

HERMITAGE PARK HOMEOWNERS ASSOCIATION, INC.

**NOTICE OF PROPOSED AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR HERMITAGE PARK; AND**

**NOTICE OF MEMBER ACTION BY WRITTEN BALLOT PURSUANT TO N.C. GEN.
STAT. § 55A-7-08**

May 10, 2024

TO: ALL MEMBERS OF HERMITAGE PARK HOMEOWNERS ASSOCIATION, INC.

Dear Hermitage Park Member:

As you may know, the Association has been working for some time to prepare and implement the proposed Second Amendment to Declaration of Covenants, Conditions and Restrictions for Hermitage Park (the “Second Amendment”). Among other purposes, the genesis behind the Second Amendment was to modernize the Declaration recorded in Book 7336, Page 200, Wake County Registry (the “Declaration”). The drafting, and careful consideration, of the Second Amendment by the Board is now complete. A copy of the final draft of the Second Amendment is enclosed with this letter for your review.

Also enclosed with this letter is a ballot for your use in voting on the Second Amendment, pursuant to N.C. Gen. Stat. § 55A-7-08. Please return your ballot per the instructions on the ballot on or before May 28, 2024. Ballots returned after this date, even if postmarked on or prior to this date, cannot be counted. The Association has expended considerable time, money, and effort into the project and proposed Second Amendment, and it is vitally important to have your participation.

This letter will otherwise serve two primary purposes. First, it will outline how the Second Amendment will be approved in accordance with the Association’s Bylaws and Declaration. Second, this letter will summarize the changes to the Declaration being made by the Second Amendment.

First, pursuant to Article XIII, Section 3 of the Declaration, the Second Amendment must be approved by not less than seventy-five percent (75%) of all Lot Owners within the Association. The term “Lot Owner” is defined in Article I, Section 12 of the Declaration as the record owner of a Lot. The Bylaws and the Articles of Incorporation provide each Lot with one (1) vote. Although a Lot may be owned by two (2) or more individuals, those individuals collectively have one (1) vote, and, therefore, only one (1) of them must sign the Second Amendment to be counted in the seventy-five percent (75%) requirement to approve the Second Amendment. Moreover, and

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pursuant to N.C. Gen. Stat. § 47F-2-117 and N.C. Gen. Stat. § 55A-7-08, the affirmative vote required to pass this Second Amendment may be accomplished via this mail-ballot process.

Therefore, there is no requirement for a meeting to be held to consider the Second Amendment. Please return your ballot per the instructions and by the deadline set forth above and on the ballot.

Second, the following will summarize the provisions of the Declaration amended by the Second Amendment:

- The definition of a Limited Common Element in Article I, Section 8 of the Declaration is being amended to broaden inclusion for gas lamps and utility lines, and to ease and shift the burden and responsibility of the same to the affected Lot Owner(s) and away from the Association;
- Article III, Section 1(f) of the Declaration is being expanded to allow the Association to adopt reasonable rules and restrictions regarding the yard space of each Lot;
- Article III, Section 4 of the Declaration is being revised to allow the Association to regulate antennas and to make it consistent with the requirements of Article VIII, Section 19, which is also being amended to make it FCC compliant;
- Article V of the Declaration is being amended to clarify how annual assessments are to be billed and/or invoiced
- Article VII, Section 1 of the Declaration is being amended to clarify responsibility for Lot and Limited Common Element maintenance (which Limited Common Elements now include utility lines and gas lamps, among other things);
- Article VII, Section 3 of the Declaration is being amended to provide for an assessment (cost of maintenance and an administrative fee) attributable to the Lot if the Association has to undertake maintenance of a Lot for a Lot Owner because of the Lot Owner's neglect
- Article VIII, Section 2 of the Declaration is being amended to clarify the use of each dwelling on a Lot, and to limit or otherwise restrict use of the dwelling to use as a short-term rental or other transient or hotel-style use;
- Article VIII, Section 12 of the Declaration is being amended to clarify rights and responsibilities concerning parking and storing of motor vehicles and other items;

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- Article VIII, Section 18 is being deleted entirely since those matters are now addressed in some measure in Article VIII, Section 12; and the amendment to Article VIII, Section 19 has already been addressed in bullet-point No. 3, above;
- Article IX, Section 9 of the Declaration is being amended to provide rights of entry by the Association for maintenance, and to permit the cost of such, and an administrative fee, to be charged against the Lot Owner as an assessment, consistent with the revision to Article VII, Section 3, above; and
- Finally, the Second Amendment adopts, in all respects, the North Carolina Planned Community Act codified at N.C. Gen. Stat. § 47F-1-101, *et. seq.*, which greatly modernizes the Association and, among other things, makes it easier for the Association to carry out and enforce the Declaration and conduct business.

