

DECLARATION OF
PROTECTIVE COVENANTS
HOLLY FOREST

THIS DECLARATION is made on July 26, 1972, by SAPPHIRE VALLEY DEVELOPMENT CORPORATION, a Florida Corporation, duly authorized to transact business in the State of North Carolina.

RECITALS

SAPPHIRE VALLEY DEVELOPMENT CORPORATION, is the owner and developer of that certain real property located in Jackson County, State of North Carolina, known as Holly Forest (the Development) described in the Supplemental Declaration attached hereto as Exhibit "A" and made a part hereof.

SAPPHIRE VALLEY DEVELOPMENT CORPORATION, intends to sell and convey the Lots and Parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the Lots and Parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, SAPPHIRE VALLEY DEVELOPMENT CORPORATION, declares that all of the Lots and Parcels in the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said Lots and Parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said Lots and Parcels in favor of each and all other Lots and Parcels; to create reciprocal rights between the respective owners of all such Lots and Parcels; to create privity of contract and estate between the grantees of such Lots, their heirs, successors and assigns; and to operate as covenants running with the land for the benefit of each and all other such Lots and Parcels in the Development and their respective owners, present and future.

I. Definitions. The following terms as used in this Declaration are defined as follows:

- (a) "Association" means the Holly Forest Association, a North Carolina non-profit corporation.
- (b) "Board" means the Board of Directors of the Holly Forest Association.
- (c) "By-Laws" means the By-Laws of the Association.
- (d) "Common Area" means all of the real property designated as such in the Supplemental Declaration; all real property which may be later annexed to the Development as Common Area and, all real property acquired by the Association, whether from the Declarant or otherwise, together in each instance with all improvements which may be at any time constructed thereon, including, but not limited to, recreational and community facilities, lakes and parks.
- (e) "Committee" means the Environmental Control Committee.
- (f) "Declarant" means SAPPHIRE VALLEY DEVELOPMENT CORPORATION, its successors and assigns.

- (g) "Declaration" means this Declaration of Protective Covenants for Holly Forest, dated the 26th day of July, 1972, as the same may be supplemented or amended from time to time.
- (h) "Development" means Holly Forest as the same may be shown on the maps thereof recorded from time to time.
- (i) "Improvement" means all buildings, out buildings, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, antennas and any other structure of any type or kind.
- (j) "Lot" means any numbered lot designated on the plat.
- (k) "Master Association" means Sapphire Valley Master Association, a North Carolina non-profit corporation.
- (l) "Owner" means:
 1. Any person, including SAPPHERE VALLEY DEVELOPMENT CORPORATION, who holds fee simple title to any Lot.
 2. Any person or legal entity who has contracted to purchase fee simple title to a Lot pursuant to a written agreement, in which case seller under said agreement shall cease to be the Owner while said agreement is in effect.
- (m) "Parcel" means any named, lettered tract shown on the plat.
- (n) "Plat" means the maps or plats of Holly Forest as they are from time to time recorded.
- (o) "Reserved Area" means all of the real property designated as such in the Supplemental Declaration or on Plats of the Development. Ownership of such Reserved Areas may be retained by Declarant and shall be put to such uses as it shall deem best, including, but not restricted to, commercial enterprises of every type or kind whatsoever.
- (p) "Road" means all of the real property designated as such in the Supplemental Declaration or on Plats of the Development.
- (q) "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, together with his or their domestic servants maintaining a common household in such dwelling.
- (r) "Supplemental Declaration" means:
 1. The recorded Supplemental Declaration of the Declarant attached hereto as Exhibit "A", or,
 2. In the case of real property being annexed to Holly Forest, the recorded Supplemental Declaration of Declarant which incorporates the provisions of this Declaration therein by reference.

