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Drawn by:

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REGISTER OF DEEDS
CATAWBA CO., N. C.

Declaration of Covenants, Conditions and Restrictions

for

HEATHER GARDENS TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 20th day of March, 1998, by **MILTON R. HALBERT** and wife, **HEATHER H. HALBERT**, hereinafter referred to as the "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Catawba County, North Carolina, which is more particularly described on a map recorded in Plat Book 44 at Page 140 in the Catawba County Public Registry, reference to which is hereby made. Declarant desires to create thereon an exclusive residential community to be named **HEATHER GARDENS TOWNHOMES**.

WHEREAS, Declarant desires to subject the property in Heather Gardens Townhomes to the covenants, conditions, restrictions set forth below for the purpose of protecting the value and desirability of the property and for the purpose of providing for the maintenance and operation of the common areas located thereon;

NOW, THEREFORE, Declarant hereby agrees that all of the property described hereinafter shall be subject to the following covenants, conditions, and restrictions, which shall be construed as covenants running with the land and which shall be binding on all parties having any right, title, or interest in said property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

Definitions

Section 1. "Association" shall mean and refer to **HEATHER GARDENS HOMEOWNERS ASSOCIATION, INC.**, its successors and assigns.

Section 2. "Common Areas" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot is described as being all of that certain piece, parcel, or tract of land designated as Common Area and shown on the plat of Heather Gardens Townhomes, recorded in Plat Book 44, Page 140, Catawba County Registry.

Section 3. "Existing Property" shall mean that certain real property referred to as Heather Gardens Townhomes, as shown on the existing Plat described in Section 4 of this Article I.

Section 4. "Existing Plat" shall mean the plat of the Existing Property recorded in Plat Book 44, Page 140, Catawba County Registry.

Section 5. "Expansion Right" shall have meaning set forth in Article II below.

Section 6. "Property" or "Properties" shall mean the Existing Property and such additions thereto as may hereafter be subjected to this Declaration under the provisions of Article II below.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including the Declarant if it owns any Lots, and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Lot" shall mean any lot shown on the Existing Plat and all other lots within the Property which may be added pursuant to the Expansion Right and shown on plats hereafter recorded.

Section 7. "Declarant" shall mean Milton R. Halbert and wife, Heather H. Halbert and any successor or assign to whom Milton R. Halbert and wife, Heather H. Halbert shall convey or otherwise transfer all of its right, title, and interest in the Property then owned by it, and to whom Milton R. Halbert and wife, Heather H. Halbert shall expressly transfer and assign all of its right, title, and interest under this Declaration or any amendment or modification thereof.

**Property Subject to this Declaration
and Additions Thereto**

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed, occupied and used subject to this Declaration and the covenants, conditions, and restrictions contained herein.

Section 2. Future Additions. Additional lands may hereafter be subjected to this Declaration in the following manner (hereinafter referred to as the "Expansion Right"):

(a) The Declarant, its successors, and assigns, shall have the right for ten years from the date of this Declaration to bring within the operation and effect of this Declaration additional portions of the land more particularly described in Exhibit "A" attached hereto. The additions authorized under this Article II shall be made by recording in the Office of the Register of Deeds of Catawba County a supplement to this Declaration. Such supplement need be executed only by the Declarant (and the owner of such additional land if the Declarant is not the Owner thereof) and shall describe the additional land and state that it is subject to this Declaration. The additions authorized by this Article II, Section 2(a) shall not require the approval of the Association.

(b) Heather Gardens Townhomes may be further enlarged by the addition of other land, not described in Exhibit "A" attached hereto, but only upon the written approval of the Association after the Association has attained the assent of the holders of a majority of the votes of each class of members present in person or by proxy at the meeting at which the vote is taken. Such enlargement of the development shall thereafter be effectuated by having the owner of such additional land subject it to the operation and effect of this Declaration by recording in the Office of the Register of Deeds of Catawba County a supplement to this Declaration describing the additional land and stating that it is subject to this Declaration.

