

BOOK 3713 PAGE 586 (25)

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WILLIAM LEE KING, Henderson COUNTY, NC

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

References: Deed Book 1200, Page 263  
Deed Book 1238, Page 483  
Deed Book 1352, Page 301  
Deed Book 1371, Page 722  
Deed Book 1421, Page 454  
Deed Book 1530, Page 456  
Deed Book 1581, Page 581  
Deed Book 3335, Page 296

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR SKYTOP FARM**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF  
POLITICAL SIGNS**

WITNESSETH

WHEREAS, Skytop Farm, a real property development was established as a planned community to be organized, controlled and governed by the Declaration of Covenants, Conditions and Restrictions for Skytop Farm recorded in Deed Book 1200, Page 263, Henderson County, North Carolina Registry of Deeds on September 30, 2004 (" Original Declaration"); and

WHEREAS, in accordance with the Original Declaration, Bylaws and its Articles of Incorporation filed on November 29, 2004, Skytop Farm Homeowners Association, Inc., a North Carolina Non-Profit Corporation ("Association" or "SFHA"), is the duly organized and authorized Association of lot owners at Skytop Farm; and

WHEREAS, Skytop Farm Homeowners Association, Inc. amended the Original Declaration by adopting the Declaration of Covenants, Conditions and Restrictions for Skytop Farm recorded in Deed Book 1530, Page 456, Henderson County, North Carolina Registry of Deeds on April 17, 2013 ("Amended Declaration"); and

WHEREAS, Skytop Farm Homeowners Association, Inc. has revised the Amended Declaration over the years and desires to amend and restate the Amended Declaration for the purposes of simplifying and clarifying the documents and executing one cohesive document to govern the Skytop Farm community; and

WHEREAS, members owning the appropriate percentage of the lots in Skytop Farm pursuant to Article 44 of the Declaration voted to adopt the following Amended and Restated Declaration of Covenants, Conditions and Restrictions for Skytop Farm for the purposes stated above;

NOW, THEREFORE, the Original Declaration and the Amended Declaration are now amended by striking the documents in their entireties except for the purpose of preserving legal descriptions and by simultaneously substituting therefor the following Amended and Restated Declaration which shall govern all Skytop Farm:

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**ARTICLE 1**  
**PLANNED COMMUNITY ACT**

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The real property and improvements which comprise Skytop Farm, a Planned Community, were submitted to the provisions of the North Carolina Planned Community Act (*N.C. Gen. Stat. §§ 47F-1-101 et seq.*) (referred to hereafter and in the Bylaws as the "Planned Community Act") in accordance with the provisions of the Planned Community Act and for the purpose of creating and establishing a Planned Community.

**ARTICLE 2**  
**DEFINITIONS**

- A. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, entitled the "North Carolina Planned Community Act", as it may be amended from time to time,
- B. "Annual Assessment" or "Annual Assessments" shall mean any and all sums levied by the Association against any Lot and its owner as Common Expenses or other charges to include but not be limited to Common Expense liability, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth in this Declaration and the Bylaws, including those amounts as described in Article 35 below.
- C. "Common Elements" shall mean real estate or other property within Skytop owned or leased by the Association, including any improvements thereon, other than a Lot.
- D. "Common Expenses" shall mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of Skytop as a Planned Community.
- E. "Common Expense Liability" shall mean the liability for Common Expenses allocated to each Lot or Family Dwelling Unit as permitted by the Act, this Declaration, the Bylaws of the Association, or otherwise by law.
- F. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Skytop Farm, and as the same may be amended hereafter.
- G. "Development" and/or "Property" shall refer to Skytop Farm Subdivision, in Henderson County, North Carolina.
- H. "Family Dwelling" or "Family Dwelling Unit" shall mean a structure arranged or designed to be occupied by one (1) family which is not attached to any other dwelling. "Family" as used in this sense shall mean a group composed of one, two or three adults and their children or other dependents. A Family Dwelling Unit shall be deemed to exist only after a written Certificate of Occupancy permit has been issued by the appropriate governmental body in Henderson County, North Carolina.

- I. "Intended for Use" shall mean the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which an Owner, has conveyed the property.
- J. "Lot Owner" or "Lot Owners" shall mean the owner or owners as shown by the real estate records in the office of the Register of Deeds of Henderson County, North Carolina, of fee simple title to any Residential Lot situated within Skytop. Lot ownership is not restricted to natural persons.
- K. "Residential Lot", "Residential Lots", "Lot" or "Lots" shall mean any unimproved parcel of land located within Skytop, which is intended for use as a site for a Family Dwelling Unit.
- L. "Structures" shall mean improvements, including but not limited to Family Dwelling Units.

**ARTICLE 3**  
**RESIDENTIAL USE**

All Residential Lots shall be used exclusively for residential purposes and shall be subject alike to this Declaration.