In either event, the Supplemental Declaration shall include a description of the real property in Holly Forest, subject to the provisions of this Declaration, and shall designate the permissive uses of such property.
- II. Land Use. Lots and Parcels in the Development shall be designated in the Supplemental Declaration as to their permissible uses and shall thereupon become subject to the Restrictive or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provisions are contained herein (e.g., commercial, governmental, school, etc.), the same may be set forth in such Supplemental Declaration.
- A. Single Family Residential. Only single family dwellings and such out-buildings as are usually accessory thereto shall be permitted on any Lot designated as single family

residential. The following restrictions shall apply specifically to such Lots:

1. Minimum Area. Each dwelling shall have fully enclosed floor area (exclusive of roofed or unroofed porches, terraces, garages, carports or other outbuildings with not less than the number of square feet established in the Supplemental Declaration for the Unit in which the lot is situated.
 2. Set Backs. Each such dwelling shall be at least:
 - (a) Thirty (30) feet from the front Lot Line;
 - (b) Twenty-five (25) feet or 25% of the depth of the Lot, whichever is greater, from the rear Lot line;
 - (c) Ten (10) feet from side Lot lines;
 - (d) At or above the elevation of the top of the dam on the lake abutting a lakefront Lot;
 - (e) The limitations contained herein shall not be applicable to any boat shelter, pier or dock constructed and maintained on a lakefront lot if such boat shelter, pier or dock is constructed with permission of the Committee.
 - (f) In the event that the Committee shall determine that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the Committee shall grant a variance to the Owner of said Lot from the provisions of these setback restrictions.
- B. Common Areas. All Lots or Parcels in the Development designated as Common Areas are and shall remain private property and Declarant's recordation of a Plat shall not be construed as a dedication to the public of any such Common Areas located therein.
1. Ownership. Subject to the provisions of a Transfer Agreement dated July 26, 1972, Declarant will convey all Common Areas to the 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 of record.
 2. Use. The use and enjoyment of Common Areas and improvements thereon, whether before or after conveyance to the Association, shall be subject to the powers of the Association as set forth in its Articles and By-Laws and to rules and regulations governing the use of such property and improvements as may from time to time be adopted by the Association. Provided, however, Declarant reserves the right to reasonable use in connection with its sales and development programs.
 3. Maintenance. Maintenance of common properties and repairs to any improvements thereon shall be the obligation and responsibility of Declarant until conveyance to the Association; thereafter the Association shall have sole responsibility therefor.
 4. Improvements. All improvements must be approved by the Committee as hereinafter provided.
- C. Roads. All real property in the Development designated as roads are and shall remain private property, and Declarant's recordation of a Plat shall not be construed as a dedication to the public of any such Roads referred to therein.
1. Ownership. Subject to the provisions of an Agreement dated July 26, 1972, Declarant will convey all 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 of 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 By-Laws and to rules and regulations governing the use of such Roads as may from time to time be adopted by the Master Association. Provided, however, Declarant reserves the right to reasonable use of the Roads in connection with its sales and development programs.
 3. Maintenance. Maintenance of the Roads shall be the obligation and responsibility of Declarant until conveyance to the Master Association; thereafter the Master Association shall have sole responsibility therefor.
 4. Subsequent Dedication. At any time after conveyance to the Master Association of any Roads, the Master Association may, upon the affirmative vote of three-fourths (3/4) of its members entitled to vote, 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.
- D. Reserved Areas. All Lots or Parcels in the Development designated as Reserved Areas are and shall remain private property and Declarant's recordation of a Plat shall not be construed as a dedication to the public of any such Reserved Areas referred to therein.
1. Use. The use and enjoyment of Reserved Areas, and improvements thereon, shall be subject to the rules and regulations governing the use of such property and improvements as may from time to time be adopted by Declarant.
 2. Maintenance. Maintenance of Reserved Areas and repairs to any improvements thereon shall be the obligation and responsibility of Declarant.
 3. Subsequent Dedication. At any time hereafter, Declarant may offer all or any portion of the Reserved Areas for dedication to public use or to the Association or Master Association. Prior to doing so, however, such dedication or transfer shall be approved by a majority of the Owners voting on the question at a special meeting of the Association called for such purpose. In the event of approval of an offer of dedication to a governmental authority, such offer shall be subject to acceptance by the governmental authority pursuant to its then applicable standards.