(c) Any such supplement to this Declaration, as described in subparagraphs (a) and (b) above, may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained herein as may be necessary to reflect the different character, if any, of the added Property, provided they are not inconsistent with this Declaration. In no event, however, shall any such supplement revoke, modify, or add to the covenants, conditions, and restrictions established by this Declaration insofar as they pertain to the Property as the same exists prior to the supplement.

Common Area

Section 1. Conveyance of Common Areas. The Declarant shall, from time to time, grant and convey to the Association, and the latter shall take and accept from the Declarant, fee simple title to the Common Areas. At the time of conveyance of any of the Common Areas, such Common Areas shall be free of any mortgages, deeds of trust, judgment liens, or similar liens or encumbrances, except for ad valorem taxes prorated to the date of conveyance and other title matters as may be acceptable to the Association.

The Association shall hold the Common Area conveyed to it subject to the following:

(a) The reservation to the Declarant of the right to lay, install, construct, and maintain, on, over, under, or in any portion of any Common Area, pipes, drains, mains, conduits, line, and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television lines, and other utilities deemed necessary or advisable to provide adequate service to any Lot now or hereafter laid out or established on the Property, together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations therein.

(b) The reservation to the Declarant of the right to enter upon any Common Area for the purpose of construction or completing the construction of improvements and the landscaping of the Common Area.

(c) The reservation to the Declarant of the right to continue to use and maintain any storm water management ponds and any sediment control ponds or facilities located on any Common Area.

Section 2. Community Use. The Common Areas conveyed to the Association shall be deemed property and facilities for the use benefit, and enjoyment, in common, of each Owner. Except as otherwise permitted by the provisions of this Declaration, no structure or improvement of any kind shall be erected, placed or maintained on any Common Area except: (i) structures or improvements designed exclusively for community use and (ii) drainage, storm water, and utility systems and structures. The Common Areas may be graded, and trees, shrubs, or other plants may be placed and maintained thereon for the use, comfort, and enjoyment of the Owners, or the establishment, retention, or preservation of the natural growth or topography of the Common Areas, or for aesthetic reasons. No portion of any Common Area may be used exclusively by any Owner for personal gardens, storage facilities, or other private uses without the prior written approval of the Association.

Section 3. No Offensive Activity. No noxious or offensive activity shall be carried on upon any Common Area, nor shall anything be done thereon which will become an annoyance or nuisance to the community or neighborhood.

Section 4. Operation of Common Areas. The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, repair, replace, restore, and maintain the Common Areas, together with any items of personal property placed or installed thereon, all at its own cost and expense.

Section 5. Limitations on Use: Enforcement. The right of each Owner to sue the Common Areas shall be subject to the terms, conditions, and provisions as set forth in this Declaration and to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order, and cleanliness of the Common Areas. All such terms, conditions, provisions, rules, and regulations shall inure to the benefit of and be enforceable by the Association and the Declarant, or either of them, their respective successors and assigns, against any owner, or any other person, violating or attempting to violate the same, either by an action at law for damages or a suit inequity to enjoin a breach or violation, or to enforce performance of any term condition, provision, rule or regulation. The Association and the Declarant shall each have the right, summarily, to abate and remove any breach or violation by any Owner at the cost and expense of the Owner.

ARTICLE IV

Property Rights in the Common Areas

Section 1. Owners' Easements of Enjoyment. Every Owner shall have the right and privilege to use and enjoy the Common Areas for the purposes for which the same were designed. This right and privilege shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admissions and other fees for the use of any recreational facility situated upon Common Area;
- (b) the right of the Association to suspend the voting rights in the Association and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any breach of its published rules and regulations or the terms of this Declaration;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless approved by a two-thirds (2/3) vote of each class of members voting in person or by proxy at a meeting called for such purpose; provided that this paragraph shall not preclude the Association from granting easements for the installation and maintenance of electrical telephone, cable television, gas, water, and sewage utilities and drainage facilities upon, over, under and across the Common Areas without the assent of the membership if such easements are requisite for the convenient use and enjoyment of the Property as determined in the sole judgment of the Board of Directors of the Association.

