, no outdoor lighting decorations shall be permitted. No outdoor flags or decorations shall be permitted other than an American flag, no larger than 3' x 5', which may be flown from the front porch of a Dwelling Unit only.

30. All construction of Dwelling Units, structures and all other improvements on any portion of the Property shall be undertaken and completed in accordance with the following conditions:

a) All construction shall be carried out in compliance with the laws, code rules, regulations and orders of all applicable governmental agencies and authorities. Construction shall equal or exceed requirements set forth by the Southern Building Code and Catoosa County.

b) No exposed concrete blocks shall remain on any exterior wall above ground level, unless covered or finished with stucco. No stucco shall be permitted above 12 inches from the ground.

c) All foundations shall be fully enclosed at the exterior walls.

d) No poles for installation of private lighting shall be located or placed outside or on the exterior of any Dwelling Unit as shown on the recorded subdivision plat.

e) No firearms shall be unlawfully discharged upon any portion of the Property at any time, and no target practice or contests of marksmanship shall be conducted at any time.

f) All Owners shall maintain their mailbox in the location provided and constructed by the Developer as a part of the Condominium.

g) All window treatments facing any street shall be white in color. Any storm doors installed on any Dwelling Unit must be of a style, design and color (including hardware) approved by the Developer (or the Association

after control of the Condominium is relinquished by the Developer). No other storm doors are permitted to be installed in any dwelling unit other than the style, design and color approved by the Developer.

- h) No window air-conditioning unit may be located in any part of the Dwelling Unit or accessory structure which is visible from any street.
- i) No outbuildings or accessory structures shall be built or permitted to remain on any portion of the Property.
- l) All front yards shall be sodded from the rear building line of the Dwelling Unit to the sidewalk. Shrubs shall be planted and maintained in accordance with the Developer's landscaping requirements.

31. No individual water supply (private wells) shall be permitted on any lot.

32. Landscaping of all Property shall be maintained as needed, which maintenance shall include, but not be limited to, mowing and removal of all trash from said Property. The Association shall be responsible for maintaining the mowing and trimming of grass and maintaining landscaping.

33. Re-subdivision of the Property and/or Dwelling Units shown upon the Recorded Plat of Cedar Creek Condominium shall be permitted only with the approval of the Developer.

34. Developer or its assigns may carry on such construction, selling and leasing activities on the Property as it deems necessary, and may maintain upon such portions of the Property as it deems necessary, such facilities as may be necessary, expedient or incidental to the completion of construction and to the selling or leasing of Dwelling Units, including, but not limited to, maintenance of a sales office, model residences, signs, storage areas, construction facilities and construction offices.

Further, the Developer shall have and does hereby reserve a transferable easement on and over certain lots and the Property for the purpose of making improvements on adjoining property and for the purpose of doing all things in connection therewith. In that connection and by way of clarification but not limitation, the easements reserved by the Developer, its successors and assigns, in, on, over, under and through the Property include those for the erection, installation, construction, and maintenance of wire, lines, conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antennae, television cables, and other utilities; for the construction of Dwelling Units and other improvements on the Property; for the installation, construction and maintenance of storm water drains, public and private sewers, and any other public or quasi-public utility facility; for the use of any streets, curbs or temporary facilities installed for parking vehicles in connection with efforts to market the Dwelling Units or lots; for the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Dwelling Units or lots. The Developer or any builder who acquires a lot from Developer for the purpose of erecting a Dwelling Unit thereon and their duly authorized agents, representatives and employees shall have the easements as well as an easement for the maintenance of sales offices and/or model residences on the Property for so long as the Developer or its successor builds or owns any lot or Dwelling Unit for sale in the ordinary course of business.

35. All outdoor barbecue grills (whether gas, electric, charcoal or otherwise) shall be placed, kept and used on the rear patio area of a Dwelling Unit. Outdoor barbecue grills shall not be placed, kept or maintained on the front lawn or front porch of a Dwelling Unit.