III. Residential Restrictions. The following shall be applicable to all Lots and Parcels within the Development designated as residential in character, and each Owner, as to his Lot or Parcel, 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 or Parcel 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 and Parcels, 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 a nuisance. The provisions hereof shall not be applicable to any portion of Holly Forest, the Supplemental Declaration for which provides that the owners of Lots therein may keep and maintain horses thereon.
- 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. 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 Development, 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 Development except from designated streets or roads within the Development.
- 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 or Parcel 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 Development. 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 Development.

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 AVAILABILITY 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 AVAILABILITY CHARGE shall and will be the only charges for water 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 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 therefor, and paying said Public Utility not less than Two Hundred and Fifty Dollars (\$250.00) 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 therefor 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 charges 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.

In the event a central sewage disposal system is constructed within the Development, 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 Development. 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 FIVE DOLLARS (\$5.00) 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 sewer 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. 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 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 Three Hundred and Fifty Dollars (\$350.00) 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 therefor 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.

IV. Lakes and Lakefront Lots.

- A. Ownership of Lakefront Lots. The boundary of any Lot shown on the Plat as being contiguous to a lake shall be the shoreline thereof as said shoreline would be if the water level in said lake were one vertical foot above the normal lake elevation.
- B. Limitations of Water Rights. No Owner of a Lot contiguous to a lake or stream shall

have rights with respect to such 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 Development 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 lakefront lot in order that the shore line 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.

- E. Right to Change of Level of Lake. Declarant or the Association shall have the right to raise and lower the water level of the lake in the Development; provided, however, that such right shall not permit raising the water level over one vertical foot above the normal lake elevation of the lake.

- V. The 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 when 90% of all Lots in the Development 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 Development, 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. As a means of defraying its expenses, the Committee may institute and require a reasonable filing fee 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.
- VI. The Holly Forest Association.
- A. General. The Association is a North Carolina non-profit corporation organized to further and promote the common interest of property owners in the Development. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and By-Laws.
- 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 By-Laws.
- VII. Sapphire Valley Master Association
- A. General. The Master Association is a North Carolina non-profit corporation organized to further and promote the common
- General. The Master Association is a North Carolina non-profit corporation organized to further and promote the common interests of property owners in, and residents of Sapphire Valley, a residential and recreational area within which lies the Development. Pursuant to an agreement dated July 26, 1972, Declarant shall transfer all Roads within the Development to the Master Association, and the Master Association shall thereafter have complete responsibility for the maintenance and repair thereof.

B. Membership. Each Owner shall, by reason of ownership, 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 By-laws.

VIII. Assessments.

A. General. Pursuant to the powers granted to it in its Articles and By-Laws, the Association is hereby expressly authorized and empowered to levy annual assessments against all Lots in the Development. Provided, however, except as may be otherwise indicated, no assessment shall be levied against Lots owned by Declarant.

B. Collection and Lien. The amount of the assessment levied by the Association shall be paid to it on or before the date or dates fixed by resolution of the Board. If not so paid, the amount of such assessment, plus any other charges thereon, including interest at the maximum limit provided by law per annum from date of delinquency and costs of collection, including attorney's fees, if any, shall constitute and become a lien on the Lot so assessed when the Board causes to be recorded in the office of the appropriate County Recorder of Deeds, a notice of assessment which shall state the amount of such assessment and such other charges and a description of the Lot which has been assessed. Such notice shall be signed by the Secretary of the Association on behalf of the Association. Upon payment of said assessment and charges, or other satisfaction thereof, the Board shall, within a reasonable time, cause to be recorded a further notice stating the satisfaction and the release of said lien.

C. Priority of Lien. Conveyance of any Lot shall not affect any lien for assessments provided herein. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment.

