



Janet Johnson-Esarey <jjohnsonesarey@gmail.com>

Fwd: Heritage Estates - Amended & Restated Declaration

1 message

Duane Esarey <desarey55@gmail.com>
To: Janet Johnson <jjohnsonesarey@gmail.com>

Sat, May 2, 2026 at 3:25 PM

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From: **Timothy D Swanson** <TimothyS@hickorylaw.com>
Date: Mon, Dec 8, 2025 at 4:03 PM
Subject: RE: Heritage Estates - Amended & Restated Declaration
To: Duane Esarey <desarey55@gmail.com>

Duane,

Here are my initial thoughts. It may be good to schedule a call once the board has had an opportunity to review this.
Thanks,

- Section 3.01 – Does the HOA want to permit real estate signs in common areas?
- Section 4.01 – The term “property” is broader than “common elements.” I would include both if you want to add the additional language.
- Section 5.04 – Does the HOA want to commit to all reserves being based on an actual “reserve study.”
- Section 5.05 – Revise “to wit” to read “to wit.”
- Section 5.06 – In the first paragraph it states that special assessments may be imposed against “a Lot or Lots,” suggesting that it may not be uniform in all cases. However, in the last paragraph it states that “all special assessments shall be levied equally at a uniform rate among all Lots...”
- Section 5.06 – In the second paragraph it states that special assessments “may not be levied for predictable or planned expenses.” This could lead to conflicting interpretations about when special assessments are allowed. I would remove this.
- Section 5.06 – Subsections (a) and (b) seem inconsistent.
- Section 5.07 – The term “Declaration” is included in the definition of the term “Management Documents.”
- Section 6.01 – What is the reason for using the phrase “Members-at-Large.” Do you not want to create some separation between the Board and ARC? Why does the ARC have to report to the Board before reporting to the owner? This seems to undermine the appeal process.
- Section 6.02 – The inclusion of the building code reference in proximity to plan approval causes confusion. The ARC only approves with regard to aesthetic matters, not the building code.
- Section 6.02 – Remove “,” before “for major construction projects.”
- Section 6.02 – Do all existing homes meet the heated SF requirement?
- Section 7.01 – This has already been established by the court.
- Section 7.02 – This needs to be reworded. “If any lots are combined, they shall continue to be treated as separate lots for purposes of voting and assessments.”
- Section 7.03(b) – This seems to be the same heated SF requirement added to Section 6.02. I would remove from Section 6.02.
- Section 7.08 – I’m not sure that “discharge” is the correct term here.
- Section 8.02 – I assume the HOA is trying to parallel G.S. 47F-3-107. These are treated as “assessments,” not “special assessments.”
- Section 10.02 – See Section 8.02 above.
- Section 11.01 – This seems redundant with Section 7.02. It is probably okay to keep them both.

Timothy D. Swanson

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From: Duane Esarey <desarey55@gmail.com>

Sent: Monday, December 8, 2025 11:37 AM

To: Timothy D Swanson <TimothyS@hickorylaw.com>

Subject: Re: Heritage Estates - Amended & Restated Declaration

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Yes, sorry. I should have thought of that.

Attached

Duane

On Mon, Dec 8, 2025 at 7:17 AM Timothy D Swanson <TimothyS@hickorylaw.com> wrote:

Duane,

I am happy to review the revised draft. Can you send a redline version so that I can see what revisions have been made?

Thanks,

Timothy D. Swanson

Partner | Young, Morphis, Bach & Taylor, LLP



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From: Duane Esarey <desarey55@gmail.com>
Sent: Friday, December 5, 2025 5:04 PM
To: Timothy D Swanson <TimothyS@hickorylaw.com>; Kalea Mejia <KaleaM@hickorylaw.com>
Cc: Janet Johnson <jjohnsonesarey@gmail.com>
Subject: Re: Heritage Estates - Amended & Restated Declaration

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Hello Timothy and Kalea,

After sharing your August 15 Amended and Restated Declaration draft with our full membership and putting it into the hands of a final language committee to address various member comments and concerns, we have arrived at substantial consensus (attached).

Would it be possible for us to obtain a final review to make sure our revisions have not strayed across any inadvisable boundaries?

Once that is done we will commence the process of obtaining notarized signatures to attain the 67% level of support required. When we attain that we will ask for your final help in getting it properly filed.

Duane Esarey
HEPOA 2025 President

On Fri, Aug 15, 2025 at 10:05 AM Timothy D Swanson <TimothyS@hickorylaw.com> wrote:

Duane and Janet:

I am attaching the revised draft of the Amended & Restated Declaration.

Please let me know if you have any questions.

Thanks,

Timothy D. Swanson | Partner

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