

**FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS,  
ASSESSMENTS AND EASEMENTS OF THE HILLS OF CEDAR CREEK  
Recorder's Cover Sheet**

**Preparer Information:** Leo P. Martin, Peters Law Firm, P.C., 233 Pearl Street, PO Box 1078, Council Bluffs, IA 51502-1078, Phone: (712) 328-3157

**Taxpayer Information:** Not applicable

**Return Document To:** Leo P. Martin, Peters Law Firm, P.C., 233 Pearl Street, PO Box 1078, Council Bluffs, IA 51502-1078

**Grantor:** HCC Investments, LLC, an Iowa limited liability company

**Grantees:** The Public

**Legal Description:** Lots 25 through 56, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 5, Council Bluffs, Pottawattamie County, Iowa;

Lots 1 through 201, both inclusive, The Hills of Cedar Creek, Phase 1;

Lots 308 through 361, both inclusive, The Hills of Cedar Creek, Phase 2;

Lots 1 through 23, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 2;

Lots 1 through 16, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 3; and

Lots 1 through 24, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 4.

Restricted Area definition includes specific lots identified in paragraph 17 on page 6.

**Document or instrument number of previously recorded documents:**

1. Final Plat of The Hills of Cedar Creek, Phase 1 - Book 105, Page 15339 recorded February 18, 2005. Pages 21-52 for Regular Covenants. Pages 53-85 for Townhome Covenants.
2. Final Plat of The Hills of Cedar Creek, Phase 2 recorded July 5, 2005, in Book 106, Page 284. Supplemental Declaration pages 14-16.
3. First Amendment to Declaration of Covenants recorded December 6, 2007, in Book 2007, Page 19177 and as pages 17-19 of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 1 on December 6, 2007, in Book 2007, Page 19178.
4. Second Amendment to Declaration of Covenants recorded September 28, 2011, in Book 2011, Page 12402 and as pages 20-24 of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 2 on September 30, 2011, in Book 2011, Page 12503.
5. Final Plat of The Hills of Cedar Creek, Phase 1, Replat 3 recorded July 3, 2012, in Book 2012, Page 9731. See Third Amendment to Declaration of Covenants-pages 16-20.
6. Final Plat of The Hills of Cedar Creek, Phase 1, Replat 4 recorded August 14, 2014, in Book 2014, Page 09795. Fourth Amendment to Declaration of Covenants-pages 17-22.

**FIFTH AMENDMENT TO THE  
DECLARATION OF COVENANTS, RESTRICTIONS,  
ASSESSMENTS AND EASEMENTS  
OF HILLS OF CEDAR CREEK**

HCC Investments, LLC, an Iowa limited liability company, (“HCC” or “Declarant”) executed a document called the Declaration of Easements, Covenants, Conditions and Restrictions of Hills of Cedar Creek on February 15, 2005, which were recorded as pages 21 to 52 of the Final Plat of a subdivision known as The Hills of Cedar Creek, Phase 1 on February 18, 2005, in Book 105, Page 15339 (hereinafter the “Covenants”). This is the Fifth Amendment to the Covenants.

**RECITALS**

1. HCC, as the owner of certain real estate that had been annexed into the City of Council Bluffs, filed a plat on February 18, 2005, in Book 105, Page 15339 which created 307 Lots numbered 1 through 307, both inclusive, for a subdivision known as The Hills of Cedar Creek, Phase 1. The original plat, which contained both regular lot covenants and townhome covenants, named HCC as the “Declarant”. All 307 Lots were subject to the “Regular Covenants” which were set forth on Pages 21 to 52 of the plat. The plat designated 154 Lots, which were legally described as Lots 154 through 307, inclusive, The Hills of Cedar Creek, Phase 1, as Townhome Lots. Only the 154 Townhome Lots were subject to the Townhome Covenants which were set forth on pages 53 to 85 of the plat.

2. A Supplemental Declaration executed on June 20, 2005 was recorded as pages 14 to 16 of the Final Plat of The Hills of Cedar Creek, Phase 2 on July 5, 2005, in Book 106, Page 284. The Supplemental Declaration made 54 additional Lots subject to the Regular Covenants. These 54 Lots were described as Lots 308 through 361, both inclusive, The Hills of Cedar Creek, Phase 2. This increased the number of Lots subject to the Regular Covenants to 361 Lots. The number of Townhome Lots remained at 154.

