

***[THIS DOCUMENT AMENDS AND RESTATES THAT DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HEATHER SPRINGS RECORDED IN BOOK 1595 AT PAGE 392 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY AND SHOULD BE INDEXED ACCORDINGLY]***

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR HEATHER SPRINGS**

WHEREAS, First Community Bank is the Declarant as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Heather Springs dated March 18, 2010, and recorded in the Office of the Register of Deeds for Richland County in Book 1595 at Page 392 on March 25, 2010 (the "Declaration"); and

WHEREAS, Declarant desires to amend and restate the Declaration as set forth herein.

NOW THEREFORE, THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HEATHER SPRINGS, made this 30<sup>th</sup> day of January, 2015, by **FIRST COMMUNITY BANK**, having an address of Post Office Box 64, Lexington, South Carolina 29071, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of a certain piece, parcel, or tract of land being delineated and shown as "Parcel A-2" and containing 4.28 acres, and "Parcel A-3" containing 1.00 acre (Parcels A-2 & A-3, together sometimes hereinafter referred to as the "Property") and on a plat prepared for Sunvest Properties, Inc. by United Design Services, Inc. dated April 27, 2004, and recorded May 17, 2004 in the Office of the ROD for Richland County (the "Boundary Plat") on in Plat Book 00935 at Page 1547; and,

WHEREAS, the Property is also shown and delineated on that certain plat entitled "Bonded Subdivision Plat of Heather Springs" prepared by United Design Services, Inc. dated July 3, 2007, and recorded in the Office of the ROD for Richland County in Book 1356 at Page 2780 (the "Bonded Plat" and together with the Boundary Plat sometimes referred to as the "Plats"); and,

WHEREAS, Declarant intends to develop said property and any other real property which it may hereafter incorporate as additional phases of Heather Springs (such additional property being hereinafter referred to as "Additional Property"); and,

Book 2002-1625  
2015006762 01/30/2015 14:50:58.987 Amend. to Decl & Master Deed  
Fee: \$56.00 County Tax: \$0.00 State Tax: \$0.00



WHEREAS, Declarant desires to provide for: (i) the ownership and maintenance of certain common areas created and/or, established within the confines of Heather Springs; and, (ii) the preservation of the values of the properties of the Heather Springs subdivision; and, (iii) the rendering of community services; and, (iv) a vehicle for the administration and the enforcement of certain covenants and restrictions applicable to the Heather Springs subdivision at the time Declarant transfers the common areas to the Heather Springs Homeowners Association, Incorporated; and,

WHEREAS, Declarant will cause to be incorporated, at or before the termination and/or conclusion of the development of the Heather Springs subdivision, under the laws of the State of South Carolina a nonprofit corporation, known as HEATHER SPRINGS HOMEOWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth herewith; and,

WHEREAS, Declarant declares that the covenants contained herein shall be covenants running with the land and shall apply to the lands described in the Plats and such additional lands owned by Declarant as may be by incorporating this Declaration by specific reference. The Declarant reserves in each instance the right to add additional restrictive covenants with respect to land owned by it and covered hereby and to limit the application to this Declaration to lands owned by it and subjected hereto in the future.

NOW, THEREFORE, Declarant declares that the real property described in the Plats be subjected to this Declaration, is, and shall be, held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter some-times referred to as the "Covenants") hereinafter set forth.

## ARTICLE I DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to Heather Springs Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

(b) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded to the Association for the use and benefit of its Members. The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, Residents and their guests (to the extent permitted by the Board of Directors of the Association) subject to fee schedules and operating guidelines.

(c) "Declarant" shall mean and refer to First Community Bank, as well as its successors and assigns, if the Declarant shall make and express conveyance of its rights as developer hereunder to such successor or assign.

(d) "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions and Easements of Heather Springs, as the same may be amended, renewed or extended from time to time in the manner provided herein, which shall be filed for.

(e) "Detached Single Family Home" shall mean and refer to improvements constructed on a Lot which improvements are intended to be occupied as a single family home and which improvements are not attached by common walls, roofs or other elements to any other improvements on the Property.

(f) "Family Dwelling Unit(s)" shall mean and refer to each Detached Single Family Homes or Townhouse(s) constructed on a Lot.

(g) "Heather Springs" shall mean and refer to the Lots and the Common Properties on the Property in Richland County, South Carolina, described in the Bonded Plat.

(h) "Lot" shall mean and refer to those portions of the Property upon which Declarant has intended for construction of or has been constructed improvements for sale, use, and occupancy as a single-family residential dwelling in conformity with the terms of this Declaration as such are shown on the Bonded Plat, and with regard to Lots on the Additional Property, on plats which will be filed of record by Declarant at the appropriate time.

(i) "Member" shall mean and refer to all those Owners who are members of the Association as defined in Article 3.

(j) "Owner" shall mean and refer to the Owner (including Declarant) as shown by the real estate records in the Office of the Register of Deeds (ROD) of Richland County, South Carolina, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Lot located within Heather Springs but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or by a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Register of Deeds of Richland County, South Carolina, a long-term contract of sale covering any Lot, the Owner of such Lot shall remain the Owner until fee simple title to the Lot has been transferred to the purchaser. A long-term contract of sale shall be one in which (i) the purchaser is required to make payments for the Lot for a period extending beyond nine (9) months from the date of the contract, (ii) the purchaser does not receive title to the property until such payments are made and (iii) the purchaser is given the use of said property.

(k) "Property," unless the context shall otherwise require, shall mean and refer to those tracts or parcels of land described in the Boundary Plat, together with all improvements thereon.

(l) "Recreational Facilities" shall mean and refer to any and all facilities designed for active recreational use, along with all parking areas located within the Common Properties and any additions thereto, which have been deeded to the Association. Nothing contained in this Section of the Declaration shall obligate Declarant or the Association to construct any Recreational Facilities.

(m) "Resident" shall mean and refer to each Owner and Tenant of a Lot and Townhouse or Detached Single Family Home, as appropriate, together with the members of his family living in such Townhouse or Detached Single Family Home.

(n) "Tenant" shall mean and refer to the lessee under a written agreement for the rent of a Lot and Townhouse or Detached Single Family Home, as appropriate, in Heather Springs.

(o) "Townhouse" shall mean and refer to improvements constructed on a Lot which improvements are intended to be occupied as a single family home and which improvements are attached by common walls, roofs and other elements to other improvements on the Property and commonly known and referred to as a townhome or townhouse.

NOTWITHSTANDING THE ESTABLISHMENT OF HEATHER SPRINGS HOMEOWNERS ASSOCIATION, INC. AND THE SUBMISSION OF THE PROPERTY TO THE TERMS AND CONDITIONS OF THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HEATHER SPRINGS IS **NOT** A CONDOMINIUM AS DEFINED IN THE HORIZONTAL PROPERTY ACT, CODE OF LAWS OF SOUTH CAROLINA, 1976 SECTION 27-31-10, ET SEQ.

## ARTICLE II PLAN OF DEVELOPMENT

1. Plan of Development of Property. The property shall be developed as a residential home community and the Declarant shall develop and construct Townhouses and Detached Single Family Homes as single-family residential dwellings in conformity with the terms of this Declaration. The Property may also include, but not be limited to, Common Properties, paved parking areas and drives, paved roads, utility systems, retention pond facilities, and other improvements or easements serving the Lots and Common Properties. The Lots shall be restricted exclusively to single-family residential use in accordance with the provisions of this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale, to make improvements and changes to all Common Properties and to all Lots owned by Declarant (other than changes to the location of the boundaries of the Lots), including, without limitation, (i) addition to and realignment of parking spaces, (ii) installation of any utility systems and facilities, (iii) installation of security and refuse facilities, and (iv) work related to the exteriors and roofs of the Townhouses.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

1. Membership. Every person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such membership. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, regardless of whether title to a Lot is vested in more than one Owner, shall have more than one membership or one vote per Lot.

2.1. Classes. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Owners shall file with the secretary of the Association an instrument in writing signed by all such Owners designating one Owner (or in the case of a corporation, one of its officers) to cast the vote which is attributable to such Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to two (2) votes for each Lot it owns as shown on the Bonded Plat. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs *earlier*:

- (a) the sale to the Owners of Ninety (90%) Percent of the Lots; or
- (b) when Declarant elects by notice to Association in writing to terminate its Class B membership.

2.2. Affirmation. Unless otherwise provided herein, all actions requiring the consent of the Members shall be deemed to have been authorized upon the receipt of the affirmative vote of the Class B Member.