D. Enforcement. The lien provided for herein may be foreclosed by suit by the Association in like manner as a mortgage and, in such event, the association may be a bidder at the foreclosure sale. The Association may also pursue any other remedy against any owner owing money to it which is available to it by law or equity for the collection of debt.

E. Proof of Payment. Upon request, the Association shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then due.

F. Suspension. The Association shall not be required to transfer memberships on its books or to allow the exercise of any rights or privileges of membership on account thereof to any owner or to any persons claiming under them unless or until all assessments and charges to which they are subject have been paid.

IX. Easements.

A. Reservations. The following easements over each Lot or Parcel and the 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 Development 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 Development 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. Equestrian Trail. A 15 foot wide easement running across the rear of each Lot situated on the perimeter of the Development for use as an equestrian trail.
- 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.

X. Reserved Areas. Declarant may retain ownership of certain Areas within the Development shown on the Plats for use for commercial purposes. Declarant reserves the right and privilege to develop said Areas for such commercial purposes as it may deem appropriate and compatible with the Development. It further reserves the right to conduct all commercial enterprises of any type or kind whatsoever which may at any time be lawfully conducted within the Development. These rights may be exercised by Declarant or assigned by it to whomever it may see fit. At the sole election of Declarant, those rights may be assigned to the Association at any time hereafter upon such terms and conditions as Declarant may deem appropriate at the time of assignment, but unless the Association acting through its Board shall otherwise agree, such assignment shall be without cost to the Association and shall be 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 of record. Any assignment of these rights, whether to the Association otherwise may be of all or any part of said rights and may include transfer or conveyance of some or all of said Areas.

Declarant reserves for itself, agents, employees, successors and assigns, full rights of access across all Common Areas required to implement this reservation. By reservation of these rights, Declarant assumes no affirmative duties to establish or maintain any commercial enterprises whatsoever.

XI. Annexation.

A. Property to be Annexed. Declarant may, from time to time and in its sole discretion, annex to the Development any other real property owned by Declarant which is

- contiguous or adjacent to or in the immediate vicinity of the Development.
- 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;
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 Development, as fully as if such area were part of the Development on the date of recording of this Declaration.

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 streets or roads shown on said plats, and to revise, resubdivide and change the size, shape, dimensions and locations of lots in said subdivision; and upon such relocation, opening or closing of streets or revision, resubdivision 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 of that portion of the street or streets on which it bounds nor of access to such lot from the streets or roads in the Development.

XIII. Remedies.

- added here*
- 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 Association's 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.

XIV. Grantee's Acceptance. Each grantee or purchaser of any Lot or Parcel shall, by acceptance of a deed conveying title thereto, or a subsequent Owner of such Lot or Parcel, 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 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, covenant, consent and agree to and with Declarant and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in the Declaration.

XV. Suspension of Restrictions. The provisions on improvements, use and occupancy set forth herein shall be suspended as to any Lot, Parcel or other area while and so long as the same is 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, Parcel 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.

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.

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

XVIII. Term and Amendment. 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 Development until January 1, 1995, after which time the same shall be extended for successive periods of ten years each. This Declaration may be amended by the affirmative vote of a majority of the Owners of all Lots in the Development 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 Owner to effect such Amendment, certified by the Secretary of the Association. may

IN WITNESS WHEREOF, Declarant has executed this Declaration this 26th day of July 1972.

SAPPHIRE VALLEY DEVELOPMENT CORPORATION

By: [Signature]

ATTEST:

[Signature]
Roy E. Cawley, Jr.

Vice-President

North Carolina, Jackson County

Filed for registration and recorded in this office in Book 369 at page 417. This 26th day of July 1972 at 4:00 P.M.

[Signature]
REGISTER OF DEEDS

AMENDMENT TO DECLARATION
OF PROTECTIVE COVENANTS OF
HOLLY FOREST

This Amendment to Declaration is made this 22nd day of February, 1989, by FAIRFIELD COMMUNITIES, INC., a Delaware corporation, and HOLLY FOREST ASSOCIATION, herein collectively referred to as "Declarant".

