

BK 3554 P 747
Filed for record 10th Sep 04
Date
Time 4:00 o'clock PM
JUDY G. PRICE, Register of Deeds
Union County, North Carolina

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

OF

SKYECROFT SUBDIVISION

DATED

SEPTEMBER 2, 2004

Prepared By: Graham P.C. Investments, LLC

Return To: Graham P.C. Investments, LLC
10800 Sikes Place, Suite 250
Charlotte, NC 28277

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
SKYECROFT SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SKYECROFT SUBDIVISION AND SKYECROFT HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as "Declaration" is made this 2nd day of September, 2004 by GRAHAM P.C. INVESTMENTS, LLC hereinafter referred to as "Declarant", and any and all persons, firms, or corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to this Declaration.

WITNESSETH:

WHEREAS, Declarant is the owner of certain Property in Union County, North Carolina known as SKYECROFT SUBDIVISION, which is more particularly described by plat(s) showing Lots 1-154, 156-208 inclusive; and recorded in the following Plat Cabinet I and File: 254-263 in the Office of the Register of Deeds for Union County to which reference is hereby made for more complete descriptions; and

WHEREAS, Declarant has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of the Property made subject to this Declaration for the benefit of the present and the future owners thereof; and

WHEREAS, Declarant may subject to this Declaration additional portions of SKYECROFT SUBDIVISION for the purpose of extending the general scheme of development to such additional Property and accordingly declares that SKYECROFT SUBDIVISION may be expanded to include additional property; and

WHEREAS, Declarant desires to provide for the preservation of the values of SKYECROFT SUBDIVISION as expanded hereby and hereinafter made subject to this Declaration and for the preservation and maintenance of the Common Property, Common Open Space and Park Utility and Maintenance Easements established by the Declaration and by the supplements hereto.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described on said recorded plats and all of the property hereinafter made subject to this Declaration by recorded supplements hereto referencing subsequently recorded plats, including, but not limited to, the "property", shall be held, sold, transferred, conveyed, occupied and used subject to the North Carolina Planned Community Act codified in Chapter 47F of the North Carolina General Statutes and to the following easements, restrictions, covenants,

and conditions, which are for the purpose of protecting the value and desirability of SKYECROFT SUBDIVISION as it now exists and is hereafter expanded and that such easements, restrictions, covenants, and conditions shall burden and run with said real Property and the heirs, successors and assigns having any right, title, or interest in the Properties now or hereafter subjected to this Declaration or any part thereof, and shall inure to the benefit of each owner thereof and burden each owner's real Property that is subjected to this Declaration.

ARTICLE I

DEFINITIONS

"Association" shall mean and refer to SKYECROFT HOMEOWNERS ASSOCIATION, INC., a not-for-profit North Carolina corporation, organized pursuant to N.C. G.S. §47F-3-101 and 55A-2-02 and its successors and assigns.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of any of the Property made subject to this Declaration, but excluding those having such interest merely as security for the performance of an obligation, provided however, the Declarant shall not be deemed an Owner.

"Property" shall mean and refer to that certain property shown on plat(s) recorded in Plat Cabinet(s) and File: L 254-263 in the Office of the Register of Deeds for Union County, North Carolina and any additional property which Declarant may make a part of this Subdivision, as provided for in the Declaration of Restrictive Covenants of SKYECROFT SUBDIVISION, recorded separately. The terms "Property," "Subdivision," and "SKYECROFT" are interchangeable.

"Lot" shall mean and refer to any improved or unimproved building lot shown upon any recorded subdivision plat of this Subdivision.

"Dwelling Unit" shall mean and refer to the completed single family home located upon a Lot.

"Declarant" shall mean GRAHAM P.C. INVESTMENTS, LLC and its successors and assigns if such successors and assigns acquire two or more undeveloped lots from the Declarant for the purpose of development and if the rights and obligations of the Declarant hereunder are expressly assigned to and assumed by such successors and assigns.

