

Heritage Estates Covenants

Summary of Committee Changes to the Amended & Restated Declaration

An incorrect version of the proposed Amended and Restated Declaration was recently circulated to members for ratification. That was an error; it was not the version the committee had been working toward. The attorney has since provided a corrected draft (version 301070.7) that includes most of the changes the committee requested, and the committee then reviewed it and proposed the additional changes shown below. Please see the accompanying cover letter for more about the mix-up.

Each change is numbered. “Before” is the language in the attorney’s current draft and “After” is the Committee’s proposed language, with the changed words highlighted in yellow. The shaded box under each change explains why it was made.

1. Preamble / Recitals

Before

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.

After

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS AND RESTRICTIONS FOR HERITAGE ESTATES is made and entered into this ___ day of _____, **2026**, by Heritage Estates Property Owners Association, a North Carolina nonprofit corporation, having a mailing address of **302 River Sound**, 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.

Reason: Corrects the date (2025 to 2026) and updates the Association’s mailing address.

2. Article III – Common Elements (Community Use)

Before

Except for **signed** identifying the property, or standard sized real estate signs, no sign or other display shall be placed within the Common Elements or within any street right-of-way within the Property without the prior written approval of the Board...

After

Except for signs identifying the property, or standard sized real estate signs, no sign or other display shall be placed within the Common Elements or within any street right-of-way within the Property without the prior written approval of the Board...

Reason: Corrects a typo: "signed" should read "signs."

3. Section 5.05 – Regular Annual Assessments

Before

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. 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 ten percent (10%) 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 ten percent (2010%) 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. 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.

After

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. 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. The budget is ratified unless at that meeting a majority of all the Lot Owners in the Association 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 proposed budget may not be sent to be ratified if increased by more than 10% of the previous year's total annual assessment without a vote of membership 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. 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.

Reason: Mostly clarifications, plus a clearer owner protection. The quorum sentence simply restates current state law, so it is not needed here; leaving it out means the Association follows the law as it stands rather than being locked into today's stricter version if it later eases. "Or any larger vote" was unnecessary.

On the 10% increase, here is how budget approval works. Under current state law, the Board presents a proposed budget and members vote on it at a meeting, in person or by proxy, with no quorum required. The budget is automatically ratified unless a majority of all possible votes are cast against it, which is a high bar, because members who do not vote effectively count toward approval. To give owners more protection, the committee added a step: any proposed budget with an increase above 10% must first be voted on as to whether it may even be sent out for ratification. At that stage only a majority of those actually voting is needed to stop it; if they vote no, the budget cannot go out for ratification and the Board must prepare a new one. The wording was also changed to state what cannot be done rather than what can, because some members had read the old version as granting the Board power when it is meant to protect owners.

4. Section 5.06 – Special Assessments (rewritten)

Before

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 unbudgeted 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 the votes of Owners of Lots voting in person or by proxy at a meeting duly called for this purpose. 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.

After

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. Such special assessments shall be subject to the following limitations:

(a) In any amount, when required by court order, settlement, or governmental authority.

(b) In an amount up to fifty percent (50%) of the current annual assessment per Lot, for unforeseen emergency expenses necessary for health, safety, or access, such as cleanup of storm damage or emergency repairs to shared infrastructure that is the responsibility of the Association under this Declaration; or for unforeseen shortfall of planned reserves for capital maintenance and repairs. Such special assessments shall be approved at a meeting of the Board and shall become effective upon approval by the Board. A special assessment for natural disaster cleanup or maintenance shortfall exceeding fifty percent (50%) of the current annual assessment per Lot requires prior approval by a majority vote of all Lot Owners voting in person or by proxy, at a meeting duly called for that purpose with not less than thirty (30) days' written notice.

(c) In an amount not to exceed the documented cost overrun, for planned capital expenses, such as road repaving or major infrastructure maintenance, that were included in the reserve budget based on professional estimates but exceeded those estimates due to unforeseeable cost increases, including inflation or tariffs; provided that such expenses shall have been included in an adopted reserve budget with regular contributions maintained accordingly. Special assessments under this subsection may not substitute for reserve budgeting and funding of predictable capital expenses.

All special assessments shall be levied equally at a uniform rate among all Lots and shall be payable at such times and in such installments as the Board determines.

