

Prepared by, Record and Return to:
Lawrence B. Pitt, Esq.
Eagle Creek Development Corporation
c/o Emerson International, Inc.
283 Cranes Roost Blvd., Suite 250
Altamonte Springs, FL 32701

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Phil Diamond, Comptroller
Orange County, FL
Ret To: CSC INC

[Cross-Reference to
ORB 7254, Page 4027,
Doc #20040009798]

**FORTIETH SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR EAGLE CREEK**

THIS FORTIETH SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR EAGLE CREEK (this “**Supplement**”) is made effective as of the 17th day of February, 2023, by **EAGLE CREEK DEVELOPMENT CORPORATION**, a Florida corporation, having an address of 283 Cranes Roost Blvd., Suite 250, Altamonte Springs, Florida 32701 (“**Declarant**”).

WITNESSETH:

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek on January 7, 2004 in Official Records Book (“**ORB**”) 7254, Page 4027, as the same was supplemented and amended by the following: First Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded November 17, 2004 in ORB 7705, Page 1201, Second Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded May 19, 2005 in ORB 7976, Page 4596, Second Supplement to Declaration of Covenants, Conditions, Easements and Restrictions recorded October 13, 2006 in ORB 8914, Page 2921, First Amendment to Second Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded October 11, 2007 in ORB 9467, Page 4164, Certificate of Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded July 17, 2009 in ORB 9903, Page 8161, Third Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded January 8, 2010 in ORB 9985, Page 4095, Fourth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded May 14, 2010 in ORB 10044, Page 4403, Fifth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded October 12, 2011 in ORB 10280, Page 841, Fifth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded April 2, 2012 in ORB 10355, Page 2814, Sixth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded on May 3, 2012 in ORB 10370, Page 6648, Sixth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded October 3, 2012 in ORB 10451, Page 3943, Seventh Supplement to Declaration of Covenants, Conditions, Easements and

Restrictions for Eagle Creek recorded November 16, 2012 in ORB 10475, Page 5310, Eighth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded January 28, 2013 in ORB 10512, Page 2525, Ninth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded June 20, 2013 in ORB 10588, Page 8270, Tenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded September 24, 2013 in ORB 10639, Page 788, Eleventh Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded December 11, 2013 in ORB 10675, Page 7459, Release from Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded December 20, 2013 in ORB 10679, Page 8737, Twelfth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded January 23, 2014 in ORB 10692, Page 8208, Corrective Release from Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded January 31, 2014 in ORB 10696, Page 6842, Thirteenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded April 22, 2014 in ORB 10733, Page 5124, Fourteenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded April 22, 2014 in ORB 10733, Page 5121, Fifteenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded July 7, 2014 in ORB 10769, Page 2242, Amendment to Twelfth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded July 28, 2014 in ORB 10780, Page 5278, Sixteenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded December 2, 2014 in ORB 10842, Page 7222, Seventeenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded August 14, 2015 in ORB 10968, Page 221, Eighteenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded September 15, 2015 in ORB 10983, Page 5048, Nineteenth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded September 23, 2015 in ORB 10987, Page 0398, Twentieth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded October 20, 2015 in ORB 11000, Page 4790, and Twenty-First Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded October 23, 2015 in ORB 11002, Page 6965; Twenty-Second Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded November 2, 2015 in ORB 11006, Page 5608, Twenty-Third Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded February 16, 2016 as Document Number 20160079131, Twenty-Fourth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded August 10, 2016 as Document Number 20160412076, Twenty-Fifth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded August 17, 2016 as Document Number 20160429784, Twenty-Sixth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded December 21, 2016 as Document Number 20160661062, Twenty-Seventy Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded February 24, 2017 as Document Number 20170104391, Twenty-Eight Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded February 10, 2017 as Document Number 20170079606, Twenty-Ninth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded May 3, 2017 as Document Number 20170246961, Thirtieth Supplement and Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded August 2, 2017 as Document Number 20170427410, Thirty-First

Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded August 18, 2017 as Document Number 20170460759, Thirty-Second Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded November 6, 2017 as Document Number 20170604394, Thirty-Third Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded July 23, 2018 as Document Number 20180434124, Thirty-Fourth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded March 22, 2019, as Document Number 20190173878, Thirty-Fifth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded August 16, 2019 as Document Number 20190509760, Thirty-Sixth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded October 24, 2019 as Document Number 20190667342, Thirty-Seventh Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded June 23, 2020 as Document Number 20200344251 (“**Thirty-Seventh Supplement**”), Thirty-Eighth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded February 15, 2021 as Document Number 20210088285, and Thirty-Ninth Supplement to Declaration of Covenants, Conditions, Easements and Restrictions for Eagle Creek recorded July 19, 2022, as Document Number 20220438493, all of the Public Records of Orange County, Florida (collectively referred to herein as the “**Declaration**”, except that the first-recorded and original Declaration shall be referred to herein as the “**Original Declaration**”); and