**ARTICLE 4**  
**COMMERCIAL USE**

No business activities shall be conducted on any portion of Skytop Farm, provided, however, private offices may be maintained in Family Dwelling Units constructed on Lots so long as such use is incidental to the primary residential use of the Lot and is approved by the Board of Directors. The property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes business activity, health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot or store or keep anything on a Lot which will increase the insurance rates for the Association or for other Lot Owners

**ARTICLE 5**  
**SUBDIVIDING, BOUNDARY RELOCATION AND COMBINING**

No Lot shall be subdivided. No boundary relocation shall be made without the written approval of the Association's Board of Directors. Owners of multiple contiguous lots in Skytop Farm can consolidate or combine their lots with the Henderson County Tax Department for tax purposes in their own discretion. Consolidating or combining lots with the Henderson County Tax Department does not impact the lot owners' assessment obligations to the Association. For example, if a lot owner owns two (2) adjoining lots in Skytop Farm and combines the lots with

the Henderson County Tax Department, the lot owner will still be obligated to pay assessments for two (2) lots to the Association.

**ARTICLE 6**  
**ARCHITECTURAL REVIEW**

- A. **SKYTOP ARCHITECTURAL REVIEW COMMITTEE:** The Skytop Architectural Review Committee (herein the "SARC") shall consist of at least three (3), but no more than five (5) Members and shall review all construction, and improvements or modifications thereto, on any Residential Lot and make recommendation as to approval or disapproval to the Board of Directors. The Board retains the right to appoint all members of the SARC who shall serve at the discretion of the Board. The Board of Directors shall have power to levy fees and charges payable by the property owner for the service provided by the SARC and to require deposits to insure that construction and landscaping plans are completed as approved. The Board of Directors shall also have the power to promulgate and enforce all reasonable and necessary Rules and Regulations in this regard and levy appropriate fines.
- B. **PLANS AND SPECIFICATIONS:** No residence, garage, fence, wall, swimming pool, tower, mailbox or other structure shall be commenced, erected or maintained upon any Lot in Skytop, nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any landscaping or site work be done until complete final plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan therefor, and showing front, side and rear alterations thereof, the name of the contractor, septic tank contractor and landscaper, have been submitted to and approved by the SARC, as to harmony of exterior design and general quality with the standards of Skytop, and as to location in relation to surrounding Structures and topography.
- C. **SITE PLAN:** Prior to the construction of any structure, a site plan to scale must be submitted on a topographic map which shows the location of the house, septic tank, drain field, all drive, walks and parking areas, with each clearly indicated. Prior to any physical disturbance of the site, special and/or irreplaceable features are to be identified and provisions for their protection clearly established. This includes rock outcroppings, springs and streams, and concentrations of azaleas, rhododendrons, and other shrubs and wildflowers.
- D. **APPROVAL PROCESS:** Refusal or approval of plans, specifications, contractor, septic system contractor and landscaper, or location of any structure may be based upon any grounds including purely aesthetic consideration, which at the sole discretion of the Board of Directors shall be deemed sufficient. In the event that the Board fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing shall be inconsistent with this Declaration unless a variance has been granted in writing by the Board of Directors.
- E. **CONTRACTOR APPROVAL:** Any contractor must be approved by the Board of Directors prior to performing any work within Skytop. No person, firm, or entity shall be approved as a

contractor unless such person, firm or entity is licensed by the State of North Carolina for his services. No Lot Owner will be permitted to act as his own builder for the exterior of any structure, except where such Lot Owner obtains his income primarily from the construction of the type of structure to be constructed and otherwise as a licensed service provider meets the qualifications for approval by the Board of Directors.

F. REQUIREMENTS AT COMPLETION: At the completion of all construction in accordance with the plans submitted, the Lot Owner shall request an on-site inspection by the SARC. No home may be occupied until the governmental authority authorized to issue such permits has issued a written Occupancy Permit. In addition to the above, the following will be required:

- (1) Final landscaping development plans must be approved and carried out without undue delay.
- (2) Exterior lighting must be approved.
- (3) All clean-up must be completed.

G. DESIGN GUIDELINES: All plans, specifications, approvals, etc., as described in this Article 6 shall be subject to, and shall be consistent with, the Design Guidelines for Skytop Farm, as now or hereafter promulgated by the Association. In the event of a conflict between this Declaration and the Design Guidelines for Skytop Farm, the provisions of this Declaration shall control.

#### **ARTICLE 7** **BUILDING SIZE**

No structure except as herein provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Single-Family Dwelling Unit not exceeding two (2) stories in height above the basement, with a minimum of at least a two (2) car garage which may be attached or unattached. Each Family Dwelling Unit must have sufficient enclosed garage space for any and all family cars. No carports are permitted. Square Footage will be calculated from the outside wall. The minimum square footage shall be two thousand eight hundred (2,800') square feet of heated living space on the main level. Two (2) story homes are to be built to a minimum of three thousand eight hundred (3,800') square feet of heated living space with two thousand eight hundred (2,800') square feet on the main level. Garages, porches, patios, decks, greenhouses, unfinished basements, cellars or similar structures are not to be considered floor space in meeting the above requirements. All improvements shall be designed so as to blend with other home dwellings in the community. Variances will be considered based on site constraints.

#### **ARTICLE 8** **BUILDING REQUIREMENTS**

No decorative features such as sculptures, birdbaths, birdhouses, fountains or other embellishments shall be permitted that are visible from any street unless approved in writing by the SARC.



