

RECORDER'S CERTIFICATION
JACKSON COUNTY, MISSOURI

10/28/2005 11:39:24 AM

INSTRUMENT TYPE: REST FEE: \$33.00 5 Pages



INSTRUMENT NUMBER/BOOK & PAGE:

200510096058

ROBERT T. KELLY, DIRECTOR OF RECORDS

(ABOVE SPACE RESERVED FOR RECORDER OF DEEDS' USE)

Document Title: Fifth Supplement to Amended and Restated Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Eagle Creek
Document Date: October 14, 2005
Grantors Names: Hunt Midwest Real Estate Development, Inc.
Grantee Name: Eagle Creek Tenth Plat
Statutory Address: Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161
Legal Description: See Exhibit B attached
Reference Book and Page: Amended and Restated Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Eagle Creek, Document No. 20031 0066203, Pages 1 - 48

**FIFTH SUPPLEMENT TO AMENDED AND RESTATED
DECLARATION OF HOMES ASSOCIATION AND
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF EAGLE CREEK**

THIS FIFTH SUPPLEMENT TO AMENDED AND RESTATED DECLARATION OF HOMES ASSOCIATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF EAGLE CREEK (this "Supplemental Declaration") is made and executed as of October 14, 2005, by HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC., a Missouri corporation (the "Developer"), Suite 100, 8300 N.E. Underground Drive, Kansas City, Missouri 64161.

RECITALS:

A. The Developer has been developing and continues to develop a residential Subdivision known as Eagle Creek in the City of Lee's Summit (the "City"), Jackson County, Missouri. The real property constituting the Eagle Creek Subdivision (the "Property" or the "Eagle Creek Property") prior to the date of this Supplemental Declaration is legally described as shown on Exhibit C to the amended and restated Declaration identified in Recital B below as expanded pursuant to the Supplemental Declaration(s) shown on EXHIBIT A attached hereto.

B. The Developer has executed that certain Amended and Restated Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Eagle Creek, dated May 30, 2003, which was recorded on June 4, 2003, under Document No. 20031 0066203, Pages 1 - 48, in the Office of the Director of Records of Jackson County, Missouri, at Independence (the "Declaration"), pursuant to which Declaration the Developer continues to subject the Property to certain amended and modified covenants, conditions, restrictions and easements for the purpose of protecting the value and desirability of the Property. The Declaration amended and restated the previous Original Supplemental Declaration and Original Supplemental HOA Declaration identified and defined therein pursuant to which various parcels of property were made a part of the Subdivision. Pursuant to the Supplemental Declarations identified on EXHIBIT A attached hereto, the Developer has expanded the Property to include additional real property as described therein.

C. Pursuant to Section 17.2 of the amended and restated Declaration, prior to the "Turnover Date" (which has not yet occurred), the Developer has the unilateral right to amend, alter or modify the Declaration.

D. Pursuant to Section 14.1 of the amended and restated Declaration, the Developer has the absolute unilateral right to expand the Property to include additional Lots (for Single Family Residences, Attached Patio Homes, Attached Townhomes or any combination thereof), Common Area, Restricted Common Areas and other property in the Subdivision and also other property that has not yet been subdivided or platted (the "Expansion Property").

E. On Sept 24, 2005, 2005, the Developer executed that certain subdivision plat entitled "EAGLE CREEK - TENTH PLAT" (the "Tenth Plat"), covering the real property formerly legally described as shown therein and on EXHIBIT B attached to this Supplemental Declaration, and platting the same into the Lots, tracts, streets, roadways, private open space and other areas shown and marked thereon, if any (the "Eleventh Expansion Property"), which Tenth Plat was approved on October 27, 2005, by the City Council of the City, and was recorded on October 28, 2005, under Document No. 200510096057 in said Director of Records' Office.

F. The Developer presently owns all of the Lots, tracts, Common Areas, Restricted Common Areas or other areas, if any, shown on the Tenth Plat.

G. The Developer desires to exercise its right to expand the Property to include the additional Lots, tracts, Common Areas, Restricted Common Areas or other areas, if any, which constitute the Eleventh Expansion Property and to subject the Eleventh Expansion Property to the covenants, conditions, restrictions and easements contained within the amended and restated Declaration.

NOW, THEREFORE, in consideration of the premises, the Developer states and declares as follows:

1. Exercise of Right to Expand. The Developer hereby exercises its unilateral right to expand the Property to include the additional Lots, tracts, Common Areas, Restricted Common Areas or other areas, if any, which constitute the Eleventh Expansion Property.

