

FIRST AMENDMENT TO DECLARATION OF
THE VILLAS AT HICKORY HILLS
a condominium

THIS FIRST AMENDMENT TO DECLARATION OF THE VILLAS AT HICKORY HILLS DECLARATION (the "Amendment") is made this ____ day of December, 2014, by **HICKORY INVESTORS, LLC**, a Missouri limited liability company ("Declarant"), whose principal place of business is located at 722 West Olive, Springfield, Missouri 65806.

WITNESSETH THAT:

WHEREAS, Declarant is the owner of a tract of real property situated in Greene County, Missouri, being more particularly described on **Exhibit "A"** attached hereto;

WHEREAS, Declarant is the successor in interest to The Villas at Hickory Hills, LLC, the initial declarant, and Declarant desires to amend and restate this Declaration;

WHEREAS, pursuant to the terms of the Declaration and the requisite vote of the required Unit Owners, Declarant has the power and authority to amend the Declaration as hereinafter set forth.

NOW, THEREFORE, Declarant hereby amends the Declaration for The Villas at Hickory Hills, a condominium as follows:

1. "Definitions". The introduction section titled "Definitions" shall be amended by adding the following definitions thereto; to the extent definitions set forth in this Amendment are duplicative or contradict with defintions set forth in the Declaration, the defintions set forth herein shall govern and control and those duplicate terms shall be deleted as necessary:

1. "Development Rights" means all "development rights" and "special declarant rights" (as those terms are defined in the Act) and other rights reserved by the Declarant in Article X and throughout this Declaration, to add real estate to the Condominium; to create additional Condominium Units, Common Elements, or Limited Common Elements; to subdivide Condominium Units; to convert Condominium Units into Common Elements; to add or remove real estate from the Additional Property or to withdraw real estate from the Condominium.

2. "Member" means a Member of the Association, as more particularly described in Article III hereof.

3. "Mortgage" means a security interest, deed of trust, or lien granted by an Owner in and to, or against, a Condominium Unit to secure the repayment of a loan, and duly filed for record in the Office of the Recorder of Deeds of Greene County, Missouri.

4. "Mortgagee" means the person who holds a Mortgage as security for repayment of a debt.

5. "Owner" or "Unit Owner" means any person, firm, corporation, or other entity which owns, of record, title to a Condominium Unit in the Project. Owner shall not mean a Mortgagee or a person or entity who otherwise holds a security interest in a Condominium Unit.

6. "Project" means the Land, the Condominium Buildings, and any and all other buildings, the Condominium Units, the Limited Common Elements and the Common Elements, but not the Additional Property unless and until it is submitted to the Condominium.

7. "Replacement Reserve Fund" means the reserve fund established pursuant to Article IV hereof for maintenance, repairs and replacements to Common Elements and Limited Common Elements.

8. "Rules and Regulations" means the rules adopted from time to time by the Association concerning the management and administration of the Project for the use and enjoyment of the Owners. The Rules and Regulations shall be promulgated by the Declarant, and a copy of the Rules and Regulations for The Villas at Hickory Hills, a condominium, are attached hereto as **Exhibit "F."**

9. "Square Footage" shall mean the total square feet of interior space in each Condominium Unit not including any terraces, patios, decks, porches, attic area, driveways or other Limited Common Elements.

2. "**Purposes; Restrictions; Architectural Control**". Article 2 shall be amended by deleting Section 2.2 and inserting the following:

"2.2 Architectural Control.

1. Review by Declarant, Board. No structure or improvement shall be constructed or maintained upon any Unit, or the Limited Common Elements applicable to that certain Unit, and no alteration to the exterior of a structure or alteration or improvement shall be undertaken, unless complete plans, specifications and plot/Unit plans therefor showing:

- The Exterior design, height, exterior building materials and color scheme thereof;
- The location of the structure within the Condominium (to be noted on the plat thereof) plotted horizontally and vertically;
- The orientation of the front and back of the structure within the Condominium;
- The locations of driveway(s) for the Unit;
- The desired location of the Limited Common Elements; and
- Any other items as the Declarant or the Board may reasonably request (collectively the "Complete Plans")

shall have been submitted to and approved in writing by the Declarant, or if the Declarant does not own any Unit, by the Board. References in this Declaration to the "Declarant or Board" shall mean the Declarant so long as Declarant owns any Unit in the Condominium, otherwise it shall mean the Board.