3. The First Amendment to the Declaration of Easements, Covenants, Conditions and Restrictions of The Hills of Cedar Creek Townhomes was executed on December 5, 2007, and was recorded on December 6, 2007, in Book 2007, Page 19177 (hereinafter the “First Amendment”). The First Amendment was also recorded as pages 17 to 19 of the Final Plat of a subdivision known as The Hills of Cedar Creek Phase 1, Replat 1 on December 6, 2007, in Book 2007, Page 19178.

The First Amendment removed Lots 262 through Lot 307, both inclusive, The Hills of Cedar Creek, Phase 1, from the jurisdiction of the Townhome Covenants effective upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 1, which occurred on December 6, 2007. This reduced the number of Lots subject to the Townhome Covenants from 154 to 108. The First Amendment replatted 46 Townhome Lots as 22 regular Lots. This reduced the number of Lots subject to the “Regular Covenants” from 361 Lots to 337 Lots.



4. The Second Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of The Hills of Cedar Creek was executed on September 28, 2011, and was recorded on September 28, 2011, in Book 2011, Page 12402 (hereinafter the "Second Amendment"). The Second Amendment was also recorded as pages 20 to 24 of the Final Plat of a subdivision known as The Hills of Cedar Creek Phase 1, Replat 2 which was recorded September 30, 2011, in Book 2011, Page 12503

The Second Amendment removed Lots 202 through Lot 261, both inclusive, The Hills of Cedar Creek, Phase 1, from the jurisdiction of the Townhome Covenants effective upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 2, which occurred on September 30, 2011. This reduced the number of Lots subject to the Townhome Covenants from 108 to 48. The Second Amendment replatted 60 Townhome Lots as 23 Regular Lots. This reduced the number of Lots subject to the "Regular Covenants" from 337 Lots to 300 Lots.

5. The Third Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of The Hills of Cedar Creek was executed on July 2, 2012, and was recorded as pages 16 to 20 of the Final Plat of a subdivision known as The Hills of Cedar Creek Phase 1, Replat 3 which was recorded July 3, 2012, in Book 2012, Page 9731 (hereinafter the "Third Amendment").

The Third Amendment made 16 Regular Lots subject to the Regular Covenants. These lots are known as Lots 1 through 16, The Hills of Cedar Creek, Phase 1, Replat 3 by replatting the 22 lots created by the filing of the plat of Phase 1, Replat 1. This reduced the number of Regular Lots by six from 300 to 294. The number of Lots subject to the Townhome Covenants was unchanged – remaining at 48.

6. The Fourth Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of The Hills of Cedar Creek was executed on January 14, 2014, and was recorded as pages 17 to 22 of the Final Plat of a subdivision known as The Hills of Cedar Creek Phase 1, Replat 4 which was recorded August 14, 2014, in Book 2014, Page 09795 (hereinafter the "Fourth Amendment").

The Fourth Amendment made 24 Regular Lots subject to the Regular Covenants. These lots are described as Lots 1 through 24, The Hills of Cedar Creek, Phase 1, Replat 4 which were created by replatting Out Lot M, The Hills of Cedar Creek, Phase 1. This Plat also created Out Lots "A" and "B" which were not made subject to either set of Covenants. This increased the number of Regular Lots by twenty-four from 294 to 318. The number of Lots subject to the Townhome Covenants was unchanged – remaining at 48.

7. The Covenants set forth Rights of the Developer in Article 11 which states:

**ARTICLE 11**  
**RIGHTS OF DEVELOPER**

“1. Notwithstanding anything in this Declaration to the contrary, Developer may at any time and from time to time prior to the Turnover Date, in its sole discretion, without the consent of any Builder or other Owner, Association member or other party, (a) subdivide any Lot owned by Developer into two or more Lots, (b) combine any two or more Lots owned by Developer into fewer Lots, (c) add to the Addition any such land as may be owned or approved for addition by Developer, or (d) dedicate portions of the Addition owned by Developer to any governmental or quasi-governmental body (including the City) if, in Developer's sole discretion, such dedication will benefit the Addition as a whole. Any such change, addition or dedication shall become effective upon the recording with the County Recorder's Office of an amendment to this Declaration setting forth the same. No other Owner shall be entitled to further subdivide any Lot, nor combine any Lots without the Association's approval.”

