

(the above space is left blank for recording purposes)

PREPARED BY AND RETURN TO:

Timothy D. Swanson
Young, Morphis, Bach & Taylor, LLP
Post Office Drawer 2428
Hickory, North Carolina 28603

**THIS DOCUMENT REGULATES OR PROHIBITS
THE DISPLAY OF POLITICAL SIGNS**

STATE OF NORTH CAROLINA

ASHE COUNTY

**AMENDED AND RESTATED
DECLARATION OF RESTRICTIVE
COVENANTS AND RESTRICTIONS FOR
HERITAGE ESTATES**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS AND RESTRICTIONS FOR HERITAGE ESTATES is made and entered into this ___ day of _____, 2025, by Heritage Estates Property Owners Association, a North Carolina nonprofit corporation, having a mailing address of Box 10 Highway 163, West Jefferson, North Carolina 28694 (the "Association"), and the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, in accordance with the Declaration and Chapter 47F of the North Carolina General Statutes.

WITNESSETH:

WHEREAS, by a Restrictive Covenants and Restrictions Agreement Affecting Heritage Estates recorded on November 8, 1999, in Book 244, Page 2255 of the Ashe County Public Registry, Heritage Estates, Inc., as developer, set forth restrictive covenants and restrictions for Heritage Estates, which was amended by an Amendment to Restrictive Covenants and

Restrictions Agreement Affecting Heritage Estates recorded on July 21, 2006, in Book 350, Page 1377 of the Ashe County Public Registry (the “Declaration”); and

WHEREAS, in accordance with statutory authority and authority reserved in Section 18 of the Declaration, the Association and the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the association are allocated have signed and adopted this Amended and Restated Declaration.

NOW, THEREFORE, pursuant to Section 18 of the Declaration and Section 47F-2-117 of the Act, the Association, by an instrument signed by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, hereby amends and replaces the Declaration in its entirety with the following:

ARTICLE I DEFINITIONS

1.01. “Act” shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

1.02. “Amended and Restated Declaration” shall mean this Amended and Restated Declaration of Restrictive Covenants and Restrictions of Heritage Estates.

1.03. “Articles” shall mean the Articles of Incorporation of the Association and any amendments thereto.

1.04. “Association” shall mean the Heritage Estates Property Owners Association, a North Carolina nonprofit corporation, its successors and assigns.

1.05. “Board,” “Executive Board” or “Board of Directors” shall mean the Board of Directors of the Association.

1.06. “Bylaws” shall mean the Bylaws of the Association and any amendments thereto.

1.07. “Common Elements” shall mean all real property and easements over real property acquired by the Association for the common use and enjoyment of its Members.

1.08. “Lot” shall mean any numbered plot of land to be used for residential purposes shown upon any Plat of the Property.

1.09. “Management Documents” shall mean the Declaration, the Articles and Bylaws of the Association, and the Rules and Regulations.

1.10. “Member” shall mean a member of the Association.

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

1.12. “Person” shall mean an individual, corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.

1.13. “Plat” or “Map” shall mean a subdivision plat of any portion of the Property recorded in the Ashe County Registry, including that certain plat recorded in Plat Book 5, Page 566 of the Ashe County Public Registry.

1.14. “Property” shall mean and refer to that certain real property shown on the Plat(s) of Heritage Estates recorded in the Ashe County Registry.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.01. Submission to the Act. In accordance with N.C.G.S. § 47F-1-102(d), the Association hereby makes the provisions of the North Carolina Planned Community Act, codified in Chapter 47F of the North Carolina General Statutes, applicable to Heritage Estates. To the extent not inconsistent with the provisions of the North Carolina Planned Community Act, the Declaration, Bylaws and Articles form the basis for the legal authority for the Association to act as provided therein, and the Declaration, Bylaws and Articles are enforceable by their terms. All provisions of the Declaration and Bylaws are severable. In the event of a conflict between the provisions of the Declaration and Bylaws, the Declaration prevails except to the extent such Declaration is inconsistent with the North Carolina Planned Community Act.