2. Duties. The Declarant or Board shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on the properties conform and harmonize with the existing surroundings and structures, and with the overall theme of the Condominium. The Declarant has established architectural guidelines for the Condominium, and the Units located therein (collectively the "Architectural Guidelines"); the Architectural Guidelines may be amended by the Declarant or Board, at time to time and from time to time.
3. Procedures. The Declarant or Board shall approve or disapprove all plans and requests within thirty (30) calendar days following receipt of the Complete Plans. In the event the Declarant or Board fails to take action on a request within thirty (30) days of receipt of the Complete Plans as provided above, approval shall be deemed to have been denied as to the request. The Developer or Board shall maintain written records of all applications submitted to it and of all actions taken. Plans, including without limitation the Complete Plans, shall be retained for a period of at least one (1) year and other records and minutes of action shall be retained for a period of four (4) years. A majority vote of the Board shall be necessary for approval of any request.
4. Liability. The Declarant or Board shall not be liable in damages to any person submitting a request for approval, or to any Unit Owner by reason of any action, failure to act, approval or disapproval, or failure to approve or disapprove any such request.
5. Existing Units. The existing Units and the Limited Common Elements in connection therewith are deemed to be approved by Declarant and confirm to the overall theme of the Condominium."

Subsection 2.13 of Article II shall be amended by adding the following to the end of that paragraph:

“All restrictions set forth in this Declaration and the Rules and Regulations promulgated by the Declarant and/or the Declarant or Board may be enforced by (a) the imposition of reasonable monetary fines as provided in the Act, (b) suspension of use of amenities and Common Elements, (c) suspension of voting rights, or (d) any other remedy at law or in equity. All Owners are responsible for the acts of the Owner’s family, guests, and invitees and any act or omission of the family, guests or invitees of an Owner shall be an act or omission of the Owner and enforceable against the Owner. Any fines imposed on an Owner shall be considered an assessment against that Owner’s Unit and may be collected in the manner provided for the collection of other assessments.”

Lastly, Article II shall be further amended by adding the following new sections thereto:

“2.19 Decoration, Maintenance, Alteration, and Repairs.

1. Following completion of their Unit, no Owner, shall have any right to modify, alter, repair, decorate, redecorate, or improve the exterior of any Condominium Unit, or to take such action with respect to the interior or exterior of any of the Common Elements or the Limited Common Elements. No Owner shall have any right to place any sign in or on any Condominium Unit or elsewhere in the Project without the prior written consent of the Declarant or Board, and the Declarant or Board shall have the right to remove any sign so placed without permission.
2. Each Owner shall have the right to modify, alter, repair, decorate, redecorate, or improve the interior of his Condominium Unit, provided such action does not impair the structural integrity, weaken the support, or otherwise adversely affect any of the Condominium Buildings or any Limited Common Element or Common Element, and provided all work is performed in good and workmanlike manner. No Owner in Phase I shall remove or change out the window blinds without the prior written consent of the Declarant. Owners in Phase II and beyond shall be free to modify, remove or change their window treatments with the consent of the Declarant or Board.
3. Each Owner shall maintain the Owner’s Condominium Unit (including the portions thereof which are not located within the physical boundaries of the Condominium Unit) in good order and repair at all times. If any Owner fails to so maintain a Condominium Unit, or any portion thereof, the Association shall have the right (but not the obligation) to perform such work as is necessary to put the Condominium Unit in good order and repair, and the cost thereof shall be deemed a debt of the Owner to the Association, payable on demand, and payment thereof shall bear interest and be secured in the same manner as for Common Expense Charges as set out in Article IV, Section 4 hereof.

4. The Common Elements, including without limitation the Limited Common Elements, shall be maintained by the Association. The Owner of any Condominium Unit as to which any Limited Common Elements are appurtenant shall have no right to modify, alter, repair, decorate, redecorate, improve, or take any other similar action with respect to the Limited Common Elements without the written consent of the Declarant or Board, it being the obligation of the Association under this Declaration to maintain the Limited Common Elements in an attractive manner for the benefit of all Owners.

3. Article IV "Improvement Descriptions" shall be amended as follows:

Section 1, the caption reading "Residential Buildings" shall be amended to read as follows "Phase I Residential Buildings"

Section 2 "Other" shall be amended by adding the words "in Phase I" between "dwelling unit" and "has an attached" in the first sentence thereof.

A new subsection titled "Phase II (and future Phases) Single Family Residences" shall be added and read as follows:

"3. Phase II (and future Phases) Single Family Residences. The following restrictions, in addition to the requirements of Article IV as apply generally to all Units in Phase II and any additional/future Phases, and any other provisions of the Declaration, are imposed upon each Unit Owner, each Unit, and the Common Elements and Limited Common Elements in connection therewith, for the benefit of all Unit Owners, the Association and the Declarant;

1. Single-Family Residential Use. Except as provided for herein, all Units created in Phase II (and future Phases) of the Condominium, shall be used, improved, and devoted exclusively as a "single-family residence" and no gainful occupation, profession, trade, bed and breakfast, inn or other nonresidential use shall be conducted from any Unit (including the Unit's Limited Common Element) or Common Element.