7.04 **Violations and Enforcement.** In the event of violations of any one or more of the provisions of this Article or this Declaration, the Association, its successors and assigns, including all parties hereafter becoming Owners of any one or more of the Dwelling Units to which the provisions of this Declaration apply, may bring action or actions against the Owner seeking to enjoin such violation, or attempted violation, and the Owner shall be further liable for such damages as may accrue, including court costs and reasonable attorney's fees incident to any such proceedings, which costs and fees shall constitute liquidated damages. By reason of the rights of enforcement of the provisions of this Declaration being given unto Owners of Dwelling Units (subject to rights of variance reserved by the Board), it shall not be incumbent upon the Association to enforce the provisions of this Declaration or to prosecute any violation thereof. In the event of a violation of these restrictions, a waiver thereof may be made by the Board in its sole discretion, if said waiver does not adversely affect the purposes contained herein.

ARTICLE VIII

ASSESSMENTS

8.01 **Creation of Lien and Personal Obligation of Assessments.** Each Owner by acceptance of a Deed conveying a Dwelling Unit, whether it be expressed in any such deed or other conveyance, by submission of such Dwelling Units to this Declaration under the provisions of Section 2.01 hereof, shall be deemed to covenant and agree to all of the terms and provisions of this Declaration and to pay to the Association Annual Assessments and Special Assessments for the purposes set forth in Section 8.04 of this Article, at such time as hereinafter provided. The Owner of the Dwelling Unit shall be personally liable to the Association for the payments of all Assessments, whether Annual or Special, which may be levied while such party is Owner of a Dwelling Unit. The Assessments, together with interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing Lien on the Dwelling Unit and all of the improvements thereon against which each such Assessment is made. Unpaid Assessments shall bear such interest from due date to date of payment at a rate set by the Board.

8.02 **Purpose of Assessments.** The Assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement, repair, maintenance and replacement of the Common Elements and Property. Special Assessments shall be used as set forth in Section 8.04 of this Article. The Board shall maintain an adequate reserve from the collection of Assessments to carry out the purposes of this Section.

8.03 **Amount of Monthly Assessments.** The Monthly Assessment per Dwelling Unit shall be determined by the Board and shall be payable in advance and quarterly unless a majority of the Board should elect to increase or reduce said amount at an annual or special meeting approved by two-thirds (2/3) of the Members in attendance. In no event shall monthly assessments permitted hereunder be increased by more than 12% annually.

8.04 **Special Assessments for Improvements and Additions.** The Board may levy

Special Assessments for the purpose of defraying, in whole or in part, the cost (more than \$500.00) of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Elements or Property, including necessary fixtures and personal property related thereto or additions to the Common Elements, provided that such Assessment shall have the approval of two-thirds (2/3) of the Owners at a duly called meeting of the Association. Written notice shall be sent to Members thirty (30) days in advance setting forth the purposes of said meeting.

8.05 Date of Commencement of Monthly Assessments. The Monthly Assessment shall commence on the date fixed by the Board to be the date of commencement. Such Monthly Assessment will be due and payable on the same date of each quarter as so established. The due date shall be fixed in the resolution authorizing such Assessment.

8.06 Lien. Recognizing that the necessity for providing proper operation and management of the Common Elements and Property entails the continuing payment of costs and expenses therefore, the Association is hereby granted a lien upon each Dwelling Unit and the improvements thereon as security for payment of all Assessments against said Dwelling Unit, now or hereafter assessed, which lien shall also secure all costs and expenses, and reasonable attorney's fees and court costs, which may be incurred by the Association in the enforcement of the lien upon said Dwelling Unit. The lien granted to the Association may be foreclosed as other liens are foreclosed in the State of Georgia. Failure by the Owner to pay any Assessment, Annual or Special, on or before the due dates set by the Association for such payment shall constitute a default, and this lien may be foreclosed by the Association.