2.02. Property Subject to this Declaration. All of the Property shall be held, transferred, sold, conveyed, occupied, and used subject to all of the covenants, conditions, and restrictions set forth herein. All Owners, their successors, heirs, and assigns, and all others who take an interest in a Lot do promise, covenant and undertake to comply with each provision of this Declaration, which provisions:

(a) shall be considered incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(b) shall, by virtue of acceptance of any right, title or interest in any Lot by an Owner, or the Association (i) be deemed accepted, ratified, adopted and declared as a personal covenant of the Owner, his or her successors and assigns, and (ii) be deemed a personal covenant to, with and for the benefit of the Association and any other Owner, their respective successors and assigns;

(c) shall by virtue of acceptance of any right, title or interest in any Lot by an Owner, be deemed a real covenant by the Association, its successors and assigns, and also an equitable servitude, running in each case, as both burdens and benefits with and upon the title to each Lot within Heritage Estates; and

(d) shall be deemed a real covenant and also as an equitable servitude for the benefit of any Lot now or hereafter owned by the Association and for the benefit of any and all other Lots.

ARTICLE III COMMON ELEMENTS

3.01. Community Use. The Common Elements conveyed to and owned by the Association shall be deemed property and facilities for the use and enjoyment, in common, of each Owner. No portion of any Common Elements may be used exclusively by any Owner for a personal garden, storage facility, or other private use without the prior written approval of the Association. No Owner may place any signs, beyond those identifying the property, **or a standard sized real estate sign**, in the Common Elements or within the right of way of any street in the Property.

3.02. Owners' Easements of Enjoyment. Each Owner shall have a non-exclusive right and easement to use and enjoy the Common Elements. This right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of the Management Documents, including but not limited to the following:

(a) The right of the Association to adopt Rules and Regulations governing the use and enjoyment of the Common Elements;

(b) The right of the Association to suspend the right of an Owner to use any Common Elements facilities for any violation of the Management Documents or for any period during which any assessment, fine, or other charge due to the Association remains unpaid;

(c) The right of the Association to dedicate, transfer, sell, convey, or encumber all or any part of the Common Elements and to grant easements, leases, licenses, and concessions upon, over, under, and across the Common Elements; and

(d) All other rights and easements of the Association set forth in the Management Documents and the Act.

3.03. Delegation of Use. Any Owner may delegate, subject to the provisions of the Management Documents, their rights of enjoyment of the Common Elements to the members of their family and to their guests, tenants, and contract purchasers who reside on the property.

3.04. Maintenance of the Common Elements. The Association shall be responsible for the operation, maintenance, and repair of the Common Elements.

3.05. Conveyance or Encumbrance of Common Elements. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. This paragraph shall not preclude the Board from granting easements, leases,

licenses, and concessions through and over the Common Elements without the assent of the membership as provided by the Act.

3.06. Rules and Regulations. The Association shall have the right to adopt, publish, and enforce reasonable Rules and Regulations governing the Property, the use and enjoyment of the Common Elements, and the personal conduct thereon of the Owners, their guests, invitees, tenants, and members of their families or households.

ARTICLE IV THE ASSOCIATION

4.01. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair, and replacement of the Property. Subject to the provisions of this Declaration and unless expressly prohibited herein, the Association shall have all of the rights, powers, and authority allowed or allowable to it under the Act. The Association shall be governed by a Board of Directors which can act in all instances on behalf of the Association unless the Management Documents or the Act specifically provide otherwise.

4.02. Membership. All Owners shall be Members of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

4.03. Voting. Each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves.

ARTICLE V COVENANTS FOR ASSESSMENTS

5.01. Covenant to Pay Assessments; Lien. Every Owner of a Lot shall be obligated to pay to the Association such annual and special assessments as may be levied by the Association pursuant to the provisions of this Declaration. Any such assessment levied against a Lot remaining unpaid for a period of thirty days or longer shall constitute a lien upon that Lot when the Association files a claim of lien in the office of the Clerk of Superior Court of Ashe County. The lien provided for herein, upon filing, shall be prior to all other liens and encumbrances on a Lot except (a) liens and encumbrances (specifically including without limitation any mortgage on the Lot) recorded before the docketing of the claim of lien and (b) liens for real estate taxes and other governmental assessments and charges against the Lot. The lien may be enforced by foreclosure pursuant to Section 47-3-116 of the Act or in any other manner allowed by law.

5.02. Personal Obligation. Each annual or special assessment, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the owner of the Lot at the time such assessment was levied. If more than one Person held an ownership interest in the Lot at such time, the personal obligation to pay such assessment shall be both joint and several. The personal obligation for delinquent assessments shall pass to such

Owner's heirs and personal representative, but shall not pass to such Owner's assigns unless expressly assumed by them. Such assumption shall not relieve an Owner of his or her obligation. No Owner may exempt himself from payment of assessments by waiver of use or by non-use of the Common Elements or by abandonment or leasing of his or her Lot.

5.03. Purpose of Assessments. The assessments levied by the Association shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities under the Management Documents and the Act and for all other purposes allowed or allowable to the Association under the Management Documents and the Act, including, but not limited to, the maintenance, repair and reconstruction of streets, sidewalks and parking areas, if any, situated on the Common Elements, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements, and any other major expense for which the Association is responsible, and such other needs as may arise. Specifically excluded are maintenance and repair or items caused by the willful neglect of the Lot Owner. These expenses should be borne by the Lot Owner.

5.04. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and those other portions of the Property which the Association may be obligated to maintain.

5.05. Regular Annual Assessments. Regular annual assessments shall be determined on a calendar year basis for the period from January 1 through December 31 of each year. The initial annual assessment shall be \$425 per Lot, ~~payable in equal monthly installments.~~ Annual assessments are to be ~~set according to statute § 47F-3-103(c), to wit:~~ **Within 30 days after adoption of any proposed budget for the planned community, the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board.** ~~The annual assessment may be increased each year without a vote of membership by up to twenty percent (20%) of the previous year's total annual assessment upon a majority vote of the Executive Board of the Association. The annual assessment may be increased by more than twenty percent (20%) of the previous year's total annual assessment by a majority vote of Members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The Executive Board may fix~~

~~the annual assessment at an amount not in excess of the maximum assessment approved under this Section.~~

~~For each calendar year the Board shall adopt a budget and fix the amount and due date of the regular annual assessment on a yearly basis at least sixty (60) days in advance of each assessment year. Within thirty (30) days after the adoption of the budget the Board shall provide to all of the Members a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Members to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than thirty (30) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting it is rejected by at least a majority of all of the Lot Owners in the Association. In the event the proposed budget and assessment is rejected, the budget and assessment for the previous year shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable quarterly on the first day of each quarter or at such other time as the Board may fix. The Association shall, upon demand and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Lot have been paid and, if not, the amount due.~~

5.06. Special Assessments. In addition to the annual assessment authorized above, the Board may levy a special assessment against all Lots from time to time to cover **unforeseen or legally mandated expenses** ~~or expenses in excess of those budgeted, including, without limitation, the costs of any repair, replacement or repaving of capital improvements, including roads.~~ Such special assessment shall be approved at a meeting of the Board and shall become effective upon approval by the Board; provided that any special assessment levied ~~to fund the acquisition or construction of additional capital improvements~~ may not be levied without the approval of at least fifty-one percent (51%) of all votes of the Association. Any special assessment levied by the Board pursuant to the provisions of this Section 5.06 shall be levied equally at a uniform rate among all Lots and shall be payable at such times and such installments as the Board shall determine.