2. Installation, Maintenance of Lawns and Landscaping.

- (a) Lawns shall be installed as provided in Plans submitted to and approved by the Declarant or Board.

- (b) Each Unit shall be maintained by Declarant or Board, all shrubs, trees, grass and plantings (collectively "landscaping"), including the area located between the units and the street, neatly trimmed properly cultivated and free of trash, brush, limbs, debris, weeds and other unsightly material and in conformity with the Plans approved by the Developer or Board. No collection and maintenance of compost on any Unit shall be permitted unless approved by the Board or Declarant.

(c) The Association and its agents shall have the right at any time to plant, replace, maintain, and cultivate shrubs, trees, grass and plantings on the Common Area, and on any Unit or any property controlled by the Association and in so doing, cross upon the Unit of an Owner as reasonably necessary to accomplish the foregoing. The Association or its authorized agents shall not be liable for trespass, for so doing.

(d) All landscaping shall be completed prior to the occupancy of any residence unless the Board approves prior occupancy due to delay caused by weather conditions.

4. Article V "Units" shall be amended as follows:-

(a)

(b) Section 4 "Unit Types, Sizes, Locations and Components" shall be renumbered as Section 7 of Article V.

(c) A new Section 4 of Article V shall be added and shall read as follows:

"4. Phase II and future Phase Unit Designations. Each of the dwelling Units in Phase II and all future Phases shall be legally designated by a number, between 1-36, each number shall correspond to the Unit's location as set forth on the Plats and Plans. The locations and designations of each Unit is also shown on the sketch plot plan attached hereto as **Exhibit "B-1"**.

(d) A new Section 5 of Article V shall be added and shall read as follows:

"5. Composition of Phase II (and future Phase) Units. Each Unit in Phase II (and future Phase) constitutes a single freehold estate and consists, among other things, of the space designated on the Plats and Plans by that Unit's designation. The boundaries of the Unit shall be the outside of the structure and any enclosed outdoor living area. All items located within the footprint of the Unit, as finally evidenced on the recorded plat of the Condominium shall be the Unit's Owner's property. All other items shall be Common or Limited Common Elements, and shall be owned by the Association.

(e) A new Section 6 of Article V shall be added and shall read as follows:

"6. Legal Description. Every contract for sale of a Condominium Unit, every deed, lease, Mortgage, will or other instrument, may legally describe a Condominium Unit by its identifying unit number as shown on the Plat inserted in the following legal description:

For Units in Phase 1, as follows:

Building _____, Unit No. _____, THE VILLAS AT HICKORY HILLS, a condominium, as per the recorded Plat at Plat Book _____, Page _____ in the Office of the Recorder of Deeds for Greene County, Missouri, together with an undivided interest in the common elements, as provided in the Condominium Governing Documents.

For Units in Phase 2 (and future Phases), as follows:

Unit No. _____, THE VILLAS AT HICKORY HILLS, a condominium, as per the recorded Plat at Plat Book _____, Page _____ in the Office of the Recorder of Deeds for Greene County, Missouri, together with an undivided interest in the common elements, as provided in the Condominium Governing Documents.

Each Condominium Unit, the appurtenant undivided interest in the Common Elements and the appurtenant Limited Common Elements shall together be legally described by the above description and shall be inseparable and may be conveyed, leased, devised or encumbered only as a Condominium Unit. This legal description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Condominium Unit, but also the Owner's corresponding Allocated Interest in the Common Elements and fee simple ownership in the entire Limited Common Elements appurtenant to the Condominium Unit. Reference to the Plat in any instrument shall be deemed to include any addenda or amendments thereto. No Owner shall execute any deed, Mortgage, lease, contract, will or other instrument conveying ownership or a security interest in his Condominium Unit without including the Condominium Unit's interest in the Common Elements and Limited Common Elements appurtenant thereto. The severance of the combined ownership of a Condominium Unit and its Common Elements and Limited Common Elements is specifically prohibited. Any contract, deed, Mortgage, lease, or will or other instrument purporting to convey a Common Element, Limited Common Element or Condominium Unit without an appurtenant interest shall be deemed and taken to include all three (3) interests even though one or more may have been omitted. A Condominium Unit may be held or owned in any real property tenancy relationship recognized under the laws of the State of Missouri. Each Condominium Unit and the undivided interest in the Common Elements and Limited Common Elements shall be deemed a parcel and subject to separate assessment and taxation.

