Explanation of Need for Covenants and Member Feedback From Open Meeting, Mail-out, and Annual Meeting

Dear HEPOA members,

We want to clarify an important legal matter that affects our entire HOA community: **only the original developer covenants are currently valid**. These are the covenants that were established when the development was created. They include a clause that gives the HOA the authority to collect assessments, maintain common areas and roads, and enforce the covenants. They also require that all property owners automatically become members of the HOA.

Over the years, the HOA has attempted to revise these covenants and filed those versions with the Ashe County courthouse. However, **none of those revisions were done through a legally valid process**. Despite being on file, they are not enforceable and could mislead potential buyers or owners into thinking they are. We have received legal advice confirming that these unofficial filings need to be **formally nullified**.

We now have two options:

Option 1: Adopt Legally Valid Updated Covenants

- An HOA attorney has drafted these new, legally valid set of covenants.
- These honor the developer's original intent, eliminate confusing language, remove outdated or vague clauses, and comply with North Carolina law.
- The draft was shared with members for feedback. All suggestions we received were reasonable and have been included. Changes are shown in red in the draft and are explained below.
- To adopt these updated covenants, we need **2/3 of property owners to sign and notarize their acceptance**.
- Once that happens, we will file them with the courthouse, and all previously filed (invalid) versions will be legally replaced by these.

Option 2: Let a Judge Nullify the Invalid Revisions

- If we don't reach the 2/3 approval threshold, we will be forced to go to court to have the invalid filings nullified.
- This will cost an estimated **$10,000 or more**, which would require a **special assessment of $200–$300 per lot**—not currently in our budget.
- If we go this route, the only enforceable covenants will be the **original developer's version**, which are vague, partially obsolete, and contain provisions that only apply to the developer—not the homeowners.

Why This Matters

Right now, our governing documents are unclear. This leaves us open to legal risk, confusion, and disputes. Option 1 allows us to fix this cleanly and affordably. Option 2 is a costly backup plan.

Please review the updated draft covenants. If you have questions, reach out—we're happy to explain any part of this.

Let's work together to put our HOA on solid legal ground.

The changes made to the attorney-drafted version based on member feedback are explained below. Once finalized, a copy of the revised covenants—along with the signature and notarization page—will be sent to each member.

Highlights in yellow are explanations of feedback received before the annual meeting. Highlights in green are from feedback received at the annual meeting.

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.

This was added to make it clear that the vacation rentals can have signs advertising how to rent them.

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 whit: 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~~.

The red text was added directly from North Carolina law. The crossed-out section was written by the attorney, who explained that when members vote to approve the annual budget, they are agreeing to fund the listed items, with costs based on reasonable estimates. If actual prices rise, the Board has the authority to cover the increases—because we're still obligated to maintain services like mowing, street lights, etc.

The removed clause was originally meant to prevent a future Board from choosing unnecessarily expensive options, by placing a cap. However, several members raised concerns that it could be interpreted the opposite way—as giving the Board broad power to raise costs well beyond what inflation would justify. Based on that feedback, we decided to remove it.

John Sheldon shared feedback from his lawyer on this, who like Timothy Swanson, said that if we do not cap the increase, the Board can increase by any amount as long as it is for approved services,

and we need this in here to protect us from that. 20% may be too high. It needs to be high enough to cover inflation, but not unacceptably high.

~~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.

The part in blue crossed out was accidentally in there twice.

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.

We've managed recent natural disasters thanks to member donations and volunteer work. Going forward, we need the ability to cover unexpected costs—like emergencies or legal obligations such as lawsuits.

We're removing wording that implied the Board could make purchases without member approval. Major expenses like repaving are already planned for in the Reserve budget and don't require special assessments. Road maintenance is done in sections, so if a shortfall is expected, it would be included in the regular annual assessment—not handled through a separate charge.

Members were in agreement that special assessments need to be limited to things that must be taken care of for the safety of the members, such as roads blocked by downed trees or other hurricane or storm damage. We also would need to pay any legally mandated expenses. We need to have this worded in a way that gives the Board power to act but not power to levi special assessments for other reasons.

We need wording that:

- Preserves the Board's ability to respond to true emergencies and legal obligations.

- Clarifies that capital projects (like repaving) should be funded through reserves or annual budget.
- Prevents abuse of special assessments for non-essential purposes.
- Aligns with member consensus and legal framing.

Maybe:

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 **only** to cover:
(a) **unforeseen emergency expenses necessary for health, safety, or access**, such as cleanup of storm damage or emergency repairs to shared infrastructure; or
(b) **expenses legally mandated by court order, settlement, or governmental authority**.

Such special assessments must be approved at a meeting of the Board and become effective upon that approval. Special assessments may not be levied for predictable or planned expenses, including but not limited to road repaving or maintenance, which must be included in the annual operating or reserve budgets.

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.

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.

This needs to be changed. We do not want to dictate fences, awnings, landscaping, etc. We thought this was already out but the lawyer must have overlooked these changes.

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.

This was suggested by a member who builds homes in Ashe County and noted that it's standard practice due to the wear and tear heavy trucks cause on the roads.

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.

Lot 31 is the lot with only a garage, originally built by the developer to store tools. It has since been sold twice in that condition, so it needs to be grandfathered as-is.

Short-term rentals have always been allowed in our community, and that cannot be changed. We need to make this clear so potential buyers aren't misled and so existing owners who purchased for that purpose are protected. Misunderstanding this issue could cause problems—for example, if someone tries to restrict short-term rentals, or if someone interprets this to mean they're not allowed. It's important to note that allowing short-term rentals affects the HOA's insurance premiums and may have tax implications. We're not changing the policy—we're simply making it clear and transparent to avoid future confusion.

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.

This clarifies that members may combine adjacent lots through the county, for example, to build a garage on a lot next to their home. Officially combining the lots ensures they can't be sold separately later, which would violate Covenant 7.01.

Another suggestion from John Sheldon's lawyer was that the HOA might want to purchase a lot that is big enough to subdivide part of it for recreational purposes, and the remaining part is big enough to sell for a house. We don't think we have the right to do this but we can check.

(a) 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.

The lawyer just forgot to include lot 17. The developer waived the set-back for these, due to the terrain.

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.

This is just to clarify that rental signs are also okay.