Reason: Ensures future Boards budget responsibly for maintenance, especially roads, and fund reserves from professional estimates, rather than leaning on large, unplanned special assessments. Since 2022, the Association has a road maintenance estimate and depreciation figures. Special assessments may not replace proper budgeting, though a small one may cover shortfalls such as

inflation. For emergencies like storms, the Board may levy up to 50% of the annual assessment (currently, about \$212 per lot) without a vote; that is an amount many members covered willingly after Helene, contributing from \$250 to \$1,500, and anything larger requires a member vote. Court-ordered amounts must always be paid.

5. Section 5.07 – Assessment as Remedy

Before

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.

After

5.07. Assessment as Remedy. After notice and opportunity for hearing, the Board, without the vote or written consent of Members, may levy a 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

Reason: The attorney advised that the correct legal term here is “assessment,” not “special assessment.”

6. Section 5.09 – Allocation of Assessments

Before

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.**

After

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 comprising the Association as of the date of its incorporation.**

Reason: Bases assessments on the lots as they existed when the Association was incorporated. Before the HOA was formed, the developer had already extinguished assessments on two lots by linking their deeds.

7. Section 6.02 – Approval of Plans

Before

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. Any Owner aggrieved by a decision of the Architectural Review Committee may appeal such decision to the Board of Directors by written notice delivered to the Board within thirty (30) days of the ARC's decision, and the decision of the Board shall be final.

After

6.02. Approval of Plans. No permanent improvements 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. Any Owner aggrieved by a decision of the Architectural Review Committee may appeal such decision to the Board of Directors by written notice delivered to the Board within thirty (30) days of the ARC's decision, and the decision of the Board shall be final.

Reason: Limits architectural review to permanent improvements; the Association does not want to police minor, non-permanent changes.

8. Section 7.01 – Residential Use

Before

7.01. Residential Use. No portion of the Property shall be used for other than single-family residential purposes and for purposes incidental thereto. 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, 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. Notwithstanding anything hereinto to the contrary, this provision shall not limit or restrict short-term rentals.

After

7.01. Residential Use. No portion of the Property shall be used for other than single-family residential purposes and for purposes incidental thereto. 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, 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. Notwithstanding anything hereinto to the contrary, this provision shall not limit or restrict **long or** short-term rentals.

Reason: Adds clarity on rentals. The attorney confirmed that “residential” legally includes long-term rentals, but some members worried the short-term-rental provision might bar long-term rentals. This makes clear both are allowed.

9. Section 7.03 – Building Restrictions (restructured a–f)

Before

7.03. Building Restrictions. 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. Any dwelling erected on a Lot shall contain a minimum of 1,000 heated square feet, exclusive of areas in garages, carports, storage areas, attics, and unheated porches of any type. No improvements, including without limitation, site preparation on any Lot, or erection of buildings or exterior additions or alternations to any building situated upon a Lot, erection of or changes or additions in fencing, walls or other structures upon a Lot, **or any cutting of trees on any Lot,** shall be commenced, erected or maintained on any Lot until the Architectural Review Control Committee has received the plans and specifications therefor and has given its written approval for commencement of

construction. No cinder block or concrete block **of any kind** may be exposed on any improvement constructed on a Lot. 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. 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 53, 54 and 55.

After

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) Grandfathered Nonconforming Lots. Notwithstanding any other provision of this Article VII, any Lot that, as of the date of incorporation of the Heritage Estates Property Owners Association, contained a non-compliant improvement constructed or allowed by the Developer shall be deemed a Grandfathered Nonconforming Lot for so long as such improvement remains on the Lot. The Owner of a Grandfathered Nonconforming Lot shall not be required to remove the improvement or construct a residential dwelling as a condition of compliance with Sections 7.01, 7.03, or any other provision of this Declaration. If the non-compliant improvement is removed or demolished, the grandfathered status shall terminate, and the Lot shall thereafter be subject to all requirements of this Declaration. This grandfathered status runs with the land.

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

(d) No **permanent** improvements, including without limitation, site preparation on any Lot, or erection of buildings or exterior additions or alternations to any building situated upon a Lot, erection of or changes or additions in fencing, walls or other structures upon a Lot, shall be commenced, erected or maintained on any Lot until the Architectural Review Control Committee has received the plans and specifications therefor and has given its written approval for commencement of construction. No cinder block or concrete block **beyond the footings**, may be exposed on any improvement constructed on a Lot.