5. Article VIII "Maintenance and Repair" shall be amended by adding the following to Section 3 thereof:

"Each Owner shall be responsible for all acts or omissions of the Owner's family, guests, tenants, licensees or invitees and any act or omission by the family, guests, tenants, licensees or invitees of an Owner shall be deemed an act or omission of the Owner, and such person or persons shall be held jointly and severally liable with the Owner."

6. Article X "Insurance; Losses" shall be amended by deleting the Article in its entirety inserting the following:

“ARTICLE X
INSURANCE

1. General Provisions. The Board shall obtain the following insurance for the Project, in such amounts as the Board may deem appropriate, except where otherwise specifically indicated, the premiums shall be paid out of the Common Expense Fund:

(a) Insurance on all Condominium Units in Phase I (each a “Phase I Unit”), including everything originally contained in each Phase I Unit as deeded to the Owner by the Declarant, such as bathroom fixtures, cabinets, vanities, appliances, equipment, floor covering, sheet-rock, and other fixtures, but not including any furniture or furnishings placed in the Phase I Unit by the Owner, against loss or damage by fire or any or all other risks insured by standard extended coverage policies and used in the State of Missouri, with such endorsements as the Board deems advisable, in amounts sufficient to prevent the Association from being a co-insurer within the terms of such policies, but in any event in an amount not less than the full insurable replacement costs thereof. Those Owners of Units in Phase II (and all future Phases) shall be required to purchase their own “all-risk” homeowner’s insurance covering their respective Unit in such amounts as the Owner deems necessary.

(b) Insurance on all Common Elements, and Limited Common Elements which have insurable value against loss or damage by fire or by any and all other risks insured by standard extended coverage policies in use in the State of Missouri, with such endorsements as the Board deems advisable, in amounts sufficient to prevent the Association from being a co-insurer within the terms of such policies, but in any event in an amount not less than the full insurable replacement cost thereof.

(c) Comprehensive general liability insurance, including medical payments insurance, against claims for personal injury or death (minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence) and property damage (minimum coverage of Two Hundred Thousand Dollars (\$200,000.00) per occurrence) suffered by the public or any Owner, the family, agent, employee, or invitee of any Owner, occurring in, on, or about the Project or upon, in, or about the private driveways, roadways, walkways and passageways, on or adjoining the Project, and at least One Million Dollars (\$1,000,000.00) in so called “umbrella” coverage. Any policy obtained pursuant to this Subsection (b) shall, if possible and practical considering the cost thereof, contain a cross-liability endorsement whereby the rights of a named insured shall not prejudice his, her, or their action or actions against another named insured, and shall contain a “severability of interest” type of endorsement precluding the insurer from denying a claim of an Owner or the Association because of the negligent acts of other Owners, or the Association.

(d) Director’s and Officer’s liability insurance for the directors and officers of the Association against any liability arising out of such party’s status as a director or officer is suggested, but not required.

(e) Such other insurance as the Board deems appropriate to protect the Association and the Owners.

2. Policies. All insurance provided for in this Article shall be obtained from responsible insurers authorized to do business in the State of Missouri, with a Best’s rating of “A” or better, and provide the following:

(a) Primary insured shall be the Association, as Trustee for each Owner in accordance with the Owner's interest in the Condominium and its property;

(b) Each Owner shall be named as an insured person with respect to liability arising out of the Owner's interest in the Condominium and its property;

(c) All Mortgagees shall be named as additional insureds as their respective interests may appear;

(d) The insurer shall waive its rights to subrogation under the policy against the Declarant (and its affiliates) and any Owner or members of his household;

(f) No act or omission by any Owner shall void the policy or the condition to recovery under the policy;

(g) If at the time of loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance;

(h) The policy may not be terminated for any cause (other than nonpayment of premium which shall require a ten (10) day notice) without at least thirty (30) days prior written notice to the Association and the Mortgagees; and

(i) If possible, all policies of insurance of the character described in this Article shall contain an endorsement extending coverage to include the payment of Common Expense Charges with respect to Condominium Units damaged during the period of reconstruction thereof.

Any proceeds paid in respect of any insurance policy obtained by the Board pursuant to this Article V shall be held and disbursed by the Board, as Trustee in accordance with this Declaration.

