

# DECLARATION OF PROTECTIVE COVENANTS FOR WHISPER LAKE SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS FOR WHISPER LAKE SUBDIVISION (“Declaration”) is made this sixth (6<sup>th</sup>) day of April, 1987, by Fairfield Communities, Inc., a Delaware corporation (“Declarant”).

## RECITALS

Declarant is the owner and developer of the real property described in Exhibit A attached hereto and incorporated herein by reference (“Property”). The Property is contained within a development known as Fairfield Sapphire Valley, located in Jackson and Transylvania County, North Carolina (“Sapphire Valley”).

Declarant, by execution and recordation of this Declaration, wishes to establish a lot subdivision within the Property to be known as Whisper Lake, consisting of Lots, Common Area, and Roads, all as more fully defined in ARTICLE I of this Declaration (“Subdivision”).

The Sapphire Valley Master Association, Inc., a North Carolina nonprofit corporation (“Master Association”) is charged with the management and operation of Sapphire Valley and joins in the execution of this Declaration to agree that the Subdivision is acceptable as an addition to Sapphire Valley and, further, to agree to the terms and conditions set forth in this Declaration, including the terms and conditions of membership for Lot owners in the Master Association.

The Whisper Lake Property Owners Association, Inc., a North Carolina nonprofit corporation (“Association”) has been organized as the operating entity for the Subdivision and joins in the execution of this Declaration to agree to the terms, conditions, and responsibilities imposed by this Declaration.

## ARTICLE I DEFINITIONS

As used in this Declaration and the exhibits attached hereto, and all amendments and supplements thereto, the following definitions shall prevail, unless the context clearly requires a different meaning:

- A. The term “Articles of Incorporation” shall mean the Articles of Incorporation for the Association as the same may be amended from time to time. A copy of the present Articles of Incorporation is attached hereto as Exhibit B and incorporated herein by reference.
- B. The term “Association” shall mean the Whisper Lake Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns, the initial Articles of Incorporation and Bylaws for which are,

attached hereto, respectively, as Exhibit B and Exhibit C and incorporated herein by reference.

- C. The term "Board of Directors" shall mean the Board of Directors of the Association.
- D. The term "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time. A copy of the initial Bylaws is attached hereto as Exhibit C and incorporated herein by reference.
- E. The term "Common Area" shall mean and include all of the property within the Subdivision, except Lots and Roads as defined below, including improvements, if any, constructed thereon, including by not limited to Whisper Lake ("Lake"), Lake dam(s) or retaining wall(s) structures, and any other area designated as such on a recorded plat of the Subdivision.
- F. The term "Committee" shall mean the Environmental Control Committee for Sapphire Valley.
- G. The term "Declarant" means Fairfield Communities, Inc., a Delaware corporation, its successors and assigns.
- H. The term "Declaration" means this Declaration of Protective Covenants For Whisper Lake, as the same may be amended from time to time.
- I. The term "Improvement" means any building, driveway, fence, retaining and other walls, hedges, poles, antennas, or other structure of any type or kind.
- J. The term "Lot" means any numbered lot designated on a plat of the Subdivision.
- K. The term "Master Association" means the Sapphire Valley Master Association, a North Carolina nonprofit corporation, its successors and assigns.
- L. The term "Owner" shall mean any Person owning a Lot in the Subdivision, including those who purchase under contract, but shall not include a mortgagee, unless that mortgagee has acquired title pursuant to foreclosure or process in lieu of foreclosure.
- M. The term "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- N. The term "Roads" shall mean those areas designated as such on a recorded plat of the Subdivision.
- O. The term "Single Family Dwelling" means a residential dwelling for one or more persons, each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) adult persons not so related, maintaining a common household in such dwelling.
- P. The term "Subdivision" shall mean the Property comprising the Whisper Lake subdivision, consisting of Lots, Common Area, and Roads.

## ARTICLE II

### SUBMISSION OF LOTS AND COMMON AREA

Declarant hereby submits the Lots and Common Area to the provisions of this Declaration. Upon recordation of this Declaration and the concurrent recordation of a plat for the Subdivision depicting the dimensions and locations of the Lots and Common

Area, the Lots and Common Area shall be held, hypothecated, encumbered, used, occupied, improved, maintained, transferred, sold, leased, assigned, conveyed, increased, modified, or altered in accordance with the provisions of this Declaration. The provisions of this Declaration shall constitute restrictive and protective covenants, conditions, restrictions, and reservations which shall run with each and every Lot and the Common Area and all Improvements thereon, which shall bind and inure to the benefit of the Declarant, its successors and assigns the Association, and all Owners, their heirs, successors, and assigns.