(d) the right of the Association to limit the number of guests of Owners.

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said property, and the rights of any mortgagee under such mortgage shall be subordinate to the rights of the Owners hereunder. Any such mortgage shall require approval by a two-thirds (2/3) vote of each class of members voting in person or by proxy at a meeting called for such purpose.

(f) the right of the Association to adopt, publish, and enforce rules and regulations as provided in Article X hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner to the use of not more than two automobile parking space in the Common Areas devoted to parking, which shall be as near and convenient to each Lot as is reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association may at any time, if it deems necessary or desirable, permanently assign vehicle parking spaces for each Lot. The Association may regulate the parking of boats, trailers, recreational vehicles, and other such items in the Common Area. Boats, trailers, and recreational vehicles shall be parked only in areas specifically designated for such purpose and shall be parked within the right of way of any public or private street in Heather Gardens.

Section 4. Antennas and Cable Television. The Association may provide cable television or one or more central television antennas for the convenience of the Owners, and the cost of these may be included in annual or special assessments. The erection of television or radio antennas or satellite disks is prohibited on individual Lots without prior written approval of the Board of Directors.

Section 5. Compliance with Rules. Each Owner shall fully and faithfully comply with the rules, regulations, and restrictions applicable to the use and enjoyment of the Common Area adopted by the Association for the safety, care, maintenance, good order, and cleanliness of the Common Area. Each Owner shall also comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Area.

Membership and Voting Rights

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. An Owner of a Lot may not withdraw from the Association.

Section 2. Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of the Lots. The Association shall have two class of voting membership:

Class A. Class A members shall be all Owners, with exception of the Declarant, and shall be entitled to one 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B Lots. Class B member shall be the Declarant and shall be entitled to three votes for each Lot owned. 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) when the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional lands are annexed to the Property as provided in Article II above, or

(b) December 31, 2008.

ARTICLE VI

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges and (2) special assessments for capital improvements, established and collected as hereinafter provided. The annual and special assessments and any other charges which the Owner is obligated to pay to the Association pursuant to the provisions of this Declaration, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment falls due. The personal obligation for

delinquent assessments shall pass to such Owner's heirs and personal representative, but shall not pass to an Owner's assigns unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Property and its residents and in particular for: the exterior maintenance of the Lots as set forth in Article IX below; the improvement, operation, and maintenance of the Common Areas, including without limitation the payment of taxes and insurance thereon; the employment of accountants and attorneys to represent the Association; the provision of adequate reserves for the replacement of capital improvements and other major expenses for which the Association is responsible; and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

At the time of the closing of the sale or resale of each Lot, the Buyer shall pay to the Association a sum equal to two months assessment to be added to the reserve fund. This obligation of the Buyer shall be in addition to his obligation to pay annual and special assessments and shall not be considered advance payment of any such assessment.

Section 4. Maximum Annual Assessment. The maximum annual assessment for each Lot shall be ONE HUNDRED (\$100.00) DOLLARS.

(a) From and after January 1, 2000, the maximum annual assessment may be increased each year by up to ten percent (10%) above the maximum annual assessment for the previous year upon a majority vote of the Board of Directors or by up to twenty (20%) above the maximum annual assessment for the previous year upon a two-thirds (2/3) vote of the Board of Directors.

(b) From and after January 1, 2000, the maximum annual assessment may be increased by more than the limitations set forth in subparagraph (a) above only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) From and after January 1, 2000, the maximum annual assessment may be increased each year by up to ten percent (10%) above the maximum annual assessment for the previous year upon a majority vote of the Board of Directors or by up to twenty (20%) above the maximum annual assessment for the previous year upon a two-thirds (2/3) vote of the Board of Directors. From and after January 1, 2000, the maximum annual assessment may be increased by more than the limitations set forth in subparagraph (a) above only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, or in connection with the exterior maintenance of the Lots, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to as sixty percent (60%) 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 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis; provided, however, that assessments for Lots owned by Declarant which are not occupied as a residence shall be in an amount equal to twenty-five percent (25%) of the assessments for other Lots.

