



Janet Johnson-Esarey <jjohnsonesarey@gmail.com>

Fwd: Heritage Estates - Amended & Restated Declaration

1 message

Heritage Estates POA <hepoa.nc@gmail.com>

Thu, Dec 18, 2025 at 4:55 PM

To: Emily McNeely <emily1135@yahoo.com>, Janet Johnson <jjohnsonesarey@gmail.com>, Jimmy Copeland <jimmyandjacki@skybest.com>, Joe Millner <joemillner@icloud.com>, Paula Shepherd <mpclshep@verizon.net>, Mitzie McCurdy <mitziem@yahoo.com>, Grayson4335@comcast.net, John Sheldon <scvsheldjk@aol.com>, Duane Esarey <desarey55@gmail.com>

HEPOA Directors and Covenants Committee.

Friends,

Legal counsel responded with the outline below to a red-line version of the covenants that illustrated all changes since their August 15 product.

This kind of pin-point approach should speed us towards the last changes we need to make.

Any changes that we made that are not flagged below can be assumed to be just as we left them. I have interspersed an initial response to each point Timothy Swanson brings up (**in red**).

I'm providing this to everyone, but do not assume that most of us will have alternate opinions or need to meet with the lawyer to finalize the language, since we are paying him to steer us clear of possible problems. I will compile any point by point responses from each of you that desires to add alternate response to the comments in red below. Likewise, any of you that want to join the meeting with legal counsel to finalize these responses should let me know some available times.

Please have any additional or alternate comments to me by the end of Monday.

Duane

----- Forwarded message -----

From: **Timothy D Swanson** <TimothyS@hickorylaw.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? **We not guarantee that right. We do tolerate small signs on the common area at the highway and in the ROW at the 4-way intersection to point towards lots/houses for sale. At about 6 months these tend to disappear even if the property has not sold.**
-
- Section 4.01 – The term “property” is broader than “common elements.” I would include both if you want to add the additional language. **YES, thank you.**
-
- Section 5.04 – Does the HOA want to commit to all reserves being based on an actual “reserve study.” **NO, not in the formal sense wherein we cannot have expenses that must be "justified" some way other than the Board has approved them in a budget. We would like to somehow require future Boards continue to use reserve studies. Is there a middle ground?**
-

- Section 5.05 – Revise “to whit” to read “to wit.” YES
-
- 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....” YES, needs clarified. We are wrestling with trying to write around the assessments that we might need to assess if an owner's neglect causes us to have work done and then assess them for it. Then trying to be clear that all shared costs are levied equally. The tail is wagging the dog a little bit so it needs clarified.
-
- 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. Good advice, at least soften this language so as to not invite legal challenges. Perhaps it can be written in a positive expression that special assessments are intended for unpredictable or unplanned expenses.
-
- Section 5.06 – Subsections (a) and (b) seem inconsistent. Perhaps B could be "In accordance with any other special assessment authorized in this Declaration; The problem may be that assessments being described as for individual owners who incur board action to mediate a situation are being thought of as "special" assessments. It may be that they are simply "a regular assessment limited to specific owner(s)."
-
- Section 5.07 – The term “Declaration” is included in the definition of the term “Management Documents.” OK
-
- 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. We are uncomfortable with empowering the ARC, but perhaps we are not wedded to prior reporting.
-
- 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. This should be put into separate sentences so there is no ambiguity. Our ARC check list details mostly things beyond aesthetics (checking easements, setbacks, not diverting run-off, etc.
-
- Section 6.02 – Remove “,” before “for major construction projects.” OK
-
- Section 6.02 – Do all existing homes meet the heated SF requirement? Yes, absolutely. It has been a bedrock principle so far.
-
- "Section 7.01 – This has already been established by the court. Yes, we are aware of that. But multiple members expressed pointed concern that the "exclusively residential use" implied short term rentals were being discouraged or ruled out. They wanted literal language, we wanted both clarity and their support.
-
- 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.” OK, if that is not OK maybe change to "Any lots combined with the county shall retain both their covenanted voting rights and their covenanted assessment obligations." We need this to be very clear.
-
- 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. OK
-
- Section 7.08 – I’m not sure that “discharge” is the correct term here. "waste or solid waste" will do. No one will be forced to clean up animal urine.
-
- Section 8.02 – I assume the HOA is trying to parallel G.S. 47F-3-107. These are treated as “assessments,” not “special assessments.” Yes, good. Correct as needed.
-
- 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. **Let's do so.**

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

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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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