**ARTICLE 9**  
**TEMPORARY STRUCTURES**

No structure of a temporary character shall be placed upon any portion of Skytop at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any Family Dwelling Unit. Temporary shelters, including mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of Skytop after completion of construction thereon as herein above provided. Basements or partially complete houses will be considered temporary and may not be inhabited.

**ARTICLE 10**  
**SETBACKS**

All front setbacks for buildings in Skytop shall be a minimum of thirty five (35') feet from the front lot line, all side setbacks shall be a minimum of fifteen (15') feet from the side lot lines, and all rear setbacks shall be a minimum of thirty five (35') feet from the rear lot lines; provided, for corner lots, there shall be a minimum setback of thirty five (35') feet from each lot line bordering on a road right-of-way. Relief from said building setback lines may be given by the Board, acting through the SARC, to any Lot Owner upon a showing of extraordinary circumstances by said Lot Owner. Such extraordinary circumstances may include unusual topography, Lot shape, frontages and also potential views to give property owners the fullest enjoyment of their Lots. In order to assure, however, that location of houses will be staggered where practical and appropriate so that the maximum amount of view and privacy will be available to each house, that the structures will be located with regard to the ecological constraints and topography of each Lot, taking into consideration topography, the location of large trees and similar considerations, the Board, acting through the SARC, reserves the right to control absolutely the precise site and location of any residential unit or other structure upon all Lots. Provided, however, that such location shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site.

**ARTICLE 11**  
**EXTERIOR CONSTRUCTION**

The exterior of all houses and other structures as well as site work and landscaping must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Lot Owner due to strikes, fire, national emergency or natural calamities. Family dwelling units may not be occupied until the exterior thereof has been completed. If the landscaping and site work is not completed within-six (6) months of building completion without the prior written approval of the Board, the Lot Owner shall, after notice and opportunity to be heard, be liable for fines as provided in Section 47F-3-102 (12) of the Act.

**ARTICLE 12**  
**TREES**

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No flowering trees, shrubs, or evergreens of any size, or trees measuring five (5") inches or more in diameter at a point one (1') foot above ground level, may be removed without the prior written approval of the SARC, unless located within twenty (20') feet of the building, or within five (5') feet of the right-of-way of driveways and walkways. Excepted here from shall be damaged trees, or trees which must be removed because of any emergency. However, should a Lot Owner remove any tree or vegetation as herein provided without the above-described written approval, or negligently or intentionally damage any tree or vegetation as herein provided, said Lot Owner shall, after notice and opportunity to be heard, be liable to the SFHA for an assessment in the amount of Fifteen Hundred Dollars (\$1,500) for each tree or other plant removed or be liable for fines as provided in Section 47F-3-102 (12) of the Act.

**ARTICLE 13**  
**SEWER AND WATER**

Prior to the occupancy of any Family Dwelling Unit, proper and suitable provisions shall be made for the disposal of sewage by means of a septic system, and no sewage shall be emptied or discharged into any creek, lake, or shoreline thereof, or upon the open ground. No sewage disposal shall be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the State Board of Health or its successor governmental authority. Each septic system shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any other Lot Owner. Approval of such system shall be obtained from the health authority having jurisdiction. In the event that the SFHA, its successors or assigns, or other person, firm corporation, or governmental authority provides a public sewage disposal system available to the subdivision's lots, any Lot Owner whose Lot has such service available shall be required to hook up to said system on the terms generally arranged for said system. Every Family Dwelling Unit shall have permanent plumbing and running water and a permanent sewage disposal system. No temporary plumbing, water, or sewage systems are allowed.

**ARTICLE 14**  
**STORAGE TANKS**

Fuel storage receptacles may not be exposed to view and must be installed, either within an accessory building or buried underground. Bottled gas and propane tanks, with the exception of gas grills, are not permitted.

**ARTICLE 15**  
**GARBAGE CONTAINERS**

Each Lot Owner shall provide sanitary containers for garbage and all garbage receptacles, tools and equipment for use by the Lot Owner or otherwise shall be placed in a fenced enclosure

to shield same from general visibility from roads abutting the Lot Owner's property, and also from neighboring properties. Trash, garbage and other waste shall be kept in said sanitary containers. No trash, garbage, construction debris or other unsightly or offensive material shall be placed upon any portion of Skytop, except as temporary and incidental to bona fide improvements of said area of Skytop.

**ARTICLE 16**  
**ANTENNAE AND OTHER UTILITIES**

All utilities, wires, cables, antennae (including television satellite receptacles) and the like, of any kind (such as telephone, electrical, television, radio and citizens band radio) must be placed underground or within, behind, or upon the house so as not to be visible from the street or adjoining Lots, except as may be expressly permitted by FCC regulations or approved in writing by the SFHA.

**ARTICLE 17**  
**ROADWAYS AND TRAFFIC CONTROL**

The SFHA either owns, or shall have control of, all rights-of-way for roadways as shown on the various plat maps recorded for Skytop. The SFHA shall have the power to place any reasonable restrictions upon the use of roadways, including but not limited to, the types and sizes of vehicles using said roads, the maximum and minimum speeds of vehicles using said roads, and the maximum noise level of vehicles. The SFHA shall have the power to levy fees and charges for the impact of construction of new homes upon the roads and other common elements and to require deposits to insure roads and rights-of-way are returned to pre-construction condition at the completion of construction. The Board shall also have the power to promulgate and enforce all reasonable and necessary traffic and parking regulations and levy fines for violations.