Please be advised that nothing in this letter shall be interpreted or intended to change the actual meaning of any provision of the Second Amendment or the Declaration, which instruments speak for themselves in their entirety. This letter is simply intended to outline a process and summarize provisions of the Second Amendment to help you better understand the process and Second Amendment. If you have any legal questions, you are advised to seek independent legal counsel of your own choosing. Otherwise, your Board Members and Property Manager (Christina Sicoli at RS Fincher) can address any questions you might have.

Sincerely,

Christina Sicoli, Community Manager
RS Fincher

Enclosures

Cc: Board of Directors

After recording, mail to:

Henry W. Jones, Jr.
P.O. Box 10669, Raleigh, NC 27605

This instrument was prepared by:

Jordan, Price, Wall, Gray, Jones & Carlton, PLLC

STATE OF NORTH CAROLINA

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR HERMITAGE PARK**

COUNTY OF WAKE

This SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERMITAGE PARK ("Second Amendment") is made as of this _____ day of _____, 2020, by the Hermitage Park Homeowners Association, Inc. (the "Association"), by the foregoing instrument signed by not less than seventy percent (75%) of the Lot Owners (the "Owners") in the Association.

W I T N E S S E T H:

WHEREAS, on or about February 17, 1997, HMC Development Corp., Incorporated, then as Declarant, caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Hermitage Park in Book 7336, Page 200, Wake County Registry (the "Declaration");

WHEREAS, on or about November 18, 1998, the Association caused to be recorded that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Hermitage Park in Book 8190, Page 2102, Wake County Registry (the "First Amendment");

WHEREAS, the Association is the North Carolina non-profit corporation organized and existing under the laws of the State of North Carolina for the purposes of carrying out and enforcing the covenants, conditions, and restrictions set forth in the Declaration, as amended from time to time;

WHEREAS, Article XIII, Section 3 of the Declaration provides that the Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners;

WHEREAS, the Association desires to further amend the Declaration to provide for, including, but not limited to, how annual assessments are billed and to be paid as set forth in Article V of the Declaration; to clarify maintenance responsibilities for the Lot Owners and Association with respect to Limited Common Elements as provided for in Article VII of the Declaration; to clarify parking restrictions regarding commercial vehicles in Article VIII, Section 12 of the Declaration; to update Article VIII, Section 19 of the Declaration regarding antennae and satellite dishes in accordance with applicable, current law regarding the same; and to adopt the North Carolina Planned Community Act, codified at N.C. Gen. Stat. § 47F-1-101, et. seq. in its entirety;

WHEREAS, the Association previously amended Article V, Section 4 of the Declaration by the First Amendment to amend a clerical or typographical error contained therein, and such First Amendment is intended to remain as written except as otherwise set forth herein;

WHEREAS, this Second Amendment has been duly approved by the consent, approval, and signatures on this instrument of at least seventy-five percent (75%) of the Lot Owners within the Association; and

WHEREAS, the capitalized terms in this Second Amendment shall have the same meaning as such capitalized terms in the Declaration unless otherwise stated herein;

IN WITNESS WHEREOF, the undersigned for the purposes expressed hereinabove, does hereby declare that the following amendments to the Declaration shall be binding on all parties having or acquiring any right, title or interest in the real property subject to the Declaration, or any part thereof, and shall inure to the benefit of each Owner or successor in interest or assignee thereof:

1. RECITALS. The foregoing Recitals shall constitute an integral part of this Second Amendment, and this Second Amendment shall be construed in light thereof.

2. That Article I, Section 8 of the Declaration shall be deleted in its entirety and replaced hereby with the following:

Section 8. "Limited Common Element" shall mean and refer to those portions of the Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways; walkways; gas lamps; parking areas or areas serving only specified Lots; those portions or that portion of any utility line(s) serving only specified Lots or a Lot; and such other similar areas as may be designated by a subdivision map of the Property or the Association.

3. Article III, Section 1(f) of the Declaration shall be deleted in its entirety and replaced hereby with the following:

(f) the right of the Association, in accordance with its Articles of Incorporation or Bylaws, to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation

thereof, or for the violation of any of the covenants and conditions contained in this Declaration, and which rules and regulations may further restrict the use of the Property and to create Limited Common Elements;

4. Article III, Section 4 of the Declaration shall be amended by amending the last sentence thereof to read as follows: "The Association may regulate or prohibit the erection of television, radio or other antennas on individual Lots, but under no event inconsistent with Article VIII, Section 19 of this Declaration, and as may be amended.