3. Governing Body. The administration of the Association shall be vested in a Board of Directors consisting of not less than three (3) members (the "Board" or "Board of Directors"). The election of the Board of Directors shall be as provided in the By-Laws, a copy which is attached hereto as Exhibit "A" and incorporated herein by reference. Notwithstanding anything to the contrary, until such time as all Lots, including all Lots in any additional phases annexed into Heather Springs, have been fully developed, permanent improvements constructed thereon and sold to permanent residents, the Board shall consist of the Declarant and/or its designees which shall be designated in Declarant's sole and absolute discretion. The Declarant may at any time in its sole discretion elect to waive the right to act as or designate the directors. Every grantee of any interest in

the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to act as or designate the directors in accordance with the foregoing. Upon the expiration of the period of Declarant's right to act as or designate the directors, which, in Declarant's sole discretion, shall be one year from the date of sale of the last Lot unless assigned by Declarant at an earlier time (such period of time being the "Development Period"), such right shall automatically pass to the Members, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting the Members shall elect a new Board pursuant to the By-Laws which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession. At the special meeting, the presence at the meeting of Members or proxies entitled to cast fifty percent (50%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not present at any such meeting, a second meeting may be called, subject to the giving of proper notice, and the presence of twenty-five percent (25%) of the total vote of the membership shall constitute a quorum for such second meeting. Any such second meeting must be held within sixty (60) days of the first meeting when the required quorum was not present. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements for such "duly called meeting" which may be established by the By-Laws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given to each Member not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

4. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

#### ARTICLE IV FUNCTIONS OF ASSOCIATION

1. Ownership and Maintenance of Common Properties. The Association shall be authorized to own and maintain the Common Properties. The Association shall pay any ad valorem taxes on the Common Properties. Each Owner shall be responsible for the payment of all ad valorem taxes on his Lot and Townhouse or Detached Single Family Home, as applicable. The Association shall have the authority to promulgate and enforce rules and regulations regarding the occupancy and use for Heather Springs (the "Regulations"), and fine Members for violations of the Regulations, which fines, if unpaid, shall become a continuing lien on the Lot, and the right, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and facilities thereon; however, no portion of the Common Properties may be mortgaged or conveyed without the consent of two thirds (2/3) of the Class A Members; and

2. Required Services. The Association shall be required to provide the following services:

(a) Repair, replacement and maintenance of the Common Properties and all improvements located thereon.

(b) Taking any and all actions necessary to enforce all covenants and restrictions affecting Heather Springs and to perform all of the functions and duties delegated to the Association in any covenants or restrictions applicable to Heather Springs.

(c) Providing administrative services, including, but not limited to, legal, accounting and financial, and communication services informing Owners of activities and giving required notices incident to carrying out the functions of the Association.

(d) Review of and approval or disapproval of plans and specifications for (i) work to any Townhouse or Detached Single Family Home or (ii) landscaping on any Lot, all as provided for in the Declaration.

(e) Maintenance of liability insurance for the Association in such amounts as shall be determined by the Board of Directors to protect the Association against claims for which the Board of Directors determine should be covered, including, without limitation, insurance for the officers and directors in connection with their management of the Association.

(f) Enforce the obligation of each Owner to maintain and keep in good repair the exterior of such Owner's Townhouse(s) or Detached Single Family Home(s), as applicable, and such Owner's Lot(s).

(g) Replacement of roofs of the Townhouses (but not the roofs of Detached Single Family Homes) when such need for replacement results from normal wear and tear due to aging.

(h) Maintenance and upkeep of the landscaping in the front and side yard of each Lot.

(k) To purchase hazard insurance covering the improvements located on the Common Properties and any items of personal property which are a part of the Common Properties.

3. Discretionary Services. The Association shall be authorized, but not required, to provide the following services:

(a) Provide police protection and security to Heather Springs including, the employment of police and security guards.

(b) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document.

(c) Provide garbage and trash collection to each Townhouse within Heather Springs.

(d) Provide periodic exterior cleaning and painting of Townhouses (but not Detached Single Family Homes).

(e) Provide landscaping to the Lots.

4. Obligation of the Association. The Association shall be obligated to carry out those services specified in Section 2 of this Article, but shall not be obligated to carry out or offer any of the functions and services specified in Section 3 of this Article. The functions and services listed in Section 3 to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors, in its discretion, of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced or may be changed in nature (i.e. form required to discretionary or vice versa) at any time upon the affirmative vote of a simple majority of the voting rights of those voting at a duly held meeting of Members together with the consent of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale.

5. Pledge of Revenues. The Board of Directors of the Association shall have the power and authority to borrow funds for the benefit of the Association in performing its authorized functions and to pledge the revenues of the Association as security for such loans.

## ARTICLE V PROPERTY RIGHTS

1. Owner's Easements of Enjoyment in Common Properties. Subject to the provisions of these covenants, the Regulations established from time to time by the Association, and any fees or charges established by the Association, every Owner, Resident and Tenant shall have an easement of ingress and egress over all paved portions of the Common Properties and of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot and/or Townhouse.

2. Title to Common Properties. Declarant shall convey to the Association, at no cost to the Association that real property designated as Common Properties on the Bonded Plat or such other areas and Common Properties of Heather Springs as Declarant may intend to be for the common use an benefit of the Members. Such conveyance(s) shall be subject to all matters of record. Upon such conveyance, the Association shall immediately become responsible for all maintenance of such Common Properties and for any ad valorem real property taxes assessed in connection with such Common Properties.

3. Extent of Owner's Easement. The easements of ingress, egress, use and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to suspend the rights and easements of use of any Owner, Resident or Tenant of any Lot for any period during which the payment of any assessment made by the Association against such Lot remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published Regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the Regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the assessment.



(b) The right of the Association by action of its Board of Directors to dedicate or transfer to any public or private utility, or municipality any part of the Common Properties.

(c) The rights and easements of the Association set forth in Section 4, below.

(d) The rights and easements of the Declarant set forth in Section 5, below.

(e) The right of the Association to impose regulations for the use of and enjoyment of the Common Properties and improvements thereon, which regulations may further restrict the use of the Common Properties.

(f) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Properties and facilities thereon.

(g) The right of the Association to grant easements and to dedicate or transfer fee simple title to all or any part of the Common Properties, including leasehold interests, to any public or private concern for such purposes and subject to such conditions as may be agreed to by the Association; provided that no such dedication or transfer of fee simple title shall be effective unless authorized by the affirmative vote of a simple majority of the votes cast at a duly called meeting of the Association and by Declarant so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote taken thereon, shall be made by the President or Vice President and attested by the secretary or assistant secretary of the Association and such certificate together with a certificate, executed by Declarant, if such consent is required, shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

4. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association, to enter upon the Property (and inside a Townhouse, if necessary) or any portion thereof in the performance of their respective duties which specifically includes but is not limited to, the right to maintain, repair and replace the residential fire sprinkler system, if applicable, and upkeep the landscaping in the front and side yard of each Lot. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the owner or Occupant of the Lot, Townhouse or other structure or improvement directly affected thereby. In that connection, the Board of Directors has the power to grant and accept easements upon, over, under, and across all of the Common Properties for ingress, egress, installing, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and electrical, gas, telephone, water and sewer lines and landscaping; provided, however, that for so long as Declarant owns any Lot primarily for the purpose

of sale or has the unexpired option to add the Additional Property or any portion thereof to the Heather Springs development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. In addition, the Board of Directors has the power to grant and accept such easements upon, over, under, and across all of the Common Properties as may be reasonably necessary or desirable for the improvement of any portion of the Property; provided, however, that for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain upon the Property the necessary poles and other necessary equipment. The Association has also reserved an easement on, under and through each Townhouse and the Common Properties for the installation, location, maintenance, repair and replacement of the residential fire sprinkler system, if applicable.

#### 5. Easements for the Declarant.

(a) Construction. During the period that Declarant owns any Lot primarily for the purpose of sale or owns any interest in any portion of the Additional Property, whether or not a part of the development, Declarant and its duly authorized representative, agents, and employees shall have a transferable right and easement on, over, through, under and across the Common Properties for the purpose of constructing Townhouses on the Lots and making such other improvements to the Property as are contemplated by this Declaration and to the Additional Property as Declarant, in its sole discretion, desires, including, without limitation, any improvements or changes permitted and described by Article IV hereof, and for the purposes of installing, replacing, and maintaining all Townhouses and other improvements within the development, as well as utilities servicing the property or the Additional Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

(b) Sales Office. Notwithstanding any provisions or restrictions herein on the contrary, Declarant and its duly authorized agents, representatives, and employees shall have an easement for the maintenance of signs, a sales office, a construction office, a business office, and model Townhouses on the Property, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots or the Additional Property, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

6. Leases of Lots. Any lease agreement between an Owner and Tenant for the lease of such Owner's residence on its Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association, and any Regulations promulgated by the Association. The lease shall also provide that failure to comply with the terms of such documents shall be default under the terms of the lease. All leases of Lots shall be in writing and a copy of the executed lease must be provided to the Board.