Section 8. Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Association of the Common Areas. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon request, promptly furnish a certificate signed by an officer of the Association setting forth the assessments which are due and payable on a specified Lot, and any person to whom such certificate is addressed shall be entitled to rely conclusively upon such certificate.

Section 9. Effect of Non-payment of Assessments and Remedies of the Association. Any assessment or other charges not paid within ten (10) days after the due date shall bear interest from the due date at the rate of ten (10%) percent per annum. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot; and interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment or other charges. The lien may be foreclosed by the Association at any time after thirty days following the due date of the assessments or other charges set forth in the notice thereof given by the Association to the Owner. The lien

may be foreclosed in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and each Owner hereby grants to the Association a power of sale under such statutes. In addition, without limiting the foregoing, the Association's lien may be foreclosed by judicial action. A proceeding to enforce a lien for unpaid assessments or other charges must be commenced within three years after the delivery of notice of the assessments or other charges to the Owner.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding or conveyance in lieu thereof, shall extinguish the lien of such assessments as to payments which became 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.

ARTICLE VII

Architectural Control

No building, fence, wall, or other structure shall be commenced erected, or maintained upon a Lot, nor shall any exterior addition to, or change, or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to an approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three or more representative appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and located in within sixty days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. This Article VII shall no apply to the Declarant.

ARTICLE VIII

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty and Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina relating to arbitration as then existing. In no event may the demand for arbitration be made after the date when the institution of legal or equitable proceedings based upon the claims would have been barred by the applicable statute of limitations or repose.

ARTICLE IX

Exterior Maintenance

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, stain, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, nor any enclosures. In order to enable the Association to accomplish the foregoing, there is hereby granted to the Association the right of unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. Similarly, if any Owner shall fail to perform any exterior maintenance or repairs on his Lot for which he is responsible within thirty days after written notice by the Association to do so, then

the Association may perform such maintenance or repairs and the cost of the same shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE X

Restrictions and Easements

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Areas and the exterior portions of the Lots. Such rules and regulations may provide for the imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property shall be used for other than residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or become a nuisance or annoyance to the neighborhood, such as loud music, barking dogs, or loud mufflers.

Section 4. Declarant's Rights During Construction. Anything contained herein to the contrary notwithstanding, it shall be permissible for Declarant to maintain, during the period of construction and sale of said Lots and townhomes, upon such portion of the property as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of said Lots or townhouses, including without limitation a business office, storage area, construction yards, signs model units, and sales office.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the property, except that dogs, cats or other common household pets may be kept or maintained provided they are not kept, bred or maintained for any commercial purpose and do not endanger the health or, in sole discretion of the Board of Directors, unreasonably disturb the Owner of any Lot or resident thereof. Owners must abide by the City of Hickory leash law.

Section 6. Clotheslines, etc. No outside clotheslines shall be permitted, and all garbage cans and similar items shall be kept screened so as to conceal them from view of neighboring Lots.

Section 7. Utility Easement. There is hereby granted to the Association a blanket easement upon, across, over, and under all of the Property for ingress, egress, installation, replacing, repairing, and maintaining a master television antenna system and all utilities,

including without limitation water, gas, sewer, telephone, and electricity. Such easements grant to the Association and appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the property and to affix and maintain utility wires, circuits, and conduits on, above, across, and under the Lots and roofs and exterior walls of the townhouses.

Section 8. Access Easements. The Association shall have the right and easement to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice. The Association shall also have the right and easement to enter any Lot in the case of an emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

Section 9. Reservation. A non-exclusive easement for ingress, egress, and regress is reserved by the Declarant and its agents and employees across all Common Areas now or hereafter owned by the Association.

ARTICLE XI

General Provisions

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years unless, prior to the expiration of the then current term, a written instrument shall be executed by the then Owners of seventy-five (75%) of the Lots stating that this Declaration shall expire at the end of the then current term. This Declaration may be amended during the first twenty year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the office of the Register of Deeds of Catawba County.