The Lots and Common Area are subject to the covenants, conditions, restrictions, and reserved rights of Declarant contained in this Declaration, and all other easements or restrictions of record in the Office of the Register of Deeds of Jackson County and Transylvania County, North Carolina.

### ARTICLE III LAND DESIGNATION AND USE

The Property comprising the Subdivision consists of three separate land use areas, designated and defined herein and depicted upon Subdivision plat(s) as Lots, Common Area, and Roads.

- A. Lots. Each lot is individually numbered and the boundaries of each is depicted on the Subdivision plat recorded concurrently with this Declaration. No Lot bears the same identifying number. Each Lot shall be restricted to a Single Family Dwelling. Each Single Family Dwelling shall have fully enclosed floor area, exclusive of roofed or unroofed porches, terraces, garages, carports, or other out buildings, of not less than 1,500 square feet, with at least 1,000 square feet on the main floor.

Each Single Family Dwelling shall be constructed:

1. not less than twenty-five (25) feet from the front Lot line;
2. not less than twenty-five (25) feet or twenty-five percent (25%) of the depth of the Lot, whichever is greater, from the rear Lot line.
3. not less than ten (10) feet from the side Lot lines;
4. at or above the elevation of the top of the Lake dam(s), for Lots which abut on the Lake.

The setback requirements outlined above may be modified by written variance granted by the Committee, if the Committee determines that application to a particular Lot will unreasonably limit the use of a Lot by its Owner and effectively deprive that Owner of an appropriate construction site on the Lot.

In addition to the above restrictions, written approval from the Committee and the Board of Directors must be obtained prior to construction of any boat shelter, pier,

or dock located upon or adjacent to any Lot abutting on the Lake. Any such boat shelter, pier, or dock shall not extend more than six (6) feet into the Lake.

- B. Common Area. The Common Area shall consist of the area designated on the plat ("Plat") recorded concurrently with this Declaration (or any supplement or amendment thereto) as "COMMON AREA 15.24 Ac." The boundary of the Common Area shall be as shown on the Plat by bearing and distance and not by the location of the Lake itself as determined by water elevation. No gasoline motors shall be used with boats or other watercraft, unless specifically authorized by Association rules and regulations. The Common Area is and shall remain private property for the benefit of Owners in the Subdivision and recordation of the Plat (or any supplement or amendment thereto) is not intended and shall not be construed as dedication of the Common Area to the public or Persons other than Owners and their guests.
1. Ownership. Declarant shall convey the Common Area to the Association, and the Association, by its execution of this Declaration, agrees to accept conveyance of the Common Area, free and clear of all liens and encumbrances but subject to easements, rights of way, and restrictions of record. Declarant may convey the Common Area to the Association at any time following recordation of this Declaration and shall convey the Common Area to the Association no later than the earlier to occur of (1) Conveyance of fifty percent (50%) of all lots in the Subdivision to Owners, or (2) ten (10) years from the date this Declaration is recorded.
  2. Use. The Common Area shall be for the use and enjoyment of all Owners in the Subdivision, subject to such rules and regulations as may be promulgated from time to time by the Association Board of Directors. Declarant reserves to itself the right to use and enjoy the Common Area as an Owner so long as it is the record title holder to one or more Lot(s) in the Subdivision, and the right to reasonable use in connection with its sales and development programs at Sapphire Valley. The Common Area shall not be available to and is not intended for use by the general public.
  3. Maintenance. Maintenance of the Common Area and repair or replacement of any Improvements thereon after completion by the Declarant shall be the obligation of the Association.
- C. Roads. All real property in the Subdivision depicted as shaded area and designated as Roads on the Plat (or any supplement or amendment thereto), except those Roads identified as State Roads which are public ways, are and shall remain private property, and Declarant's recordation of the Plat (or any supplement or amendment thereto) shall not be construed as a dedication to the public of any such non-public Roads depicted thereon.
1. Ownership. Declarant will convey all non-public Roads to the Master Association free and clear of all liens and encumbrances (other than liens for taxes), but subject to such easements, rights-of-way and restrictions as then appear on record.
  2. Use. The use and enjoyment of the Roads, after conveyance to the Master Association, shall be subject to the powers of the Master

Association as set forth in its Articles and Bylaws, and to rules and regulations governing the use of such Roads as may from time to time be adopted by the Master Association. Declarant reserves the right to reasonable use of the Roads in connection with its sales and development programs.

3. Maintenance. Maintenance, repair, and replacement of the Roads shall be the obligation and responsibility of Declarant until conveyance to the Maser Association; thereafter the Master Association shall have sole responsibility therefore.
4. Subsequent Dedication. At any time after conveyance to the Master Association of any Roads, the Master Association upon the affirmative vote of three-fourths (3/4) of its members entitled to vote, may offer any of such Roads for dedication to public use. Such offer shall be subject to acceptance by the appropriate governmental authority pursuant to its then applicable standards.