8.07 Lease, Sale or Mortgage of Dwelling Unit . Whenever any Dwelling Unit may be leased, sold or mortgaged by the Owner thereof, which lease, sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration, the Association, upon written request of the Owner of such Dwelling Unit, shall furnish to the proposed lessee, purchaser or mortgagee, a statement certifying the status of payment of any Assessments which shall be due and payable to the Association by the Owner of such Dwelling Unit; such statement shall include whether there exists any matter in dispute between the Owner of such Dwelling Unit and the Association under this Declaration.

Such statement shall be executed by an officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

Should payment of any Assessment be in default when such lease, sale or mortgage should be transacted, then the rent, proceeds of purchase or mortgage shall be applied by the lessee, purchaser or mortgagee first to payment of any delinquent Assessment to the Association before payment of any rent, proceeds of purchase or mortgage to the Owner of any Dwelling Unit who is responsible for payment of such delinquent Assessment.

In any voluntary conveyance of a Dwelling Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor and the Dwelling Unit made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore.

ARTICLE IX

**MORTGAGES, MORTGAGEES AND PROCEDURES AND
RIGHTS RELATING THERETO**

9.01 Mortgages and Other Liens.

(a) Each Owner shall have the right, subject to the provisions herein, to make or create, or cause to be made or created, any mortgage or other lien on or affecting said Owner's respective Dwelling Unit, together with said Owner's respective ownership interest in the Common Elements, provided however that, from the date this Declaration is recorded, no Owner shall have the right or authority to make or create, or cause to be made or created, any mortgage or other lien on or affecting the Property or any part thereof except only to the extent of said Owner's own Dwelling Unit and the respective interest in the Common Elements corresponding thereto.

(b) Subsequent to the recording of this Declaration, no liens of any nature shall be created or arise against any portion of the Property except against an individual Dwelling Unit. No labor performed or materials furnished with the consent or at the request of a particular Owner shall be the basis for the filing of a mechanic's lien claim against any other Dwelling Unit. If the performance of the labor or furnishing of the materials is expressly authorized by the Association, each Owner shall be deemed to have expressly authorized and consented to such performance of labor and furnishing of materials, and each Owner shall be liable for the payment thereof in a proportionate share of any due and payable indebtedness, as set forth in this Declaration. An Owner shall not be liable for any claims, damages or judgments entered as a result of any action or inaction of the Association other than for mechanic's liens as set forth above. Each Owner's liability for any judgment entered against the Association shall be limited to said Owner's proportionate share of the indebtedness, as set forth in this Declaration whether collection is sought through Assessment or otherwise.

9.02 Rights of Mortgagees.

(a) Each of the following actions shall require, as of the date such action is taken, the prior written approval of at least fifty-one (51%) percent of Mortgagees or holders, guarantors or beneficiaries of any Mortgage or security deed constituting a first mortgage lien on any one or more Dwelling Units:

(i) abandonment or termination of the Association or removal of the Property from the provisions of this Declaration, except for removal provided by law, or in the case of destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to this Declaration which changes the interest of the Owners in the Common Elements;

(iii) use of hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement, or reconstruction of such improvements;

(iv) any amendment to this Article or to any other provision in this Declaration which specifically grants rights to the holders of such first mortgages or security deeds.

(b) Upon written request, any mortgagee subject to this Declaration shall be entitled to:

(i) inspect the books and records of the Association during normal

business hours, upon reasonable notice;

(ii) receive a copy of the annual, financial statement of the Association which is prepared for the Association and distributed to the Owner's;

(iii) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings;

(iv) receive written notice of any default in the obligations hereunder of any Owner of such Dwelling Unit encumbered by such first mortgage lien, not cured within thirty (30) days after notice of such default has been sent to such Owner by the Association; and

(v) receive written notice of any material amendment to this Declaration or the Bylaws of the Association.

However, the Association's failure to provide any of the foregoing to a First Mortgagee who has so requested same shall not affect the validity of any action or decision which is related to the foregoing, nor shall the Association have any liability on account of its good-faith failures to so provide.