ARTICLE VI  
COVENANTS FOR ASSESSMENTS

1. Creation of the Lien and Personal Obligations of Assessments. Except as set forth elsewhere in the Declaration, Declarant covenants and each Owner of any Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) regular annual assessments or charges (the "Regular Assessments") payable in monthly installments; and (2) special assessments or charges for the purposes set forth in this Article ("Special Assessments" and together with Regular Assessments sometimes the "Assessments"). Regular Assessments and Special Assessments are to be fixed, established and collected from time to time as hereinafter provided. The Regular Assessment and Special Assessments together with such interest thereon and costs of collection therefor, including reasonable attorney fees, as hereinafter provided, shall be a charge and continuing lien on the Lots and Townhouses thereon against which each such assessment is made. Each such Assessment, together with assessed interest thereon and all costs of collection, as hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment first becomes due and payable. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of Common Properties or abandonment of his Lot and Townhouse.

2. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence upon the date of purchase of the Lot and Townhouse by the Owner. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. Declarant shall not be responsible for assessments on Lots owned by Declarant. At Declarant's option, lots owned by builders which are not occupied as residences may not be responsible for assessments.

At least thirty (30) days in advance of each annual assessment period, the Board shall fix the amount of the annual assessment and promptly thereafter the Board shall cause written notice thereof to be sent to every Owner subject thereto. In the event the Board shall fail to fix the amount of annual assessment as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The due dates shall be established by the Board.

3. Purpose of Regular Annual Assessment. The Regular Assessments shall be levied by the Board of Directors of the Association and shall be payable as determined by the Board. The Regular Assessments levied shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots and in particular for the acquisition, improvement and maintenance of Heather Springs, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Commons Properties; the operation, maintenance and repair of the Recreational Facilities, if any;

the maintenance of water and sewer mains in and upon the Common Properties; the maintenance of open spaces, of roads and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way), drives and parking areas within the Common Properties; the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of any "sign easement" areas located on any Lot, as shown on a recorded plat; the maintenance of entranceways, landscaping and lighting of Common Properties, road medians, and islands and entranceways, the lighting of streets (whether public or private); the maintenance of the other amenities, if any; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Properties; the cost for providing (i) periodic exterior cleaning and painting of the Townhouses (but not the Detached Single Family Homes), (ii) landscaping to the Lots, (iii) replacement of roofs of the Townhouses (but not the roofs of the Detached Single Family Homes) when such need for replacement results from normal wear and tear due to aging, (iv) and maintenance and upkeep of the landscaping in the front and side yard of each Lot which shall be limited to the periodic cutting of the lawn unless otherwise designated by the Association; the costs associated with duties of the Architectural Control Committee; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise

4. Special Assessments. In addition to the annual Regular Assessments authorized by Section 3 hereof, the Board of Directors of the Association may levy Special Assessments against Lots for the following purposes to the extent any Regular Assessment is insufficient:

(a) Repair, re-surfacing or re-paving of any paved areas located on the Common Properties or any roads and streets which have not been accepted for dedication by a public authority.

(b) Repair, replacement and maintenance of the walls and landscaping on the Common Properties.

(c) To provide for the necessary facilities and equipment to offer the services authorized herein;

(d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

(e) Replacement of the roofs of the Townhouses (but not the roofs of the Detached Single Family Homes) constructed on a Lot.

Before any Special Assessment is levied by the Association, it must receive the assent of a simple majority of the votes cast at a duly held meeting of the Association. In mailing out the notice of such meeting, the Association shall include in the notice one statement from those Directors favoring the Special Assessment and one statement from the Directors opposing the special

assessment (if any), containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed two (2) pages in length.

In the event any Owner shall fail to fulfill his/her/its obligations under Article VI hereof, and the Association shall fulfill any of such obligations for such Owner, the Association shall be entitled to specially assess such Owner, without the requirement of a vote, for all costs incurred by the Association in performing such service.

5. Notice and Quorum Requirements. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 of this Article VI shall be sent to all Members not less than ten (10) days nor more thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast a majority of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6. Reserve Funds. The Association may establish reserve funds from its Assessments to be held in reserve in an interest-bearing account or investments as a reserve for: (a) major rehabilitation, major repairs, or major maintenance; and (b) for emergency and other repairs required as a result of storm, flood, wind, natural disaster or other casualty loss.

7. Certificate of Payment. The Association shall upon demand at any time furnish to any Owner liable for any Regular or Special Assessment, a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

8. Effect of Non-payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association. If the annual Regular Assessment or any Special Assessment is not paid by an Owner on or before its past-due date, then such assessment shall become delinquent, shall bear interest from the past due date until paid at the rate of the lesser of (i) fifteen percent (15%) per annum, or (ii) the highest rate permitted by law, and shall automatically and immediately (together with interest thereon as provided herein and all costs of collection, including attorney's fee) become a charge and continuing lien on the Lot, and/or Townhouse against which each such delinquent assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, Tenant, successors and assigns.

If the assessment is not paid within thirty (30) days after the past-due date, the Association may, at its election, bring an action to foreclose its lien on the property or bring an action at law against the Owner personally. If a delinquent assessment is put in the hands of an attorney-at-law for collection, there shall be added to the amount of such assessment all costs of collection, including, but not limited to, fifteen percent (15%) of the amount of the delinquent assessment and all interest thereon, and all reasonable attorney's fees and costs. No owner may waive or otherwise

escape liability for the assessment provided herein by non-use of the Common Properties or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein. Mortgagees shall not be required to collect assessments.

9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

10. Annual Statements. The president, treasurer or such other officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$250.00. Such officer shall furnish to each Member proof the Association who may request in writing, a copy of such statement within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

11. Annual Budget. The Board of Directors shall prepare and make available to all Members, at least sixty (60) days prior to the first day of each fiscal year, a budget outlining anticipated receipts and expenses for the upcoming fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

12. Uniform Assessment. All assessments made under this Declaration and levied against Lots with Townhouses constructed thereon shall be equal. All assessments made under this Declaration and levied against Lots with Detached Single Family Homes constructed thereon shall be equal. Notwithstanding the forgoing sentences, the assessments levied against those Lots owned by the Declarant and, at the option of the Declarant, those lots owned by builders that are not occupied as residences may, in Declarant's sole discretion, vary and differ from the assessments levied against Lots with Townhouses and Detached Single Family Homes constructed thereon.

13. Assessment for Roof Replacement. In order to insure that the Association will have sufficient reserve funds to replace the roofs of the Townhouses located on the Lots, a reserve fund will be established pursuant to Article VI, Section 6. The funding of the reserve shall be provided by the Owners of Lots on which Townhouses are constructed whereby a portion of the Regular Assessment, which portion shall be determined by the Board, shall be deposited and held in reserve until such time as the roofs of the Townhouses need replacing.

14. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. All property owned by the Declarant, at the Declarant's election (in Declarant's sole discretion), shall be exempt for the Assessments created herein. At the Declarant's election, Lots owned by builders (provided such lots are not being occupied as residences) shall be exempt from annual assessments until sold. Otherwise, no land or improvements devoted to dwelling use shall be exempt from said assessments.

15. Assessment for Non-Compliance. In the event any Owner, their guests, or invitees fail to comply with any of the provisions of the Declaration, the By-Laws of the Association or the Regulations established and amended from time to time by the Developer or the Board, the Developer or the Board may issue additional assessments in amounts as it determines in its sole discretion, which shall be an Assessment for Non-Compliance and which is a lien on the Lot of that Owner.

## ARTICLE VII ARCHITECTURAL CONTROL

1. Improvements, Changes and Alterations. No building, fence, wall or other structure or planting or landscaping (including but not limited to, the removing, planting or placing of trees, shrubbery, bushes, grass, or ground cover, or the construction, installation, location or removal of walls, fences, fountains, bird baths, pools, ponds, streams, gardens decks or patios) shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein including without limitation any plantings or landscape be made unless and until the plans and specifications showing the nature, kind, shape, color, height, materials 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 and topography by the Board, or by an architectural committee composed of three (3) or more representatives appointed by the Board (hereinafter referred to as the "Architectural Control Committee"). The initial Architectural Control Committee shall be appointed by the Declarant. Provided that nothing herein contained shall be construed to permit interference with the development of the Property by the Declarant so long as said development follows the general plan of development of the Property previously approved by the appropriate governmental entity. Notwithstanding anything herein to the contrary, up to one year after the last Lot is sold by Declarant, Declarant may approve any plans and specifications rejected by the Board or the Architectural Control Committee for the construction of initial improvements on any Lot provided the initial improvements are approved by the appropriate governmental entity. Such approval by Declarant shall operate and have the same effect as approval by the Architectural Control Committee or the Board.