5. Article V of the Declaration is hereby amended to clarify that the assessments obligated to be paid by the Lot Owners pursuant to the Declaration are annual assessment as provided for therein, but which annual assessments may be billed and/or otherwise invoiced to the Lot Owners by the Association for monthly payments of the same; and provided further that Article V, Section 4 of the Declaration shall be amended as follows:

(b) Increase by Association. From and after December 31, 1996, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of ten percent (10%) or the percentage increase reflected in the U.S. City Average, Consumer Price Index – United States and selected areas for urban wage earners and clerical works, all time most recent index and percentage changes from selected data (published by the U.S. Bureau of Labor Statistics, Washington, D.C.) or such other index as may succeed the Consumer Price Index, for the twelve month period ending approximately proceeding October 1.

(c) Increase by Member. From and after December 31, 1996, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses for the Association, any accrued debts and reserves for future needs, but it may not fix the annual assessment in an amount in excess of ten percent (10%) of the sums derived by application of the Consumer Price Index formula in Subsection (b) without the consent of members required by Subsection (c) in this Section 4.

(e) The Board of Directors may fix the assessment at an amount not in excess of the maximum.

6. Article VII of the Declaration is hereby amended as follows, to insert at the end of Article VII, Section 1, the following sentence:

Provided further that notwithstanding anything herein to the contrary, the Association shall not be responsible for maintaining, and the Lots Owners shall therefore maintain at their sole expense, respectively, the Limited Common Elements, including, but not limited to, driveways; walkways; gas lamp fixtures; parking areas or areas serving only one or specified Lots; those portions or that portion of any utility line(s) serving only specified Lots or a Lot, including, but not limited to, sewer and water lines located outside of the Town of Cary sanitary sewer easements serving one Lot; and such other similar areas as may be designated by a subdivision map of the Property or the Association.

7. Article VII, Section 3 of the Declaration is amended by adding a sentence thereto after the final sentence, to read as follows: "In the event the Association performs such maintenance as provided in this Article, the cost of such maintenance incurred by the Association and an administrative fee may be charged against the Lot and Owner therefor, as an assessment attributable to said Lot and Owner, and collectible against said Lot and Owner in all manner and respects as set forth in Article V of this Declaration.

8. Article VIII, Section 2 of the Declaration shall be deleted in its entirety and hereby replaced with the following:

Section 2. Use of Property. No portion of the Property (except for temporary office of the Declarant and/or model houses used by the Declarant) shall be used except for single-family residential purposes and for purposes incidental or accessory thereto. No portion of the Property, nor any Lot or any Building thereon, shall be leased or rented for hotel, boarding home, or transient purposes, and no rental agreement or lease shall be made for a period of less than six (6) months, nor for less than the total of any Lot and Building situated thereon.

9. Article VIII, Section 12 of the Declaration is deleted in its entirety and hereby replaced with the following:

Section 12. Parking. No industrial or commercial type trucks, tractors, inoperable or abandoned vehicles, boats, trailers, campers, motorhomes, motor house trailer (whether on or off wheels), recreational vehicles, or trucks shall be parked on the Property or on any right of way of any streets adjoining the Property by any Lot Owners, or any of the Lot Owners' family members, tenants, or contract purchasers, except as may be permitted in accordance with the Rules and Regulations adopted by the Board of Directors from time to time.

Vehicles permitted or otherwise allowed by this Declaration may be parked or stored only on portions of a Lot improved for that purpose (i.e., garage, driveway, or carport) or maintained on any Lot upon a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than three (3) vehicles. Any driveway or parking pad constructed upon any Lot shall have either a concrete surface, or be constructed from brick pavers.

Notwithstanding anything in this Section 12 to the contrary, a boat and/or trailer may be parked or kept on a Lot if it is parked or kept in such a manner that it is screened from all streets, the Common Elements or Limited Common Elements, and all adjacent Lots. Screening may be either by fence or plantings, but in any case, the screening must comply with the applicable Cary Zoning Ordinances and be approved pursuant to Article VI of this Declaration.

Inoperable or abandoned vehicles may be stored on a Lot so long as such are stored or kept on any Lot in such manner as to not be seen from any other Lot, any street within the subdivision, and the Common Elements and Limited Common Elements. No automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

10. Article VIII, Section 18 of the Declaration shall be deleted in its entirety and removed therefrom.

11. Article VIII, Section 19 (which will be new Section 18) of the Declaration is deleted in its entirety and hereby replaced with the following:

Section 18. Antennas; Satellite Dishes or Discs. Unless otherwise required by law, no exterior satellite dish in excess of one meter (39.37”) in diameter may be placed on the exterior of any Living Unit on in the Common Elements (or Limited Common Elements) without the prior written approval of the Board of Directors or architectural committee, which may be withheld in its sole discretion. The locale of any exterior antenna, or satellite dish more than one meter (39.77”) in diameter, shall be subject to the reasonable prior approval of the Board of Directors or architectural committee. Exterior antenna, or satellite dishes less than one meter (39.77”) in diameter may be required to be screened from public view by the Board of Directors or architectural committee based on applicable guidelines.

