

**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR THE**

**HERITAGE OF HAWK RIDGE COMMUNITY ASSOCIATION**

**ADOPTED: DECEMBER 30, 2020**

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[Exhibit A, Legal Description](#)

Signature Pages

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE  
HERITAGE OF HAWK RIDGE COMMUNITY ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE HERITAGE OF HAWK COMMUNITY ASSOCIATION is made on the 30th day of December 2020, by the **HERITAGE OF HAWK RIDGE COMMUNITY ASSOCIATION**, a Missouri non-profit corporation.

**WITNESSETH:**

**WHEREAS**, the real estate described on Exhibit A, attached hereto and incorporated herein, known as Heritage of Hawk Ridge (the “Subdivision”), is subject to that certain Declaration of Covenants, Conditions, and Restrictions for the Heritage of Hawk Ridge Community Association dated May 7, 2001 and recorded in Book 2574 Page 197 of the Office of the Recorder of Deeds of St. Charles County, Missouri as amended by the following instruments: (i) Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated May 8, 2002 and recorded in Book 2912 page 1645; (ii) Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated September 2, 2005 and recorded in Book 4324 page 970; (iii) Amendment to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated September 12, 2007 and recorded in Book 4845 page 154; (iv) Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated September 21, 2007 and recorded in Book 4847 page 952; (v) Amendment to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated April 15, 2014 and recorded in Book 6175 page 1963; (vi) Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated April 16, 2015 and recorded in Book 6340 page 2337; (vii) Supplementary Declaration to the Declaration of Covenants, Conditions and Restrictions for Heritage of Hawk Ridge Community Association, dated August 31, 2017 and recorded in Book 6800 page 2041; and (viii) Amendment to Declaration of Covenants, Conditions, and Restrictions for Heritage of Hawk Ridge Community Association dated April 27, 2020 and recorded in Book 7285 page 1947 (as so amended, the “Original Indenture”);

**WHEREAS**, Lombardo Homes of St. Louis LLC, a Michigan limited liability company registered to do business in Missouri (“Lombardo”), was assigned all rights and obligations of the Declarant (as defined in the Original Indenture) under the Original Indenture;

**WHEREAS**, Lombardo has conveyed all of the Lots within the Properties to Owners terminating all Class B Lots (as defined in the Original Indenture) and Class B memberships;

**WHEREAS**, the Members and the Board of Directors desire to amend and restate the Original Indenture in its entirety;

**WHEREAS**, Article XIII, Section 3 of the Original Indenture (as amended by that certain Amendment to Declaration of Covenants, Conditions, and Restrictions for Heritage of Hawk Ridge Community Association dated April 27, 2020 and recorded in Book 7285 page 1947 which, by scrivener's error, incorrectly referenced Article XII instead of Article XIII) provides that the Original Indenture may be amended or terminated by instrument signed by the Board of Directors and approved by the vote of the majority of the Members at a meeting at which a quorum is present, provided, however, that so long as any Class B membership exists, no amendment adopted by the Owners shall be effective unless and until such amendment is approved in writing by the Declarant;

**WHEREAS**, no Class B memberships exist and the Members have approved this Declaration at a duly noticed and conducted meeting at which a quorum of the Members voted, all in accordance with the terms, provisions and requirements of the Original Indenture.

**NOW THEREFORE**, in order to carry out their intent as expressed above and in consideration of the mutual agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## **ARTICLE I DEFINITIONS**

1. "ARC" shall mean and refer to the Architectural Review Committee, its successors and assigns.
2. "Association" shall mean and refer to the **HERITAGE OF HAWK RIDGE COMMUNITY ASSOCIATION** ("HHRCA"), its successors and assigns which shall act through its Board of Directors.
3. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Heritage of Hawk Ridge Community Association, its successors and assigns.
4. "Common Area" shall mean and refer to all of (i) the private roads, streets, courts, and cul-de-sacs in the Properties not dedicated to public use, and (ii) the real property described as Common Area 1, Common Area 2, Common Area 3, Common Area 4, Common Area 5, Common Area 6, Common Area A, Common Area B, and Landscape Easement on that certain *Record Plat Heritage of Hawk Ridge Plat One* as recorded in Plat Book 38, Page 11 of the St. Charles County Recorder of Deeds' Office, together with any improvements thereon, owned by the Association whether in fee, by easement or otherwise, for the common use and enjoyment by the Owners of Lots within the Subdivision, as well as the private roads and streets, open space, recreational facilities, Golf Course, club house, sidewalks, sign and landscape easements and buffers, and water, sewer and storm water drainage easements, and the facilities constructed within the Subdivision, which easements, improvements, and facilities serve more than one Lot and are not located within a public easement or public street right-of-way. Except as otherwise