**ARTICLE 18**  
**OFF-STREET PARKING**

Each owner of a Family Dwelling Unit shall provide sufficient space for parking any and all vehicles off the roadways. Overnight parking on the roadways in any area of Skytop is not permitted. No vehicles shall be parked on grass or non-parking areas.

**ARTICLE 19**  
**VEHICLES AND VEHICLE STORAGE**

A. STORAGE: Any boats, recreational vehicles, campers, motorcycles, all-terrain vehicles or any commercial vehicle kept within the Development must be stored in the garage or an enclosed area that is not visible from the roads and streets within any portion of Skytop. No

vehicle of any kind shall be stored on any lot. Garage doors must be closed at all times when not in use. Commercial vehicle is defined as a vehicle that advertises a business, commercial enterprise, product, employer or service anywhere on the vehicle (except for a license plate holder or a small decal on a window).

B. MOTORCYCLES, ATV'S, UTV'S, ETC: Use of non-street legal motorcycles, motorbikes, all-terrain vehicles, or utility vehicles (diesel or gasoline fueled) shall not be allowed upon or in Skytop Farm. Electric vehicles such as golf carts are permitted within the community.

#### **ARTICLE 20** **LOT UPKEEP**

It is the responsibility of each Lot Owner to prevent any unclean, unsightly, or unkempt condition of buildings or grounds on the Lot Owner's property, including the right-of-way. The Board shall have the right, but not the duty, to enter upon any Lot for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds that tend to decrease the beauty of the neighborhood as a whole or the specific area. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot Owner and shall not be deemed a trespass.

#### **ARTICLE 21** **NUISANCES**

No obnoxious or offensive activity shall be carried on upon any portions of Skytop nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Lot Owner, tenant or guest thereof in any area of Skytop thereby diminishing the enjoyment of Lots by their owners. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as any diminish or destroy the enjoyment of other property in Skytop by the Lot Owners, tenants, and guests thereof, may be maintained. The Board reserves the right, in its sole discretion, to determine a nuisance, and upon ten (10) days' written notification by the Board, the activity must cease.

#### **ARTICLE 22** **EROSION CONTROL**

The Board shall have the right to protect the land designated as areas upon which residential building shall take place from erosion by planting trees, plants and shrubs where and to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by the Board to provide and insure against such erosion. The Board however is under no duty to take such actions as herein above provided.

**ARTICLE 23**  
**FIRES**

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No outdoor fire shall be built within Skytop. No leaves, trash, garbage or similar debris shall be burned except as permitted by a written permit issued by the Board. Outdoor grilling shall be done with the greatest of care in view of fire and smoke hazards and general pollution. Fire pits may be allowed with prior written consent from the Board.

**ARTICLE 24**  
**SIGNS**

No signs, including "for rent," "for sale" and other similar signs shall be erected, placed allowed or maintained on any Lot by anyone, including but not limited to a Lot Owner, a Realtor, a contractor or subcontractor, except with the written approval of the Board or as may be required by legal proceedings. If such approval is granted, the Board reserves the right to restrict size, color and content of such signs. Owners are allowed to erect one political sign with the maximum dimensions of 24" x 24" on their Lot. The political sign may only be erected forty-five (45) days before an election day and must be removed seven (7) days after an election day.

**ARTICLE 25**  
**WATER COURSES**

No lake, pond or other water retention basin shall be constructed, nor shall the course of any stream be changed, nor any culverts installed in any stream without prior written approval of the Board.

**ARTICLE 26**  
**WATERWAYS**

The owner of Lots fronting on a stream, pond or other waterway, or on an open-space area, separating the Lot from such waterway, will not be permitted to erect or maintain a private dock, dam or similar structure on such waterway.

**ARTICLE 27**  
**BOATS**

No boat, canoe or other water-craft shall be operated upon any stream, pond or other waterways in Skytop, and no boat, canoe or other water-craft shall be beached or stored overnight or permanently on the shore of any stream, pond or other waterway in or abutting Skytop, without the prior written consent of the Board.

**ARTICLE 28**  
**ANIMALS**

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No animal, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other commonly domesticated household pets may be kept, provided that they are not bred or maintained for commercial purposes. Pets, when running loose, must be kept strictly within the boundaries of the owner's property. At all other times, they must be kept securely on a leash, unless granted prior written permission by the Board. No animal shall be kept Skytop Farm, except normal, household pets ordinarily kept in homes. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, or other nuisance. No savage or dangerous animal shall be kept or permitted in Skytop Farm. No pets may be permitted to run loose upon the Common Elements, and any lot owner who causes or permits any animal to be brought or kept in Skytop Farm shall indemnify and hold the Association harmless for and from any loss, damage, or liability which it sustains as a result of the presence of such animal in Skytop Farm, regardless of whether SFHA or the Board of Directors has given its permission therefor. Whenever such pet is allowed outside the lot, then the pet must be on a leash and any animal droppings which occur during such time as the pet is outside the lot must be immediately collected by the owner.