Section 4. FHA/VA Approval. In the event the Declarant, its successors or assigns has arranged for and provided purchasers of Lots with FHA insured or VA mortgage loans, then as long as any Class B Lot exists, the following actions will require the prior approval of the

Federal Housing Administration or the Veterans Administration: annexation of additional properties other than as provided in Article II, Section 2(a) hereof, mortgaging or conveyance of common Area to persons other than to the Association, and any material amendment of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its duly-authorized officers, the day and year first above written.

Milton R. Halbert (SEAL)
Milton R. Halbert

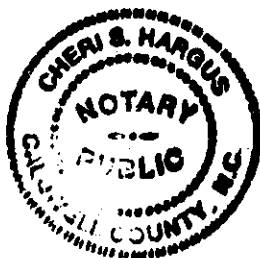
Heather H. Halbert (SEAL)
Heather H. Halbert
by: Milton R. Halbert A.I.F.

STATE OF NORTH CAROLINA
CATAWBA COUNTY

I, Cheri S. Hargus, a Notary Public for said County and State, do hereby certify that MILTON R. HALBERT,* attorney in fact for HEATHER H. HALBERT, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said HEATHER H. HALBERT, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Catawba, State of North Carolina, in Book 1936, Page 881, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said MILTON R. HALBERT acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said HEATHER H. HALBERT, and individuality.

Witness my hand and official seal, this the 20th day of March, 1998.



Cheri S. Hargus
Notary Public
My commission expires: 12/2/02

*As an Individual and as

EXHIBIT "A"

BEING all of Lot Nos. 90 thru 104, inclusive, of the J.P. Eckard Subdivision, according to a plat of the same recorded in Plat Book 4, Page 125-128, Catawba County Registry, to which plat reference is hereby made for greater certainty of description.

For reference to title see Book 2007, Page 1581, Catawba County Registry.

W
e
b

Drawn by: Shirley Herman Anthony, Attorney at Law
208 Union Square, Suite 200, Hickory, NC 28601

BYLAWS
OF
HEATHER GARDENS HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
Name and Location

The name of the corporation is **HEATHER GARDENS HOMEOWNERS ASSOCIATION, INC.**, hereinafter referred to as "the Association." The principal office of the Association shall be located at Post Office Box 6001, Hickory, NC 28603, or at such other place as the Board of Directors may deem convenient or the affairs of the Association may require, provided that meetings of members and directors may be held at such place and location in the State of North Carolina as may be agreed upon by the majority of the Board of Directors.

ARTICLE II
Definitions

Section 1. "Association" shall mean and refer to **HEATHER GARDENS HOMEOWNERS ASSOCIATION, INC.**, its successors and assigns.

Section 2. "Property" shall mean and refer to any and all of that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean and refer to any and all real property owned by the Association for the common use and enjoyment of the Owners

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee interest in any Lot which is a part of the Property, including, contract sellers, but excluding those parties having such interest merely as a security interest for the performance of an obligation.

Section 6. "Declaration" shall mean and refer to Milton R. Halbert and wife, Heather H. Halbert and any successor assign to whom Milton R. Halbert and wife, Heather H. Halbert shall convey or otherwise transfer all of its right, title and interest in the Property then owned by it, and to whom Milton R. Halbert and wife, Heather H. Halbert shall expressly transfer and assign all of its right, title, and interest under the Declaration or any amendments or supplements thereto.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in Book _____, Page _____, Catawba County Registry, and all amendments and supplements thereto.

Section 8. "Member" shall mean and refer to those persons or other entity to membership as provided in the Declaration.

ARTICLE III Meetings of Members

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock P.M. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of the votes of the Class A Membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member of the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to at least 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 bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV

Board of Directors: Selection and Term of Office

Section 1. Number. The affairs of this Association shall be managed by a Board of Directors who need not be members of the Association, and the number of Directors constituting the Board of Directors shall be three. The initial Board of Directors of three Directors shall serve until the first annual meeting of members of the Association.

