

Hills of Cedar Creek
Phase 1 Replat 3

2012-9731
7-3-12

**THIRD 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, 233 Pearl Street, Council Bluffs, IA 51503, Phone: (712) 328-3157

Taxpayer Information:

Council Bluffs Savings Bank, 117 Pearl Street, Council Bluffs, IA 51503

Return Document To:

Leo P. Martin, 233 Pearl Street, Council Bluffs, IA 51503, Phone: (712) 328-3157

Grantor:

HCC Investments, LLC, an Iowa limited liability company

Grantees:

To The Public

Legal Description: Lots 1 through 22, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 1, Council Bluffs, Pottawattamie County, Iowa

Document or instrument number of previously recorded documents:

1. Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek executed on February 15, 2005 and recorded as part of the Final Plat of The Hills of Cedar Creek, Phase 1 which was recorded February 18, 2005 in Book 105, Page 15339.
2. First Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek executed December 5, 2007, and recorded as part of the Final Plat of The Hills of Cedar Creek Phase 1, Replat 1 recorded December 6, 2007, in Book 2007, Page 19178.
3. Second Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek executed September 28, 2011, and recorded as part of the Final Plat of The Hills of Cedar Creek Phase 1, Replat 2 recorded September 30, 2011, in Book 2011, Page 12503.

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

This is the Third Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek which was executed on February 15, 2005 and which was recorded as part of the Final Plat of a subdivision known as The Hills of Cedar Creek, Phase 1 which was recorded February 18, 2005 in Book 105, Page 15339. The First Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek Townhomes was executed on December 5, 2007, and was recorded as part of the Final Plat of a subdivision known as The Hills of Cedar Creek Phase 1, Replat 1 which was recorded December 6, 2007, in Book 2007, Page 19178 (hereinafter the "First Amendment"). The Second Amendment to the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek was executed on September 28, 2011, and was recorded as part 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 (hereinafter the "Second Amendment"). This Third Amendment amends the original document, as amended, which is hereinafter referred to as the "Covenants".

Recitals

A. HCC Investments, LLC, an Iowa limited liability company, was the owner of the real estate when it was platted as a subdivision and was the initial "Declarant" ("Declarant"). The property that was made subject to the "Covenants" was a parcel of land containing 307 Lots numbered 1 through 307, both inclusive, The Hills of Cedar Creek, Phase 1, Council Bluffs, Pottawattamie County, Iowa, according to the recorded plat thereof. This plat included 154 Lots which were Townhome Lots which were legally described as Lots 154 through 307, inclusive, Hills of Cedar Creek, Phase 1, Council Bluffs, Pottawattamie County, Iowa, according to the recorded plat thereof. The original plat contained both regular lot covenants and townhome covenants. All lots were subject to the "Regular Covenants". Only the Townhome Lots were subject to the Townhome Covenants.

B. The First Amendment removed Lot 262 through Lot 307, both inclusive, 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.

C. Additional real property legally described as Lots 308 through 361, inclusive, The Hills of Cedar Creek, Phase 2, Council Bluffs, Pottawattamie County, Iowa, was made subject to the Covenants when the Final Plat of Phase 2 was filed on July 6, 2005 in Book 106, Page 284.

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

"ARTICLE 11
RIGHTS OF DEVELOPER

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."

E. 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."

F. Developer has not relinquished control and less than 10 years has expired. The Turnover Date has not occurred so the Developer retains the rights described in Article 11 of the Covenants.

G. Council Bluffs Savings Bank (a division of Carroll County State Bank), an Iowa corporation, ("CBSB") now owns the twenty-two lots legally described as Lots 1 through 22, both inclusive, The Hills of Cedar Creek, Phase 1, Replat 1, Council Bluffs, Pottawattamie County, Iowa. Those lots are currently subject to the Declaration of Covenants, Restrictions, Assessments and Easements of Hills of Cedar Creek which was executed on February 15, 2005 and which was

recorded as part of the Final Plat of a subdivision known as The Hills of Cedar Creek, Phase 1 which was recorded February 18, 2005 in Book 105, Page 15339 (hereinafter referred to as the "Regular Covenants").

H. CBSB intends to re-plat the properties currently described as Lots 1 through 22, inclusive, Hills of Cedar Creek, Phase 1, Replat 2, Council Bluffs, Pottawattamie County, Iowa as Lots 1 through 16, both inclusive, of The Hills of Cedar Creek, Phase 1, Replat 3. These new Lots would remain subject to the Regular Covenants.

I. Developer consents to the re-platting of the land which is now described as Lots 1 through 22, inclusive, of The Hills of Cedar Creek, Phase 1, Replat 1, Council Bluffs, Pottawattamie County, Iowa, which will be described as Lots 1 through 16, both inclusive, of The Hills of Cedar Creek, Phase 1, Replat 3, Council Bluffs, Pottawattamie County, Iowa which will remain subject to the Regular Covenants.

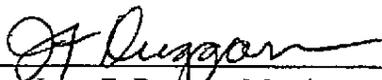
**CONSENT TO REPLAT OF PROPERTY
SUBJECT TO COVENANTS**

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 Lots 1 through 22 inclusive of The Hills of Cedar Creek, Phase 1, Replat 1, Council Bluffs, Pottawattamie County, Iowa, which shall, upon the filing of the Final Plat of The Hills of Cedar Creek, Phase 1, Replat 3, become legally described as Lots 1 through 16, both inclusive, of The Hills of Cedar Creek, Phase 1, Replat 3, Council Bluffs, Pottawattamie County, Iowa, and which shall remain subject to the provisions of the "Regular Covenants" as set forth in the Declaration of Easements, Covenants, Conditions and Restrictions of Hills of Cedar Creek, a subdivision in the City of Council Bluffs, Pottawattamie County, Iowa which was executed on February 15, 2005 and which was recorded as part of the Final Plat of a subdivision known as The Hills of Cedar Creek, Phase 1 which was recorded February 18, 2005 in Book 105, Page 15339.

IN WITNESS WHEREOF, the undersigned has executed this Third Amendment to the Declaration of Easements, Covenants, Conditions and Restrictions of Hills of Cedar Creek, a subdivision in the City of Council Bluffs, Pottawattamie County, Iowa which was executed on February 15, 2005 and which was recorded as part of the Final Plat of a subdivision known as The Hills of Cedar Creek, Phase 1 which was recorded February 18, 2005 in Book 105, Page 15339.

Dated: July ____, 2012

HCC INVESTMENTS, LLC

By: 
Name: Jerry F. Duggan, Member

STATE OF IOWA)
) SS.
COUNTY OF POTTAWATTAMIE)

On this 2 day of July, 2012, before me appeared Jerry F. 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 Jerry F. Duggan acknowledged said instrument to be the free act and deed of said limited liability company.

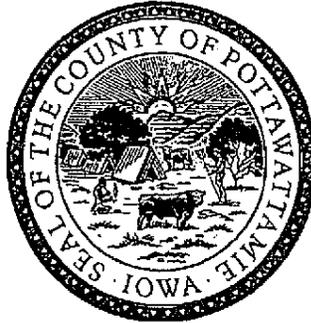


Jody L. James

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 3

Joan Miller Deputy Real Estate
Signed

6/29/12
Date