**ARTICLE 29**  
**VACANT LOTS**

Unused and/or vacant Lots are not to be trespassed upon for any reason.

**ARTICLE 30**  
**HUNTING AND FIREARMS**

Hunting and trapping of animals, fowl and game is prohibited, and the discharge of firearms or bows and arrows for any purpose is prohibited.

**ARTICLE 31**  
**EASEMENTS**

A. UTILITIES AND DRAINAGE: SFHA reserves a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water of other private or public conveniences or utilities on, over and under the rear and front ten (10') feet of each Lot, and ten (10') feet along all sides of each Lot, and such other areas as shown on the applicable plats; provided further that the SFHA may cut drain ways for surface water wherever and whenever such action may appear to the Board to be necessary in order to maintain reasonable standards of health, safety and appearance. SFHA

further reserves a perpetual alienable and releasable easement and right to cut any trees, bushes or shrubbery or to take any other similar action reasonably necessary to provide economical and safe utility installation, and to maintain reasonable standards of health, safety and appearance.

B. PUMPING STATIONS AND TANKS: SFHA reserves the right to locate pumping stations and tanks within any portion of Skytop; provided, however, that if the owner of any Lot upon which such pumping station or tank shall be located is other than the Board and the applicable recorded plat of such Lot Owner's property does not designate such property for use as aforesaid, then such pumping station or tank shall not be located upon such Lot Owner's property without the permission of such Lot Owner.

C. PESTICIDES AND FIRE CONTROL: In addition, the SFHA reserves a perpetual alienable and releasable easement and right on and over and under all Lots to dispense pesticides and take other action which in the opinion of the Board is necessary or desirable to control insects and vermin, to cut fire breaks and other activities which in the opinion of the Board are necessary to control fires. SFHA however is under no duty to take such actions as hereinabove provided.

D. LOT OWNER RIGHTS: Every Lot Owner, his or her guests and lessees, shall have a right and easement of enjoyment in, to and over the Common Elements, including the paved rights-of-way, subject to the rights of the Board under this Declaration, the Bylaws and the Rules and Regulations of the Association. Such easement shall be appurtenant to and shall pass with the title to every Lot or Family Dwelling Unit. No Lot Owner may give easements through their property to other property owners for the purpose of roads or utilities, excluding the right to give easements to the SFHA.

### **ARTICLE 32** **TRESPASS**

Whenever the Board is permitted by this Declaration to correct, repair, clean, preserve, clean out or do any action on any Lot or on the easement areas adjacent thereto entering such Lot or easement area and taking such action shall not be deemed a trespass.

### **ARTICLE 33** **SKYTOP FARM HOMEOWNERS ASSOCIATION**

#### **A. GENERAL:**

(1) The Association is a non-profit corporation as defined in the Act, G.S. 47F-3-101, organized to further and promote the common interests of Skytop property owners, manage and maintain the road systems and other common elements in Skytop, and manage the services for which it is responsible under this Declaration. Operation of the Association shall be in accordance with this Declaration, the Act, the Articles of Incorporation (hereinafter referred to as the "Articles"), and with the Bylaws, as they may or amended

from time to time. The Board shall have all of the powers granted to it under NC G.S. 55A, the Act, the Articles, this Declaration, the Bylaws and the Rules and Regulations, as they may be amended from time to time.

(2) Every Owner of a Residential Lot, now or hereafter subject to this Declaration is bound to and hereby agrees that he shall accept membership in the Association and does hereby agree to be bound by this Declaration, the Articles and the Bylaws of the Association and the Rules and Regulations enacted pursuant thereto. Membership is automatic upon acquisition of ownership of a Residential Lot in Skytop and may not be hypothecated or transferred apart and separate from a transfer of the ownership of the Residential Lot. Membership shall likewise automatically terminate upon sale or transfer of the Residential Lot, whether voluntary or involuntary. Voting rights and qualifications of voters and membership in the Association are more fully stated, qualified and determined by this Declaration, the Articles of Incorporation, and the Bylaws.

B. SFHA MEMBERSHIP AND VOTING RIGHTS: Members shall be all owners of Residential Lots, with the exception of the SFHA, its successors and assigns, and shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) person holds an interest in any Residential Lot, all such persons shall be Members. The vote for such Residential Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Residential Lot.

#### **ARTICLE 34** **SERVICES PROVIDED BY SFHA**

The SFHA, its successors and assigns, shall provide the following services to Lot Owners within Skytop:

- A. Maintenance and improvement of the Common Elements, including roads.
- B. Administrative Services for the operation of the Planned Community.

#### **ARTICLE 35** **ANNUAL ASSESSMENTS**

A. GENERAL: Each Lot Owner shall pay to the SFHA, Annual Assessments for the purposes set forth in Article 33, such assessments to be fixed, established and collected from time to time as hereinafter provided.

B. ANNUAL ASSESSMENTS: The assessments of common expenses as described in Section 47F-3-115 of the Planned Community Act and as otherwise provided for in the Declaration, as amended, shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots in the Planned Community as may be more specifically authorized from time to time by the Board.