(e) 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.

(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 street right of way set-back provisions shall not apply to Lot Nos. 17, 38, 39, 52 53, 54 and 55.

Reason: Several use-restriction updates: removes the restriction on cutting trees; grandfathers lots with non-compliant improvements the developer made before the HOA was formed, which have been owned that way for nearly twenty years, so current owners are not forced to change them; allows temporary improvements and existing concrete-block footings (the intent is only to prohibit exposed concrete-block buildings); and keeps the setback provisions for certain lots.

10. Section 7.04 – Construction

Before

All construction, landscaping or other work which has been commenced on any Lot or Tract must be continued with reasonable diligence to completion...

After

All construction which has been commenced on any Lot or Tract, must be continued with reasonable diligence to completion...

Reason: Removes “landscaping or other work”; the Association does not intend to regulate landscaping.

11. Section 7.07 – Signs

Before

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, 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, but not limited to, supporting or opposing an issue on the election ballot.

After

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, 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 within forty-five (45) days before the day of the election and 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, but not limited to, supporting or opposing an issue on the election ballot.

Reason: Reworded for clarity; the original political-sign language was confusing.

12. Section 7.10 – Parking and Temporary Shelters

Before

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 temporary shelter residence (e.g., motor home, trailer, yurt, tent, etc.) shall be used on the subject premises except during a period of time when the owner of the same has a residence under permanent construction on the subject premises. **No parking shall be permitted on the streets within Heritage Estates. After occupancy of a residence, all Owners and occupants shall park vehicles only within designated garages, driveways, or other approved areas located on the Lot.**

After

7.10. **Parking and Temporary Shelters.** **No parking shall be permitted on the streets within Heritage Estates.** No vehicles may be parked within any right of way outside of a driveway or in the yard of any Lot. **After occupancy of a residence, all Owners and occupants shall park vehicles only within designated garages, driveways, or other approved areas located on the Lot.** No temporary shelter **as a** residence (e.g., motor home, trailer, yurt, tent, etc.) shall be used on the subject premises except during a period of time when the owner of the same has a residence under permanent construction on the subject premises.

Reason: Keeps the community's narrow roads clear for safety, access, and snow removal by prohibiting street parking, and limits temporary shelters (motor homes, trailers, tents, etc.) to the period of active construction, after which vehicles must be parked off-street on the lot.

13. Section 11.01 – Easements

Before

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. In the event an Owner combines two (2) or more adjacent Lots into a single parcel as provided hereinabove, the original Lot lines as shown on the recorded

subdivision plat shall nevertheless continue to define separate Lots for all purposes under these Covenants, including, without limitation, assessments, voting rights, maintenance obligations, and application of use restrictions. Notwithstanding the foregoing, upon written request of the Owner, the Association may approve the extinguishment or release of any utility easement located along the former interior Lot line(s) of the combined parcel, provided the Board determines that such easement is not required for the benefit or service of any other Lot, utility provider, or Common Element. Any such extinguishment or release shall be evidenced by a written instrument recorded in the Office of the Register of Deeds. 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

After

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. In the event an Owner combines two (2) or more adjacent Lots into a single parcel as provided hereinabove, the original Lot lines as shown on the recorded subdivision plat shall nevertheless continue to define separate Lots for all purposes under these Covenants, including, without limitation, assessments, voting rights, maintenance obligations, and application of use restrictions. Notwithstanding the foregoing, upon written request of the Owner, the Association may approve the extinguishment or release of any utility easement located along the former interior Lot line(s) of the combined parcel, provided the Board determines that such easement is not required for the benefit or service of any other Lot, utility provider, or Common Element. Any such extinguishment or release shall be evidenced by a written instrument recorded in the Office of the Register of Deeds. Notwithstanding the above, 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.

Reason: Allows access across the shared easement between two properties when a utility running through it needs repair.

14. Section 12.07 – Signature/Notary block

Before

Address & Lot Number:

After

Lot Address **&/or** Lot Number:

Reason: Allows the signature/notary block to use a lot number when a lot has no street address (such as vacant lots).