#### ARTICLE IV LOT RESTRICTIONS

The following shall be applicable to all Lots within the Subdivision and each Owner, as to his Lot, covenants to observe and perform the same:

- A. Accessory Outbuildings. Without the approval of the Committee, no accessory outbuildings shall be erected on any Lot prior to the erection thereon of a dwelling. In no event shall any such accessory outbuildings, partially completed or temporary structure, ever be used for human occupancy or habitation.
- B. Completion of Construction. Construction of any improvements, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which have been partially or totally destroyed and not rebuilt within twelve (12) months shall be deemed nuisances. Declarant or the Association may remove any such nuisance or repair or complete the same at the cost of the Owner.
- C. Prohibition Against Used Structures. Without the approval of the Committee, no used buildings or structures intended for use as a dwelling shall be placed on any Lot.
- D. Maintenance of Lots. All lots, whether occupied or unoccupied, and any Improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become a part of the annual assessment to which such Lot is subject. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.
- E. Disposal of Sanitary Wastes. No outside toilet shall be constructed on any Lot. All plumbing fixtures, dishwashers, toilets and other devices for disposal

of household wastes shall be connected to a sewage disposal system approved by the Committee and appropriate government authorities.

- F. Fences. All property lines shall be kept free and open and no fences, hedges or walls shall be permitted thereon without Committee approval.
- G. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any Lot.
- H. Signs. No person, except the Declarant, shall erect or maintain upon any Lot or Improvement any sign or advertisement, unless prior approval is obtained from the Committee.
- I. Animals. No animals shall be kept or maintained on any Lot except the usual household pets which shall be kept reasonably confined so as not to become nuisance.
- J. Garbage and Refuse Disposal. No Owner shall burn trash, garbage or other like household refuse without a permit from the Committee, nor shall any Owner accumulate on his Lot junked vehicles or litter; refuse or garbage, except in receptacles provided for such purposes.
- K. Concealment of Fuel Storage Tanks and Trash Receptacles. Fuel storage tanks on any Lot shall be either buried below the surface of the ground or screened to the satisfaction of the Committee. Every receptacle for ashes, rubbish or garbage shall be installed underground or be so placed and kept as not to be visible from any road, lake or Common Area within the Subdivision, except at the times when refuse collections are made.
- L. Restrictions on Temporary Structures. No travel trailer or tent shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot until after the construction of a dwelling thereon. At no time shall a mobile home be placed on a Lot.
- M. Removal of Trees. No tree over three inches in diameter may be removed from any lot without the prior written consent of the Committee.
- N. Limited Access. There shall be no access to any Lot on the perimeter of the Subdivision except from designated Roads within the Subdivision.
- O. Ditches and Swales. Each Owner shall keep drainage ditches and swales located on his Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his Lot as may be reasonably required for proper drainage.
- P. Resubdivision of Lots. No Lot shall be further subdivided.
- Q. Drilling and Mining. No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.
- R. Water Services and Sewage Disposal Services. Subject to the approval of the appropriate governmental agencies, Declarant intends to construct or cause the construction of a waterworks system in the Subdivision. Declarant intends that said waterworks system shall be owned and operated by a Privately Owned Public Utility authorized by a Certificate of Public Convenience and Necessity issued by the North Carolina Utilities Commission in accordance with the provisions of Article I of Chapter 62 of the General Statutes of North Carolina, as now or hereafter amended, revised or superseded, to acquire,

maintain and/or operate a waterworks system and conduct a public utility business in the area occupied by the Subdivision.