C. ADJUSTMENT OF ASSESSMENTS: Except as set forth in this Declaration, common expenses shall be assessed against all Lots and Family Dwelling Units equally.

D. COMPUTATION OF OPERATING BUDGET AND ANNUAL ASSESSMENT. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Planned Community during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within thirty (30) days after adoption of any proposed budget for the planned community, the Board shall provide to all the Lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting sixty-seven percent (67%) of the Lot owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

E. DUE DATE FOR ANNUAL ASSESSMENTS:

The Annual Assessment shall be fixed on a calendar year basis or fiscal year basis as determined by the SFHA and shall be due and payable thirty (30) days after the invoice date for Residential Lots and Family Dwelling Units. Each new property Owner shall commence payment of the assessment, prorated for the months remaining in the year, on the first day of the month following the date of closing. Payment of the assessment shall be past due thirty-one (31) days after the invoice date or closing date and shall thereafter be deemed to be delinquent.

F. DELINQUENT ASSESSMENTS AND ENFORCEMENT: Delinquent Annual Assessments together with interest thereon at the rate of eighteen percent (18%) per annum as provided in Section 47F-3-115 of the Act, a late charge of \$40 and cost of collections thereof as hereinafter provided shall be a charge and continuing lien on the Lot Owner's property against which each such assessment is made at such time as the SFHA or its designee or assignee files a notice of lien to enforce such charge in the manner provided in Section 47F-3-116 of the Act. Each such assessment, together with such interest thereon, late charge and cost of collection thereof as hereinafter provided, shall be the personal obligation of the person who was the Lot Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership or a Residential Lot or Family Dwelling Unit, all such co-owners shall be jointly and severally liable for the entire amount of the assessment. Any lien as established herein shall be enforceable as an alien against the defaulting Lot Owner's property as provided in Section 47F-3-116 of the Act. The SFHA may bring an action at law against the Lot Owner personally obligated to pay a delinquent Annual Assessment or to foreclose the lien against the property, as stated above, and there shall be added to the amount of such assessment, the costs of preparing and filing the notice of lien, the complaint in such action, and in the event a judgment is

obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee actually incurred, together with the costs of the action.

G. RE-PAVING RESERVES: Reserves for road surface re-paving and incidental striping and right-of-way maintenance shall be maintained by the SFHA out of the road maintenance assessment so that each year the SFHA collects an amount of money which, when multiplied by the number of years remaining before re-paving, will be required (which shall include the year of collection) and added to current SFHA reserves for re-paving, will equal the total estimated cost of re-paving, including striping and buildup and maintenance of the rights-of-way incidental to re-paving. A professional engineer shall be consulted by the SFHA at least every second year for help in determining the future costs of re-paving and the remaining estimated life of the existing paving. Re-paving reserves shall not be used for any purpose other than re-paving road surfaces, striping of re-paved road surfaces and buildup and maintenance of the rights-of-way incidental to re-paving.

H. CAPITAL BUDGET AND CONTRIBUTION AND SURPLUS FUNDS. The Board of Directors shall annually prepare a capital budget, which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required may be fixed by the Board and included within the budget and assessment as provided in Paragraph D of this Article. Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.

#### **ARTICLE 36** **SPECIAL ASSESSMENTS TO ALL OWNERS**

A. If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.

B. The Board of Directors may levy special assessments for capital improvements upon the common elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the affirmative vote of a majority of all the lot owners at a special meeting of the Association duly called for that purpose.

#### **ARTICLE 37** **SUBORDINATION OF THE LIEN TO MORTGAGE**

The liens provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien or lien provided for in the preceding

section. However, the sale or transfer of any lot pursuant to a foreclosure of a first mortgage or any conveyance or assignment in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

### **ARTICLE 38** **REMEDIES**

A. **ENFORCEMENT OF COVENANTS:** Each person to whose benefit this Declaration inures, including the SFHA, may proceed at law or 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 attorney fees.

B. **SUSPENSION OF PRIVILEGES:** After notice and an opportunity to be heard in accordance with subparagraph D below, the Board may suspend all voting rights, if any, and all rights to use the Common Elements, of any Lot Owner for any period during which any Annual Assessment against such Lot Owner remains unpaid, or during the period of any continuing violation by such Lot Owner of the provisions of this Declaration, the Bylaws or the published Rules and Regulations. The right of ingress and egress of a Lot Owner to his/her Lot or Family Dwelling Unit shall not be affected by any suspension of privileges.

C. **PENALTIES:** In accordance with Sections 47F-3-102 (11) and (12) and 47F-3-107.1 of the Act, the Board may impose penalties for violations of the provisions of this Declaration, the Bylaws and the published Rules and Regulations, after notice and an opportunity to be heard in accordance with subparagraph D. Those penalties may include, but are not limited to, suspension of rights to use the Common Elements, and reasonable fines.

D. **ENFORCEMENT PROCEDURES:** In accordance with Section 47F-3-107.1 of the Act the Board shall not suspend privileges or impose a fine or charge for damages against a Lot Owner unless and until the following procedure is followed:

(1) **Demand:** Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than (10) days, during which the violation may be abated without further sanction, if such violation is continuing one, or a statement that any further occurrence of the same violation may result in the imposition of sanction. The Board or its designee may demand immediate abatement in such circumstances that, in the Board's sole determination, pose a danger or nuisance to safety or property. Charges for late payments under Article 35 of this Declaration are not to be regarded as fines that warrant a hearing under this subparagraph.