5.07. Assessment as Remedy. After notice and opportunity for hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs and reasonable attorneys' fees incurred in bringing the Owner or his or her Lot into compliance with the provisions of the Management Documents.

5.08. Suspension of Privileges. The Association, after notice and opportunity for hearing, may suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty days or longer.

5.09. Allocation of Assessments. Except as otherwise provided in this Declaration or the Act, all regular and special assessments shall be levied equally against all Lots.

5.10. Delinquent Assessments. Any assessment not paid within thirty days after the due date shall be delinquent. The Board may impose reasonable charges for late payment of assessments and other sums due and payable to the Association, including without limitation interest, late charges, collection costs, and reasonable attorneys' fees. All such late payment charges, along with all other fees, fines, charges, and sums of any kind due and payable to the Association, shall constitute assessments secured by the lien and shall be enforceable as assessments under this Article 5. Any interest charged by the Association for late payment of assessments shall be at the rate of ten percent (10%) per year and shall accrue from the due date until paid.

5.11. Subordination of the Lien to Mortgages. The lien for assessments provided for herein, prior to its docketing in the Office of the Clerk of Superior Court of Ashe County, shall be a continuing charge and lien upon the Lot, but shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

5.12. Voluntary Conveyance; Estoppels. Except as provided in Section 5.11, the lien for assessments provided for herein, prior to its docketing in the office of the Clerk of Superior Court of Ashe County, shall not be affected by any conveyance of a Lot and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed after being docketed in the Office of the Clerk of Superior Court of Ashe County, as provided in Section 5.01. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board setting forth the amount of the unpaid assessments against the Lot, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to, a lien for any unpaid assessments in excess of the amount set forth in that statement.

ARTICLE VI ARCHITECTURAL CONTROL

6.01. Architectural Review Committee. The Board of Directors shall appoint an Architectural Review Committee consisting of not less than three members.

6.02. Approval of Plans. No building, fence, wall, awning, structure, improvement or landscaping on any Lot shall be commenced, erected, constructed, placed, replaced, demolished, or altered on a Lot until the plans and specifications showing the nature, kind, shape, height, materials, color, exterior finish, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, existing easements, boundary setbacks, and topography by the Architectural Review Committee. If the Architectural Review Committee fails to approve or disapprove an application within thirty (30) days following its receipt, further approval will not be required and this Article

will be deemed to have been fully complied with. The Architectural Review Committee or the Board of Directors shall be entitled to stop any construction in violation of these instructions.

6.03. Road impact Fee. A non-refundable one-time road impact fee of \$500 shall be assessed for each home construction approved after the adoption of these covenants. Liability for any observable road damages resulting from home construction shall be in excess of the road impact fee.

ARTICLE VII USE RESTRICTIONS

7.01. Residential Use. No portion of the Property shall be used for other than residential purposes and for purposes incidental thereto. **With the exception of Lot 31, all Lots shall be known and described as residential lots, and no part of said Lots shall be used for any commercial, business, or professional purpose. Notwithstanding the foregoing, the leasing or rental of homes, including short-term vacation rentals, shall be deemed a residential use and not a business or commercial activity, provided such use complies with all applicable laws. Likewise, however,** nothing set forth in this Section 7.01 shall prohibit the Owner of any home from using a portion of the home as an office, provided that such use does not create regular customer or client traffic to and from such home and no sign, logo, symbol, or nameplate identifying such business is displayed anywhere on such Lot. It shall be within the discretion of the Board to determine, on a case-by-case basis, which home occupation or business-related activities will be compatible with the residential nature of the Property.

7.02. Subdivision and Combination. No Lot shall be further subdivided, and no lot shall be used to provide access to property located outside of Heritage Estates. **Lots may be combined with the county as seen fit by their owner, with the understanding that the Association vote and assessment obligations of each of the contributing lots remains intact.**

7.03. Building Restrictions.

(a) No single-wide, double-wide or other mobile homes or house trailers, or other HUD-labeled units listed as manufactured mobile homes or house trailers, shall be permitted on any Lot; provided, however, that nothing herein shall prevent modular homes which have been constructed off frame, with roof pitches 6/12 or greater, and are placed and assembled under a building permit, if it otherwise fully complies with all restrictions in this Section.

(b) Any dwelling erected on a Lot shall contain a minimum of 1,000 heated square feet, exclusive of areas in attached or detached garages, carports, storage areas, attics, and unheated porches of any type.

(c) No cinder block or concrete block of any kind may be exposed on any improvement constructed on a Lot.

(d) All improvements constructed on a Lot shall be constructed in compliance with all applicable federal, state and local laws, rules, regulations, codes, ordinances of any state, federal or local government or agency having jurisdiction over the Lot.

(e) All outbuildings shall be approved by the Architectural Review Committee.

(f) No building may be constructed on any Lot which is closer than twenty (20) feet from the street right of way or closer than ten (10) feet from the property line of any other adjoining Lot; provided, however, that these set-back provisions shall not apply to Lot Nos. 17, 38, 39, 52 and 53.

(g) All construction, landscaping or other work which has been commenced on any Lot or Tract must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot or Tract, except during such reasonable time period as is necessary for completion. All construction must be completed within 18 months after the date upon which it commenced, unless a specified period of extension longer time is approved by the Architectural Control Committee and the Board of Directors.

7.05. Prohibited Activity. No noxious, offensive, or unlawful activity shall be conducted on any Lot or on any other part of the Property, nor shall anything be done thereon that may be or become an unreasonable annoyance, inconvenience, or nuisance to the residents of the Property or that unreasonably interferes with their quiet enjoyment of the Property. No go-carts or off-road dirt bikes may be operated on the Common Areas, including the roads of the community.

7.06. Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property or cause or allow any disturbance, including but not limited to playing any musical instruments, radio, stereo, or television in a manner that unreasonably disturbs any other Owner.

7.07. Signs. The Association shall not regulate or prohibit the use of one sign on a Lot of customary and reasonable dimensions advertising the Lot for sale or rent or the use of indoor or outdoor display of a political sign on a Lot of a size no greater than 24 inches by 24 inches earlier than forty-five (45) days before the day of the election and later than seven (7) days after an election day. For purposes of this Section, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

7.08. Pets. No animals shall be raised, bred, or kept on any Lot except dogs, cats, or other household pets kept for the personal enjoyment of the occupants. Livestock may not be kept on any Lot, and no animals shall be kept for commercial breeding purposes, including but not limited to puppy mills or other high-volume breeding operations. No savage or dangerous pets may be kept on the Property, and no pet shall be allowed if such pet constitutes an unreasonable annoyance, inconvenience, or nuisance to any other Owner. If the Board receives

any complaint that an animal constitutes such an unreasonable nuisance, the Board shall afford the Owner of such animal notice and opportunity for hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience, or nuisance, the Board may require that such animal be removed from the Property.

No pet shall be permitted upon the Common Elements unless it can be easily and immediately carried or leashed by a person that can control the pet. Each Owner shall clean up immediately after his or her pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each owner shall hold the Association harmless from any claim resulting from any action of his or her pet and shall repair at his or her expense any damage to the Common Elements caused by his or her pet. If any owner violates these rules more than twice in any twelve-month period, then in addition to any fines provided in the Declaration, the Board shall have the right to require the owner to remove the pet from the Common Area after notice and opportunity for hearing.

The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration. The Board may also adopt a rule prohibiting certain pets which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience, or nuisance be removed as provided hereinabove.

7.09. Trash and Vegetation. No trash, rubbish, garbage, or other waste material shall be kept or permitted upon any Lot except temporarily in sanitary containers located in an appropriate area screened and concealed from view.