In consideration thereof, the Owners of each Lot agree to pay to said Privately Owned Public Utility, its successors, assigns, lessees and/or licensees, a MINIMUM MONTHLY AVAILIBILITY CHARGE OF FIVE DOLLARS (\$5.00) for water, water service and the accommodations afforded said Owners by said waterworks system, commencing upon availability of water in a waterworks system distribution main provided for the Lot, and continuing thereafter so long as water is available for use, whether or not tap or connection is made to a waterworks system distribution main and whether or not said Owners actually use or take water. Said AVAILIBILITY CHARGE shall and will be the only charges for water except as otherwise herein provided. The aforesaid amount of said AVAILIBILITY CHARGES, including special provisions for said AVAILIBILITY CHARGES with respect to contiguous Lots of the same Owner, time and methods of payment thereof by said Owners and other matters shall be provided in Tariffs and Rate Schedules and Rules and Regulations and Conditions of Service for water services filed and published by said Public Utility with said North Carolina Utilities Commission or any successor regulatory body in the State of North Carolina in accordance with law and passed to file or formally approved by said Commission as the then effective Tariff and Rate Schedule and Rules and Regulations and Conditions of Service of said Public Utility. Upon any said Owner making a written request therefore, and paying said Public Utility not less than Four Hundred Dollars (\$400.00) in cash therewith in accordance with said Rules and Regulations and Conditions of Service for Water Service, or such other amount as is approved or passed to file therefore by said North Carolina Utilities Commission or its successor, a tap to a waterworks system distribution main and connection to Owner's Lot line will be installed. The amount of said AVAILABILITY CHARGES and other are subject to change hereafter by order of the North Carolina Utilities Commission or its successor in accordance with then existing law, and the structure of said AVAILABILITY CHARGES are likewise and in the same manner subject to change from Availability Rates to another type of rate or rates. Unpaid charges shall become a lien upon the Lot or Lots to which they are applicable as of the date the same become due. Nothing in this paragraph set forth shall be construed as a limitation on the rights of any Public Utility to sell and assign in accordance with law its property and assets to a North Carolina municipal corporation or to a governmental subdivision of the State of North Carolina.

Declarant does not represent or guarantee that a central sewage disposal system will be constructed. However, in the event a central sewage disposal system is constructed within the Subdivision, said system shall be owned and operated by a Privately Owned Public Utility authorized by a Certificate of Convenience and Necessity issued by the North Carolina Utilities Commission in accordance with the Provisions of Article I of Chapter 62 of the General Statutes of North Carolina, as now or hereafter amended, revised

or superseded, to acquire, maintain and/or operate a sewage disposal system and conduct a public utility business in the area occupied by the Subdivision. Each Owner THEREFORE AGREES THAT UPON REQUEST, HE SHALL PAY THE Owner and operator of said system a proportionate share of the costs of extending the system to his Lot. Each said Owner further agrees to pay to said Privately Owned Public Utility, its successors and assigns, lessees and/or licensees a MINIMUM MONTHLY AVAILABILITY CHARGE OF SEVEN DOLLARS FIFTY CENTS (\$7.50) for sewage disposal and treatment and the accommodations as afforded said Owners by said sewage disposal system commencing upon the availability for use of a sewage collection main provided for that Lot which leads to an operable sewage treatment facility and continuing thereafter so long as such sewage collection main is so available for use, irrespective of whether or not connection is made to or use made of said sewage collection main in connection with or for the purposes of any said Lot. The aforesaid amount of said AVAILABILITY CHARGES shall and will be charged for each Lot of said Owner and will be the only charge for sewage disposal and treatment except as otherwise herein provided. The aforesaid amount of said AVAILABILITY CHARGES INCLUDING SPECIAL PROVISIONS FOR SAID AVAILABILITY CHARGES with respect to contiguous Lots of the same Owner, times and methods of payment thereof by said Owners, and other matters shall be provided in Tariffs and Rate Schedules and Rules and Regulations and Conditions of Service for Sewer Service filed and published by said Public Utility with said North Carolina Utilities Commission, or any successor regulatory body of the State of North Carolina, in accordance with law or passed to file or formally approved by said Commission as the then effective Tariff and Rate Schedule and Rules and Regulations and Conditions of Service of said Public Utility. Upon any said Owner making written request therefore and paying said Public Utility not less than Five Hundred and Fifty Dollars (\$550.00) in cash therewith in accordance with said Rules and Regulations and Conditions of Service for sewer service, or such other amount as is approved or passed to file therefore by the North Carolina Utilities Commission or its successors, a tap to a sewage collection main and connection to said Owner's Lot line will be made. All sewer lines and appliances necessary in conjunction therewith on each Owner's Lot shall also be installed, repaired, and maintained at the sole expense of each said Owner. The amount of said AVAILABILITY CHARGES and other charges are subject to change by order of the North Carolina Utilities Commission or its successors in accordance with then existing law and the structure of said AVAILABILITY CHARGES are likewise and in the same manner subject to change from availability rates to another type of rate or rates. Unpaid charges shall become a lien upon the Lot or Lots to which they are applicable as of the date the same become due. Nothing in this paragraph set forth shall be construed as a limitation on the rights of any Public Utility to sell and assign in accordance with law its property and assets to a North Carolina municipal corporation or to a governmental subdivision of the State of North Carolina.