### 2. Procedures.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications of any of the features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Neither Declarant, nor the Association, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. **FURTHER, NEITHER DECLARANT, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSION OF SUCH PLAN AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ASSOCIATION, ITS BOARD MEMBER OR OFFICERS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY SUCH DAMAGES, AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.**

(d) During construction, any employee or agent of the Architectural Control Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and structure thereon for the purpose of ascertaining compliance with the provisions of this Declaration, and neither the Architectural Control Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

3. Violations. If any structure shall be erected, placed, maintained or altered upon any Lot, other than in accordance with plans and specifications approved by the Architectural Control



Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article. If, in the opinion of the Declarant, or the Board of Directors of the Association upon recommendation of the Architectural Control Committee, such violation shall have occurred, the Board of Directors shall provide written notice to the Owner of such Lot by certified mail, setting forth the nature of the violation and the specific action required to remedy the violation. Any such required remedial action shall be consistent with guidelines then maintained by the Architectural Control Committee. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Board of Directors of the Association shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both.

## ARTICLE VIII USE RESTRICTIONS

1. Purpose. The primary purpose of this Declaration and the foremost consideration in the origin of same has been the creation of a fee simple residential development which is aesthetically pleasing and functionally convenient.

2. Residential Use. Each Lot and the Townhouse or Detached Single Family Home constructed thereon shall be used for residential purposes exclusively. No business or commercial activity of any nature shall be maintained in any Family Dwelling Unit, including by way of illustration and not by way of limitation, telephone answering services, manufacturer's representatives, interior decoration services and such other activities as do not directly constitute or necessitate the transfer of goods or merchandise from, in or about a Family Dwelling Unit. However, until such time as Declarant has sold all of the Lots in Heather Springs, it may use any Family Dwelling Unit which Declarant owns as a model unit or as a sales office.

3. Permitted Structures. No structure shall be erected, placed or permitted to remain on any Lot other than the following:

(a) One single-family Townhouse to be used as a dwelling or one single-family Detached Single Family Home to be used as a dwelling.

(b) Landscaping structures of the type compatible with the Townhouses and Detached Single Family Homes built in Heather Springs including, but not limited to, garden walls, walks, fences, driveways and parking areas.

4. Landscaping. If trees or shrubbery located on such portion of a Lot should die, the Owner shall promptly remove the same and, in the event said Owner shall fail to do so, the Association shall be permitted to remove the same. The Owner shall, at Owner's expense, replace dead trees or shrubbery with reasonably similar trees or shrubbery; provided, however, that any such replacements may be of a lesser age.

5. Antennas. No radio or television transmission or reception towers, antennas, satellite dishes or disks shall be erected on any structure or within the Property. Notwithstanding the above, satellite dishes or disks which are not greater than eighteen (18") inches in diameter may be installed on Lots provided they are adequately screened from the streets and adjoining Lots.

6. Air Conditioning Units and Other Objects Located Outside of Townhouse. No Owner shall install or permit to be installed window or roof-top air conditioning units or similar machines or objects outside of the Owner's Townhouse or Detached Single Family Home or which protrude through the walls, windows or roof of a Townhouse or a Detached Single Family Home.

7. No Signs. Except for the rights given Declarant under this Declaration, no signs, advertisements, or notices shall be erected, exhibited, maintained, inscribed, painted or affixed on any portion of a Lot or on any Family Dwelling Unit by anyone including, but not limited to, an Owner, a realtor, a contractor, or subcontractor, except with the prior written consent of the Association or except as may be required by legal proceedings. If such consent is granted, the Association shall have the right to restrict the size, color and content of such signs.

8. No Burning. No outside burning of wood, leaves, trash, garbage or other refuse shall be permitted on any Lot.

9. Pets. Except as in this section permitted, no animals, livestock or poultry of any kind shall be kept, raised or bred on any Lot; provided, however, that an Owner may be permitted to keep no more than two (2) normal household pets (i.e., dogs or cats) on his Lot. In the event that pets are kept on a Lot, such pets shall not be kept, maintained or bred for any commercial purposes and must be secured by a leash or lead at any time they are permitted outside a Family Dwelling Unit. In no event shall an Owner maintain on a Lot any pet which causes distress to other Owners by barking, howling, whining, biting, scratching or damaging

10. No Outbuildings or Temporary Structures. No mobile home, tent, barn, shed, pet pen, pet house, above ground pool, basketball goal, or other similar outbuilding or structure shall be placed on any Lot at any time, either temporarily or permanently. No structure of a temporary character shall be placed upon any Lot at any time.

11. Parking of Vehicles. No vehicle of any type (including, but not limited to, boats, trailers, trucks, buses, motor homes, recreational vehicles, motor scooters, go carts, motor bikes and campers) other than conventional automobiles and pick-up trucks not used for commercial use, shall be parked or maintained on any Lot. None of the aforesaid vehicles shall be parked or stored overnight on the streets or other Lots located in Heather Springs, nor shall they be used as a living area while located on the Property nor shall any of the aforesaid vehicles be repaired or serviced on any portion of the property.

12. Activities Causing Disorderly Conditions. The pursuit of hobbies or other activities which might lead to disorderly, unsightly or unkempt conditions shall not be pursued or undertaken on any Lot.

13. Disturbing Others. Each Owner shall be responsible for and shall regulate the occupancy and use of such Owner's Lot and Family Dwelling Unit so as to not unreasonably disturb other residents of Heather Springs or to interfere unreasonably with the peace and enjoyment of the other Lots and Family Dwelling Units by the Owners thereof. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done on a lot which creates an annoyance or nuisance to the Owners or residents within Heather Springs. No Owner shall allow any disturbing noises on such Owner's Lot to interfere with the rights, comforts or conveniences of other owners. No Owner shall permit any musical instrument to be played or any phonograph, television, radio or other sound-making equipment to be operated on such Owner's Lot at a volume which disturbs or annoys other residents of Heather Springs.

14. Rubbish and Trash. No portion of a Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, garbage or other waste shall be stored only temporarily awaiting pickup and must be kept in adequate sanitary containers. All equipment for the storage or disposal of trash, garbage or other waste shall be kept in a clean and sanitary condition.

15. Interior Window Coverings. All interior window coverings or treatments as viewed from the exterior shall be white or off-white in color. No bed sheets, towels, newspaper or any other product not specifically designed for window treatment application shall be used for temporary or permanent interior window coverings or treatments.

16. Mailboxes. Each Owner shall install a mailbox for use in connection with such Owner's Family Dwelling Unit; provided, however, that no mailbox shall be erected or installed on any Lot unless the Owner shall have received prior written approval from the Declarant as to the design, style and location of the mailbox.

17. Trees; Screening. Trees which have a diameter in excess of six (6") inches measured two (2') feet above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior written approval of the Architectural Control Committee of the landscape plan. Garbage cans and equipment shall be screened to conceal them from view of neighboring Lots and streets. Swing sets may be installed on the Lots only after receiving the prior written approval of the Architectural Control Committee. No clotheslines shall be permitted on the Lots.

18. Fences. All fences must be approved pursuant to Article VII, Section 1 prior to installation. Chain link fences are not allowed.

## ARTICLE IX INSURANCE AND RECONSTRUCTION

1. Owner Must Provide Insurance of Family Dwelling Unit. Each Owner shall, at his own expense, insure said Owner's Family Dwelling Unit including, but not limited to, the roof (i.e. roofs of Townhouses and of Family Dwelling Units) and all other insurable improvements on such Owner's Lot in an amount not less than the then current maximum insurable replacement value

thereof. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, wind storm and water damage.

All policies will contain a standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by institutional mortgage investors in the area in which the development is located, and which appropriately names all mortgagees or their servicer in such form as requested by such mortgagees or their servicer.

All policies will be written with a company holding a general policyholder rating of "A" or better by Best's Insurance Reports and in a financial category of Class VI or better in Best's Key Rating Guide. Policies may not be cancelable or substantially modified by any party without at least thirty (30) days prior written notice to the Association and each mortgagee which is listed as a scheduled holder of a first mortgage in the insurance policy.

Each Owner shall obtain additional insurance at his own expense for contents and personal property; provided, however, that no Owner will be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their mortgagees, may realize under any insurance policy which the Association, in its discretion, may have in force at any particular time. Any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of any Owner's policy will be chargeable to the Owner who acquired such other insurance. Each Owner who obtains an individual insurance policy covering any portion of a Family Dwelling Unit, other than the personal property belonging to such Owner, will file a copy of such policy with the Association within thirty (30) days after purchasing such insurance. Each Owner, at his own expense, may obtain on his Family Dwelling Unit or the contents thereof, title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterment and personal property damaged and lost. In addition, risk of loss with respect to any improvements made by an Owner within his Unit shall be that of the Owner. Betterments coverage or "improvements, insurance" shall be secured solely by an Owner wishing such coverage of his risk of loss, and the Association shall have no liability therefor.