2. Expansion Effective Upon Recording. The expansion set forth above, shall be effective immediately upon filing the Tenth Plat and this Supplemental Declaration of record in the Office of the Director of Records for Jackson County, Missouri, at Independence. Recording of the Tenth Plat and this Supplemental Declaration shall automatically grant, transfer and convey to the Association any new Common Areas, Restricted Common Areas and all other areas designed for Members' or Association use, if any, added by the Eleventh Expansion Property.

3. Expansion of Definitions. The definitions contained in the amended and restated Declaration are hereby expanded to encompass and refer to the Property, as expanded by the Tenth Plat and this Supplemental Declaration to include the Eleventh Expansion Property. For example, (i) "Lot" shall mean the Lots described in the amended and restated Declaration and in all prior plats described in the amended and restated Declaration, any subsequent plats and in the Tenth Plat and (ii) all references to the Declaration shall mean the amended and restated Declaration as previously supplemented and as supplemented and amended by this Supplemental Declaration.

4. Declaration Operative on New Lots, Tracts, Common Areas and Restricted Common Areas. The new Lots, Tracts, Common Areas or Restricted Common Areas, which constitute the Eleventh Expansion Property, shall be subject to all of the terms and conditions of the amended and restated Declaration immediately upon recording of the Tenth Plat and this Supplemental Declaration in the Office of the Director of Records for Jackson County, Missouri, at Independence.

5. Fencing Restriction on Restricted Lots. Lots 401 through and including 413, 420, 427, 428, 435, 436 and 442 through and including 453 of the Tenth Plat (the "Restricted Lots") are hereby subjected to the following:

(a) Any fencing permitted on such Restricted Lots as set forth below shall be constructed of only natural cedar (unstained), dog eared pickets, no more than four (4) feet in height, with the finished side facing out, all as set forth in the fencing guidelines established from time to time by the Review Committee and no other fencing of any type shall be permitted thereon; and

(b) Such fencing shall be permitted only at locations on such Restricted Lots as are approved in advance by the Review Committee upon application of a Lot Owner affected hereby.

6. **Ratification of Amended and Restated Declaration.** The Developer, on behalf of itself and as the holder of a majority of the votes possible to be cast under the Declaration, hereby ratifies, affirms and confirms all covenants, conditions, restrictions and easements contained in the Declaration, which covenants, conditions and provisions shall run with the land and be binding upon the Owners, including the Developer, and their respective heirs, personal representatives, successors, transferees and assigns and all other persons or entities having, at any time, any right, title or interest in all, or any part of, the Property, the Eleventh Expansion Property or any Lots, Tracts, Commons Areas or Restricted Common Areas otherwise subject to the terms hereof.


IN WITNESS WHEREOF, the Developer has caused this Supplemental Declaration to be executed by its duly authorized officers as of the day and year first above written.

All signatures must be in black ink!

DEVELOPER:

HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.

By:


Ora Reynolds
Ora H. Reynolds, Vice President and General Manager
of Residential Development

ATTEST:

By:

Donald K. Hagan
Donald K. Hagan, Secretary

STATE OF MISSOURI)
) S.S.
COUNTY OF CLAY)

On this 14th day of October, 2005, before me, the undersigned Notary Public in and for said County and State, personally appeared Ora H. Reynolds, who, being by me first duly sworn, did say that she is the Vice President and General Manager of Residential Development of Hunt Midwest Real Estate Development, Inc., a Missouri corporation, that she executed the foregoing instrument on behalf of said corporation under and with the authority of its Board of Directors and that she acknowledged that she so executed the same as the free act and deed of said corporation for the purposes therein stated.

DONNA K. WILLIS
Notary Public - Notary Seal
(Notary Seal)
STATE OF MISSOURI
County of Clay
My Commission Expires November 1, 2005

My Commission expires:

11/1/05

Donna K. Willis
Signature of Notary Public
DONNA K. WILLIS
Notary Public - Notary Seal
STATE OF MISSOURI
County of Clay
Typed or Printed Name
My Commission Expires November 1, 2005

EXHIBIT A
TO
FIFTH SUPPLEMENT TO AMENDED AND RESTATED
DECLARATION OF HOMES ASSOCIATION AND
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF EAGLE CREEK