(c) Upon written request, a First Mortgagee of any one or more Dwelling Units shall be entitled to timely written notice in the event of any substantial damage or destruction of any part of the Common Elements or if the Common Elements or any portion thereof are made the subject matter of any condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority. No Owner or other party shall be entitled to priority over such first mortgagee with respect to the distribution to such Owner or other party, with respect to such Dwelling Unit, of any insurance proceeds payable by reason of such damage or destruction or of the proceeds of any such condemnation award or settlement.

(d) The provisions hereof are in addition to all other rights of Mortgagees herein contained or under law.

(e) When notice is to be given to any First Mortgagee hereunder, the Board shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing mortgages of Dwelling Units in the Development, if the Board has notice of such participation.

9.03 Subordination. The liens provided for in this Declaration shall be subordinate to the lien of any prior recorded mortgage or security deed on the Property or Dwelling Unit or any portion thereof, or on any interest of such Owner, which mortgage or security deed is recorded prior to the date such lien for unpaid Common Expenses attaches and is owed, or held by any lender, except for the amount of said proportionate share of such Common Expenses which become due and payable from and after the date on which such lender either takes possession of the Dwelling Unit or interest encumbered by such mortgage or security deed, or accepts a conveyance, transfer or assignment of the Dwelling Unit or of any interest therein (other than as security) in lieu of any foreclosure of such Mortgage or security deed. This provision shall not be amended, modified or rescinded without the prior written consent of all lenders who are the holders or owners of a Mortgage or security deed recorded prior to the date of such amendment, modification or rescission.

An Owner or Mortgagee of a Dwelling Unit shall have the right to acquire from the Association a certificate showing the amount of unpaid assessments with respect to the Dwelling Unit. The Association may not enforce against a mortgagee who relies on the certificate any indebtedness as of that date in excess of the amount shown thereon.

By subordination agreement executed by a majority of the Board, the benefits of this Article may be extended to Mortgages other than first mortgages.

ARTICLE X

DEFAULT; REMEDIES

10.1 **Event of Default; Notice.** If any Owner (either by said Owner's own conduct or by the conduct of an occupant of said Owner's Dwelling Unit) shall violate any provision of this Declaration, the By-laws or the Rules and Regulations, and if such default or violation shall continue for twenty (20) days after written notice to the Owner from the Association, or shall occur repeatedly during any ten (10) day period after such written notice, then such violation shall constitute an event of default ("Event of Default") and the Association shall have the power to issue to said defaulting Owner a notice in writing terminating the rights of said defaulting Owner to occupy, control, use and enjoy the Common Elements and to vote as a Member of the Association.

10.2 **Remedies in the Event of Default.** In an Event of Default, the Association or its successors and assigns, or its agent, shall have each and all of the rights and remedies which may be provided for in this Declaration or the laws of the State of Georgia, or which may be provided or permitted at law or in equity, and may prosecute an action or other proceedings against such defaulting Owner and/or others for enforcement of any lien and the appointment of a receiver for the Dwelling Unit and ownership interest of such Owner or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Dwelling Unit and such Owner's interest in the Property, and to sell the same, as hereinafter in this Declaration provided, or for any combination of remedies, or for any other relief. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum contract rate per annum permitted by law shall be charged to and assessed against such defaulting Owner until paid, and shall be added to and deemed part of said Owner's respective share of the Common Expenses, and the Association shall have a lien for all of the same, as well as for non-payment of said Owner's respective share of the Common Expenses, upon the Dwelling Unit and ownership interest in the Common Elements of such defaulting Owner and upon all of said Owner's additions and improvements thereto; provided, however, that such lien shall be subordinate to the lien of any prior recorded First Mortgage or security deed on the Property or any portion thereof, or on any interest of such Owner, except for the amount of the proportionate share of said Common Expenses which became due and payable from and after the date on which the said Mortgage owner or holder either takes possession of the Dwelling Unit or interest encumbered by such mortgage or security deed, accepts a conveyance of any interest therein (other than as a security) or files suit or commences other proceedings to foreclose such mortgage or security deed and causes a receiver to be appointed. In the Event of Default by any Owner, the Board shall have the authority to correct such Default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner, together with interest thereon at the rate aforesaid. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association. This provision shall not be amended, modified or rescinded without the prior written consent of all lenders who are

the holders or owners of a Mortgage or security deed recorded prior to the date of such amendment, modification or rescission.

ARTICLE XI

CONDEMNATION; DESTRUCTION & LIQUIDATION

11.01 Representation. In the event all or a portion of the Condominium is destroyed or damaged, acquired or taken through condemnation and/or eminent domain, the Dwelling Unit Owners hereby appoint the Association as their attorney in fact and representative to engage in any negotiations, settlements or agreements with any individual or entity in connection with any of the circumstances and/or proceedings described herein.

11.02 Distribution of Proceeds. Any and all proceeds received as a result of the damage, destruction and/or condemnation of all or any portion of the Condominium shall be made payable to the Association and deposited by the Association for the benefit of all Dwelling Unit Owners. Said proceeds shall be distributed to the Dwelling Unit Owners affected by said damage, destruction or condemnation on a pro rata basis based upon the fair market value of the Dwelling Units affected.

ARTICLE XII

GENERAL PROVISIONS

12.01 Acceptance of Provisions. Each Owner, by the acceptance of a deed of conveyance, accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations imposed hereby shall be deemed and taken to be covenants running with the land, shall bind any person having at any time any interest or estate in said land and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

12.02 Notices. Any notices required or permitted to be given under this Declaration unless otherwise specified shall be either personally hand delivered or sent registered or certified mail with return receipt requested, at the respective address of the Owners or the Association or to such other address as an Owner or the Association may from time to time designate in writing to the Association. Any notice shall be deemed to have been given at the time it is hand delivered or it is placed in the mails with sufficient postage prepaid.

12.03 Amendments; Generally. With the exception of amendments deemed "Material Amendments", this Declaration may be amended in accordance with the following procedures:

- (a) An Amendment to this Declaration may be considered at any annual or special meeting of the Association; provided however, that, if at an annual meeting, notice of consideration of the Amendment and a general description of the terms of such Amendment shall be included in the notice of the annual meeting provided for in Section 5.02, and if a special meeting, a similar notice

shall be included in the notice of the special meeting provided for in Section 5.03. Notice of any meeting to consider an Amendment shall also be sent to each Mortgagee listed upon the register of the Association.

(b) At any such meeting, the Amendment must be approved by an affirmative two-thirds (2/3) vote of those Owners present and voting.

(c) If an Amendment is approved as set forth in Paragraph (b) of this Section, the Secretary shall mail a true copy of the Amendment to each Owner, informing each Owner that he shall have twenty (20) days from such notice within which to reply, in writing, to the Secretary of the Association and to indicate his approval or disapproval of such Amendment. If seventy-five (75%) percent of those Owners responding within said twenty (20) day period shall indicate their approval of the Amendment, it shall be deemed adopted.

(d) An Amendment adopted under Paragraph (c) of this Section shall become effective upon its recording in the Office of the Clerk of the Superior Court of Catoosa County, Georgia, and the President and Secretary shall execute, acknowledge and record the Amendment and the Secretary shall certify on its face that it has been adopted in accordance with the provisions of this Section; provided that in the event of the disability or incapacity of either, the Vice-President shall be empowered to execute, acknowledge and record the Amendment. The certificate shall be conclusive evidence to any person who relies thereon in good faith, including, without limitation, any Mortgagee, prospective purchaser, tenant, lienholder or title insurance company that the Amendment was adopted in accordance with the provisions of this Section.

(e) This certificate referred to in Paragraph (d) of this Section shall be in substantially the following form:

CERTIFICATE

I, _____, do hereby certify that I am the Secretary of Cedar Creek Condominium Owners' Association and that the within Amendment to the Declaration of Covenants and Restrictions and By-Laws for Cedar Creek Condominium Owners' Association was duly adopted by the Owners of said Association in accordance with the provisions of Section 12.03 of said Declaration.