Section 2. Term of Office. At the first annual meeting, the members shall elect three Directors for a term of one year.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of the death, resignation, or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

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 approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE VI

Nomination and Election of Directors

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairperson, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each 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. Election to the Board of Directors shall be by secret written 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 the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

Powers and Duties of the Board of Directors

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty days, for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, 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 that such member shall be absent from three consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

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

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4th) of the Class A members who are entitled to vote;

(b) supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(i) fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment period;

(ii) send written notice of each assessment to every Owner subject thereto at least thirty days in advance of each annual assessment period;
and

(iii) foreclose the lien against any property for which assessments are not paid within thirty days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate office to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibility to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained;

(h) cause the exterior of the dwellings to be maintained.

Officers and Their Duties

Section 1. Enumeration of Officers. The officers 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 may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

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

Section 5. Resignation and Removal. Any officer may be removed from office by the Board with or without cause. An officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or 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. 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. No person shall simultaneously hold more than one 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 orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall, co-sign all checks and promissory notes.

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.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; service notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses; and perform such other duties required by the Board.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, keeping, in accordance with accepted accounting procedures, a detailed, accurate, and chronological record of all receipts and disbursements and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual accounting of the Association books to be made by a public accountant not associated with the Association at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy to each of the Members.

ARTICLE IX

Committees

The Association shall appoint an Architectural Committee, as provided in the Declaration, and a Nomination Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

Assessment

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against

which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within ten days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for the herein by non-use of the Common Areas or abandonment of his Lot.

ARTICLE XII

Corporate Seal

The Association shall have a seal in circular form having within its circumference the words: HEATHER GARDENS HOMEOWNERS ASSOCIATION, INC.

ARTICLE XIII

Amendments

Section 1. These Bylaws may be amended at a regular or special meeting of the members, by a vote of a majority of a quorum of members of directors present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 3. In the event the Declarant, its successors or assigns, has arranged for and provided purchasers of Lots with FHA insured or VA mortgage loans, then as long as any Class B Lot exists as provided in the Declaration, any material amendment of these Bylaws shall require the prior approval of the Federal Housing Administration or the Veterans Administration.

ARTICLE XIV

Miscellaneous

Section 1. The fiscal year of the Association shall be the calendar year.

Section 2. The Association shall provide the first mortgagee of any Lot prompt notice of any default by the Owner of such Lot on its assessment, if such default is not cured within ten days of default.

Section 3. The Association will provide liability insurance for the Common Area and provide fire and extended coverage on any of the Common property owned by the Association based on a current replacement basis of not less than one hundred percent (100%) of the insurable value, and the premiums for such insurance shall be considered a common expense of the Association and part of the annual assessment.

Section 4. The Association shall give all first mortgagees of Lots notice in writing of any loss to or taking of Common Areas in excess of Ten Thousand Dollars (\$10,000.00), upon the Association's knowledge of such loss.

Section 5. Should any State or other governmental agency condemn any part of the Association's property, the Association shall provide written notice to the first mortgagees of any such condemnation.

Section 6. The first mortgagee of any Lot shall be entitled to the same rights as the Owners in regard to the inspection of books, records, and operating budget.

Section 7. The Board of Directors of the Association is empowered to enter into a contract with any person or corporation to provide a professional manager for the Association; however, any such contract shall provide that either party may terminate the contract on ninety days written notice to the other.

**STATE OF NORTH CAROLINA
CATAWBA COUNTY**

The foregoing certificate of Cheri S. Hayes, a Notary Public of
Caldwell County, N.C. is certified to be correct. This instrument was
presented for registration this 20th day of March, 1998, at 2:15 o'clock P.M., and
duly recorded in the Office of the Register of Deeds for Catawba County, North Carolina, in
Book 2073 at Page 1989.

This 20th day of March, 1998.

RUTH MACKIE
Register of Deeds

By: Ruth Mackie
Deputy Assistant Register of Deeds

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