provided in this Declaration, the Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use as set forth herein.

5. “Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Heritage of Hawk Ridge Community Association.

6. “Dwelling” or “Unit” shall mean and refer to single family homes or villas constructed within the boundaries of a Lot for occupation by one family as a residence whether by the Owner of such dwelling or by tenants or lessees of such Owner. The Dwelling or Unit includes any garage attached thereto.

7. “Events Director” shall mean and refer to a person employed by the Association who plans, schedules, organizes and approves the social activities and related administrative details of the community.

8. “Golf Course” shall mean and refer to the Heritage of Hawk Ridge Golf Course located within the Heritage of Hawk Ridge community.

9. “Lot” shall mean and refer to any plot of land, upon which a Dwelling or Unit is located and shown on the subdivision plat, including all improvements thereon.

10. “Member” shall mean and refer to all persons who are members of the Association by virtue of being Owners as defined in this Declaration.

11. “Owner” shall mean and refer to the owner of record, whether one or more persons or entities, of fee simple title to any Lot.

12. “Properties” shall mean and refer to the “Existing Property” pursuant to Article II of this Declaration.

13. “Resident” shall mean and refer to Owners, Members, Domestic Partners, Tenants, and Lessees who occupy the dwelling or unit within Heritage of Hawk Ridge as their primary residence.

14. “Tenant” means any individual, entity, estate, trust or any fiduciary acting in such capacity on behalf of any of the foregoing, having the right to occupy a Unit or Dwelling pursuant to a lease granted by an Owner.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HERITAGE OF HAWK RIDGE COMMUNITY ASSOCIATION

1. Existing Property – The real property which is and shall be held, transferred, sold, conveyed, used and occupied subject to this Declaration as of the date of recording hereof, and which is within the jurisdiction of the Association, is all of the real property described on Exhibit A.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

1. Membership – Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
2. Voting Rights – The voting rights of the membership shall be appurtenant to the ownership of the Lots and may not be separated from ownership of any Lot. There shall be one class of Lot with respect to voting rights and ownership of a Lot shall entitle the Owner of such Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot.
3. Leased Units – Notwithstanding any other provision of this Declaration or the Bylaws of the Association, no Tenant shall have voting rights and no Owner or Member shall be permitted to transfer voting rights to a Tenant.

**ARTICLE IV**  
**PROPERTY RIGHTS**

1. Owners' Easements of Enjoyment and Access – Except as limited by the provisions of this Section 1 and by the Rules and Regulations adopted by the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:
  - A. the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, Tenants and guests;
  - B. the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published Rules and Regulations of the Association;
  - C. the right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least 51% of the votes of the entire membership of the Association agree to such dedication, sale or transfer and signify their agreement by a signed document recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri. Nothing herein shall be deemed to prohibit the Board of Directors of the Association, without consent of the Members, from granting easements over and across the Common Area to any public or private agency, authority, entity, person or

utility for the installation and maintenance of sewerage, utility (including cable television) or drainage facilities or conduits when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of or beneficial to the properties within the subdivision. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the owners of Lots within the Subdivision and shall not be conveyed except to the City of Lake Saint Louis or another non-profit corporation organized for similar purposes;

D. the right of the Association, to borrow money and, with the assent of Members entitled to at least 51% of the votes of the entire membership of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as set forth herein;

E. the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, any such dedication shall require the assent of the Members as set forth in subparagraph C above, and further provided that, if the Board of Directors of the Association determines, in its sole discretion, that such exchange is necessary to cure an encroachment or setback violation on any Lot, the Board may effect such exchange without the consent of or approval by the Members;

F. the right of the Association to expand or add to the Common Area and to improve, maintain and operate the Common Area;

G. the right of the Association to adopt, promulgate and enforce rules and regulations concerning the use of the Common Area; and

H. the right of the Association to otherwise deal with the Common Area as provided in the Bylaws of the Association.

## 2. Delegation of Use

A. Family – The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner’s family who occupy the residence of the Owner, as their principal residence in St. Charles County, Missouri.

B. Tenants, Contract Purchasers – The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated by such Owner to his Tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in St. Charles County, Missouri.

C. Guests – The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, Tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.



D. Suspension of Rights – The rights of any delegate of an Owner shall be suspended by, upon and during suspension of such Owner’s rights as provided in Section 6 of Article XIII of this Declaration.

3. Regulation and Maintenance of Common Area and Common Area Easements – It is the intent of the Association that the Common Area be preserved to the perpetual benefit of the Owners.

A. Regulation of Common Area – The Board of Directors may adopt and promulgate rules and regulations governing the use of the Common Area by Owners and their family, guests and invitees. No Owner or other permitted user shall use the Common Area or any portion thereof in violation of the rules and regulations contained in this Declaration or subsequently adopted by the Board of Directors.

Without limiting the generality of the foregoing, no Owner or tenant, guest or invitee of an Owner shall, without the specific prior written consent of the Board of Directors: (i) damage or waste the Common Area or improvements thereon or remove any trees or vegetation therefrom, (ii) erect any gate, fence, structure or other improvement or things on the Common Area, (iii) place any garbage receptacle, trash or debris on Common Area; (iv) fill or excavate any part of the Common Area, (v) landscape or plant vegetation on Common Area; or (vi) use the Common Area or any part thereof in a manner inconsistent with or in any way interfering with the rights of other Owners. Exceptions to said regulations may be granted by the ARC committee.

B. Rights and Responsibilities of the Association as to Common Area – The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners, and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners, subject to the provisions of this Declaration; (ii) procure and maintain adequate liability insurance covering the Association and its Members, Directors and officers, against any loss or damage suffered by any person resulting from use of the Common Area, and adequate hazard insurance covering the real and personal property owned in fee by the Association; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

C. Association’s Right of Entry – The Association and the employees, agents, contractors and subcontractors of the Association, shall have a non-exclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement for the purposes of: (i) installing and maintaining subdivision entrance signs, features, fencing and landscaping; and (ii) making such improvements to the Common Area, and (iii) maintaining the Common Area easement in its natural or improved state.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments – Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges and all costs of collection, including reasonable attorney's fees, shall be a charge against and a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Association that any monetary fines imposed against an Owner pursuant to the Declaration, Bylaws or Rules & Regulations of the Association shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

2. Purposes of Assessments – The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for:

A. acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including, but not limited to, the Golf Course;

B. repair and reconstruction of improvements on the Common Area including, but not limited to, the Golf Course, and including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof;

C. cutting and edging of grass on the Lots;

D. removal of snowfall of two (2) inches or more from driveways, walkways (driveway to front door) and private streets;

E. street lighting;

F. payment of taxes and public assessments levied against the Common Area owned by the Association in fee simple;

G. procurement and maintenance of insurance;

H. employment of attorneys, accountants and other persons or firms to represent the Association when necessary;

I. payment of principal and interest on funds borrowed for Association purposes; and

J. such other needs as may arise.

3. Annual Assessments

A. Annual Assessment – For purposes of annual and special assessments, the Lots were divided into the following four subclasses: Class A-1 (the “Carriage Homes”), Class A-2 (the “Villa Homes”), Class A-3 (the “Garden Homes”) and Class A-4 (the “Executive Homes”). Each subclass shall be assigned its own annual assessment, which may vary and differ from the annual assessment of another subclass. The initial annual assessment shall be the assessment for each subclass as of the date of this Declaration, and thereafter, the Board of Directors shall establish the annual assessment for each subclass. The term annual assessment shall refer to the amount owed by each owner in each subclass.

The Board of Directors shall set the annual assessment effective January 1 of each year without a vote of the Members, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the annual assessment for the previous year unless such increase is approved as set forth in Section 3(B), below.

B. Annual Assessments: Ratification of Budgets – The Board of Directors shall adopt a proposed budget (including the proposed annual assessment for each subclass of Lots) at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall post a copy of the proposed budget on the HHRCA website and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 10 days nor more than 60 days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget. The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Any annual assessment ratified by the Members shall continue thereafter from year to year as the annual assessment until changed by the Board and ratified by the Members as set forth herein.

4. Special Assessments – In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement on the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall be ratified by the Members having a majority of the votes at a meeting in which a quorum is present in accordance with the notice and quorum procedures set forth in Section 6 of this Article.

5. Assessment Rate; Collection Period – The annual assessments and special assessments shall be fixed at a uniform rate within each subclass of Lots and may be collected on a yearly, semi-annually, quarterly or monthly basis, as determined by the Board of Directors.

6. Notice and Quorum for any Action Authorized Under Section 4. – Written or published notice of any meeting called for the purpose of authorizing a special assessment under Section 4 shall be sent to all Members not less than 10 days nor more than 60 days prior to the meeting. At such meeting, the presence of Members, in person or by proxy, entitled to cast one-third (1/3) of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and if called for a date not later than 60 days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-tenth (1/10) of the votes of the entire membership.

7. Date of Commencement of Annual Assessments. Amount of Initial and Subsequent Annual Assessments: Certificate of Payment – Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots on the day of conveyance of a Lot or Unit to an Owner. Unless a lower amount is set by the Board of Directors and ratified by the Members, the first annual assessment shall be the “annual assessment” set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

At least 30 days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least 15 days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

8. Effect of Nonpayment of Assessments: Delinquencies, Late Charges, Interest, and Collection Procedures – The delinquencies, late charges, interest and collection procedures for nonpayment of assessments shall be as set forth in the Assessment Collection Policy established by the Board of Directors, a copy of which shall be made available on the HHRCA website. The Board of Directors shall have the ability to amend the Assessment Collection Policy from time to time without the approval of the Members.

9. Subordination of the Lien to Mortgages – The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of a Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessment which

became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

10. Exempt Property – All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Missouri shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

11. Initial Capital Contribution – At the time of closing of each sale of a Dwelling, a sum equal to one-half (1/2) of the annual assessment for that Lot in effect at the time of such sale shall be collected from the purchaser of such Dwelling and transferred to the Association as part of its working capital. The purpose of such working capital contributions is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid pursuant to this Section shall not be considered as an advance payment of any Annual Assessment or special assessment.

## ARTICLE VI

### RIGHTS OF LENDERS

1. Books and Records – Any owner or holder of a first deed of trust on any Lot, or its agent, shall have the right, during normal business hours, to examine copies of this Declaration, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

2. Notice to Lenders – Upon written request to the Association, the owner or holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

A. Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

C. Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

3. Approval of Owners and Holders of First Deeds of Trust – Unless at least seventy-five percent (75%) of the owners and holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

A. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of

this subsection. Nothing herein shall be deemed to prohibit the Association from exchanging Common Area for other real property of like utility and value as provided in Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots;

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

C. Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

D. Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

4. Payment of Taxes and Insurance Premiums – The owners or holders of first deeds of trust on Lots, jointly or separately, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

## **ARTICLE VII EASEMENTS**

1. Access and Utility Easements – Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and for other public utility installations are reserved as shown on the recorded plat of the Properties. The Association may reserve or grant easements over the Common Area as provided in Article IV of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

2. Easements for Governmental Access – An easement is hereby established over the Common Area and every Lot within the Properties for the benefit of applicable governmental agencies for installing, removing, and reading meters, maintaining and replacing water and sewer facilities, and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

3. Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction – If any Dwelling is located closer than 5 feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such Dwelling. Such work shall be done expeditiously and, upon completion of the

work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which existed prior to the commencement of the work as is reasonably practicable. No fence shall be erected within such area adjoining a Dwelling.

4. Association's Easement and Right of Entry – The Association, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association.

5. Easement Over Common Area – A perpetual, non-exclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and Tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, Tenants or occupants, for the purpose of providing access, ingress and egress to and from streets, parking areas and walkways serving the Properties. Notwithstanding the foregoing, this Declaration does not grant to any Lot or Owner any easement of view or sight over the Common Area, including, but not limited to, the Golf Course.

6. Easement for Golf Course – Every Lot and the Common Area are burdened with an easement permitting golf balls unintentionally to come upon such Common Area or Lot and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of any Lot to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall the Association, Board of Directors or other HHRCA members performing duties for the Association (in their capacity as such) be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement. The properties immediately adjacent to the Golf Course shall be burdened with a nonexclusive easement in favor of the Association for over spray of water from any irrigation system serving the Golf Course. Under no circumstances shall the Association be held liable for any damage or injury resulting from such over spray or the exercise of this easement.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

The Association shall have the sole and absolute right to determine the style and appearance of the Dwellings, fences, walls, buildings, outbuildings, garages, storage sheds, mailboxes, lawn decorations, structures of any type, grading, landscaping and any other improvements to be built or constructed on any Lot (hereinafter individually and collectively referred to as "Improvements").

After occupancy of a Dwelling as a residence pursuant to a certificate of occupancy or other similar certificate issued by the City of Lake St. Louis, no Improvements (including, without limitation, replacement of any previously existing Improvements) shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereof be made (including, without limitation, changing materials or color of any exterior portion of any such Improvements), nor shall a building permit for such Improvements or change be applied for or obtained, nor shall any

landscaping or re-landscaping of any Lot be commenced or made until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Association or by the ARC, which shall be composed of three or more persons appointed by the Board of Directors of the Association. If the Association or its designee fails to approve or disapprove such proposed Improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with these provisions. The Association shall have the right to charge a reasonable fee, not to exceed \$100.00, for receiving and processing each application.

The Association, shall have the right to promulgate and from time to time amend written architectural standards and construction specifications, which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Neither the Association nor the ARC shall approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures or topography.

Neither the Association, the Board of Directors, the ARC, nor any member or employee of any of them, shall have any liability to any person or entity by reason of any acts taken or omitted by them, or any of them, in good faith pursuant to this Article.

## **ARTICLE IX**

### **PARTY WALLS**

1. General Rules of Law to Apply – The general rules of law regarding party walls, lateral support in below-ground construction and of liability or property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Properties and placed on the dividing line between the Lots, and all reconstruction or extensions of such walls, to the extent not consistent with the provisions of this Article.
2. Sharing of Repair and Maintenance – The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
3. Destruction by Fire or Other Casualty – If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
4. Easement and Right of Entry for Repair, Maintenance and Reconstruction – Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those



improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

5. Weatherproofing – Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements.

6. Right to Contribution Runs with Land – The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7. Certification by Adjoining Property Owner That No Contribution Is Due – If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge, provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

## **ARTICLE X**

### **RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

1. Responsibilities – The Association, subject to the rights of the Owner set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and shall keep the Common Area in good, clean and proper condition, order and repair. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, administration and management of the Common Area and the performance of its other obligations hereunder. The Association shall operate and maintain all Common Areas. The Association shall also be responsible for enforcement of the covenants and restrictions contained in this Declaration.

2. Manager – The Association may employ and pay for the services of a person or entity to assist the Association in managing its affairs and carrying out its responsibilities hereunder and such other persons or entities, including attorneys and accountants, as the Association deems necessary or advisable, whether such persons or entities are engaged, furnished, or employed directly by the Association. The Association may enter into a Management Agreement for such management services upon such terms as the Board of Directors may deem appropriate.

3. Personal Property for Common Use – The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Bylaws of the Association.

4. Insurance; Bonds – The Association shall procure and maintain adequate liability insurance covering the Association. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers’, directors’ and employees liability insurance, and such other insurance as it deems necessary or advisable. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration. The Association may cause any or all persons responsible for collecting and disbursing monies of the Association to be bonded.