ARTICLE V  
LAKE AND LAKEFRONT LOTS

- A. Ownership of Lakefront Lots. The boundary of each Lot shall be as shown on the Plat (or any supplement or amendment thereto) regardless of the actual water level of the Lake.
- B. Limitations of Water Rights. No Owner of a Lot contiguous to the Common Area shall have rights with respect to any lake or stream, the land thereunder, the water therein, or its or their elevation, use or conditions, nor shall such Owner have any riparian rights incident or appurtenant thereto. No person shall acquire title to any land in the Subdivision by accretion, reliction, submergence or changing water levels.
- C. Right to Remove Accretions. Declarant or the Association shall have the right at any time to dredge or otherwise remove any accretion or deposit from the Common Area in order that the shoreline of the lake to which said Lot is contiguous may be moved inland toward or to the boundary of said Lot.
- D. Responsibility for Damages. Neither Declarant nor the Association shall be liable for damages caused by erosion, washing or other action of the water of any lake or stream, whether or not located upon the Common Area.
- E. Right to Change Level of Lake. Declarant or the Association shall have the right to raise and lower the water level of the Lake in the Subdivision; provided, however, that such right shall not permit raising the water level over one vertical foot above the normal lake elevation of the lake and further provided that the Lake shall not be extended beyond the boundaries of the Common Area.

ARTICLE VI  
ENVIRONMENTAL CONTROL COMMITTEE

- A. General Powers. All improvements constructed or placed on any Lot must first have the written approval of the Committee. Such approval shall be granted only after written application has been made to the Committee in the manner and form prescribed by it. The application, to be accompanied by two sets of plans and specifications, shall show the location of all improvements, if any, existing upon said Lot, the location of the improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the Committee may require, including soil, engineering and Geologic reports and recommendations.
- B. Committee Membership. The Committee shall be composed of three members, to be appointed by Declarant, at least one of whom shall be a qualified member of one of the allied physical design professions (i.e. civil engineer, architect, land planner, etc.). Committee members shall be subject to removal by Declarant and any vacancies from time to time existing shall be filled by appointment of Declarant, or in the event of Declarant's failure to do so within two months after any such vacancy, then by the Association through action of the Board. The power to appoint or remove Committee members shall be transferred to the Association

not later than when 90% of all lots in Sapphire Valley have been sold by Declarant.

- C. Grounds for Disapproval. The Committee may disapprove any application:
1. If such application does not comply with this Declaration;
  2. Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or
  3. If, in the judgment of a majority of the Committee reasonably exercised the proposed improvement will be inharmonious with the Subdivision, or with the improvements erected on other Lots.
- D. Rules and Regulations. The Committee shall from time to time adopt written rules and regulations of general application governing its procedures which shall include, among other things, provisions for the form and content of applications, required number of copies of plans and specifications, provisions for notice of approval or disapproval, including a reasonable time period for approval by Reason of failure to disapprove, etc.
- E. Variances. The Committee may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to owners of other Lots.
- F. Certification of Compliance. At any time prior to completion of construction of an improvement, the Committee may require a certification, upon such form as it shall furnish, from the contractor, Owner or a licensed surveyor that such improvement does not violate any setback, ordinance or statute, nor encroach upon any easement or right-of-way of record.
- G. Administrative Fees. To defray its expenses, the Committee may institute and require a reasonable administrative fee, payable to the Declarant to accompany the submission of plans and specifications, to be not more than one-fourth (1/4) of 1% of the estimated cost of the proposed improvement, subject to a minimum fee of \$25.00. No additional fee shall be required for resubmissions.
- H. Liability. Notwithstanding the approval by the Committee of plans and specifications or its inspection of the work in progress, neither it, Declarant, the Association, nor any person acting in behalf of any of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.
- I. Appeals. Any applicant shall have the right to appeal to the Board from any decision of the Committee within 30 days after entry of such decision.
- J. Restriction on Construction of Model Homes. Model or exhibit homes shall be built only with the prior written permission of the Committee.

ARTICLE VII  
ASSOCIATION

- A. General. The Association is a North Carolina nonprofit corporation organized to further and promote the common interest of property owners in the Subdivision. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and Bylaws.
- B. Membership.
1. Classes of Members. There shall be members and associate members.
  2. Members. Each Owner shall, by reason of ownership, become a Member of the Association.
  3. Associate Members. If not otherwise a Member, each of the following shall be Associate Members of the Association:
    - (a) The spouse and children of a Member who have the same principal residence as the Member.
    - (b) Persons who by virtue of contractual agreements with the Developer are entitled to membership in the Association.
- C. Rights, Privileges and Obligations. The rights, duties, privileges and obligations of membership in the Association are as set forth in its Articles and Bylaws.