(2) Notice: Within two (2) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation is subsequently repeated, the Board may impose a fine or suspend privileges by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine or privileges to be suspended; (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Board to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have a fine or suspension of privileges reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(3) Hearing: If the hearing is requested, it shall be held before the Board and the violator shall be given a reasonable opportunity to be heard. The Board shall render its final decision regarding imposition of the fine or suspension of privileges no later than five (5) days after the hearing and in form the Board of its decision. The Board shall issue a written statement of the results of the hearing.

E. ABATEMENT AND ENJOINMENT OF VIOLATIONS. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the common elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

F. 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 39** **SEVERABILITY**

Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**ARTICLE 40**  
**RESPONSIBILITY FOR OTHERS**

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Lot Owners are obligated to assume the responsibility that any and all dependents, guests, contractors and visitors will observe and maintain all the Rules and Regulations, covenants and restrictions binding the Lot Owners themselves.

**ARTICLE 41**  
**LEASING OR RENTING**

“Leasing” for purposes of this Declaration is defined as regular occupancy of a Lot or Family Dwelling Unit by any person other than the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity or emolument.

A. PURPOSE OF ARTICLE 41. The purpose of this Article is (i) to protect the equity of the individual property Owners in the Association, (ii) to carry out the purpose for which the Planned Community was formed by preserving the character of the Planned Community as a residential community of owner-occupied homes and by preventing the Planned Community from assuming the character of a renter-occupied community, and (iii) to comply with the eligibility requirements for financing in the secondary mortgage market in so far as such criteria provide that the Planned Community shall be substantially owner-occupied.

B. CONDITIONS. With limited exceptions, no more than ten percent (10%), that is five (5) of the fifty-five (55) Lots at Skytop Farm Planned Community, may be leased at any time. All Lots may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be permitted. Month-to-month renting shall not be permitted. All leases must be for a term of not less than one (1) year, unless permitted in writing by the Board of Directors which permission is in the sole discretion of the Board. No Lot may be subleased. Time sharing and time shares as defined in the North Carolina Time Share Act (N.C.G.S. Chapter 93A) of any Lot or Family Dwelling Unit in Skytop is prohibited.

All leases, lessors and lessees are subject to the provisions of the Declaration, Bylaws, and Rules and Regulations. The Owners shall make available to the tenant copies of the Declaration, Bylaws, and Rules and Regulations.

All Owners shall register any and all changes in the status of a rental/leased Lot, including vacancies and the renewal of leases, with the Association, within fifteen (15) days.

All Owners shall abide by the following procedures prior to leasing their Lot:

- (1) Before a Lot can be leased at Skytop Farm, Owners shall present a completed Request to Lease Form to the Board of Directors, or their designated representative, for approval.
- (2) Upon receipt of a Request to Lease Form, the Board of Directors shall determine the number of Lots leased at that time and shall not approve any Request to Lease Form which causes the number of Lots leased to exceed the maximum five (5). The

Board shall give notice of its action to the Owner within five (5) business days of receiving the request.

- (3) If the Board, or their designated representative, has approved an Owner's Request to Lease Form, the Owner may start the process of leasing its Lot. At least fifteen (15) days before the effective date of such proposed lease, the Owner shall present the lease to the Board of Directors, or their designated representative, for approval. The Board shall give the Owner notice of whether the proposed lease is approved within five (5) business days of receiving the request.
- (4) If an Owner presents a Request to Lease Form and the maximum five (5) Lots are already leased and the Owner does not qualify for an undue hardship exemption as explained below, the Owner can request that the Board of Directors place the Lot on the Lease Waiting List. A request to be placed on the Lease Waiting List must be in writing and delivered or mailed to the Board or its designated representative. The Lease Waiting List shall be developed on a "first come, first serve" basis, to be determined by the postmark on the envelope in which the request has been mailed or, if hand delivered, the date it is received by the Board or its designated representative.
- (5) If a lessee's occupancy of one (1) of the five (5) leased Lots ends, the Owner of said Lot may replace the lessee within ninety (90) days of (i) the date of the termination of the lease or, (ii) the date the Lessee moves out of the premises, if said move is greater than one (1) month prior to the termination of the lease. If the Owner fails to replace the lessee of said Lot within ninety (90) days, the Owner shall forfeit his ability to lease at the end of the ninety (90) days and the Owner's name will be placed at the bottom of the Lease Waiting List. After an Owner loses its leasing privileges for a Lot, the Board shall promptly notify the Owner at the beginning of the Lease Waiting List of the availability.

All Owners that are currently renting/leasing their Lot shall register the rental/leased Lot with the Association within fifteen (15) days of the recording of this Declaration with the Henderson County Registry of Deeds. In order to properly register a rental/leased Lot with the Association, the Owner of a rental/leased Lot must provide the Association, through the Board of Directors, or their designated representative, the name(s) of the tenants in the rental/leased Lot, a telephone number by which the tenant(s) may be contacted by the Association if the need arises, a copy of the lease and the term (duration) of the lease.