2. Liability Insurance. The Association will obtain, maintain and pay the premiums, as part of the Assessments, a policy of comprehensive general liability insurance coverage covering at a minimum all of the Common Properties. Coverage limits will be in amounts generally required by private institutional mortgage holders for projects similar in construction, location and use to the development; provided, however, that such coverage will be for at least \$1,000,000 for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance and use of the Common Properties and legal liability arising out of law suits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because

of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each mortgagee listed as a scheduled holder of a first mortgage in the insurance policy.

3. Reconstruction or Repair of Damaged Townhouses. If any Family Dwelling Unit shall be damaged by casualty, the Owner of such Family Dwelling Unit shall promptly reconstruct or repair it so as to restore such Family Dwelling Unit nearly as possible to its condition prior to suffering the damage. All such reconstruction and repair work shall be done in accordance with plans and specifications therefor, approved by the Association. Encroachments upon or in favor of, Family Dwelling Units or Lots, which may be necessary for or created as a result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Owner on whose Family Dwelling Unit or Lot such encroachment exists, provided that such reconstruction or repair is done substantially in accordance with the plans and specifications approved by the Association or as the building was originally constructed. A number of Townhouses constructed on the Lots appear from the exterior to have a common party wall with Townhouses constructed on contiguous Lots. However, all Townhouses have been constructed with separate exterior stud walls where there appears to be a party wall. The boundary line between these Lots runs along the air space between any such Townhouses. This air space has been concealed on the exterior by covering it with facie boards which are common to both Townhouses. The exterior of the two walls on either side of this small air space are unfinished so that if one of the Townhouses is destroyed and not rebuilt, an unsightly condition will exist. Therefore, if a structure is destroyed in whole or in part, and the Owner thereof elects not to rebuild, such Owner shall be responsible for the cost of finishing the exterior of those walls on contiguous Townhouses which are unfinished and which are exposed to view as the result of such destruction. The finish placed on these exterior walls shall be subject to the approval of the Declarant and shall be compatible with the finish of the other visible exterior walls of the structure. In addition, the Owner of the damaged or destroyed structure shall be responsible for the cost of immediately weatherproofing the exposed unfinished walls of contiguous Townhouses, if necessary.

4. Decision Not to Reconstruct. An Owner shall not be required to reconstruct a damaged Townhouse only in such event as 80% or more of the Townhouses in Heather Springs are rendered uninhabitable by such casualty.

## ARTICLE X MAINTENANCE

1. Owner's Responsibility. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Family Dwelling Unit, and other improvements thereon shall be the responsibility of the Owner of such Lot. The responsibility of each Owner shall include the maintenance, repair, and replacement of all siding, exterior doors, fixtures, equipment, and appliances (including, without limitation, the heating and air-conditioning system for his Family Dwelling Unit) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of his Lot. The

responsibility of the Owner shall also include the maintenance, repair, and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and all screens or glass-enclosed porches, balconies, or decks which are a part of the Family Dwelling Unit. Except as provided for in Article IV, Section 2, each Owner shall perform such maintenance and repairs as may be necessary to maintain the roof of such Owner's Family Dwelling Unit in a good state of repair.

In addition, each Owner shall be responsible for replacing the roof of said Owner's Family Dwelling Unit (including the roofs of any Townhouse) as such need is caused by a hazard which is normally covered under the Owner's hazard insurance or which is required under this Declaration. Each Owner shall maintain and keep the exterior and grounds of his Family Dwelling Unit in good, neat, clean and sanitary condition and such responsibility shall include the maintenance and care of all lawns, trees, shrubs, hedges, grass, and other landscaping contained within such Lots other than those responsibilities of the Association as set forth in Article IV, Section 2. Each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any portion of the Lot, Family Dwelling Unit which is the responsibility of the Owner under this Declaration, but which responsibility such Owner fails or refuses to discharge; the Association may specially assess the Owner for any amounts expended by the Association to discharge the responsibility of the Owner defined herein. In the event of any such assessment as herein provided and the non-payment by the Owner within thirty (30) days after notice and demand from the Association, the Association shall have the rights set forth in Article VI, Section 7 hereof.

## ARTICLE XI GENERAL PROVISIONS

1. Easement for Encroachment. If any portion of a Townhouse or Detached family Unit now encroaches upon any other Townhouse or Lot as a result of the construction of the buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of the buildings, there shall exist a valid easement for these encroachments and for the maintenance of same so long as the buildings stand.

2. Enforcement of Covenants. In the event of a violation or breach of any of the restrictions contained herein by any Owner or agent of such Owner, the Owners of Lots in Heather Springs, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof and to prevent the violation or breach of any such covenant. In addition to the foregoing, Declarant or the Association shall have the right, wherever there shall have been built or put in place on any Lot in Heather Springs any structure or landscaping in violation of these restrictions, to enter upon such Lot where such violation exists and summarily abate or remove the same at the expenses of the owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, regardless of how long such failure shall continue, shall not constitute a waiver of or a bar to such right to enforce.

3. Reservation of Easement. The Declarant hereby reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric service, community television antenna, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, sprinkler systems, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, storm drainage or other public conveniences or utilities on, in or over those portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may (a) have been used prior to the installation of such utilities for construction of a building; or (b) such portion of the Property as may be designated as the site for a Family Dwelling Unit. These easements and rights expressly include the right to cut any trees, bushes and shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations, siltation basins, retention and detention ponds, and tanks within Heather Springs in any open space or on any portion of the Property designated for such use on the applicable plat of said Property, or to locate same upon any portion of the Property. Such rights may be exercised by a licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service. Following the installation of any utility apparatus or other improvement on any portion of the Property pursuant to the provisions of this paragraph, the Declarant shall restore such portions of the Property as nearly as is reasonably possible to its condition immediately prior to such installation.

The Association shall have the power and authority to grant and establish upon, over and across the Common Properties such additional easements as are necessary or desirable for the providing of service or utilities to the Common Properties or Lots.

4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty (20) year period or during the last year of any subsequent ten (10) year renewal period, Two-thirds (2/3rds) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term and all holders of first priority deeds to secure debt of any Owner or successor to such Owner consent in writing to the termination of this Declaration. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the president and secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association,

the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Office of the Register of Deeds (ROD) for Richland County, South Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

5. Amendments. Declarant specifically reserves the right to amend this Declaration, or any portion hereof, on its own motion without the consent of any other Owners for so long as Declarant owns at least one (1) Lot in Heather Springs. In all other instances, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if two-thirds (2/3rds) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the president and secretary of the Association shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be prior to the date on which such addendum is recorded in the Office of the Register of Deeds for Richland County, South Carolina, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Members, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, and the total number of votes cast against the amendment. Such addendum shall be recorded in the Office of the Register of Deeds for Richland County, South Carolina. Notwithstanding any provision herein to the contrary, this Declaration shall not be amended without the express written consent of Declarant until Declarant's rights under Article III, Section 3 have expired.

6. Notices. Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent and notice thereby given when personally delivered or when mailed, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one of two or more co-owners or co-tenants of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the secretary of the Association, in writing, of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed, shall be deemed to have been given notice if notice was given to his predecessor in title.

7. Severability. Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no



wise affect the other provisions thereof which are hereby declared to be severable and which shall remain in full force and effect.

8. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of this Declaration.

9. Authorized Action. All actions which the Association is allowed or required to take under this instrument and all approvals or disapprovals which the Association is authorized to make shall be authorized actions of the Association only if approved by the majority of Members of the Board of Directors of the Association present at a duly held meeting of such Board of Directors, unless the terms of this Declaration provide otherwise.

10. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Association contemplated under this Declaration, neither Declarant nor the Association, nor any director or officer thereof, shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld.

11. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all of the Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Master-In-Equity for Richland County, South Carolina, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within Heather Springs as set forth below:

(a) Each Lot shall be subject to an annual assessment which shall be paid by the Owner of such Lot to the Trustee. The amount of such annual assessment and its due date shall be determined solely by the Trustee.

(b) Any past-due annual assessment together with interest thereon at the rate of fifteen percent (15%) per annum from the due date and all costs of collection including fifteen percent (15%) of the assessment and interest thereon as reasonable attorney's fees, shall be a personal obligation of the Owner at the time the annual assessments become past due, and it shall also constitute and become a charge and continuing lien on the Lot against which the assessment has been made in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

(c) The Trustee shall be required to use the funds collected as annual assessments for the maintenance, repair and upkeep of the Common Properties. The Trustee may charge as a part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. The Trustee shall not have the obligation to provide for maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessments have been exhausted.

12. Federal Lending Requirements. Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or other similar agency.

Any such amendment must be with the consent and approval of such agency and must be properly recorded.