ARTICLE VIII  
MASTER ASSOCIATION

- A. General. The Master Association is a North Carolina nonprofit corporation organized to further and promote the common interests of property owners in, and residents of Sapphire Valley. Declarant shall transfer all Roads within the Subdivision (other than those designated on the Plat as state highways) to the Master Association, and the Master Association shall thereafter have complete responsibility for the maintenance, repair, and replacement thereof.
- B. Membership. Each Owner shall, by virtue of owning a Lot, be a member of the Master Association.
- C. Rights, Privileges and Obligations. The rights, duties, privileges and obligations of membership in the Master Association are set forth in its Articles and Bylaws, which include payment of dues to the Master Association.

ARTICLE IX  
ASSESSMENTS

- A. Association Assessments. The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the expenses of the Subdivision. The procedure for the determination of any annual assessment ("Assessment") or special assessment shall be as set forth in the Bylaws of the Association and this Declaration. Assessments shall not be levied against Lots owned by Declarant.
- a. The Amount or any Assessment or special Assessment levied by the Association shall be paid to it on or before the date or dates fixed by resolution of the Board. If any Assessment or special assessment is not

paid within sixty (60) days of the due date thereof, the amount of such Assessment or special assessment (together with interest computed at the simple rate of eighteen percent (18%) per annum from and after the due date thereof) and any cost of collection (including reasonable attorney's fees, if any) shall, at the option of the Association Board of Directors constitute and become a lien upon a Lot as to the due date thereof upon filing notice thereof with the Jackson County or Transylvania County Clerk of Superior Court (which notice shall be filed within 120 days from the due date of the Assessment or special assessment). In such instance, the services rendered by the Association for the benefit of such Lot and for which the Assessment or special assessment is levied shall be deemed to have been performed on the due date of such Assessment or special assessment to "improve" such Lot and/or to create an "improvement" thereon, as defined in Chapter 44A, Article II, Part I of the General Statutes of North Carolina; the lien arising therefrom shall constitute a "lien of mechanics, laborers, and materialmen dealing with the Owner," and such lien may be perfected and enforced pursuant to the provisions of said Part I. Any action to enforce such lien may, at the Association's option, include a prayer for collection of Assessments and/or special assessments levied against such Lot since the filing date of said Claim of Lien. The Association may purchase a Lot at any sale thereof contemplated under North Carolina General Statute §44A-14.

- b. Any person who acquires an interest in a Lot, except through foreclosure of a first mortgage of record, including without limitation, persons acquiring title by operation of law and purchasers at judicial sales, shall not be entitled to occupancy of the Lot or enjoyment of the Common Area until such time as any unpaid Assessment or special assessment due and owing from the former Lot Owner has been paid. The Association, acting through its Board of Directors may enforce its claim and lien rights for the recovery of any unpaid Assessment or special assessment to the Declarant, any Lot Owner or group of Lot Owners, or any other Person.
- c. The Association, in addition to its own Assessments or special assessments, may collect the annual dues for the Master Association and the recreational fee for the Declarant as provided below. The lien of the Master Association and the lien of the Developer to secure the payment of the annual dues and the recreational fee shall be concurrent and on equal parity.

B. Recreational Assessment. All lots within the Subdivision shall be held, used, occupied and conveyed subject to the provisions of the "Supplemental Declaration of Restrictions for Fairfield Sapphire Valley, Inc.," dated October 12, 1982, recorded in Deed Book 533, Page 184, in the Office of the Register of Deeds of Jackson County, North Carolina and Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Register of Deeds of Transylvania County, North Carolina, which provides for assessments for maintenance, repair and upkeep of recreational amenities owned by Declarant ("Recreational Fees").

- a. The Declarant shall have a lien on each Lot for unpaid Recreational Fees and interest thereon. Such lien shall be subordinate to prior bona fide liens of record. The Declarant's lien shall also be subordinate to the lien of the Association provided for above. Reasonable attorney's fees incurred by the Declarant incident to the collection of recreational fees or the enforcement of the lien securing the payment of the recreational fee, together with all sums advanced and paid by the Declarant for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Declarant in order to preserve and protect its lien, shall be payable by the Lot Owner as secured by such lien. Any person who acquires an interest in a Lot shall not be entitled to occupancy of the Lot or enjoyment of the common elements until such time as all unpaid Recreational Fees due and owing by the former Lot owners have been paid to the Declarant. The Declarant shall have the right to assign its claim and lien rights for the recovery of any unpaid Recreational Fee to any third party.
- C. Master Association Assessment. In addition to the assessment of the Association and the Recreational fee, Lot Owners must pay dues to the Fairfield Sapphire Valley Master Association for their membership in the Master Association, as determined by the Master Association. Every Lot Owner acquiring title, legal or equitable, to any Lot in the Subdivision shall become a member of the Master Association and as long as he/she is the Owner of any such Lot he/she must remain a member of the Master Association. Such membership is not intended to apply to those persons who hold an interest in any Lot merely as security for the performance of an obligation to pay money such as, mortgages and deeds of trust. If a mortgage or beneficiary forecloses or realizes its security and become the Owner of a Lot, that Person will become a Lot Owner and made subject to the requirements and limitations imposed in this Declaration on Lot Owners and become a member of the Master Association.
- a. The Master Association shall have all of the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law including but not limited to the power to levy against each member of the Master Association annual dues, the amount of which shall be determined by the Board of Directors of the Master Association after consideration of current maintenance expenses and future needs of the Master Association. No such charge shall ever be made against, or be payable by the Declarant, the Master Association itself, or any corporation or corporations that may be created to acquire title to and operate those facilities presently being operated and maintained by the Master Association.
  - b. The amount of the dues levied by the Master Association shall be paid to it on or before the date or dates fixed by resolution of the Board. If any dues are not paid within sixty (60) days of the due date thereof, the amount of such dues (together with interest computed at the simple rate of eighteen percent (18%) per annum from and after the due date thereof) and any cost of collection (including reasonable attorney's fees, if any) shall, at the