Witness my hand this ____ day of _____, 20__

Secretary

(f) No Amendment shall be made affecting the Common Elements which is in any manner inconsistent with the permitted uses and purposes for such properties set out in Section 7.01. No Amendment to this Declaration shall be made unless it conforms to any local, county, or state governmental planning and zoning laws and regulations. No Amendment to this Declaration shall be made which shall adversely affect the rights of Mortgagees under Section 9.03.

12.04 Material Amendments.

(a) Amendments to this Declaration which propose changes or revisions to any of the following provisions shall be deemed "Material Amendments": an amendment affecting voting rights; an amendment to increase assessments by more than twenty-five (25%) percent or to affect assessment liens or the priority of assessment liens; an amendment to reduce reserves for maintenance, repair and/or replacement of Common Elements; an amendment affecting responsibility for maintenance and repairs; an amendment concerning the reallocation of interests in the Common Elements, or rights to their use; an amendment concerning re-definition of any portion of the Condominium or Dwelling Unit boundaries; an amendment concerning conversion of Dwelling Units into Common Elements or vice versa; an amendment concerning the expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property from the Condominium; an amendment concerning hazard or fidelity insurance requirements; an amendment concerning imposition of a restriction on the leasing of Dwelling Units; an amendment concerning the imposition of restrictions on the rights of an Owner of a Dwelling Unit to sell or transfer his/her Dwelling Unit; an amendment concerning restoration or repair of any portion of the Condominium after damage or partial destruction; an amendment concerning provisions that expressly benefit Mortgage holders, insurers or guarantors; an amendment concerning termination of the legal status of the Condominium for any reason.

(b) The procedure utilized for the Association to consider and vote upon a Material Amendment to this Declaration shall be the same procedure utilized in Section 12.03 hereof. However, prior to any Material Amendment being approved, an affirmative vote of two-thirds (2/3) of the total allocated votes in the Association and an affirmative vote of at least fifty-one (51%) of the Mortgagees holding First Mortgages on Dwelling Units in the Condominium shall be required. If a Mortgagee fails to submit a response or vote on a Material Amendment within thirty (30) days after being notified in writing, by certified mail, return receipt requested, that the Material Amendment is being considered, the approval of the proposed Material Amendment by said Mortgagee shall be implied.

12.05 Severability. The invalidity of any restriction hereby imposed, or any provision hereof, or of any part of any such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and all of the terms hereof are hereby declared to be severable.

12.06 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class residential condominium community.

12.07 Conveyance of Interest in Common Elements. The undivided interest in the Common Elements shall not be separated from the Dwelling Unit to which such interest appertains and shall be deemed conveyed or encumbered with the Dwelling Unit even though such interest is not expressly mentioned or described in the deed of conveyance or other instrument.

12.08 Effective Date. This Declaration shall be effective upon recordation.

12.09 Headings. The headings of paragraphs and sections in this Declaration are for convenience or reference only and shall not in any way limit or define the content or substance of such paragraphs and sections.

12.10 **Number and Gender.** As used in this Declaration, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

12.11 **Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule of property known as the rule against perpetuities, then such provision shall continue in force and effect only until fifty (50) years after the date hereof.

12.12 **Attorney Fees and Court Costs.** In the event any Owner shall violate the restrictions, covenants or obligations herein, the Developer, the Association or other party seeking to enforce restrictions, covenants and obligations shall be entitled to recover, and said violating party agrees to pay, damages or other dues for such violations, including but not limited to reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed as of the day and date first above written.

Signed, sealed and delivered in the presence of:

UNITED BUILT HOMES, LLC

Jeffrey B. Nowlan
Notary Public

BY: *[Signature]*
John C. Whitmire, Member

Kare Jones
Notary Public

BY: *[Signature]*
Quincy Simon, Member

MY COMMISSION EXPIRES
MARCH 17, 2009