13. Annexation.

(a) Additional residential property and Common Properties may be annexed to the Property only with the consent of two-thirds (2/3) of each class of Members.

(b) Notwithstanding the above, lands which are adjacent to the Property (hereinafter referred to as "Additional Land") or Additional Property may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this instrument. Provided, however, that should Declarant elect to improve and develop all or part of the Additional Land and Additional Property, Declarant shall have the right to impose upon the Additional Land and Additional Property supplemental covenants and restrictions which are not substantially different from those contained herein. Notwithstanding anything contained herein which might otherwise be interpreted to produce a contrary result, this Declaration does not create any charge, lien or other encumbrance or restriction on any part of the Additional Land and Additional Property, or affect in any way the title thereto or any part thereof, nor does this Declaration create an obligation upon Declarant to improve and develop all or any portion of the Additional Land and Additional Property.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration of Covenants, Conditions, Restrictions and Easements for Heather Springs to be executed in its name and its corporate seal hereto affixed as of the 30<sup>th</sup> day of Jan., 2015.

WITNESSETH:

Chris Runge  
Chanelle Sells

FIRST COMMUNITY BANK

By: [Signature]  
Its: Vice President

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF

Personally appeared before me the undersigned witness who, being duly sworn, made oath that s/he saw the within named First Community Bank by its Authorized Officer sign, seal and deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness whose signature appears above witnessed the execution thereof.

Chanelle Sells

SWORN to before me this 30 day of Jan, 2015

Chris Runge L.S.

Notary Public for South Carolina (SEAL)  
My Commission expires: 5.0.16

EXHIBIT "A"

[Proposed By-Laws of Heather Springs Homeowners Association, Inc.]

**BY-LAWS OF HEATHER SPRINGS  
HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I  
NAME AND LOCATION

These are the By-Laws of the Heather Springs Homeowners Association, Inc. hereinafter referred to as the "Association." The principal office of the Corporation shall be located at 5455 Sunset Boulevard, Lexington, South Carolina 2907, but meetings of Members and Directors may be held at such places as may be designated by the Board of Directors from time to time.

ARTICLE II  
DEFINITIONS

The capitalized terms used herein shall have the same meaning as the defined terms set out in the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Heather Springs dated March 18, 2010, and recorded in the Office of the ROD for Richland County in Book 1539 at Page 392, as the same was amended by that certain Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Heather Springs dated \_\_\_\_\_, 2015, and recorded in the Office of the ROD for Richland County in Book \_\_\_\_\_ at Page \_\_\_\_\_.

ARTICLE III  
PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the Lots, the Townhouses, the Detached Single Family Homes, and Common Properties, within those certain tract(s) and/or Lot(s) on the Property described in the Declaration and incorporated by reference, and to promote the health, safety and welfare of the residences within the Heather Springs subdivision (hereinafter, "Heather Springs") and any additions thereto as may hereafter be brought within the jurisdiction of the Association, and for this purpose to:

(a) Exercise all of the powers and privileges and to perform, or delegate to an appropriate person or entity the authority to perform, all of the duties and obligations of the Association, including the establishment and amendment of any Regulations and the use and maintenance of the Common Properties and Additional Land and Additional Properties as set forth in the Declaration as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as set forth in length;

(b) Fix, levy, collect and enforce payment by any lawful means, all Assessments pursuant to the terms of the Declaration; pay all expenses in connection therewith; and pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property subject to the Declaration and the Association;

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property

including, but not limited to the Common Properties, as determined advisable by the Board of Directors;

(d) Borrow money, mortgage, pledge, deed in trust, or hypothecate any and all of its real or personal property including, but not limited to the Common Properties, as security for money borrowed or debts incurred upon arrival by the affirmative casting of two-thirds (2/3) of all Class A and B votes of the Association;

(e) Participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional residential property and Common Properties, provided that any such merger, consolidation, or annexation shall have the assent of Members of the Association controlling a majority of all Class A and B votes of the Association, provided, however, that this shall not affect the right of the Declarant to add additional Property to the Community and Association as set out in the Declaration;

(f) Make, by decision of the Board of Directors, and subject to applicable law, any election of a fiscal year for the Association, as the Board of Directors shall determine from time to time;

(g) Designate, by decision of the Declarant or the Board of Directors, as set forth in the Declaration and by amendment to these By-Laws, neighborhoods to be under the authority and control of the Association pursuant to voting rights of the Members as established by the Declaration, these By-Laws, as amended, and the Board of Directors.

(h) To have and exercise any and all powers, rights, and privileges which a corporation organized under the nonprofit corporation law of the State of South Carolina by law may now or hereafter have or exercise including the right to enter into agreements with other Associations

and entities for the management and maintenance of Common Properties of such Association or entities;

(i) Notwithstanding the purposes and powers of the Association enumerated above, the Association, after passage of control to the Owners by converting Class B membership to Class A membership as set forth in the Declaration, shall not enter into, either directly or indirectly, contracts or leases with the Declarant (including a management contract) unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control in accordance with the Declaration, upon not more than ninety (90) days notice to the other party to the said contract or lease.

#### ARTICLE IV MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held at a time, date, and place established by the Declarant within twelve (12) months after the organization of the Association. Subsequent annual meetings of the Members shall be held at a time, date and place established by the Board of Directors each year so long as no annual meetings of the Members shall be scheduled on a legal holiday. Until one (1) year after the last Lot, including all Lots in any additional phases annexed into Heather Springs, has been fully developed, permanent improvements constructed thereon and sold to permanent residents (such period of time being hereinafter referred to as the "Development Period"), the Board shall consist of the Declarant and/or its designees, which shall be designated in Declarant's sole discretion, and the only purpose of the annual meeting(s) will be (1) to serve as a town forum in which the President and Officers report on and answer reasonable questions concerning the activities and financial condition of the Association; and (2) consider

matters raised consistent with the requirements of the South Carolina Non-Profit Corporation Act, S.C. Code Ann. § 33-31-101 et seq., hereinafter referred to as the "Act."

Section 2. Special Meetings. Special Meetings of the Members may be called at any time by the Declarant, President or by the Board of Directors, or as prescribed under the Act. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at a special meeting.

Section 3. Notice of Meetings. Written notice in English specifying the place, day and hour of the meeting of the Members, and, in the case of the special meeting, the notice shall also specify the purpose of the special meeting and the description of the matter for which the meeting was called. Notice of meetings shall be given by any fair and reasonable manner. The mailing of a copy of such notice of a special or annual meeting by first class mail or registered mail, postage prepaid, at least ten (10) days (or if notice is mailed by other than first class or registered mail, at least thirty (30) days) and not more than sixty (60) days before such meeting date to each Member entitled to vote at the meeting, including the Declarant, addressed to the Members' address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice shall be considered fair and reasonable. The notice requirement may be waived by a Member before or after the date and time of the meeting as stated in the notice. The waiver must be in writing, be signed by the Member and be delivered to the Association for inclusion in the minutes of the meeting, except that the attendance of a Member at a meeting waives notice unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. Also, an emergency meeting may be called with a twenty-four (24) hour notice to those Members entitled to vote, upon the unanimous vote of the Association's Board in the event an issue



requires the immediate attention of the Members of the Association. If a meeting of Members is adjourned to a different date, time, or place, notice need not be given of the new date, time or place, if (1) the new date, time, or place is announced at the meeting before adjournment and (2) the record date fixed pursuant to Section 9 of this Article for the adjourned meeting is not changed for the new meeting (either voluntarily by the Board or as required under the Act).

Section 4. Quorum. The presence at a meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of Membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members present shall have power to adjourn the meeting from time to time, without notice as long as the requirements of Section 3 of this Article are met. The quorum at the new meeting shall be reduced to five percent (5%) of each Class of Members.

Section 5. Proxies. Votes may be cast in person or by proxy. All appointment of proxies shall be by written appointment form, signed either personally or by an attorney-in-fact and filed with the Secretary prior to the vote being taken at the meeting in the case of a vote that is taken at a scheduled meeting (or such other time set out on the appointment form or meeting notice) and by the deadline established by the appropriate notification of a vote to be taken in any other manner. Except as otherwise allowed herein or by written authorization of the Board of Directors of the Association, no appointment form shall confer on the proxy a broader authority than to vote on the matter(s) or at the meeting(s) than is defined on the appointment form. Every proxy shall be revocable at the pleasure of the Owner, up to the time that the vote for which it was issued is cast and shall automatically cease upon conveyance by the Owner of that Lot. The proxy shall automatically

cease upon the Member (i) attending any meeting and voting in person, (ii) the Member signing and delivering to the Secretary in writing a notice revoking the appointment, (iii) or by receipt of notice the death of the Member prior to the proxy casting a vote.