option of the Master Association Board of Directors constitute and become a lien upon a Lot as of the due date thereof upon filing notice thereof with the Jackson County or Transylvania County Clerk of Superior Court (which notice shall be filed within 120 days from the due date of the dues). In such instance, the services rendered by the Master Association for the benefit of such Lot and for which the dues are levied shall be deemed to have been performed on the due date of such dues to “improve” such Lot and/or to create an “improvement” thereon, as defined in Chapter 44A, Article II, Part I of the General Statutes of North Carolina; the lien arising therefrom shall constitute a “lien of mechanics, laborers, and materialmen dealing with the Owner,” and such lien may be perfected and enforced pursuant to the provisions of said Part I. Any action to enforce such lien may, at the Masters Association’s option, include a prayer for collection dues levied against such Lot since the filing date of said Claim of Lien. The Master Association may purchase a Lot at any sale thereof contemplated under North Carolina General Statute §44A-14. Any person who acquires an interest in a Lot, except through foreclosure of a first mortgage of record, including without limitation, persons acquiring title by operation of law and purchasers at judicial sales, shall not be entitled to occupancy of the Lot or enjoyment of the Common Area until such time as any unpaid dues due and owing from the former Lot Owner has been paid. The Master Association, acting through its Board of Directors may enforce its claim and lien rights for the recovery of any unpaid dues to the Declarant, any Lot Owner or group of Lot Owners, or any other Person.

- c. The Master Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Master Association certifying that the charges on a specified Lot have been paid or that certain charges against a Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Master Association for the issuance of the certificates. Such certificates shall be conclusive evidence of payment of any charges therein stated to have been paid.
- d. The lien of a mortgage or deed of trust representing a first lien placed upon any Lot for the purpose of construction and/or permanent financing and recorded in accordance with the laws of North Carolina shall be, from the date of recordation, superior to any and all such liens provided for herein.

## ARTICLE X EASEMENTS

- A. Reservations. The following easements over each Lot and right to ingress or egress to the extent reasonably necessary to exercise such easements, are reserved to Declarant and its Licensees:
  - 1. Utilities. A ten foot wide strip running along the inside of the front and side Lot lines, except those Lot lines coincident with street right-of-way lines, in which case such strip shall be 25 feet wide, and a 25

foot wide strip running along the inside of the rear Lot line, for the installation, maintenance and operation of utilities, including radio and TV transmission cables, and the accessory right to locate guy wires, braces or anchors, or to cut, trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation.

2. Shoreline Maintenance. A 15 foot wide strip running along the inside of all Lot lines coincident with the shoreline of any lake or water course in the Subdivision for the purpose of shoreline maintenance.
  3. Slope and Drainage. A 30 foot wide easement running along the inside of all Lot lines coincident with street right-of-way lines for the purpose of cutting, filling drainage and maintenance of slopes and drainage course.
  4. Flooding Easement. A flowage and flooding easement running along the inside of all Lot lines coincident with the shoreline of any lake equal to the lakefront building setback line for such Lot as herein set forth.
  5. Private Streets. An easement on, over and under all streets in the Subdivision for the purpose of installing, maintaining and operating utilities thereon or thereunder, for the purpose of drainage control; for access to any Lot or Parcel and for purposes of maintenance of said streets.
  6. Other Easements. Any other easements shown on the Plat.
- B. Use of and Maintenance by Owners. The areas of any Lots affected by the easements reserved herein shall be maintained continuously by the Owner of such Lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purpose herein set forth. Improvements within such areas shall be maintained by the Owner except those for which a public authority or utility company is responsible.
- C. Liability for Use of Easements. No Owner shall have any claim or cause of action against Declarant or its licensees arising out of the exercise or nonexercise of any easement reserved hereunder or shown on the Plat except in cases of willful or wanton misconduct.