3. Condominium Policy and Subrogation. In the event that an insurance policy specifically designed to meet the insurance needs of condominium projects becomes available in Missouri, the Board shall be authorized to obtain such a policy provided that the coverage afforded thereby at least equals the coverage provided by the policies enumerated in this Article. Each Owner and the Association agree to and hereby waive all rights of subrogation against the Declarant that they may have now or in the future under any property insurance policies.

4. Individual Insurance. Each Owner shall be responsible for insuring the personal property and furnishings located in the Owner's Condominium Unit, and for insuring the Owner's improvements, alterations, additions, and fixtures not covered by the master policy to be purchased by the Association. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Association for the benefit of all of the Owners as above provided. Each Owner, at his own cost and expense, should carry an individual policy of liability insurance insuring against the liability of the Owner, inasmuch as liability insurance policies to be carried by the Association will, as to each Owner, be only with respect to his liability arising out of the ownership, maintenance, or repair of that portion of the Project which is not reserved for his exclusive use or occupancy.

5. Waiver of Claims. Each Owner and the Association agree to and hereby waive all claims against the Declarant, the Declarant's officers, employees, agents, partners, successors,

assigns, and subcontractors for any injuries or damages including personal injuries or death that they may have now or in the future under any property insurance policies.”

7. Article XVIII shall be amended inserting the following:

“7. **Declarant Retained Amenities.** The Declarant has the perpetual right to retain ownership in certain amenities including the swimming pools, clubhouses, and other amenities located on or near the Project. The Declarant authorizes and assigns its authorized agents, representatives, employees, assigns and successors to use and regulate the use of these amenities. The Declarant and/or its respective successors or assigns may charge the Association a monthly fee for the use, operation, and maintenance of amenities. The fee may cover the costs and expenses associated with the operation of those amenities, including but not limited to, maintenance, reserves for deferred maintenance, insurance, repairs, utilities, accounting, administration, legal costs, management, interest, carrying costs, overhead, taxes, return on investment, and other miscellaneous incidental costs.

8. **Partition.** The Common Elements and Limited Common Elements shall remain undivided and shall not be subject to an action for partition or division so long as the Project is maintained as a Condominium pursuant to the Act in accordance with the terms and provisions hereof. The Condominium Units may only be partitioned or subdivided by the Declarant in accord with Declarant’s right to create additional Condominium Units.

9. **Severability.** In the event of the invalidity or partial invalidity or unenforceability of any provision or portion of this Declaration, the remainder of this Declaration shall remain in full force and effect.

10. **Enforcement.** The Declarant or Board, or any Owner, shall be entitled to enforce any of the terms and provisions hereof by action at law or in equity; or the Declarant or Board, after ten (10) days prior written notice to the Owner in question, may pursue any of the remedies provided in Article IV hereinabove. If the Declarant or Board or any Owner shall incur any costs or expenses, including attorney fees, while successfully enforcing any of the terms or provisions hereof, these costs and expenses shall be paid by the Owner against whom the enforcement action was directed and shall be collected as a delinquent Common Expense Charge under Article IV, Section 4, hereof. Failure by the Declarant or Board or any Owner or Owners to so enforce the terms hereof shall not be deemed a waiver of any breach or failure to adhere to any of the terms and provisions hereof. All remedies available to the Declarant or Board shall be cumulative and not exclusive.

11. **Covenant Running with the Land.** Subject to change according to Article VIII, the terms and provisions hereof shall be deemed to be covenants running with the Land and shall be binding upon the Declarant, all Owners, and their heirs, legal representatives, successors, and assigns.

12. **Exhibits.** Exhibits “A” through and including “F,” attached hereto, and any subparts thereof, amendments, or addenda thereto are hereby incorporated by reference in this Declaration for all purposes, as if set out verbatim herein.

13. **Resale Certificates.** The Association shall be entitled to charge a reasonable fee as determined by the Declarant or Board for the cost and expense of preparing Resale Certificates.

14. **Dissolution of Project.** The Project may only be dissolved by the Association in accord with the provisions of the Act.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

Hickory Investors, LLC
a Missouri limited liability company

By: Swiss Villa Investors, LLC

By: _____
Wayne D. Morelock, Member

By: John Youngblood, Member

John Youngblood

“Declarant”

STATE OF MISSOURI)
)
COUNTY OF GREENE) SS.

On this _____ day of _____, 2014, before me appeared Wayne D. Morelock and John Youngblood, to me personally known, who being by me duly sworn did say that they are authorized representatives of the Declarant and that said instrument was signed and sealed in behalf of said company by authority of its Members, and he acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

EXHIBIT B-1

Plats and Plans; Locations of Phase II and Beyond Units

EXHIBIT E

RULES AND REGULATIONS

Copies are available at the office of Declarant