WHEREAS, the Declaration sets forth certain covenants, conditions, easements and restrictions affecting the Property and provides for certain membership, property rights, obligations and other matters affecting the Property and its Owners; and

WHEREAS, Article II, Section 2A. of the Original Declaration provides that Declarant reserves for itself the absolute and unconditional right, without notice to or the approval of any other party, to impose the Declaration upon any real property located within Eagle Creek; and

WHEREAS, Until the Turnover meeting occurs as described in Article XIII, Section 2 of the Original Declaration, Article XIX, Section 3 of the Original Declaration provides that Declarant reserves for itself the absolute and unconditional right to alter, modify, change, revoke, rescind, or cancel any or all of the Declaration or the restrictive covenants contained in the Declaration, provided that such alteration, modification, change, revocation, rescission or cancellation does not materially and adversely interfere with an Owner’s then permitted use of its Parcel; and

WHEREAS, the Transfer of Control of portions of the Gated Community Subdivision Infrastructure (as provided in Article XIII, Section 4 of the Original Declaration) has occurred and the process of Transfer of Control of other portions of the Gated Community Subdivision Infrastructure is underway; and

WHEREAS, Turnover and the Turnover meeting have not occurred; and

WHEREAS, Declarant desires to subject the real property described in **Exhibit “A”** attached hereto and made a part hereof by this reference (the “**Designated Property**”) to the effect

and coverage of the Declaration and to the jurisdiction of the Association, which Designated Property is located within Eagle Creek; and

WHEREAS, Declarant desires to subject the real property described in **Exhibit “B”** attached hereto and made a part hereof by this reference (the “**Designated Common Property**”) to the effect and coverage of the Declaration and the jurisdiction of the Association, which Designated Common Property is located within Eagle Creek; and

NOW THEREFORE, the Declaration is hereby amended, modified and supplemented, and Declarant hereby declares, as follows:

1. **Recitals.** The recitals stated above are true and correct and are incorporated herein by this reference.

2. **Definitions.**

2.1. The definitions set forth in the Declaration are incorporated herein and made a part hereof by this reference.

2.2. Capitalized terms used in this Supplement, unless otherwise defined in this Supplement, shall have the meanings ascribed to them in the Declaration.

2.3. Each of the tracts comprising the Designated Common Property described in **Exhibit “B”** attached hereto, together with any easements dedicated to the Association on any plat, including, but not limited to, the Plat referenced in **Exhibit “A”** attached hereto, shall hereafter be included in the definition of “**Common Property**” set forth in Article I of the Original Declaration.

2.4. The definition of “**Common Streets and Roads**” set forth in Article I of the Original Declaration shall hereafter include Tract A described in **Exhibit “B”** attached hereto.

2.5. Each of the subdivided lots described in **Exhibit “A”** attached hereto shall hereafter be a “**Gated Residential Lot**” as such term is defined in Article I of the Original Declaration.

2.6. Each of the subdivided lots described in **Exhibit “A”** attached hereto shall hereafter be a “**Lot**” as such term is defined in Article I of the Original Declaration.

2.7. Each of the subdivided lots described in **Exhibit “A”** attached hereto shall hereafter be a “**Parcel**” as such term is defined in Article I of the Original Declaration.

2.8. The definition of “**Property**” as defined in Article I of the Original Declaration is hereby amended to include the Designated Property.

2.9. Each of the subdivided lots described in **Exhibit “A”** attached hereto shall be a “**Residential Lot**” as such term is defined in Article I of the Original Declaration.

3. Annexation of Designated Property. The Designated Property is hereby subjected to the provisions of the Original Declaration, as supplemented, amended and/or restated from time to time. The Designated Property shall hereafter be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered in accordance with the provisions of the Declaration, as supplemented, amended and/or restated from time to time, which shall run with title to the Designated Property and shall be binding upon all persons having any right, title or any interest therein, their respective heirs, legal representatives, successors, successors-in-title and assigns. The provisions of this Supplement shall be binding upon the Association in accordance with the terms of the Declaration.

4. Annexation of Designated Common Property. The Designated Common Property shall be subject to the provisions of the Declaration, as supplemented, amended and/or restated from time to time. The Designated Common Property shall hereafter be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered in accordance with the provisions of the Declaration, as supplemented, amended and/or restated from time to time, which shall run with title to the Designated Common Property and shall be binding upon all persons having any right, title or any interest therein, their respective heirs, legal representatives, successors, successors-in-title and assigns. The provisions of this Supplement shall be binding upon the Association in accordance with the terms of the Declaration.