## ARTICLE XI

### ANNEXATION OF ADDITIONAL PROPERTY TO SUBDIVISION

- A. Property to Be Annexed. Declarant may, from time to time and in its sole discretion, annex to the Subdivision any other real property owned by Declarant which is contiguous or adjacent to or in the immediate vicinity of the Subdivision.

- B. Manner of Annexation. Declarant shall effect such annexation by recording a Plat of the real property to be annexed and by recording a Supplemental Declaration which shall:
1. Describe the real property being annexed and designate the permissible uses thereof. If no designation is made such real property shall be deemed single family residential as defined herein.
  2. Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of Common Areas; and,
  3. Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration. Upon the recording of such Plat and Supplemental Declaration, the annexed area shall become a part of the Subdivision, as fully as if such area were part of the Subdivision on the date of recording of this Declaration.

## ARTICLE XII REVISION OF PLATS

Notwithstanding the provisions and conditions herein contained, Declarant intends to prepare and record subdivision plats and does hereby reserve unto itself, its successors and assigns, the right to relocate, open, or close Roads shown on said plats, and to revise, re-subdivide and change the size, shape, dimensions and locations of unsold Lots in said subdivision; and upon such relocation, opening or closing of Roads or revision, re-subdivision or changing of size, shape, dimensions and locations of Lots, the covenants, conditions, restrictions and reservations hereby imposed shall be applicable to the resulting Lots in lieu of the Lots as originally shown on said plat prior to such revision, relocation or change, provided, however, that no Lot sold prior to such revision, relocation or change shall be deprived to that portion of the street or streets on which it bounds nor of access to such Lot from the streets or roads in the Subdivision.

## ARTICLE XIII REMEDIES

- A. Enforcement. Declarant and each person to whose benefit this Declaration inures, including the Association, may proceed at law or in equity to prevent the occurrence, continuation or violation of any provisions of this Declaration, and the Court in such action may award the successful party reasonable expenses in prosecuting such action, including attorneys' fees.
- B. Suspension of Privileges. The Board may suspend all voting rights, if any, and all rights to use the Common Areas of any Owner for any period during which any Association assessment or other obligation remains unpaid, or during the period of any continuing violation of the provisions of this Declaration by such Owner after the existence thereof has been declared by the Board.



- C. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

ARTICLE XIV  
GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any Lot shall, by execution of a contract of sale or acceptance of a deed conveying title thereto, or a subsequent Owner of such Lot, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges and immunities of the Declarant and of the Association. By such acceptance, such grantee or purchaser shall, for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenants, consent and agree to and with Declarant and the grantee or purchaser of each other to keep, observe, comply with and perform the covenants, conditions and restrictions contained in the Declaration.

ARTICLE XV  
SUSPENSION OF RESTRICTIONS

The provisions on improvements, use and occupancy set forth herein shall be suspended as to any Lot or other area while and so long as the same are owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent that such provisions shall prevent the reasonable use of such Lot or area for said purposes. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such Owner shall have no rights as a member of the Association, nor shall it be liable for any Association assessments.

ARTILCE XVI  
SEVERABILITY

Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

ARTICLE XVII  
CAPTIONS

Paragraph captions in the Declaration are for convenience only and do not in any way limit or amplify the terms of provisions hereof.

ARTICLE XVIII

TERM

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Subdivision until January 1, 2017 after which time the same shall be extended for successive periods of ten years each unless prior thereto a majority of the then Lot Owners vote at a duly constituted meeting of the Association not to continue these provisions in affect.

ARTICLE XIX

AMENDMENT

This Declaration may be amended by the affirmative vote of a majority of the Owners of all Lots in the Subdivision entitled to vote and recording an amendment to this Declaration duly executed by (a) the requisite number of such Owners required to effect such amendment; or (b) by the Association, in which latter case, such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Owners to effect such Amendment, certified by the Secretary of the Association.

Notwithstanding the above, the Declarant, as long as it has record title to more than 25% of the Lots in the Subdivision, reserves the right at any time to amend the Declaration and/or plat as may be required by any lending institution or public body, or in such manner as Declarant may determine to be necessary to carry out the purposes of the Subdivision in such a way as to be beneficial to all Lot Owners or to further clarify and to explain the obligations and responsibilities of Lot owners and the Declarant.

IN WITNESS WHEREOF, Fairfield Communities, Inc. has caused this instrument to be executed in its corporate name by its Senior Vice President and attested by its Secretary on this sixth day of April, 1987.

FAIRFIELD COMMUNITIES, INC.

By: Terry Flora  
Senior Vice President