RECITALS:

WHEREAS, Declarant has recorded on the 26th day of July, 1972, in the office of the Register of Deeds of Jackson County, North Carolina, in Deed Book 369 at page 417, et. seq. a certain Declaration of Protective Covenants for Holly Forest, to which reference is specifically made. Said Declaration subjects the land described therein, commonly known as "Holly Forest" to the provisions thereof, pursuant to an incremental plan of development.

NOW, THEREFORE, Declarant hereby amends, pursuant to Article XVIII thereof said Declaration of Protective Covenants, as follows:

1. Article VIII, Section B is amended to read:

B. Collection and Lien: The amount of the assessment levied by the Association shall be paid to it on before the date or dates fixed by resolution of the Board. If any assessment is not paid within sixty (60) days of the due date thereof, the amount of such assessment (together with interest computed at the simple rate of eighteen per cent (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 Board, constitute and become a lien upon said lot as of the due date thereof upon filing a claim of lien with the Jackson County Clerk of Superior Court. In such instance, the services rendered by the Association for the benefit of such lot and for which the assessment is levied shall be deemed to have been performed on the due date of such 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 levied against such lot since the filing date of said claim of lien. The Association may purchase said lot at any sale thereof contemplated under North Carolina General Statute § 44A-14.

2. Article VIII, Section D is amended to read:

The Association may also pursue any other remedy which is available to it by law or equity for the collection of debt.

3. Article XIII, Section A is amended by adding the following:

In the event that one or more trees is/are cut in violation of Paragraph III M. hereinabove, said equitable remedy shall include a decree for the replacement of said tree or trees at the Owner's expense. Alternatively, the Association may cause said tree or trees to be replaced and collect the costs of such replacement from the Owner, in which event, entry upon Owner's lot for such purpose shall not be construed as trespass, and the Association or its agents or contractors shall not be liable for loss or damage reasonably resulting from such entry and replacement.

REGISTERED
FEB 1 1 50 PM '89

IN WITNESS WHEREOF, FAIRFIELD COMMUNITIES, INC. and HOLLY FOREST ASSOCIATION, INC. have caused this instrument to be executed and their corporate seals to be affixed all by order of their Board of Directors duly given, this the day and year first above-written.

(CORPORATE SEAL)

ATTEST:

Quinn Jones Hagwood
Asst. Secretary

(CORPORATE SEAL)

ATTEST:

Quinn D. Watkins
Asst. Secretary

STATE OF North Carolina

COUNTY OF Jackson

I, a Notary Public of the County and State aforesaid, do hereby certify that Quinn Jones Hagwood personally appeared before me this day and acknowledged that she is Asst. Secretary of FAIRFIELD COMMUNITIES, INC., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Will President, sealed with its corporate seal and attested by her as its Asst. Secretary.

WITNESS my hand and official stamp or seal, this the 27th day of February, 1989.

My Commission Expires July 6, 1993

FAIRFIELD COMMUNITIES, INC.

BY:

Will President

HOLLY FOREST ASSOCIATION, INC.

BY:

Will President

STATE OF North Carolina

COUNTY OF Jackson

I, a Notary Public of the County and State aforesaid, do hereby certify that Jan E. Watkins personally appeared before me this day and acknowledged that she is Pres. Secretary of HOLLY FOREST ASSOCIATION, INC. and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Pres. President, sealed with its corporate seal and attested by her as its Pres. Secretary.



WITNESS my hand and official stamp or seal, this the 2nd day of February, 1989.

Janice M. Russell
Notary Public

My Commission Expires: July 6, 1993

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

The foregoing certificate(s) of Janice M. Russell and is/are certified to be correct.

1:50 This instrument was presented for registration and recorded at o'clock P.M., in Deed Book 715 Page 6.

This 7th day of February, 1989.

Barbara L. Smith
Register of Deeds