5. Exhibit D. Exhibit “D” to the Original Declaration, as amended in the Thirty-Ninth Supplement, is hereby deleted and the attached **Exhibit “D”** is substituted therefor and is referred to herein, as amended from time to time, as the “**Master Plan**”. The Master Plan shall serve as Declarant’s written designation of Villages to date within the Eagle Creek community pursuant to Article VI, Section 5.A. of the Original Declaration.

6. Article I - DEFINITIONS. The following definitions were added to the Original Declaration pursuant to Exhibit “A” of the Thirty-Seventh Supplement and deemed incorporated into Article I – DEFINITIONS – of the Declaration pursuant to said Thirty-Seventh Supplement are hereby amended to read as set forth below (please note that underlined text is inserted, ~~text stricken through~~ is deleted):

“Owner-Maintained Retaining Wall” means any retaining wall and related improvements, including, without limitation, geogrid reinforcement, footers or other subsurface improvements that attach to the retaining wall, any fencing on any retaining wall and any portion of the landscaping and irrigation system affected thereby, installed by or on behalf of the Declarant or the original builder who constructed the home and other improvements on such Lot, and located on or adjacent to the rear lot line or any side lot line of any Lot or on any other portion of a Lot, if such retaining wall and related improvements that abuts or is adjacent to any storm water drainage systems and/or any wetlands or uplands contiguous thereto and which retaining walls are located within wall, swale and drainage easements depicted on a Plat: (i) any storm water drainage systems; (ii) wetland buffers; (iii) conservation easement areas; (iv) environmental swale easement areas; (v) wetlands or uplands contiguous thereto, or if such retaining walls and/or related improvements are located within wall, swale, drainage easements or conservation areas depicted on a Plat (collectively, the “**Wall and Protected Area Swale Easement**”).

"Owner-Maintained Retaining Wall Repairs" means the inspection, maintenance, operation, cleaning, repair and replacement of the following: (i) the portion of any Owner-Maintained Retaining Wall located on an Owner-Maintained Retaining Wall Lot; and (ii) the Wall and Swale **Protected Area** Easement located on an Owner-Maintained Retaining Wall Lot.

"Wall and Swale Protected Area Easement" means the area encumbered by any Wall and Swale **Protected Area** Easement.

7. Article VIII – EASEMENTS. Section 17 of Article VIII of the Declaration, which were added to the Original Declaration pursuant to Exhibit "B" of the Thirty-Seventh Supplement, is hereby amended to read as follows (please note that underlined text is inserted, ~~text stricken through~~ is deleted):

“Section 17. Owner-Maintained W/S Access Easement. Declarant grants to the Association and to all Owner-Maintained Retaining Wall Lot Owners, and to their respective designated contractors, vendors, material suppliers, agents and designees, as an appurtenance to the ownership of the Owner-Maintained Retaining Wall Lots held by such Owner-Maintained Retaining Wall Lot Owners, but subject to this Declaration, the Articles of Incorporation and Bylaws and the rules and regulations promulgated by the Association pursuant to this Declaration, a perpetual non-exclusive easement (the “Owner-Maintained W/S Access Easement”) for ingress and egress on, over, across and through: (i) any portion of any other Owner-Maintained Retaining Wall Lot, as necessary and/or appropriate, to access the portion of the ~~Wall and Swale Easement Area~~ Wall and Protected Area Easement and the Owner-Maintained Retaining Wall on such Owner-Maintained Retaining Wall Lot; and (ii) any portion of the ~~Wall and Swale Easement Area~~ Wall and Protected Area Easement (collectively, the “Access Area”) as reasonably necessary and/or appropriate to perform its/their obligations and/or to exercise its/their rights under Article XI, Section 11 of this Declaration. The Association and/or Owner utilizing this Owner-Maintained W/S Access Easement, shall, upon completion, remove its equipment from the Access Area and shall (except as otherwise provided in Article XI, Section 11B hereof) restore any portions of the Access Area to the same condition as the same were in prior to the use of the Owner-Maintained W/S Access Easement. Any contractors, vendors, material suppliers, agents and designees entering the Access Area shall be properly licensed (if applicable) and insured.”