Section 6. Parliamentary Rules. Robert's Rules of Order (latest edition) or such other rules as the Board of Directors may adopt shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the Articles of Incorporation, these By-Laws or with the statutes of the State of South Carolina.

Section 7. Failure to Hold Meetings. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with these By-Laws does not affect the validity of a corporate action.

Section 8. Authorization to Vote and Notice by Owner. It shall at all times be the responsibility of any Owner to keep current with the Association, the name and address of the person authorized to cast the vote assigned to that Lot, Townhouse or Detached Single Family Home and to receive notification from the Association as to any meetings which the Association may be required to send. Proof of the authority to receive notice and to vote shall be presented to the Association in the form of a certificate signed by the Owner. Such certificate shall be deemed valid until revoked by a subsequent certificate.

Section 9. Record Date. The Board of Directors shall set the record date for determining the Members entitled to notice of a Members meeting; to vote at a Members meeting; and to exercise any rights in respect of any other lawful action. The record date shall not be more than seventy (70) days before the meeting or action requiring a determination of the Members occurs.

Section 10. Voting Requirements. Unless otherwise required in these By-Laws, the Declaration, the Articles of Incorporation, or the law, the affirmative vote of the votes represented and voting, which affirmative vote also constitutes a majority of the required quorum, is the act of the Members.

Section 11. Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter and the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at the meeting.

ARTICLE V  
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number & Types. The affairs of this Association shall be managed by a Board of Directors of not less than three (3) Directors, who need not be Members of the Association; provided, however, that during the Development Period (and as described above) the Declarant and/or its designees shall act as Directors unless the Declarant voluntarily waives its appointment power and authorizes the Association to elect Directors in accordance with these By-Laws. At any time during the Development Period the Declarant may increase or decrease the number of Directors of the Association so long as the rest of the terms of these By-Laws are adhered to. All Directors who are also Members must be in good standing with the Association in order to seek election to, or continue to hold a position on, the Board of Directors.

Section 2. Term of Office. At the first annual meeting after the termination of the Declarant's Class B votes, the Members will elect five (5) Directors for staggered terms in accordance with Article VI, Section 2 of these By-Laws.

Section 3. Removal. At any time, any Director(s) appointed by the Declarant may be removed from the Board, with or without cause, by the Declarant by giving written notice of removal to the Director and either the presiding officers of the Board of Directors or the Association President or Secretary. Any Director(s) elected by the Association may be removed from the Board of Directors, with or without cause, by the affirmative casting of a majority (51%) of all of the votes of the Association. Any Director(s) who is a Member and who is not in good standing with the Association, or who misses three (3) consecutive Board meetings (unless such absence shall have been excused by the President of the Association or other person(s) authorized to do so), may be immediately removed from the Board of Directors by the remaining Board members and replaced in accordance with these By-Laws. In the event of death, resignation, or removal of a Director, a successor shall be selected by the Declarant, if that Director was appointed by the Declarant, or the remaining Members of the Board of Directors, if elected by the Members of the Association and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. Compensation of any Director shall require the affirmative casting of a majority (51%) of all of the Class A and B votes. This provision shall in no way require the Members approval of or preclude the Board of Directors from compensating a Director for his duties as an officer of the Association, from employing a Director as an employee of the Association, or shall it preclude the Association from contracting with and thereafter compensating a Director for the management of the Association.

Section 5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of a majority (51%) of the Directors, which shall represent a quorum. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 6. Reversal of Board of Directors. A decision of the Board of Directors, an officer or a committee of the Association may be reversed or modified by the Declarant as long as the Declarant owns any portion of the Property.

ARTICLE VI  
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Except where Directors are appointed or replaced by the Declarant or the Board of Directors, nomination for election for the Board of Directors shall be made by a nominating committee (the "Nominating Committee") or as specified in guidelines set forth by the Board of Directors. For purposes of the first Annual Meeting, the Nominating Committee, when created, shall consist of a Chairman and at least two (2) more Members of the Association. For purposes of any and all Annual Meetings other than the first Annual Meeting, at least one member of the Nominating Committee shall be a member of the Board of Directors. The Nominating Committee shall be appointed by the Board of Directors. Members of the Nominating Committee shall serve from the close of the annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 2. Election. Unless agreed to otherwise by the affirmative vote of a majority (51%) of Members entitled to vote and present at the meeting, election to the Board of Directors shall be by secret ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of these By-Laws and the Declaration. At the first annual meeting after the termination of the Declarant's Class B votes, the Members shall elect five (5) Directors: two (2) Directors for a term of one (1) year, two (2) Directors for a term of two (2) years, and one (1) Director for a term of three (3) years; and at each annual meeting thereafter, the Members shall elect successor Directors for terms of three (3) years. The term of any Director shall be automatically extended and shall not expire until the annual meeting at which a successor for that Director is elected. The person(s) receiving the largest number of votes shall be elected. If no nominee(s) are nominated pursuant to these By-Laws, that (or those) Director(s) shall be appointed by the current Board of Directors of the Association. Cumulative voting, voting more than one (1) time for any Director, is not permitted under any circumstance.

## ARTICLE VII MEETING OF DIRECTORS

Section 1. Regular Meetings. Until the end of the Declarant's Class "B" Membership, regular meetings of the Board of Directors shall be held at dates, times and places and as frequently as is deemed prudent by the Declarant. Upon the end of the Declarant's Class "B" Membership, regular meetings of the Board of Directors shall be held quarterly, or more frequently, and at dates, times and places determined by a majority (51%) of the Board of Directors. Without the approval of all of the Directors, no meeting shall fall upon a legal holiday. No notice shall be required for regular meetings.

Section 2. Special Meetings. Special Meetings of the Board of Directors shall be held when called by the President of the Association or any two (2) Directors, after not less than two (2) days notice is given, either personally, by mail, or by telephone, to each Director, unless waived in writing signed by the Director or by attendance of the meeting without objection or participation.

Section 3. Quorum. A majority (51%) of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision authorized by a majority (51%) of the Directors either by written consent or when present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

ARTICLE VIII  
POWERS, DUTIES AND REQUIREMENTS OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors, when empowered, shall have the power, but not the obligation, to perform such duties as authorized by the Declaration, to include, but not be limited, to:

(a) Adopt, amend and publish any architectural guidelines which may have been promulgated by the Architectural Control Committee (the "Architectural Guidelines") for Heather Springs and Regulations of the Association governing the Common Properties and facilities thereon and the personal conduct of the Members and their guests, and to establish Assessments for the infraction thereof;

(b) Suspend the voting rights, the right to use the recreational facilities on the Common Properties, and the services provided by the Association, including without limitation architectural review services, of a Member during any period in which each Member shall be in

default in the payment of any Assessment levied by the Association or for any other violation of the Declaration, the Architectural Guidelines (as defined herein), or other Regulations;

(c) Exercise for the Association of all of the powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) Declare the office of a member of the Board of Directors to be vacant in the event such member (i) is absent from three (3) consecutive regular meetings of the Board of Directors unless such absence shall have been excused by the President of the Association or other person(s) authorized to do so, or (ii) is otherwise not in good standing as a Member of the Association, including without limitation failure to pay Assessments when due;

(e) Employ a manager, an independent contractor, Treasurer of the Association or such other employees as they may deem necessary, to prescribe their duties and;

(f) Levy Assessments and to collect from the Members all costs of collection, including but not limited to court costs and reasonable attorney fees, for all infractions of the Association's Regulations, the Architectural Guidelines, the Declaration, Articles of Incorporation and/or these By-Laws.

(g) Delegate, in part or in whole, to any employee, agent, director, officer, contractor, manager or other appropriate entity, any power or authority given to the Board of Directors by the Declaration or these By-laws.

Section 2. Duties. It shall be the responsibility of the Board of Directors to:

(a) Comply with the requirements of applicable South Carolina law governing the Association regarding the Association's annual meetings;



(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) Perform such other duties as required by the Declaration, the Articles of Incorporation or the By-laws.

(d) Take legal action where it is deemed prudent and to be in the best interest of the Association by the Board of Directors, including without limitation foreclosure of the lien against any Lot for which Assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same as provided in the Declaration, or both;

(e) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. At all times the Association records with respect to payments made or due shall be deemed correct unless proper documentation to the contrary can be produced. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment. A reasonable charge may be made by the Board for the issuance of these certificates;

(f) Procure and maintain liability and hazard insurance on property owned by the Association in amounts established by the Board of Directors in its sole discretion and with insurance companies licensed to do business in South Carolina with a Best rating of AA or better;

(g) Cause and pay for all officers or employees having fiscal responsibilities to be bonded, if and as it may be deemed appropriate by the Board of Directors;

(h) Cause the Common Properties to be maintained.