5. Implied Rights – The Association may exercise any other right or privilege and take any action authorized by this Declaration, the Association’s Bylaws, or law, as from time to time amended, and every other right or privilege reasonably necessary to effectuate the exercise of any right or privilege or the taking of any action authorized herein or therein.

6. Records – The Association shall retain, maintain and provide copying services of records per the Records Inspection, Copying, and Retention Policy adopted by the Board of Directors, as amended from time to time, a copy of which will be available on the HHRCA website.

## **ARTICLE XI**

### **USE RESTRICTIONS**

1. Age Restriction – At least eighty percent (80%) of the occupied Units shall be occupied by at least one person who is 55 years of age or older, and all permanent occupants must be at least 18 years of age or older. A “permanent occupant” shall be defined as a person who occupies a Dwelling for more than 8 weeks in any calendar year.

A surviving or divorced spouse who is a permanent occupant under the age of 55 years and who was the spouse of an occupant 55 years of age or older will be allowed to remain as an Occupant.

No Owner may lease or sell a Unit unless at least 1 person who will occupy the unit is 55 years of age or older. The Board of Directors shall have the right to require prior age verification from all prospective occupants.

The Association shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of, or use of common facilities by, persons under 18 years of age.

2. Leased Units – An Owner may lease or sublet his Unit; provided, however, that any lease or sublease must be for at least 6 months, in writing and contain the following provision:

“Tenant shall obey, adhere to and be bound by all provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Heritage of Hawk Ridge Community Association, recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri, as the same may be

amended from time to time. Tenant acknowledges that he has received a copy of such Declaration and the Rules and Regulations of the Association and is familiar with the provisions of the same.”

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association a copy of any leases or subleases of his Unit.

## **ARTICLE XII**

### **INHERENT RISK ACCEPTED**

By acceptance of a deed for a Lot, each Owner, for himself, the members of his family, his guests and his invitees (“Releasing Parties”), shall be deemed to have released and agreed never to make a claim against the Association, its successors and assigns, owners of the Golf Course, or any of its or their officers, directors, guests, patrons, owners and invitees, stockholders, employees, agents, principals, partners or contractors (“Released Parties”), for any injury, death or property damage (including diminution in value) that may ever be suffered or incurred by any of the Releasing Parties while on any Lot or near the Golf Course or in connection with the operation of the Golf Course, and each of the Releasing Parties shall be deemed to have waived any and all claims and causes of action that any of the Releasing Parties may have ever had against any of the Released Parties or the Golf Course for damages, equitable relief or otherwise. The Releasing Parties shall be deemed to have recognized, known and accepted all of the potential (whether foreseeable or not) damages, risks, hazards and consequences generally or specifically inherent in the operation of a golf course, in the game of golf, in the nature of golf course premises, and in residing or locating on, adjacent to or near a golf course, or visiting near a golf course property, including, without limitation the following: flying or ricocheting golf balls and other objects, holes, depressions and hazards, cart paths, berms and other portions of the Golf Course property; large numbers and continuous flow of players and spectators; hours of play, proximity’s of greens, tees, fairways and other features to residences, yards and streets; inconvenience, lakes, creeks and other waterways, golf carts, water sprinklers and distribution facilities; and the intensive use of pesticides, herbicides, fertilizers and other chemicals and health hazards related thereto (including allergy susceptibilities). The doctrines of strict tort liability and private nuisance shall not be applicable to the operation of the Golf Course and any liabilities with respect thereto, and the foregoing doctrines shall be deemed waived.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

1. Enforcement – The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an Owner to enforce any

covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The fines and enforcement procedures shall be determined by the Board of Directors and shall be set forth in a Fine and Enforcement Policy, a copy of which shall be made available on the HHRCA website. The Board of Directors shall have the ability to amend the Fine and Enforcement Policy from time to time without the approval of the Members.

2. Severability – Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

3. Amendment – The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Properties and the Owners thereof for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of the Owners as set forth below.

This Declaration may be terminated or amended during the first twenty-five year period by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Lots. Amendment or termination shall be by written instrument signed by the appropriate persons or entities and recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri and, upon recordation, shall be binding on all Lots and Units within the Properties and the Owners thereof, without regard to whether the Owner of such Lot voted for or against or signed or did not sign the amendment.