8. The Turnover Date is defined in Section 3.11 of the Covenants which states:

“Section 3.11 **Control of Association by Developer**. Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Association and the Architectural Committee, including appointment and removal in Developer's sole discretion of all officers of the Association, members of the Board of Directors and all members of the Architectural Committee, until the date (the "**Turnover Date**") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Addition, or (b) the effective date designated by Developer in a notice to the members of the Association stating that Developer relinquishes control. Until the Turnover Date, Developer will be entitled to cast all votes with respect to the election and removal of all officers of the Association, the Board of Directors, and members of the Architectural Committee and with respect to any other matter requiring the vote or approval of members of the Association or the Architectural Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws. Notwithstanding the foregoing, or any other provision to the contrary set forth in this Declaration, if at the occurrence of the Turnover Date, Developer continues to own any Lots in the Addition, then so long thereafter as Developer continues to own Lots in the Addition, Developer shall have the sole and exclusive authority to appoint all of the members of the Architectural Committee.”

9. Developer has not relinquished control and less than 10 years has expired since the most recent plat affecting the Addition. The Turnover Date has not occurred so the Developer retains the rights described in Article 11 of the Covenants.



10. The Declarant (HCC) now owns Out Lot B, The Hills of Cedar Creek, Phase 1, Replat 4, located in Council Bluffs, Pottawattamie County, Iowa. This Out Lot is not currently a Regular Lot or a Townhome Lot under the Covenants.

11. HCC intends to re-plat Out Lot B as Lots 25 through 56, both inclusive, and Out Lots "B" and "C" of The Hills of Cedar Creek, Phase 1, Replat 5, located in Council Bluffs, Pottawattamie County, Iowa. The new Lots numbered as Lots 25 through 56, both inclusive, will be made subject to the Regular Covenants. The new Out Lots "B" and "C" of The Hills of Cedar Creek, Phase 1, Replat 5 will be made part of the "Restricted Area".

12. Pursuant to the powers reserved to the Declarant as Developer to add to the Addition any land owned by the Developer, the Developer consents to the proposed re-platting of Out Lot B of The Hills of Cedar Creek, Phase 1, Replat 5, located in Council Bluffs, Pottawattamie County, Iowa.

13. Developer is the owner of Out Lot B through Out Lot L and Out Lots N and O of The Hills of Cedar Creek, Phase 1 which are part of the "Restricted Area" as defined in Section 2.17 of the covenants filed February 18, 2005 which were recorded as Pages 21 to 52 of the Final Plat of the subdivision known as The Hills of Cedar Creek, Phase 1 filed on February 18, 2005, in Book 105, Page 15339. Out Lot M of The Hills of Cedar Creek, Phase 1 has been replatted and no longer exists.

14. Developer is also the owner of Out Lots "P", "Q" and "R" of The Hills of Cedar Creek, Phase 2 and Out Lot "A" of The Hills of Cedar Creek, Phase 1, Replat 4.

15. Pursuant to the powers reserved to the Declarant as Developer to add to the Addition any land owned by the Developer, the Developer adds Out Lots P, Q and R of The Hills of Cedar Creek, Phase 2 and Out Lot "A" The Hills of Cedar Creek Phase 1, Replat 4 as Lots subject to the Restricted Area as defined in Section in 2.14 of the Covenants filed February 18, 2005. This addition shall be effective upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 5.

16. The Lots subject to the Regular Covenants prior to the filing of this Fifth Amendment are legally described as follows:

Lots 1 through 201, both inclusive, The Hills of Cedar Creek, Phase 1;  
Lots 308 through 361, both inclusive, The Hills of Cedar Creek, Phase 2;  
Lots 1 through 23, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 2;  
Lots 1 through 16, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 3; and  
Lots 1 through 24, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 4.

In addition to being subject to the Regular Covenants, the following Lots are also subject to the Townhome Covenants:

Lots 154 through 201, both inclusive, The Hills of Cedar Creek, Phase 1.

17. Upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 5, the number of Lots subject to the Regular Covenants will increase from 318 to 350 and the number of Lots subject to the Townhome Covenants will remain at 48.

Upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 5, the definition of "Restricted Area" as originally defined in Section 2.17 of the Covenants filed February 18, 2005 shall be amended to read as follows:

**Restricted Area**" means (i) that area of any Lot which is located within Out Lots B through L, both inclusive, and Out Lots N and O designated on the Plat of The Hills of Cedar Creek Phase 1; (ii) those areas on Lots 27 and 28 of The Hills of Cedar Creek, Phase 1 designated as storm sewer and drainage easements; (iii) those areas on Lots 39, 40, 59, and 60 The Hills of Cedar Creek, Phase 1 designated as sanitary, storm sewers, and drainage easement; (iv) those areas on Lots 66, 87, 88, and 89 The Hills of Cedar Creek, Phase 1 designated as storm sewer and drainage easements; (v) those areas on Lots 106 and 217 The Hills of Cedar Creek, Phase 1 designated as storm sewer easements; (vi) Out Lot A of The Hills of Cedar Creek, Phase 1, Replat 4, and those areas on Lots 1 and 2 of The Hills of Cedar Creek, Phase 1, Replat 4, designated as storm water drainage easements; and (vii) Out Lots B and C of The Hills of Cedar Creek, Phase 1, Replat 5, and those areas on Lots 44 and 45 The Hills of Cedar Creek, Phase 1, Replat 5, designated as storm sewer and drainage easements. Out Lots B through L and Out Lots N and O of The Hills of Cedar Creek Phase 1 may also contain trails and/or a trail system that are made part of the Restricted Area. Each of the Lots and Out Lots identified above are made part of the Restricted Area subject to the various easements, if any, as more fully described in the notations on the respective plats.

**CONSENT TO REPLAT OF PROPERTY  
TO BE MADE SUBJECT TO COVENANTS**

Based upon the authority vested in the undersigned Developer, as described in the Recitals above, the Developer consents to the re-platting of the land now described as Out Lot B of The Hills of Cedar Creek, Phase 1, Replat 4, located in Council Bluffs, Pottawattamie County, Iowa, which shall, upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 5, become legally described as Lots 25 through 56, both inclusive, and Out Lots B and C of The Hills of Cedar Creek, Phase 1, Replat 5, located in Council Bluffs, Pottawattamie County, Iowa, and upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 5, Lots 25 through 56, both inclusive, shall then become subject to the provisions of the "Regular Covenants" of The Hills of Cedar Creek as amended, which are more fully described in the Recitals.



IN WITNESS WHEREOF, the undersigned has executed this Fifth Amendment to the Declaration of Easements, Covenants, Conditions and Restrictions of Hills of Cedar Creek, a subdivision located in the City of Council Bluffs, Pottawattamie County, Iowa.

Dated: February 19, 2016.

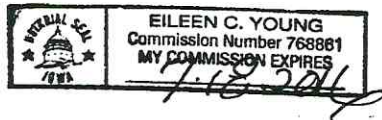
HCC INVESTMENTS, LLC

By: James M. Duggan  
James M. Duggan, Member

STATE OF IOWA )  
 ) SS.  
COUNTY OF POTTAWATTAMIE )

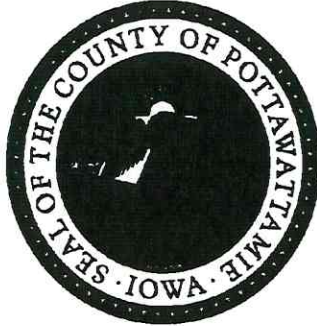
On this 19 day of February, 2016, before me appeared James M. Duggan, to me personally known, who, being by me duly sworn, did say that he is a member of HCC Investments, LLC, an Iowa limited liability company, and that said instrument was signed on behalf of said limited liability company, and said James M. Duggan acknowledged said instrument to be the free act and deed of said limited liability company.

Eileen C. Young  
Notary Public



# Pottawattamie County Auditor's Certification Of Subdivision Name Approval

MARILYN JO DRAKE  
POTTAWATTAMIE COUNTY AUDITOR  
AND ELECTION COMMISSIONER  
P. O. BOX 649  
COUNCIL BLUFFS, IOWA 51502-0649



Kristi Everett, First Deputy - Elections  
Joan Miller, First Deputy - Real Estate  
Rebecca Belt, First Deputy - Tax and  
Finance  
Phone (712) 328-5700  
FAX (712) 328-4740

I, Marilyn Jo Drake, Auditor of Pottawattamie County, Iowa, or designee, do hereby certify that the subdivision name of the attached platting is unique within Pottawattamie County and is hereby approved.

Name of new subdivision:

**THE HILLS OF CEDAR CREEK, PHASE 1, REPLAT 5**

*Joan P. Miller Deputy Real Estate*  
Signed

*2/22/16*  
Date