The Board of Directors of the Association has the authority to promulgate Rules and Regulations related to this Article. The Association may require that Owners and tenants execute a document acknowledging Article 41 of the Declaration or other related forms.

C. **HARDSHIP EXEMPTION.** The Board shall have the option in its sole discretion to allow leasing of a Lot at any time to avoid undue hardship. If the Board determines that it is appropriate to grant an Owner a hardship exemption, the Owner shall be allowed to lease the Lot for a hardship period of one (1) year. The Owner of a Lot who believes that leasing is necessary to avoid undue hardship shall make written application to the Board for approval at least fifteen (15) days before the effective date of such proposed lease setting forth the pertinent

circumstances and giving other notice as required herein. Circumstances which the Board may determine to impose undue hardship may include, by way of example but not limitation, (i) where an Owner must relocate and cannot sell the Lot within ninety (90) days from the date the Lot was placed on the market, for at least the current appraised market value, having made reasonable efforts to do so; (ii) the death of the Owner when the Estate's representative makes a request to lease; and (iii) where the Owner is required by his or her employer to relocate temporarily, and intends to return to reside in the Lot. The Board shall approve or disapprove the lease pursuant to the terms of the Declaration as amended, and shall give notice of its action to the Owner within five (5) business days of receiving the request.

If the Board has granted an Owner a hardship exemption and the Owner of a Lot still believes that leasing the Lot is necessary to avoid undue hardship after the initial one (1) year hardship period has passed, the Owner shall make written application to the Board for an extension for another year of the hardship period.

D. LOT OCCUPIED BY FAMILY MEMBER. If an Owner's family member, but not the Owner, intends to occupy a Lot, the Lot might not be considered "leased" under this Declaration. The Owner shall present the Board with proof that a family member intends to occupy the Lot. The Board will designate a party to confirm family status and promptly report their findings to the Board. If the Board determines that there is sufficient evidence of family status, the Lot will not be considered "leased" for purposes of this Declaration.

All Owners shall register any and all changes in the status of a rental/leased Lot, including vacancies and the renewal of leases, with the Association, within fourteen (14) days.

E. PENALTY. The failure of any Owner to comply with this Section shall be considered a violation of the Declaration. The Association may, after providing the Owner with notice and opportunity to be heard, impose fines up to one hundred dollars (\$100.00) per day pursuant to N.C.G.S. 47F-3-107.1 for such violation.

#### **ARTICLE 42** **VARIANCES**

In case of hardship and for good cause shown, the SFHA may grant variances from any of these covenants and restrictions. The decision of the SFHA to grant or not grant variances as herein provided is based upon SFHA's sole and absolute discretion.

#### **ARTICLE 43** **Rules and Regulations**

A. CONSISTENT WITH DECLARATION: The Board may from time to time promulgate reasonable Rules and Regulations respecting the restrictive covenants set out in this Declaration, but such Rules and Regulations shall be consistent with this Declaration and not in derogation of or intended as an amendment thereof.

B. USE OF COMMON ELEMENTS: The Board may from time to time promulgate reasonable Rules and Regulations respecting the use of the Common Elements, including exclusive use of part of the Common Elements (such as picnic facilities, if any) by a Lot Owner and his or her guests, which exclusive use may be conditioned upon, among other things, payment of a fee.

C. GENERAL POWERS OF THE BOARD: The Board may from time to time, without the consent of the Members, promulgate, modify, or delete Rules and Regulations applicable to Lots and Family Dwelling Units, Common Elements, administration and management of Skytop, or Skytop as a whole. Such Rules and Regulations shall be binding upon all Lot Owners, guests of Lot Owners, tenants of Lot Owners, contractors and other guests until and unless overruled, canceled, or modified in a regular or special meeting by the vote of Members holding a majority vote in the Association. Such Rules and Regulations may be enforced by the Association in accordance with the Act, this Declaration and Bylaws, to include but not be limited to the imposition of fines and penalties pursuant to Sections 47F-3-102 (11) and (12) and 47F-3-107.1 of the Act, after notice and an opportunity to be heard.

#### **ARTICLE 44** **FUTURE RESTRICTIONS AND AMENDMENTS**

This Declaration may be amended only by affirmative vote of or written agreement signed by Owners of Lots which at least Sixty-Seven Percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Planned Community Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Henderson County, North Carolina.



IN WITNESS THEREOF, this Declaration has been executed by the duly authorized officers of Skytop Farm Homeowners Association, Inc.

This the 13<sup>th</sup> day of May 2021.

Skytop Farm Homeowners Association, Inc.

By: [Signature]  
President

(Seal)

By: [Signature]  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF Henderson

I, Elizabeth A. McCoy, Notary Public for Henderson County, North Carolina, certify that Janet J. Jenkins, personally came before me this day and acknowledged that she is the Secretary of Skytop Farm Homeowners Association, Inc. a North Carolina Non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary

WITNESS my hand and official seal, this 13 day of May, 2021.

[Signature]  
NOTARY PUBLIC

My Commission Expires:

11-03-2023