No unlicensed motor vehicles, including cars, buses, tractors, trailers, and all parts thereof, that are not in normal running condition and in occasional use shall be kept on any of the within described real property except within an enclosed structure; it being specifically understood that this covenant is to prohibit and forbid the keeping of any wrecked motor vehicles not in normal public use and operation and any other like parts or the debris upon the within described property, except for occasional necessary repairs in buildings. No parking shall be allowed on the streets. Each lot shall have its own parking area driveways on the lot once owners have taken occupancy of the home.

Any unsightly equipment and material, including garden and maintenance machinery and equipment, garbage cans and sanitary containers, lumber and construction materials and any other like equipment and materials shall be kept at all times, except when in use, out of sight from the community's streets. Grass must be kept mowed and yards maintained at all times.

7.10. Parking. No vehicles may be parked within any right of way outside of a driveway or in the yard of any Lot. No motor home shall be used on the subject premises as a residence except during a period of time when the owner of the same has a residence under construction on the subject premises.

**ARTICLE VIII
MAINTENANCE OF THE PROPERTY**

8.01. Maintenance by Association. The Association shall be responsible for the operation, maintenance, and repair of the Common Elements.

8.02. Maintenance by Owners. Except for the maintenance required of the Association under Section 8.01, each Owner shall be responsible for keeping his or her Lot and all improvements thereon in a clean and sanitary condition and in good order and repair, which shall include, but shall not be limited to, prompt removal of all litter, trash, refuse and waste, keeping land, including lawns and shrub beds, well maintained and free of trash, uncut grass and weeds, keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; complying with all governmental health and safety requirements; mowing lawn on a regular basis, pruning trees and shrubs, removing and replacing any dead plant material, repainting improvements, and repair of damage and deterioration to improvements.

If an Owner fails to maintain his or her Lot and the improvements thereon in accordance with this Section 8.02 in a manner reasonably satisfactory to the Board, the Board shall give written notice to such Owner, and if the necessary maintenance is not completed within ninety (90) days thereafter, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and repair, maintain, and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance, or restoration shall be added to and become part of the assessment to which such Lot is subject.

**ARTICLE IX
INSURANCE**

9.01. Insurance. The Association shall maintain, to the extent reasonably available:

(i) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(ii) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

(a) If the insurance described in Section 9.01(a) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(b) Any loss covered by the property policy under Section 9.01(a)(i) shall be adjusted with the Association pursuant to N.C.G.S. § 47F-3-113(d).

(c) All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

(d) The Association shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his or her family, guest or invitees, located on or used at the Common Elements. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

ARTICLE X COMPLIANCE WITH MANAGEMENT DOCUMENTS

10.01. Management Documents. The administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations, herein referred to as the "Management Documents," and if there are any conflicts or inconsistencies in such documents, then the provisions of this Declaration shall control. In the event that anything shown on any Plat of the Property is inconsistent with the provisions of this Declaration, then the provisions of this Declaration shall prevail. Should any of the provisions of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control.

10.02. Compliance with Management Documents. Each Owner, resident, or tenant of a Lot shall comply with the provisions of the Management Documents. The failure of any Owner to comply with any such provisions shall entitle the Association or any other Owner to maintain an action for the recovery of damages or for injunctive relief or both, and such persons or entities shall have the right to enforce all of the restrictions set forth in the Management Documents. Failure to enforce the provisions of the Management Documents shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under the law.

If any structure is built on the Property in violation of this Declaration, the Association or its designated agents may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Property) enter upon the Lot where such violation exists and abate or remove the same at the expense of the Owner; provided, however, that the Association shall then, after appropriate notice, make whatever repairs are necessary at the expense of the Owner, make repairs to ensure that the

property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal, or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall be the personal obligation of the Owner and shall be added to and become a part of the assessment to which such Lot is subject. Notwithstanding the foregoing, the Association shall not have the right to exercise the foregoing powers without an order from a court of competent jurisdiction if the abatement sought by the Association involves the alteration or demolition of any improvements within the Property.