12. Article IX, Section 9 of the Declaration shall be deleted in its entirety and hereby replaced with the following:

Section 9. Entry of the Association for Maintenance. At any and all reasonable time or times, the Association, the Declarant, the Builder, the Developer or their duly authorized representatives, or agents, successors or assigns, shall be authorized to enter any Lot subject to this Declaration to perform such maintenance or do such other things as are allowed or required by this Declaration for the Association to perform or maintain or to remove any object placed in any easement area in violation of the provisions of this Section 9. Accordingly, such right of entry is hereby expressly reserved upon the Association, Declarant, Builder and Developer. In the event of any such entry upon any such Lot to perform such maintenance or do such other thing(s) as are allowed or required by this Declaration for the Association to perform or maintain, and such entry and maintenance or thing is caused or occasioned as a result of some act or failure to act of the Owner of such Lot, the Association’s cost(s) and administrative fee(s) incurred in performing any such maintenance or thing may be charged against the Lot and Owner therefor, as an assessment

attributable to said Lot and Owner, and collectible against said Lot and Owner in all manner and respects as set forth in Article V of this Declaration.

13. That, furthermore, the Association, which was created prior to January 1, 1999, hereby amends the Declaration to adopt and incorporate the provisions of Chapter 47F of the North Carolina General Statutes (the "North Carolina Planned Community Act," N.C. Gen. Stat. § 47F-1-101, *et. seq.*), which shall be applicable to the Association in all respects.

14. This Second Amendment has been duly approved by the consent, approval, and signatures on this instrument of at least seventy-five percent (75%) of the Lot Owners within the Association.

15. All remaining provisions of the Declaration with the exception of the herein stated Second Amendment shall remain in full force and effect.

16. This Amendment shall become effective as of the date of recording in the Office of the Wake County Register of Deeds.

WHEREFORE, the President and Secretary of the Association have hereunto affixed the corporate certification for the purpose of enacting the foregoing Second Amendment to the Declaration.

**CERTIFICATION OF VALIDITY OF SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR HERMITAGE PARK**

By authority of its Board of Directors, the undersigned hereby certify that the foregoing instrument has been duly authorized by the consent, approval, and signatures on this instrument of at least seventy-five percent (75%) of the Lot Owners within HERMITAGE PARK HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation.

HERMITAGE PARK HOMEOWNERS
ASSOCIATION, INC., A North Carolina Non-
Profit Corporation

By: _____

President

ATTEST:

Secretary

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF WAKE

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that s/he is Secretary of HERMITAGE PARK HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by _____ as its Secretary.

Witness my hand and official stamp or seal, this _____ day of _____, 2020

Notary Public

Printed Name

My Commission Expires: _____

[SIGNATURES OF LOT OWNERS APPEAR ON FOLLOWING PAGES]

HERMITAGE PARK HOMEOWNERS ASSOCIATION, INC.

**MEMBER ACTION BY WRITTEN BALLOT
N.C. GEN. STAT. § 55A-7-08**

Pursuant to the Association's Bylaws and N.C. Gen. Stat. § 55A-7-08 please take notice that the Association is conducting this Member Action by Written Ballot to determine approval of the proposed Second Amendment to Declaration of Covenants, Conditions and Restrictions for Hermitage Park.

ALL BALLOTS MUST BE RECEIVED (not postmarked) NO LATER THAN 5:00 P.M. ON MONDAY, MAY 28, 2024 and the presence of a quorum will be determined from the ballots received as of that date and time. A ballot received after such deadline will not be counted. Please note per below that ballots may be returned by mail or scanned and emailed to RS Fincher, c/o Christina Sicoli, your management company and community manager.

Please return ballot to:
RS Fincher
c/o Christina Sicoli, Community Manager
P.O. Box 1117
Apex, NC 27502

Or

Christina.sicoli@rsfincher.com

Or

Via facsimile: (919) 362-1462

BALLOT

On the issue of approval of the proposed Second Amendment to Declaration of Covenants, Conditions and Restrictions for Hermitage Park as noticed in the letter and Notice dated _____, and enclosed therewith, I/we hereby vote:

_____ **For**

_____ **Against**

Signature of Member

Print Name

Street Address in Hermitage Park

Date