8. Article XI-RESTRICTED COVENANTS. Sections 11A. and 11C. of Article XI of the Declaration, which was added to the Original Declaration pursuant to Exhibit "C" of the Thirty-Seventh Supplement, is hereby amended to read as follows (please note that underlined text is inserted, text stricken through is deleted):

“A. Owner-Maintained Retaining Wall Lot Owner Obligations. In accordance with this Declaration, the Articles of Incorporation and Bylaws and the rules and regulations promulgated by the Association pursuant to this Declaration, each Owner-Maintained Retaining Wall Lot Owner shall be responsible for promptly making and completing any and all Owner-Maintained Retaining Wall Repairs on and to: (i) the Owner-Maintained Retaining Wall located on such Owner-Maintained Retaining Wall Lot: and (ii) the ~~Wall~~

~~and Swale Easement Area~~ Wall and Protected Area Easement located on such Owner-Maintained Retaining Wall Lot so as to maintain the integrity, function and appearance thereof and to prevent any erosion of soil from their Owner-Maintained Retaining Wall Lot to the areas behind the Owner-Maintained Retaining Wall or any property adjacent thereto.

C. No Interference or Interruption. No Lot Owner shall interfere with or interrupt, in any manner, access to the Owner-Maintained Retaining Wall or ~~Wall and Swale Easement Area~~ Wall and Protected Area Easement for the purpose of conducting Owner-Maintained Retaining Wall Repairs; provided that nothing contained herein, including, without limitation, the provisions regarding the Owner-Maintained WIS Access Easement, shall prevent the installation of fencing, walls, landscaping or other improvements which may be temporarily removed to utilize the Owner-Maintained WIS Access Easement (subject to compliance with all other terms of this Declaration). No Owner or other person or entity shall take any action to remove or modify any portion of the Owner-Maintained Retaining Wall, unless approved in writing by the Declarant (prior to Turnover) or the Association (after Turnover).”

9. Interpretation. If any provision, covenant, condition, restriction or obligation set forth in this Supplement is capable of two (2) interpretations, one (1) of which would render the provision, covenant, condition, restriction or obligation void and the other of which would render the provision, condition, restriction or obligation valid, then the provision, covenant, condition, restriction or obligation shall have the meaning which shall render it valid.

10. Severability. If any provision of this Supplement or its application to any person, entity or circumstance is invalid or unenforceable to any extent, such provision shall be deemed automatically adjusted to conform to the requirements for validity as declared at such time, and, as so adjusted, shall be deemed a provision of this Agreement as though originally included herein. If the provision invalidated is of such a nature that it cannot be adjusted, the remainder of this Supplement, and the applicability of such provision to other persons, entities or circumstances shall be valid and enforceable to the fullest extent permitted by law and shall be deemed to be separate from such invalid or unenforceable provisions and shall continue in full force and effect.

11. Reaffirmation. Except as expressly modified by this Supplement, all terms and provisions of the Declaration are hereby ratified, confirmed and remain unchanged and in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-

SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Declarant has caused this Supplement to be executed effective as of the day and year first above written.

WITNESSES:

DECLARANT:

[Signature]
Print Name: Amanda Caruso

[Signature]
Print Name: Meredith Gibson Zornik

EAGLE CREEK DEVELOPMENT CORPORATION, a Florida corporation

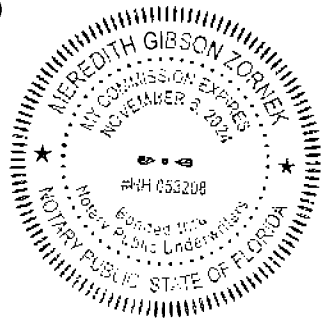
By: [Signature]
Name: Lawrence B. Pitt
Title: Vice President and General Counsel

STATE OF FLORIDA
COUNTY OF Seminole

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 17th day of February 2023, by Lawrence B. Pitt, Vice President and General Counsel of Eagle Creek Development Corporation, a Florida corporation, on behalf of the corporation and that he acknowledged executing the same freely and voluntarily under authority duly vested in him by said corporation. He is personally known to me.

[Signature]
Notary Public

(Notary Seal)



Name typed, printed or stamped

My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF DESIGNATED PROPERTY

Lots 321 through 442, inclusive, **EAGLE CREEK VILLAGE J & K PHASE 2B-1**, according to the plat thereof as recorded in Plat Book 111, Pages 1 through 5, inclusive, of the Public Records of Orange County, Florida (the "**Plat**").

EXHIBIT "B"

LEGAL DESCRIPTION OF DESIGNATED COMMON PROPERTY

Tracts A and OS-11, **EAGLE CREEK VILLAGE J & K PHASE 2B-1**, according to the plat thereof as recorded in Plat Book 111, Pages 1 through 5, inclusive, of the Public Records of Orange County, Florida.

EXHIBIT "C"

(RESERVED/ INTENTIONLLY LEFT BLANK)

Exhibit "D" Eagle Creek Master Plan