There shall be a conclusive presumption that any violation or breach, or any attempted violation or breach, of any of the covenants or restrictions set forth in this Declaration cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

10.03. Fines and Suspension of Privileges. The Association, after notice and opportunity for hearing, may impose reasonable fines or suspend membership and voting rights (except rights of access to Lots) for reasonable periods for violation of the Management Documents. Any fine may be imposed, in an amount not to exceed that permitted by the Act, for each day after its imposition that the violation continues. Such fines shall be assessments secured by the lien under Article 5 hereinabove. If a suspension of membership rights and privileges is imposed, the suspension shall be continued until the violation or delinquency is cured.

ARTICLE XI EASEMENTS

11.01 Easements. All of the Property, including Lots and Common Elements, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities established by the developer or by his or her predecessors in title, prior to the subjecting of the Property to the Declaration. The Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property.

A five (5) foot utility easement is hereby reserved on all sides of each lot. It is specifically understood and agreed that, upon lots being combined, this utility easement on the common boundary of the combined tract shall be automatically extinguished.

ARTICLE XII GENERAL PROVISIONS

12.01. Indemnification of Officers and Directors. The Association shall indemnify all persons who serve at any time as officers or directors of the Association against all costs incurred by them in connection with the defense or settlement of any claim, action, suit, or proceeding in which they are made parties or which may be asserted against them by reason of

having been an officer or director of the Association, except in relation to matters in any such proceeding as to which any such officer or director shall be found guilty of willful and intentional negligence or misconduct. In the event of a settlement this indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

12.02. Amendments and Termination. Except as is otherwise specifically authorized herein, this Declaration may be amended only upon the affirmative vote or written agreement signed by Owners to which at least sixty-seven percent (67%) of the votes of the Association are allocated. Any amendment to this Declaration shall not be effective until an instrument evidencing the same shall be recorded in the Ashe County Registry.

12.03. Interpretation of Declaration. Whenever appropriate, the singular may be read as plural, the plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender.

12.04. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

12.05. Headings. The headings used in this Declaration are for convenience and reference only, and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

12.06. Notices. Notices shall be in writing and shall be addressed as follows: (a) if to an Owner, to the Owner's address last appearing in the books of the Association; and (b) if to the Association, to the mailing address of the Association, as set by the directors. The Association may designate a different address for notices by giving written notice of such change of address to all Owners. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association.

12.07. Covenants Running with the Land. All of the provisions of this Declaration shall be construed as covenants running with the land and shall be binding upon and inure to the benefit of all parties having any right, title, and interest in the Property or any part thereof and their heirs, successors, and assigns.

**THIS SPACE WAS INTENTIONALLY LEFT BLANK.
SIGNATURE AND ACKNOWLEDGMENT APPEAR ON THE FOLLOWING PAGE.**

IN WITNESS WHEREOF, the undersigned officers of Heritage Estates Property Owners Association hereby certify that the above Amended and Restated Declaration is duly adopted in accordance with and pursuant to the Declaration and the Act by the Association and its Members by an instrument signed by Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION,
a North Carolina nonprofit corporation

(Seal)

By:

Its:

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of said County and State, certify that _____ personally came before me this day and acknowledged that he is the President of Heritage Estates Property Owners Association, a North Carolina nonprofit corporation, and that by authority duly given and as the act of the company, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and notarial stamp or seal, this _____ day of _____, 2025.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

IN WITNESS WHEREOF, the undersigned, constituting the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the association are allocated hereby sign and adopt this Amended and Restated Declaration of Covenants and Restrictions for Heritage Estates Property Owners Association.

Owner's Signature

Date: _____

Owner's Printed Name

Date: _____

Owner's Signature

Owner's Printed Name

Address & Lot Number:

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of said County and State, certify that _____ personally came before me this day and executed the foregoing instrument.

Witness my hand and notarial stamp or seal, this _____ day of _____, 2025.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.