Section 3. Requirements: The Board shall not be authorized or obligated to initiate, and the Association shall not initiate, any judicial or administrative proceeding unless first approved by a seventy-five percent (75%) affirmative vote of the entire Association Membership, except that no such approval shall be required for actions or proceedings: (1) initiated to enforce the provisions of the Declaration, these By-Laws, Architectural Guidelines, or Regulations; (2) initiated to challenge property taxation or condemnation proceedings; (3) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it. This Section 3 of Article VIII of these By-Laws shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE IX  
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The offices of this Association shall be a President and Vice President, who shall at all times be Members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board of Directors from time to time by resolution create. Compensation for the officers and the employees of the Association shall be fixed by the Board of Directors of the Association. The Board of Directors may employ a Director as an employee of the Association, and may contract with and thereafter compensate that Director for the management of the Association.

Section 2. Appointment of Officers. All officers shall be appointed by the Board of Directors.

Section 3. Term. Officers of this Association shall be appointed annually by the Board, and each shall hold office for one (1) year unless he shall resign, or be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may appoint such other officers as the affairs of the Association may require, each of whom shall hold office for such time, and with such authority perform such duties as the Board of Directors may determine from time to time.

Section 5. Resignation and Removal. Any Officer may be removed from office with or without cause by a majority (51%) vote of the Board of Directors. Any Officer may resign at any time giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person, otherwise no office may be held by the same person during the same time period. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the Officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors; see that the orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, promissory notes, deeds and other written instruments and shall be authorized, along with the Treasurer and other authorized parties, to sign on all checking accounts. If any vote of the Board results in a tie, the President shall cast the tie-breaking vote.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; keep any corporate seal obtained by the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing Members of the Association together with their addresses, authenticate the records of the Association and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by Resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; and keep proper books of accounts.

#### ARTICLE X COMMITTEES AND ARCHITECTURAL CONTROL AUTHORITY

When empowered, the Association's Board of Directors by majority vote shall appoint an Architectural Control Committee. In addition, the Board of Directors shall appoint other committees

as deemed appropriate in carrying out its purpose, including the establishment of a Nominating Committee as required herein. Compensation for committee members and for any employees of the Association assigned to or hired by these committees shall be fixed or approved by the Board of Directors. In addition to the committees appointed by the Board, there may be an appointed or elected committee for any Specific Purpose Area (the "Specific Purpose Committee") as follows:

Section 1. Establishment of Committee and Responsibilities. Upon termination of Declarant's Class "B" Membership or, prior to that point, at such time as the Board of Directors shall resolve to do so, a Specific Purpose Committee may be established by the Board of Directors for each Specific Purpose Area. As set forth in the Declaration, each Specific Purpose Committee shall carry out the duties required of it by the Board of Directors.

Section 2. Specific Purpose Assessment and Budget. To fund these budgeted expenses, in addition to the Annual Assessment charged each Lot Owner in the Community, all Owners of the Lots in each Specific Purpose Area may be charged an annual Specific Purpose Assessment, which shall be a part of the Association's lien on each Lot. At the option of the Declarant, or the Board of Directors, When Empowered, this Specific Purpose Assessment may be paid in installments and may, when collected, be deposited by the Association in an account separate from the Annual Assessment charged all Lot Owners in the Community. At the same time that the Specific Purpose Area budget is created by the Board of Directors, or submitted to the Board of Directors by the Specific Purpose Committee, the Board of Directors shall determine or the Specific Purpose Committee shall submit to the Board of Directors for approval, the amount to be charged for the Specific Purpose Assessment and an installment schedule for payment of the Specific Purpose Assessment by the Owners of the Lots in each Specific Purpose Area.

The Specific Purpose Area budget adopted by the Specific Purpose Committee shall be submitted to the Board of Directors for approval prior to such date as shall be set out by the Board of Directors annually, however, said date for submittal shall not be less than thirty (30) days after the date of notice to the Specific Purpose Committee by the Board of Directors of the submittal date. The Specific Purpose Area budget, amount of annual Specific Purpose Assessment and installment plan submitted to the Board of Directors by the Specific Purpose Committee shall be deemed approved if not disapproved by the Declarant or four (4) of the five (5) Members of the Board of Directors, When Empowered, within thirty (30) days after submission or such shorter time established by the Declarant or the Board of Directors, When Empowered.

ARTICLE XI  
BOOKS, RECORDS, AND PUBLICATIONS

The books, records, publications, and papers of the Association shall at all times, during reasonable business hours, or other reasonable circumstances, and preferably by appointment, be subject to inspection by any Member. Upon reasonable notice to the Association or its designated manager, the Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies of the governing documents addressed in this paragraph may be purchased at a reasonable cost.

Upon written request, and pursuant to the Act, any Member shall be entitled to inspect the latest financial statements and accounting records of the Association.

ARTICLE XII  
FUNDS AND BONDS

Section 1. Payments and Depositories. All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the said

Association to the payment of any of the expenses of operating and managing the Association, or to the proper undertaking of all acts and duties imposed upon it by virtue of these By-Laws, the Articles of Incorporation and the Declaration. As the funds for any Assessment are paid to the Association by any Owner the same may be commingled with the monies paid to the Association by the other Owners. All funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of the Common Properties, shall be held for the benefit of the Members of the Association.

The depository of the Association shall be such bank or other federally insured depository institution as shall be designated from time to time by the Board of Directors and in which the funds of the Association shall be deposited. Withdrawal of funds from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.

In the event the Board of Directors uses funds collected and held in the Association's reserve account(s), the Board of Directors shall have the option, in its sole discretion and without notice to the Members, to replenish (in whole or in part) or not to replenish said reserve account(s).

Section 2. Bonds. At the discretion of the Board of Directors, fidelity bonds shall be required on all members of the Board of Directors, the Officers of the Association and any other persons, employees or entities handling or responsible for the funds of the Association. The amounts of such bonds shall be determined by the Directors, but if it is determined that bonds are to be obtained, they shall be at least equal to the amounts to be handled at any point by that person or entity. Unless verification that the bonds have been provided by such person or entity is obtained by or provided for the Board of Directors, the premiums for these bonds shall be paid by the Association as a common expense.

ARTICLE XIII  
CORPORATE SEAL

The Association may have a seal in circular form having within its circumference the name of the Association.

ARTICLE XIV  
AMENDMENTS

Section 1. Except as otherwise required herein, the Declaration, the Articles of Incorporation, or by applicable law, these By-Laws may be amended, by mail or at a regular or special meeting of the Members, by the affirmative casting of a majority (51%) of all of the Class A votes of the Association present in person or by proxy and all of the Class B votes, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B Membership. Without limiting the foregoing, the Association, and the Declarant, and for so long as the Declarant owns any portion of the Property, shall, at any time and from time to time as they see fit, have the right to cause this document to be amended to correct any clerical or scrivener's error(s) or to conform to the requirements of the Federal Housing Administration or the Veterans Administration or the Federal National Mortgage Corporation, FHLMC and such other secondary market agencies as the same may be amended from time to time.

Section 2. In addition to any other right to amend as set out herein, as long as the Declarant owns any portion of the Property the Declarant may amend and/or restate these By-Laws without the consent of the Owners, their mortgagees, or the Association. Subject to the Declaration and these By-Laws, every purchaser or grantee of any Lot or Common Properties now and hereafter, by acceptance of a deed or other conveyance thereof, agrees that the By-Laws may be amended as provided herein.



Section 3. In addition to any other right to amend as set out herein, the Board of Directors may amend and/or restate these By-Laws without the consent of the Owners, their mortgagees, or the Association, in order to (1) designate, add, withdraw, or otherwise modify Neighborhoods or Neighborhood voting in the Community, or (2) add, subtract, or otherwise modify the number of Directors on the Board.

Section 4. In the case of any conflict of any Articles of Incorporation and these By-Laws or the Regulations, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration, the Regulations, and these By-Laws, the Declaration shall control.

#### ARTICLE XV MISCELLANEOUS

Section 1. In case of any conflict with the provisions of the South Carolina Non-profit Corporation laws, such laws shall control. Such laws are incorporated herein by reference as if fully set out herein.

Section 2. Subject to the right of the Board to set such date or to a ruling by the Internal Revenue Service, the fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 3. The Association shall indemnify an individual made a party to a proceeding because the individual is or was a Director, or officer against liability incurred in the proceeding if the individual complies with the requirements of applicable South Carolina law governing the Association and shall pay for or reimburse the reasonable expenses incurred by the Director or

Officer who is a party to a proceeding in advance of final disposition of the proceeding if the Director complies with the terms of the applicable laws.

IN WITNESS WHEREOF the undersigned incorporator of the Heather Springs Homeowners Association, Inc. has hereunto set their hand and seal on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

WITNESSETH:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name:  
Its: