

**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS & RESTRICTIONS FOR  
THE HERITAGE**

**THIS DECLARATION** is made this 5th day of May, 2015, by **CLIFTON-STEWART, LLC**, a Virginia limited liability company, herein the Grantor and the "Developer", whose address is 16325 Taylor Place, Abingdon, Virginia 24211.

**WITNESSETH:**

**WHEREAS**, the Developer is the owner of certain real property located in the Madison Magisterial District of Washington County, Virginia, which is to be developed as a residential subdivision; and,

**WHEREAS**, the Developer desires to place certain easements, restrictions, covenants and conditions hereafter set forth against the herein described real property (hereinafter "The Heritage") for the purpose of protecting the value and desirability of The Heritage.

**NOW, THEREFORE**, for and in consideration of the premises herein, the Developer hereby declares that the hereafter described lots within The Heritage shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the real property herein described and be binding on all parties, their heirs, successors and assigns, having any right, title or interest therein and shall inure to the benefit of the owner(s) of each Lot ("Owner") in The Heritage.

1. Property Subject to Declaration.

A. *Initial Phase.* The real property which is subject to this Declaration ("Lots") is situate in the Madison Magisterial District of Washington County, Virginia, and is known, numbered, designated and described as Lot No. 1 through 15, inclusive, **Lot Nos. 38 through 57**, inclusive, **Lot Nos. 59 through 74**, inclusive, and **Lot Nos. 113 through 123**, inclusive, as the same are shown and described on that certain plat entitled in part "***Final Plat The Heritage***", dated March 1, 2012, last revised January 19, 2015, by Addison Surveyors, which plat is of record in the Office of the Clerk of the Circuit Court of Washington County, Virginia in Plat Book 71, Pages 21 - 25, inclusive ("Plat"), reference to which is hereby made for a more particular description of the real property hereby affected by this Declaration, and being a part of real property conveyed unto the Grantor by Deed dated February 16, 2010 and recorded in the Office of the Clerk, Circuit Court of Washington County, Virginia in Instrument No. 100000738, reference of which is hereby made for a more particular description of the source of the real property hereby affected.

B. *Future Phases.* The Developer may, in its discretion, add additional real estate to The Heritage at any time by filing a Supplemental Declaration or similar instrument in the Office of the Clerk, Circuit Court of Washington County, Virginia that describes such additional real estate and making the same subject to this Declaration. The Developer may also, in its discretion, use the streets and utilities within The Heritage to access and provide services to other real estate now or hereafter owned by the Developer, which other real estate is not required to be subject to this Declaration.

2. Use Restrictions. The Lots that are subject to this Declaration shall be subject to the following use restrictions and be binding on the Owner and resident of each Lot:

- A. *Generally.*
- (1) All Lots in The Heritage shall be used for residential purposes exclusively.
  - (2) No structure shall be erected, placed, altered or permitted to remain on any Lot except a single-family dwelling designed for occupancy by one family except as otherwise set forth in this Declaration, the Washington County Planning Commission's R2 Zoning Restrictions, and the recorded Plat.
- B. *Vehicles, Boats & Campers.* No vehicle, travel home, camper or boat shall be parked on any street or public right-of-way within The Heritage. All recreational vehicles, boats, personal watercraft, and campers must be kept in enclosed, attached garages except for periods of cleaning, loading and repair, all of which cannot exceed twenty-four hours. No inoperable or junk vehicle may be stored or maintained on any Lot.
- C. *Clotheslines.* No outside clotheslines shall be erected or placed on any Lot.
- D. *Animals.* Grazing animals, livestock, bees, snakes, goats, sheep, pigs, wild or undomesticated animals, or poultry of any kind shall not be raised, bred or kept on any Lot, nor shall animals of any kind, including dogs and cats, be kept, bred, or maintained on a Lot for any commercial purposes. Domesticated animals intended as a pet or service animal, up to a maximum of three (3) total per residence, are allowed provided that such pets shall be kept on each Owner's Lot through invisible fencing or other means and shall not be allowed to roam free. Pet owners must comply with all applicable leash laws promulgated by Washington County or the Commonwealth of Virginia.
- E. *Tanks and Utility Enclosures.* All HVAC systems and propane tanks shall be suitably enclosed and screened from view.
- F. *Lot Signs.* Except for the subdivision sign located on Lot No. 122, only signs advertising the Lot for sale or signs used by a builder during the construction and sales period of residences will be permitted. Such signs shall not be more than five (5) square feet in size.
- G. *Trash.* Trash, garbage or other waste shall be kept in sanitary containers with suitable and attractive housing, and no Lot shall be used for the dumping of any kind of waste material, including building materials. Garbage containers shall not be placed on the street side for garbage pickup until after 4:00 pm the day before scheduled garbage pickup, and shall be removed from the street area within twelve hours of pickup.
- H. *Lawns.* All lawns shall be neatly mowed and maintained before, during and after construction of any dwelling thereon. The Association may, in its discretion, and upon notice to a Lot Owner provide for the mowing on all Lots, regardless of ownership, prior to the construction of improvements on a Lot, and the Association may charge Special Assessments for the cost thereof.
- I. *Detention Basins.* No improvements may be constructed on Lot Nos. 2, 3 and 123 that interfere with the detention basins located on such Lots.
- J. *Nuisances.* No noxious noise producing or offensive activity shall be carried on upon any Lot or street, nor shall anything be done thereon which may be or become an annoyance or nuisance to Owners within The Heritage.

3. Use of Lots as a Street. No Lot or portion of any Lot may be used for a roadway, street or easement of any nature, or for access to any property lying outside the boundaries of The Heritage without the written consent of the Developer, which consent may be withheld, conditioned or delayed by the Developer for any reason; however, this restriction and reservation shall not apply to the Developer, and the Developer hereby expressly reserves the right to use or grant rights to others to use any (i) Lot or part thereof that it may now or hereafter own, (ii) street, (iii) easement area, or (iv) common area for a roadway, street or easement to access or service property lying outside the boundaries of The Heritage without the consent of any Lot Owner.
4. Protection of Roads.
  - A. Intent of Developer. The roads and streets in The Heritage have been designed and constructed in a manner to allow them to be accepted into the Virginia secondary highway system by Washington County and/or the Virginia Department of Transportation based on the current requirements for such acceptance. The Developer intends to pursue such acceptance into the secondary highway system as soon as all eligibility requirements for the same are satisfied (minimum number of homes, etc.). Any street completion or erosion and sediment bonds that the Developer has provided to Washington County or the Commonwealth of Virginia in the course of developing The Heritage shall continue in force in accordance with their terms, but any portion of such bonds that are not paid to Washington County or the Commonwealth of Virginia shall be the sole property of, and be refunded to, the Developer when released. In the event the Developer fails to pursue the inclusion of the streets into the secondary highway system, the Association, as hereafter described, may pursue the same as agent for all Owners.
  - B. Maintenance Prior to Acceptance.
    - (1) Until the streets in The Heritage are accepted into the Virginia secondary highway system, the Association, as hereafter described, shall be responsible for the routine upkeep and maintenance of said streets, as well as any costs necessary to allow the streets to be into the public highway system.
    - (2) If any party, whether an Owner, an Owner's agent or contractor, or other party, shall cause damage to the streets or the drainage system for the streets prior to their acceptance into the secondary highway system, then the Owner or the party causing such damage shall be solely liable for the costs incurred by the Developer or the Association to repair such damages, and shall pay, upon demand, the costs of repairing any such damage, which may, if necessary, be collected by legal proceedings, together with interest, Court costs and reasonable attorney fees. The provisions of this Paragraph shall apply to damage caused by erosion for Lot onto the streets or the drainage system of The Heritage.
5. Easements.
  - A. Entrance Sign. There is hereby excepted and reserved from Lot No. 122 a permanent easement for the construction, placement and maintenance of the entranceway signage and landscaping as the same will exist upon the sale of such Lot, together with a reasonable access easement to maintain and replace the same.

- B. *Minimum Utility Easements.* Except as hereafter set forth, there is reserved, as shown on the Plat, a minimum 20 feet in width drainage and utility easement, which is a minimum of 10 feet on each side of all interior Lot lines and a minimum 20 feet contiguous to all exterior boundary lines, including street lines.
- C. *Underground Utilities.* All utility service lines servicing dwellings are to be installed from underground service connections.
- D. *Non-Interference.* No Lot Owner shall construct improvements on or fill any drainage easements in such a manner that will increase the flow of water onto adjoining properties other than into approved drainage areas as shown on the Plat without the consent of either the affected Lot Owner(s) (which consent shall be evidenced by an appropriate instrument recorded in the aforesaid Clerk's Office) or the Washington County Planning Commission.
- E. *Developer Rights.* The Developer reserves the right to grant utility, access, and use easements over, across and to any portions of The Heritage that are owned by the Developer, or its streets and utility structures, to third parties, in its sole discretion and either with or without consideration. Any easements granted in favor of said third parties shall inure to the benefit of said third parties, and if the granting easement so provides, to their beneficiaries and assigns. Developer shall also have the right to assign rights under this Paragraph to the Association.
- F. *First Responders.* All policemen, firemen, life saving crews, and similar emergency personnel and first responders are hereby granted an easement and right to have access to each Lot within The Heritage in the proper performance of their respective emergency duties.

6. *Further Subdivision.*

- A. *Consent Required.* No Lot Owner or successor in title thereto shall further subdivide any Lot without the written consent of the Developer, which consent may be withheld, conditioned or delayed for any reason; however, this restriction and reservation shall not apply to the Developer, and the Developer hereby expressly reserves the right to further subdivide or modify the boundaries of any Lot that it may now or hereafter own, subject to the approval of the Washington County Planning Commission.
- B. *Re-Combination.* A Lot Owner may combine two or more adjoining Lots into a single Lot with only the consent of the Washington County Planning Commission, in which event all previously existing interior Lot line easements shall automatically extinguish except where the easement covers an existing natural drainage way or installed utility. Upon recordation of an approved re-combination plat, the re-combined Lot shall be deemed a single Lot for all purposes, the Owner shall have only one vote in the Association and be liable for only one Lot assessment.

7. *Architectural Control.*

- A. *Building Regulations.*
  - (1) Only "stick built" custom homes that are constructed entirely on the Lot are allowed. No (i) mobile or manufactured homes, (ii) double-wide house trailers, (iii) modular homes, or (iv) pre-fabricated, mobile or shell type structures in

which a contractor or distributor completes only the exterior of the structure with the Owner completing the balance, shall be constructed, erected, placed or permitted on any Lot, nor shall any Lot Owner or invitee use a house trailer, camper, motor camper, stand along basement, tent, garage, barn or temporary structure as a residence at any time.

- (2) All single story dwellings shall contain a minimum of 2,200 square feet of finished, heated living area.
- (3) All dwellings with two stories above ground level shall contain a minimum of 2,800 square feet of finished, heated living area, the ground floor level of which shall contain a minimum of 1,800 square feet of finished, heated living area.
- (4) All garages must enter into the side of the dwelling unless otherwise approved in writing by the Developer.
- (5) All wood-framed windows must be painted or stained.
- (6) All roofs must be covered in slate (real or synthetic), cedar shake, metal, architectural shingles, terra cotta, or tin, all of which must be pre-approved by the Developer in writing.
- (7) Each Owner shall provide adequate off-street parking for all vehicles owned or used by residents of the household, and no Lot Owner or resident of the household may use the streets of The Heritage to provide normal use parking.
- (8) The location and design of antenna masts, satellite dishes and radio transmission towers must be approved by the Developer prior to their installation or replacement so as to limit their visibility from the streets of The Heritage. No wireless communication towers may be constructed on any Lot.
- (9) In-ground swimming pools and spas are allowed provided that their location and design are approved by the Developer prior to construction.
- (10) Fireplaces and chimneys shall be masonry unless otherwise approved in writing by the Developer.
- (11) The Developer shall approve mail and newspaper boxes before installation, construction or replacement.
- (12) All street lights shall be of a design that is similar to others in the subdivision and as pre-approved by the Developer.
- (13) All fencing, whether man made or live plantings, both as to kind, construction and location, must be approved by the Developer prior to its installation, construction or replacement, and in no event will the Developer approve tall, man-made or natural property borders, such as privacy fences or tall-growing trees or shrubs. The Developer will not approve any fence of a "chain link" or "wire" construction. No Lot Owner may construct a fence closer to the street on which it faces that is closer to such street than the rear wall of such dwelling without the prior written consent of the Developer, which consent may be withheld, conditioned or delayed for any reason.

- (14) No detached storage buildings or garages of any kind are permitted. No outside toilets, hog pens, stables, enclosed dog lots, or chicken houses are allowed.
- (15) The setback lines from the front, rear and sides shall be those set forth on the Plat or established by Washington County.
- (16) All dwellings shall comply with the building and zoning rules and regulations of Washington County and the Commonwealth of Virginia.

**B. *Buildings Plans.***

- (1) Lot Owners shall submit three (3) sets of building plans and a "New Construction Committee Residential Review Application Form" to the Developer. The Developer shall have fourteen (14) days to review and either approve or disapprove, in whole or in part, the building plans. If approved, two (2) signed copy will be returned to the Owner, one of which will be used to secure the building permit.
- (2) The plans shall show:
  - (a) The size and location of all improvements on the Lot;
  - (b) The main floor elevation relative to the street;
  - (c) The roof pitch(es) and roofing material;
  - (d) The type and color of exterior building material, including windows and siding.
- (3) The Developer may, in its discretion, reject any plans (i) due to their non-compliance with the provisions of this Declaration, or (ii) in order to insure harmony of external design and location in relation to surrounding structures.

**C. *Construction Regulations.***

- (1) The Lot Owner or the Owner's contractor shall:
  - (a) Grade in a partial driveway entrance, install drain pipe in the roadway ditch and cover the driveway surface with crushed stone so that mud from the construction site and delivery vehicles will not be carried onto the adjoining and surrounding street surfaces.
  - (b) Excavate a burn pit or arrange for a dumpster to be placed on the Lot so that scrap building materials and trash may be properly disposed and will not be blown or transmitted onto adjacent Lots.
  - (c) Provide a portable toilet to be utilized by construction workers during the construction of the residence.
- (2) All residences shall within, six (6) months of issuance of a certificate of occupancy, have a paved or concrete driveway leading from the street to the residence. A residence may have a suitable walkway constructed for ingress and egress to the front door of the residence. If a walkway is constructed, it must be surfaced in concrete, brick pavers, concrete pavers, flagstone, or slate. Railroad ties and landscape timbers are not permitted for walks and steps.

- (3) All landscaping plans must be approved in writing by the Developer.
- (4) All lawn decorations other than plantings, including but not limited to statues, water fountains, etc., must be prior approved by the Developer in writing.
- (5) Flags and flagpoles are prohibited except that an Owner of a Lot may display a flag of the United States in accordance with the Freedom to Display the American Flag Act of 2005 and the Virginia Property Owners' Association Act subject only to the right of the Developer to establish reasonable restrictions as to the size, place, duration, and manner of placement or display of such flag on a Lot which the Developer deems necessary to protect a substantial interest of The Heritage.

- D. *Construction or Destruction of Dwelling.* If all or any portion of a dwelling or other Lot structure is damaged or destroyed by fire or other casualty, the Owner shall, with all due diligence, promptly rebuild, repair or reconstruct such structure in a manner which will substantially restore it to its apparent condition immediately prior to the casualty. When original construction or reconstruction is begun, work thereon must be pursued diligently and completed within one (1) year. If for any reason work is discontinued and there is no substantial progress towards completion for a continuous period of three (3) months, then the Developer shall have the right to notify the Owner of its intentions to enter the Lot and take such steps as may be required to correct an undesirable appearance, and the Owner of the Lot shall be liable for all costs and expenses incurred therewith, including all reasonable attorney fees incurred to enforce the Developer's rights herein.
- E. *Remodels, Reconstructions and Additions.* All exterior remodels, reconstructions and additions shall require the Developer's prior written approval the same as new construction.

8. Owners Association.

- A. *Membership.* Each Owner, by acceptance of a Deed for a Lot in The Heritage, whether or not it shall be expressed in the Deed, will be deemed a Member of The Heritage Owners Association ("Association"), a Virginia non-stock corporation, and subject to the Bylaws thereof, a copy of which is attached hereto as Exhibit "A", as the same may, from time to time, be amended without the necessity of recordation.
- B. *Duties.* The Association shall be responsible for (i) owning and maintaining Lot Nos. 2, 3 and 123 and the detention basins located thereon that benefit the entirety of The Heritage, (ii) maintaining the signage on Lot No. 122 and the main entrance on Avondale Drive, (iii) maintaining the detention basins and streets until the same are accepted into the Virginia Secondary Highways System, (iv) succeeding to the rights of the Developer in accordance with Paragraph 9 of this Declaration, (v) enforcing the terms of this Declaration, (vi) maintaining any desired liability insurance, and (vii) such other matters involving The Heritage as the Association's Board of Directors may, from time to time, decide.
- C. *Assessments.* Each Owner other than the Developer shall pay to the Association an initial Assessment of \$100.00 per calendar year to cover mowing and other expenses, the first of which Assessment shall be due and payable to the Association by March 1, 2016 with each subsequent payment due on the same day of each year thereafter (herein an "Assessment"). Assessments may change in accordance with the Bylaws of the

Association. In addition, each Member shall pay Regular or Special Assessments to the Association at such times and in such amounts as the Majority Vote of the Members may determine in order to pay the Association's other expenses and satisfy its obligations under this Declaration and the Bylaws. In the event that any Member fails and refuses to pay their Assessments within sixty (60) days of its due date, the Association may either (i) file suit in the Washington County, Virginia state Courts to recover judgment against the non-paying Member for all unpaid Assessments then due, together with all court costs and reasonable attorney fees incurred by the Company in collecting such unpaid Assessment, or (ii) file a Memorandum of Association Lien in the land records of Washington County, Virginia. Such Memorandum, once filed, shall be a lien superior to all subsequent liens and encumbrances, except real estate taxes, and shall be, along with interest at the judgment rate in effect from time to time in Virginia (and, if applicable, court costs and attorney fees of 25% if legal action is required), the personal obligation of the person(s) who was the Owner of the Lot as of the date of the Memorandum. The personal obligation for payment of Assessments set forth in any recorded Memorandum shall pass to an Owners' successor in title unless expressly released by the Association.

- D. *Indemnity.* The Association shall indemnify every officer, director or manager against any and all expenses, including attorney fees reasonably incurred by or imposed upon any officer, director, or manager in connection with any action, suit or other proceeding, (including settlement of any suit or proceeding, if approved by the Board then in office) to which he or she may be a party by reason of being or having been an officer, director, or manager. The officers, directors, or managers shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, conduct or bad faith. The officers, directors or managers shall have no personal liability with respect to any contract or other commitment made by them, in good faith on behalf of the Association (except to the extent that such officers, directors or managers may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director or manager free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officers, directors or managers, or former officers, directors or managers, may be entitled. The Association shall maintain adequate general liability insurance and officers, directors or managers liability insurance to fund this obligation, as a common expense of the Association.

9. *Developer Rights.*

- A. *Recreational Facilities.* The Developer reserves the right for three (3) years from the date of this Declaration and upon notice to the Association to construct on any Developer-owned Lot such recreational and social facilities as the Developer may deem appropriate in its sole discretion for the benefit of The Heritage and its Lot owners. Should the Developer elect to construct such improvements on a Lot, the Developer shall do so at its sole risk and expense, but after completion of such improvements and transfer of the applicable Lot to the Association, the Association shall be solely liable for the upkeep, maintenance, liability, insurance and other rights of ownership thereof. Such improvements may include, but not be limited to, a clubhouse and pool.



- B. *Transfer of Developer Rights.* The original Developer may, at any time, either (i) transfer and assign its rights and duties hereunder, either in whole or in part, to any other party or entity by the recordation of an instrument in the aforesaid Clerk's Office, at which time the assignee shall have all the rights and duties originally granted herein to the original Developer, or (ii) resign as the Developer, either of which may be done without consent of any other party. In the event that the original Developer resigns without naming a successor Developer or its legal existence is terminated by operation of law, then the Association shall become the successor Developer. Upon the original Developer's assignment or resignation, the original Developer shall have no further rights, duties or liabilities arising from its role as the original Developer. All references in this Declaration to the Developer shall mean any successor Developer.
10. *Term.* These covenants shall run with the land and shall be binding on all of the Lots in The Heritage, and shall inure to the benefit of all persons owning said Lots for a period of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive period of ten (10) years each unless modified by an instrument signed by a majority of the Owners of the total number of Lots in The Heritage and recorded in the aforesaid Clerk's Office.
11. *Enforcement.* If any person or future Owner of any Lot shall violate or attempt to violate any of the covenants, reservations or restrictions herein, the Developer or any other Owner may prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any of the said provisions, and either prevent such persons from so doing, or recover damages for such violations. In any such action, the prevailing party in such action shall be entitled to recover from the other party their reasonable attorney fees.
12. *Severability.* Invalidation of any one of these covenants by a Court of competent jurisdiction shall in no way affect any of the other provisions, which shall remain in full force and effect and binding upon all Lots in The Heritage.
13. *Modification.* Additions to, deletions from, or modifications of this Declaration may be made at any time by an instrument signed by the Developer and a majority of the number of the Lot Owners and recorded in the aforesaid Clerk's Office.
14. *Non-Waiver.* Failure by any party to enforce any or all rights and remedies granted to them under this Declaration shall in no event be a waiver of the right to do so thereafter.
15. *Remedies Cumulative.* All rights and remedies set forth herein are cumulative and are intended to be enforceable to the fullest extent possible.
16. *Headings.* The paragraph headings in this Declaration are for ease of reference only and shall not be considered in construing any provision herein.

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*Signature Page Follows*

WITNESS the following signature and seal:

CLIFTON-STEWART, LLC

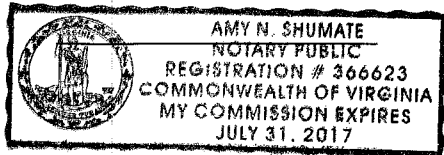
By: *J A Stewart* *MANAGING MEMBER*  
Jimmy A. Stewart, Managing Member

Commonwealth of Virginia;  
County of Washington:

Jimmy A. Stewart, who is the Managing Member of Clifton-Stewart, LLC and whose identity is known to me personally or has been proven by acceptable photographic evidence, executed and acknowledged the foregoing before me on this the 5<sup>th</sup> day of May, 2015, for and on behalf of said Virginia limited liability company.

My Commission Expires:

*Amy N Shumate*  
NOTARY PUBLIC



**EXHIBIT "A"**  
to the  
**DECLARATION OF SUBDIVISION**  
for  
**THE HERITAGE**

**BYLAWS**  
of  
**THE HERITAGE OWNERS ASSOCIATION**

DEFINITIONS

1. For purposes of these Bylaws, the following terms shall have the following meanings:
  - A. "Assessments" shall mean money that is charged to and paid by each liable Member to the Association to support the Association's business.
  - B. "The Heritage" shall mean:
    - (1) The real property situate in the Madison Magisterial District of Washington County, Virginia, and is known, numbered, designated and described as Lot Nos. 1 through 15, inclusive, Lot Nos. 38 through 49, inclusive, Lot Nos. 59 through 74, inclusive, and Lot Nos. 113 through 123, inclusive, as the same are shown and described on that certain plat entitled in part "*Final Plat The Heritage*", dated March 1, 2015, last revised January 19, 2015 by Addison Surveyors, which plat is of record in the Office of the Clerk of the Circuit Court of Washington County, Virginia in Plat Book 71, Pages 21 to 25, inclusive ("Plat"), reference to which is hereby made; and,
    - (2) Any additional real estate that the Developer may hereafter make subject to the Declaration in accordance with the terms of the Declaration.
  - C. "Declaration" shall mean that certain Declaration of Covenants, Conditions, Easements & Restrictions for The Heritage dated May 5, 2015.
  - D. "Majority Vote" shall mean at least 50.01% of all votes cast at a meeting at which a quorum is present.
  - E. "Member" shall mean a person or party that owns a Lot in The Heritage. When a Lot is owned by more than one person or party, such multiple owners shall collectively be deemed the Member for all purposes of the Association, and in no event may any Member's vote be divided into fractional parts. If the multiple owners cannot agree on their vote, their vote shall not be counted.
  - F. "Membership" shall mean the Members of the Association.

- G. "Notice" shall have the meaning set forth in Paragraph 36.
- H. "Place" shall mean such location within twenty (20) driving miles of The Heritage as may be designated by the Board of Directors.
- I. "Plat" shall mean a survey plat of any property that is made subject to the Declaration.

All other capitalized terms herein shall have the meaning assigned to them in the Declaration.

#### NAME AND LOCATION

- 2. Name and Location. The name of this Association is The Heritage Owners Association. The initial principal office of the Association is located at 16325 Taylor Place, Abingdon, Virginia 24211, but meetings of Members and Directors may be held at any Place.

#### MEMBERSHIP

- 3. Identification of Members. The Secretary of the Association shall be responsible for maintaining an accurate and up-to-date list of all Members of the Association, and the Secretary's determination of the Membership shall be absolute and binding on all parties absent a showing of bad faith. The Secretary may base his or her determination of a person's status as a Member on any or all of the following:
  - A. Notice and/or evidence provided to the Secretary by an alleged Member.
  - B. Records maintained by the Office of the Clerk of the Circuit Court of Washington County, Virginia.
  - C. Records maintained by the Washington County Commissioner of Revenue.
  - D. The opinion of the Association's legal counsel.

Any person identified by the Secretary in good faith as a Member shall be entitled to all rights under these Bylaws, and all actions approved by the Association in reliance thereon shall be final, conclusive and binding on all parties and for all purposes notwithstanding a subsequent determination that the Secretary's Membership listing contained an unintentional mistake of fact.

- 4. Annual Meetings. The annual meeting of the Membership of the Association shall be held within ninety (90) days of the beginning of each calendar year at such place and time as specified in the Notice thereof for the purpose of electing members of the Board of Directors and transacting such other business as may properly come before the meeting.
- 5. Special Meetings: Special meetings of the Members may be called at any time by the Board of Directors, and shall be called by the Board of Directors upon the written request of at least fifty percent (50%) of all Members of the Association.
- 6. Notice and Place of Meetings. Notice of Membership meetings shall be provided as required in the "Notices" paragraph of these Bylaws, and all meetings of the Members shall be held at such Place as shall be designated in the Notices thereof.
- 7. Quorum.

- A. Except as otherwise provided by law or these Bylaws, at all meetings of the Membership, the presence at the commencement of such meeting in person or by proxy of Members owning at least one-third (33.33%) of the Lots in The Heritage shall be necessary and sufficient to constitute a quorum for the transaction of any business. The withdrawal of any Member after the commencement of a meeting shall have no effect on the existence of a quorum after a quorum has been established.
  - B. Despite the absence of a quorum at any meeting of the Members, the Members who are present may adjourn the meeting upon Majority Vote of the Members thereat, and any business may be transacted at the adjourned meeting at which a quorum is present that might have been transacted at the originally called meeting as if a quorum had then been present.
8. Voting.
- A. Each Member is entitled to one (1) vote for each Lot owned by such Member in The Heritage, except that (i) no Member that is delinquent in the payment of any assessment will be entitled to vote on any matter until such time as the Member's delinquency is cured, and (ii) the provisions of Paragraph 6(B) of the Declaration shall control in the event of a re-combination of commonly owned Lots.
  - B. Except as otherwise required by law or these Bylaws, any action of the Membership shall be authorized by a Majority Vote of the Members present at a meeting at which a quorum is present.
  - C. Each Member entitled to vote or to express consent or dissent at a meeting may do so by proxy; provided, however, that the instrument authorizing such proxy to act shall have been executed in writing by the Member or his or her verified attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the persons executing it shall have specified therein a longer length of time for it to continue in force. Such instrument shall be delivered to the Secretary at the meeting and shall be filed with the records of the Association.
  - D. Any written resolution signed by at least 50.01% of the Membership shall be and constitute action by such Members to the effect therein expressed with the same force and effect as if the same had been duly passed by at least a Majority Vote of the Members at a duly called meeting of the Membership, and such resolution so signed shall be inserted in the Minute Book of the Association.
9. Powers of Members. No Member, other than a Member who is also an Officer, shall take part in the management of the Association nor transact any business for the Association in their capacity as a Member, nor shall any Member, other than a Member who is also an Officer, have the right to sign for, or to bind the Association.

#### BOARD OF DIRECTORS

10. Number, Election and Term of Office.

- A. The initial Board of Directors shall consist of three (3) people appointed by the Developer, and such persons shall serve until the first annual meeting of the Membership or until their successors are elected.
  - B. Members of the initial Board of Directors may, but need not be, a Member of the Association.
  - C. After expiration of the terms of the initial Board of Directors, all members of the Board must be (i) either a Member of the Association or appointed by the Developer, and (ii) capable of attending and participating in all Board meetings unless excused by the other members of the Board. If any Board member ceases to be a Member of the Association or becomes unable to attend and participate in all Board meetings, as determined by majority vote of the other Board members, during their term of office, such Board member shall be deemed to have resigned without necessity of further action or acceptance.
  - D. A Director may also serve as an Officer of the Association, but is not required to do so.
  - E. At each annual Membership meeting, the Members shall elect three (3) people to serve as members of the Board of Directors until the next annual meeting of the Members, or until such time as their successors are elected. Any Member of the Association may seek election to the Board of the Directors, and any Director may be elected to successive terms of office. If more than three (3) people seek election to the Board of Directors, the three (3) candidates receiving the highest number of votes at the annual Membership meeting shall be the new members of the Board of Directors.
  - F. The number of members of the Board of Directors may be increased or decreased by (i) a Majority Vote of the Board of Directors, and (ii) a Majority Vote of the Membership at any annual meeting of thereof.
11. Vacancies. Any vacancy in the Board of Directors occurring by reason of (i) an increase in the number of Directors, or (ii) the death, resignation, disqualification, removal or inability to act of any Director, or otherwise, shall be filled for the unexpired portion of the term by a majority vote of the remaining Directors at any regular or special meeting of the Board of Directors.
12. Resignation. Any Director may resign at any time by giving written notice to the Board of Directors or to an Officer. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Association, and the acceptance of such resignation shall not be necessary to make it effective.
13. Removal. Any Director may be removed with or without cause at any time by a vote of at least seventy-five percent (75%) of the Membership that is present at a special meeting called for such purpose and at which at least seventy-five percent (75%) of the Membership is present at the commencement of such special meeting, notwithstanding any other general quorum requirements set forth in these Bylaws.
14. Meetings.

- A. A regular annual meeting of the Board of Directors shall be held immediately following the annual Membership meeting without the necessity of any notice beyond notice of the annual Membership meeting.
  - B. The Board of Directors may establish such regular meeting dates as it may, from time to time, decide without the necessity of providing notice thereof to the Membership provided that notice is given to the Board of Directors and Membership of the time, place and ascertainable dates of such regular meetings (e.g. 7:00 pm on first Monday of every other month beginning in May at the Harbor House restaurant in Abingdon, Virginia).
  - C. Special meetings of the Board of Directors shall be held whenever called by any member of the Board or any Officer at such time and place as may be specified in a notice thereof prepared and sent to the Directors and the Members in accordance with the "Notice" paragraph of these Bylaws.
  - D. Emergency meetings of the Board of Directors shall be held whenever called by any member of the Board or any Officer at such time and place as the majority of the Directors may agree and without advance notice to the Membership provided that (i) circumstances do not reasonably allow time to provide formal notice that is sent in accordance with the "Notice" paragraph of these Bylaws, and (ii) the minutes of such emergency meeting are subsequently approved by a majority of the Board members at a regularly scheduled meeting.
  - E. All meetings of the Board of Directors shall be open to all Members who are current in their assessments other than the portion of any meeting relating to pending or threatened litigation involving the Association. The Board of Directors may establish reasonable procedures for hearing from the Members at a meeting, but is not required to hear from the Members at any time other than a duly called meeting of the Members.
15. Chairperson. At each meeting of the Board of Directors of the Association that occurs immediately following the annual Membership meeting, the Board shall elect a Chairperson of the Board by majority vote. The Chairperson, if present, shall preside at all meetings of the Board of Directors, and in his or her absence, the Association's President or Secretary shall preside.
16. Quorum and Adjournments. At all meetings of the Board of Directors, at least fifty one percent (51%) of all members of the Board of Directors serving at that time shall constitute a quorum for the transaction of business, except as otherwise provided by law or by these Bylaws.
17. Duties and Powers.
- A. The Board of Directors shall be responsible for the control and management of the affairs, property and interests of the Association, and may exercise all powers of the Association.
  - B. The Board of Directors shall have the obligation to:

- (1) Maintain the landscaping, signage and any lighting of the entranceways, including the cost of utilities thereto, specifically including the entranceway easement on Lot No. 122.
  - (2) Own and maintain the detention basins on Lot Nos. 2, 3 and 123 as described in the Declaration.
  - (3) Own and maintain any recreational or social facilities that may be transferred to it by the Developer in accordance with the Declaration.
  - (4) Maintain the streets within The Heritage until the same are accepted into the Virginia Secondary Highway System in accordance with provisions of the Declaration.
  - (5) Succeed to the rights of the Developer in accordance with provisions of the Declaration.
  - (6) Perform such other matters involving The Heritage as the Board of Directors or Members may, from time to time, decide.
- C. The Board of Directors shall have the authority in its discretion to:
- (1) Interpret and enforce the terms and provisions of the Declaration.
  - (2) Maintain any desired public liability and casualty insurance on the real estate within The Heritage that is under the control of the Association.
- D. The Board of Directors may delegate its obligations to any one or more of the Association's Officers.
18. Manner of Acting.
- A. At all meetings of the Board of Directors, each Director present shall have one vote and all action of the Board shall be approved by a majority vote thereof except as otherwise required by law or by these Bylaws.
  - B. Except as otherwise provided by law or by these Bylaws, the action of a majority of the Directors present at any meeting at which a quorum is present and after any required notice is provided to the Members shall be the act of the Board of Directors. Any action authorized, in writing, by a majority of the Directors entitled to vote thereon and filed with the Minutes of the Association shall be the act of the Board of Directors with the same force and effect as if the same had been passed by majority vote at a duly called meeting of the Board.
19. Committees. The Board of Directors may, from time to time, designate from among the Membership such committees as the Board may deem desirable having such power and authority, to the extent permitted by law, as may be provided in the enabling resolution thereof. Each such committee shall serve at the pleasure of the Board of Directors.

#### OFFICERS

20. Number, Qualifications, Election and Term of Office.
- A. The Officers of the Association shall consist of a President, a Secretary/Treasurer, and such other Officers as the Board of Directors may from time to time deem



advisable. Each Officer may be, but is not required to be, a Member or Director of the Association, and any person may serve in more than one office.

- B. The Treasurer shall be the “Tax Matters Partner” as defined in the Internal Revenue Code with full and complete power to act in that capacity.
  - C. All notices to the Association shall be directed to or served upon the Secretary, other than legal notices that are otherwise required by law to be served on another Officer or the Association’s Registered Agent.
  - D. The Board of Directors shall appoint the Officers of the Association at the annual meeting of the Board of Directors, except that the initial Officers of the Association shall be elected at the organizational meeting of the Board of Directors.
  - E. Each Officer shall hold office at the pleasure of the Board of Directors or until (i) his or her successor shall have been elected and qualified, or (ii) his or her death, resignation or removal.
21. Resignation. Any Officer may resign at any time by giving written notice of such resignation to the Board of Directors or to any other Officer. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof, and the acceptance of such resignation shall not be necessary to make it effective.
  22. Removal. Any Officer may be removed, either with or without cause, and a successor appointed by majority vote of the Board at any time.
  23. Vacancies. A vacancy in any Office by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by the Board of Directors.
  24. Duties of Officers. Officers of the Association shall, unless otherwise provided by the Board of Directors, each have such powers and duties as generally pertain to their respective offices as well as such powers and duties as may be set forth in these Bylaws, or as may, from time to time, be specifically conferred or imposed by the Board of Directors. The President shall be the Chief Executive Officer of the Association.
  25. Sureties and Bonds. In case the Board of Directors shall so require, any Officer, employee or agent of the Association shall execute to the Association a bond in such sum, and with such surety or sureties as the Board of Directors may direct and at the Association’s expense, conditioned upon the faithful performance of his or her duties to the Association, including responsibility for negligence and for the accounting for all property, funds or securities of the Association which may come into his or her hands.

#### FINANCIAL MATTERS

26. Banking.
  - A. The Association may maintain demand deposit accounts in any federally insured deposit institution (“Bank”).
  - B. All funds payable to the Association, whether derived from Assessments or otherwise, shall be deposited in the Association’s Bank account.

- C. Checks of the Association and orders for transfer or withdrawal of the funds of the Association shall be signed by any one or more Officers. The drawee of any such funds is authorized and directed to honor and pay any checks so drawn.
  - D. The Association is authorized to borrow money on behalf of the Association for such times, at such rate of interest, offering Association assets as security therefore, and upon such other terms as a majority vote of the Board of Directors may determine.
27. Establishment of Assessments.
- A. The initial Regular Assessment for all Members shall be \$100.00 per calendar year to cover mowing and other expenses, the first of which Assessment shall be due and payable to the Association by March 1, 2016 with each subsequent payment due on the same day of each year thereafter.
  - B. In addition and to support the activities and responsibilities of the Association, the Board of Directors shall, by Resolution adopted by a majority vote at any meeting establish Assessments of the Association's Members, which Resolution shall specify the amount of such Assessment and the required payment frequency thereof ("Regular", to be used to pay the Association's normal operating expenses, or one-time, "Special" Assessments, to be used to pay for capital improvements to or other expenses of The Heritage), all in accordance with the terms law and of the Declaration.
  - C. All Assessments levied by the Association shall be used exclusively to:
    - (1) Satisfy the Association's rights and responsibilities as set forth in the Declaration and these Bylaws.
    - (2) Promote the recreation, health, safety and welfare of the Membership.
    - (3) Pay for such other matters relating to The Heritage as the Association may, from time to time, decide.
  - D. Regular Assessments shall be uniform, but Special Assessments need not be, so long as there is a reasonable basis for the lack of uniformity.
  - E. The establishment of any Special Assessments levied shall require the approval of at least fifty-one percent (51%) of the Members that will be affected by the Special Assessment.
28. Payment of Assessments. All Assessments shall be due and payable as the Board of Directors may provide. Any Assessment that is not paid as and when due shall entitle the Association to:
- A. Collect a late charge equal to five percent (5%) of the amount of the unpaid Assessment.
  - B. Collect interest thereon at the legal rate of interest as is in effect from time to time in the Commonwealth of Virginia.

- C. File suit against the owner in a court of competent jurisdiction to obtain judicial collection rights without prejudice against the Association to file future actions against the owner for future defaults.
  - D. Collect all reasonable attorney fees and court costs that the Association may incur in enforcing its rights hereunder.
  - E. File a Memorandum of Lien in the land records of Washington County, Virginia, which Memorandum, once filed, shall be a lien superior to all subsequent liens and encumbrances, except real estate taxes, and shall be, along with interest, costs and fee, the personal obligation of the Member and their successor(s) in title.
  - F. Report such non-payment to any consumer credit reporting agency or to any other party.
29. Notice of Assessments. Notwithstanding anything to the contrary in these Bylaws, the Association shall provide at least fifteen (15) days but no more than thirty (30) days prior written notice to each Member of any meeting at which it intends to establish the amount of either Regular or Special Assessments.
30. Payment Certificates. The Association shall, upon demand and for a reasonable charge, furnish a Certificate signed by an Officer setting forth whether or not all assessments on a specified Lot has been paid in full through the date thereof, which Certificate shall be binding on the Association. The Association may charge a reasonable service charge not to exceed \$10.00 to defray the cost of preparing the Certificate.
31. Association Expenses and Liabilities. The Association shall bear all expenses incurred with respect to the organization, operation, and management of the Association. Any Officer shall be entitled upon majority vote of the Board of Directors to reimbursement from the Association for direct expenses incurred by him or her and allocable to the organization, operation, or management of the Association. The Association may purchase and pay for insurance covering liability of the Association and its Officers and Members. No Director, Officer or Member shall be liable, responsible, or accountable to the Association or any other Member in damages or otherwise for any acts, or for any failure to act, performed or omitted in good faith.
32. Salary. No stated salary shall be paid to any Director or Officer, as such, for their services. However, nothing herein shall be construed to preclude any Director or Officer from serving the Association in any other capacity and receiving compensation therefore.

#### MISCELLANEOUS PROVISIONS

33. Liability and Indemnity. The Officers and Directors shall not be liable to the Association, or any Member, for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct. The Association shall indemnify and hold harmless each of the Officers and members of the Board of Directors for any and all claims, contracts, and demands that such person incurs on behalf of the Association unless any such claim shall have been made contrary to the provisions of the Declaration or these Bylaws, except to the extent that such liability is satisfied by Directors and Officers Liability Insurance. Officers and Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any

threatened, pending or completed action, suit or proceeding by reason of the fact that such person is or was an Officer or Director of the Association, against expenses (including attorney fees), judgments, fines and amounts paid in settlement incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association.

34. Developer Rights. Notwithstanding anything to the contrary herein, the Developer of The Heritage, as defined in the Declaration, shall have the absolute right and privilege to appoint the majority of the members of the Board of Directors of the Association until such time as the Developer has fewer than five (5) votes as a Member.
35. Fiscal Year. The fiscal year of the Association shall be the calendar year.
36. Notices. Any notice required to be given under these Bylaws and any required delivery of information shall be given as follows unless otherwise specifically set forth elsewhere in these Bylaws or the Declaration:
  - A. The Secretary of the Association shall provide all notices unless such person is unavailable, in which event the President or the Chairperson of the Board of Directors shall appoint any other officer to provide such notice.
  - B. Except in the case of an emergency meeting, notice to members of the Board of Directors shall be given at least three (3) days in advance by telephone or in writing delivered to the Board member as such Board member may from time to time specify in the Minutes of the Board of Directors, which delivery may be by posting on the Board member's residence door, email, or first class mail.
  - C. Notice to the Membership shall be given in writing delivered to the each Member as such Member may from time to time request in writing delivered to the Association's Secretary at least ten (10) days in advance of the effective date thereof, which writing may request notice by (i) posting on the Member's residence door, (ii) email, or (iii) first class mail addressed to the Member at such address as the Member may specify. In absence of a written request to the contrary, notice to a Member shall be deemed sufficient if posted on such Member's residence door. Notice of any annual meeting shall be provided at least ten (10) days prior thereto, and notice of any special meeting shall be provided at least two (2) days prior thereto.
  - D. Any person may waive notice of any meeting or delivery of information by filing a written and signed waiver of notice with the Association Secretary either before or after such meeting or required delivery of information.
  - E. No notice of a meeting is required to specify the purpose thereof except as otherwise required by these Bylaws.
  - F. Notice need not be provided for any adjourned meeting.
  - G. Notice of any regular meeting of the Board of Directors need not be given provided that each Member is given notice of the specified date, time and location of all such meetings in a manner that allows the Members to calculate when such meetings shall occur, e.g. the second Tuesday of every month at 7:00 pm in the

banquet room of the Harbour House restaurant, Lee Highway, Abingdon, Virginia.

37. Conflicts of Interest.

- A. No contract or other transaction between the Association and any other party shall be impaired, affected or invalidated, nor shall any Director or Officer be liable in any way by reason of the fact that any one or more of the Directors or Officers of the Association is or are interested in, or is a Director or Officer, or is a director or Officer of such other party, provided that such fact is disclosed or made known to the Board of Directors.
- B. Any Director or Officer, personally and individually, may be a party to or may be interested in any contract or transaction of this Association, and no Director or Officer shall be liable in any way by reason of such interest, provided that the fact of such interest be disclosed or made known to the Board of Directors, and provided that the Board of Directors shall authorize, approve or ratify such contract or transaction.

38. Amendments. Except as set forth in the Declaration:

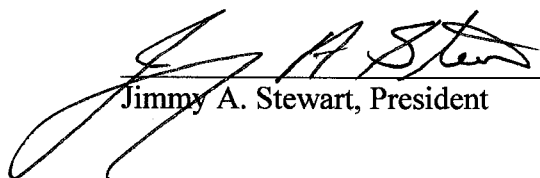
- A. Amendments to these Bylaws may be made by majority vote of the Directors and Majority Vote of the Members at any meeting at which a quorum is present, provided ten (10) days prior written notice is given to the Directors and Members of the purposed change.
- B. In the event that any portion of these Bylaws is subsequently rendered invalid by act of the General Assembly of Virginia, those portions hereof which are not affected by such legislation shall remain in full force and effect until and unless altered or repealed in accordance with the terms hereof.

39. Third Party Beneficiaries. These Bylaws are for the benefit of the Association and its Members and are not for the benefit of any third parties, including, without limitation, any creditors of the Association or of a Member.

40. Headings. All paragraph headings in these Bylaws are inserted as a matter of convenience and for reference only and shall not be construed in any way to define, limit or extend or describe the scope of these Bylaws or the intention of the provisions thereto.

The undersigned certifies the foregoing Bylaws have been adopted as the current Bylaws of the Association.

*Dated:* Adopted May 5, 2015.

  
 Jimmy A. Stewart, President

INSTRUMENT #150001794  
 RECORDED IN THE CLERK'S OFFICE OF  
 WASHINGTON COUNTY ON  
 MAY 5, 2015 AT 03:40PM