4. Interpretation – Headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing any provision hereof. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the word “including” shall mean “including, without limitation”. This Declaration and the provisions thereof shall be construed and enforced in accordance with the laws of the State of Missouri.

5. Subdivision of Lots – No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded plat, except by or with the consent of the Association and, if required, by the City of Lake St. Louis.

6. Rules and Regulations - The Board shall have the authority to adopt additional Rules and Regulations governing the HHRCA. A list of additional Rules & Regulations not contained within this Declaration or Bylaws are summarized in a document titled “HHRCA Rules and Regulations” and can be found on the HHRCA website or in the Clubhouse office.

In addition to any other rights and remedies that the Association may have under the Bylaws of the Association and this Declaration, the Association may impose sanctions for a violation of this Declaration, the Bylaws of the Association, the Rules and Regulations adopted by the Board, and any restrictive Covenants applicable to the Properties, in accordance with procedures set forth in those

documents or in additional policies adopted by the Board of Directors from time to time, which sanctions may include, without limitation, reasonable monetary fines, which shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use the Common Area or facilities thereon.

In addition, as provided in the Declaration or Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area and recreational facility within the Properties if the Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to stop the Association from enforcing any other covenant, restriction or rule.

#### EXHIBIT A

##### Legal Description

All of the property in the Heritage of Hawk Ridge, a subdivision in St. Charles County, Missouri according to the plats thereof recorded Plat Book 38, page 11, Plat Book 39, page 14, Plat Book 42, page 272, Plat Book 45, page 16, Plat Book 48, page 36, and Plat Book 48, page 334, all in the Office of Recorder of Deeds of St. Charles County, Missouri.

[Signature Pages to Follow]

IN WITNESS WHEREOF the Association has caused this instrument to be executed under seal as of the date first above written.

HERITAGE OF HAWK RIDGE COMMUNITY ASSOCIATION, a Missouri nonprofit corporation

By: Larian A. Johnson  
Print Name: LARIAN A. JOHNSON

By: Linda Bird  
Print Name: LINDA BIRD

By: Fred McGarran  
Print Name: FRED MCGARRAN

By: Patrick P. Verditti  
Print Name: PATRICK P. VERDITTI

By: Jeff Ford  
Print Name: JEFF FORD

Being all of the members of the Board of Directors of  
Heritage of Hawk Ridge Community Association

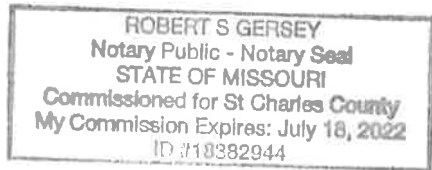
STATE OF MISSOURI )  
 ) SS  
COUNTY OF ST. CHARLES )

On this 30th of December 2020, before me personally appeared HHR Board Members, and \_\_\_\_\_ to me personally known, who, being by me duly Sworn, did state that he/she is a member of the Board of Directors of Heritage of Hawk Ridge Community Association, a Missouri nonprofit corporation, and that said instrument was signed on behalf of said nonprofit corporation, and acknowledges said instrument to be the free act and deed of said nonprofit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of St. Charles and State of Missouri the day and year first above written.

/s/ Robert S Gersey  
Notary Public ROBERT S GERSEY

My term expires: 7-18-2022  
(seal)



STATE OF MISSOURI )  
 ) SS  
COUNTY OF ST. CHARLES )

On this \_\_\_th of \_\_\_\_\_, 2020, before me personally appeared \_\_\_\_\_, and \_\_\_\_\_, to me personally known, who, being by me duly Sworn, did state that he/she is a member of the Board of Directors of Heritage of Hawk Ridge Community Association, a Missouri nonprofit corporation, and that said instrument was signed on behalf of said nonprofit corporation, and acknowledges said instrument to be the free act and deed of said nonprofit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of St. Charles and State of Missouri the day and year first above written.

/s/ \_\_\_\_\_  
Notary Public

My term expires: \_\_\_\_\_  
(seal)