SUMMARY OF SUPPLEMENTS

<u>DATE EXECUTED/ DATE RECORDED</u>	<u>RECORDING INFO.</u>	<u>SUPPLEMENT #</u>	<u>INFORMATION</u>
05-30-03/06-04-03	Doc #20031 0066203 (Pages 1 - 48)	Original	Amended and Restated Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements
06-04-03/06-09-03	Doc #20031 0068065 (Pages 1 - 4)	First	Eagle Creek - Townhomes - 1 st Plat
09-26-03/10/14/03	Doc #20031 0126509 (Pages 1 - 6)	Second	Eagle Creek - 8 th Plat
07-12-04/07-16-04	Doc #20041 0068231 (Pages 1 - 5)	Third	Eagle Creek - 9 th Plat
03-17-05/03-22-05	Doc #200510023175 (Pages 1 - 7)	Fourth	Eagle Creek - 9 th Plat - Imposed Fencing Restrictions on Lots 349 through 364

EXHIBIT B
TO
FIFTH SUPPLEMENT TO AMENDED AND RESTATED
DECLARATION OF HOMES ASSOCIATION AND
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF EAGLE CREEK

Legal Description of Eleventh Expansion Property:

Lots 401 through 453, inclusive, and Tract F, EAGLE CREEK - TENTH PLAT, a subdivision in Lee's Summit, Jackson County, Missouri, according to the recorded plat thereof.

Legal Description of Eleventh Expansion Property Prior to Platting:

A subdivision of land in the Northwest Quarter and the Southwest Quarter of Section 23, Township 47, Range 32, City of Lee's Summit, Jackson County, Missouri, being bounded and described as follows:

Commencing at the Northeast Corner of said Southwest Quarter; thence North 87°45'23" West along the North line of said Southwest Quarter, 1628.43 feet; thence South 02°14'37" West, 95.65 feet to a point on the Westerly line of EAGLE CREEK-NINTH PLAT, a subdivision in the City of Lee's Summit, Jackson County, Missouri, said point being also the True Point of Beginning of the tract to be herein described; thence South 38°31'47" West along said Westerly line, 180.00 feet; thence Southeasterly along said Westerly line and the Southerly right-of-way line of SW Golden Eagle Road, as now established, on a curve to the left, having an initial tangent bearing of South 51°28'24" East, a radius of 925.00 feet, a central angle of 07°07'26", an arc distance of 115.01 feet; thence South 31°24'10" West along said Westerly line, 140.29 feet; thence North 50°37'41" West, 266.04 feet; thence North 37°49'35" West, 682.22 feet; thence North 52°10'25" East, 180.00 feet; thence South 37°49'35" East, 40.99 feet; thence North 52°10'25" East, 663.77 feet; thence North 54°24'13" East, 45.63 feet; thence North 50°53'28" East, 170.72 feet; thence North 19°42'59" East, 60.08 feet; thence North 87°43'09" East, 562.10 feet to a point on the Westerly right-of-way of EAGLE CREEK-FOURTH PLAT, a subdivision in the City of Lee's Summit, Jackson County, Missouri; thence Southerly along said Westerly line and the Westerly right-of-line of SW Eagle Creek Road, as now established, on a curve to the left, having an initial tangent bearing of South 03°48'36" East, a radius of 530.00 feet, a central angle of 31°02'59", an arc distance of 287.22 feet to a point on the North line of EAGLE CREEK-EIGHTH PLAT, a subdivision in the City of Lee's Summit, Jackson County, Missouri; thence South 55°08'25" West along said Northerly line, 59.42 feet; thence South 81°48'08" West along said Northerly line, 60.81 feet; thence South 88°08'23" West along said Northerly line, 170.96 feet; thence South 79°27'26" West along said Northerly line, 140.41 feet; thence South 71°20'47" West along said Northerly line, 70.28 feet to a point on the Northerly line of said EAGLE CREEK-NINTH PLAT; thence South 65°56'20" West along said Northerly line, 70.28 feet; thence South 59°43'53" West along said Northerly line, 91.06 feet; thence South 54°18'37" West along said Northerly line 50.00 feet; thence South 52°10'25" West along said Northerly line, 517.86 feet to a point on the aforementioned Westerly line of said EAGLE CREEK-NINTH PLAT; thence South 37°54'04" East along said Westerly line, 234.20 feet; thence South 45°28'13" East along said Westerly line, 155.85 feet to the True Point of Beginning. Containing 15.11 acres, more or less.

NOTE: The above-described Property has been platted. The recording information identifying such Plat is shown in Recital E of the Supplemental Declaration to which this Exhibit B is attached.