"Common Property/Common Open Space" shall mean all property owned by the Association and the Park Utility and Maintenance Easements granted to the Association for the common use and enjoyment of all or a designated class of members. Common Property includes without limitation all existing and future roads and rights-of-way and all street lanterns constructed or installed along/or over the rights-of-way of the roadways or common areas, walls, greenways, median strips, sidewalks, cul-de-sac centers, utility and maintenance, planting areas, fountains, pumps, common areas, facilities, common open space, park utility and maintenance easements, walking trails, privacy gate if approved by the Town of Weddington and easements that are developed on the Common Property (it being understood that this enumeration is by way of description of the type of facilities that may be developed and in no way shall bind or obligate the Declarant to provide any of the described facilities) and all entry way, directional, and informational signs (and the areas set aside for their location) and any other property as may be purchased or provided for the common use and benefit of the Declarant, the Owners, and any member in the Association, including without limitation such Common Property as may be shown on the recorded plat(s) of the Property. Except by the Declarant, the Common Property shall not be used for public commercial purposes, but may be used for enjoyment of the Association's members for fund-raising activities to support the purposes of the Association.

"Committee" shall mean the Architectural Review Committee established by the Declarant for the purpose of administering control over architectural, landscaping, and related matters, as provided in Article V of this Declaration.

ARTICLE II

RIGHTS AND DUTIES OF THE ASSOCIATION AND PROPERTY OWNER ASSESSMENTS

Section 1. Owner's Easements of Enjoyment. The Declarant and, to the extent provided by this Declaration, every Owner shall have a non-exclusive right and easement of ingress, egress, and regress over the Common Property/Common Open Space, and Park Utility and Maintenance Easements, unless otherwise stated, and over the roads within the Property, to be used in common with others, for the purpose of providing access to lot(s) owned or dwelling unit(s) owned by the owner for himself, his family, agents, licensees and invitees, and for his and their non-exclusive use and enjoyment of the Common Property/Common Open Space, and Park Utility and Maintenance Easements subject however to the limitations on such use and enjoyment of the Common Property/Common Open Space and Park Utility and Maintenance Easements as provided for in this Declaration. Every Owner, and the members of such Owner's family who reside with such Owner or are overnight guests of such Owner, shall have the right to use the recreational areas within the Common Property/Common Open Space, and Park

Utility and Maintenance Easements subject however to such Owner paying when due the dues and assessments of the Association and abiding by all rules and regulations of the Association, including without limitation those governing the use of the recreational areas, Common Property, Common Open Space, and Park Utility and Maintenance Easements. Non-Owners shall only be entitled to use the recreational areas on such terms and conditions as the Association may select. The Association may as provided by the North Carolina Planned Community Act may impose fines and suspend voting rights and privileges of any member for any period during which any assessment remains unpaid, or as a result of any infraction or violation of the Declaration or any Association Rules and Regulations and Guidelines.

Section 2. Annual Assessments.

(a) The Association shall have the duty to repair, replace, and maintain all, park utility and maintenance easements, walking trails, common open space, recreational areas, and improvements located thereon, and all streets, roads, road rights-of-way, and other Common Property. The Association shall have the right, from time to time, to establish a reasonable assessment, which assessment shall be paid by each Owner in such periodic installments as the Association may determine, to be used to pay: (1) the operating and administrative expenses of the Association; (2) the costs of maintenance, upkeep, replacement and repair of all recreational areas, and improvements located thereon, and all streets, roads, road rights-of-way, common open space, park utility and maintenance easements and other Common Property; and (3) other expenses necessary or useful to maintain and operate the Association and the recreational facilities (including, without limitation, procuring, maintaining and paying the costs of insurance related to the common property/common open space, park utility and maintenance easements and of surety and other bonds related to the management of the Common Property and the Association). It is understood (by way of example and without limitation) that the assessment funds shall be used for such matters concerning Common Property as the following: maintenance, repair and replacement of improvements within the recreational areas, the seeding and re-seeding road rights-of-way and Common Areas, erosion control, repairing of road shoulders, surfacing, patching and resurfacing of parking lot and road pavement, placement of gravel, and planting and maintenance of shrubs, trees and seasonal flowers.

(b) The annual assessments may also be used by the Association for the purpose of adding to the recreational facilities.

(c) The annual assessment payable by each Owner shall be \$1,195.00 per lot per calendar year. The annual assessment shall be due and payable on January 31 of each year. Homeowner dues will be prorated at closing. Annual assessments are applicable on each individual lot regardless of whether two or more lots are combined by an owner to form one.

(d) The annual assessment may be increased or decreased by the board of directors of the Association without a vote of the membership to an amount not more than twenty percent (20%) in excess of the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than twenty percent (20%).

(e) Annually the board of directors of the Association shall have determined and shall have given written notice to each Owner of the annual assessment affixed against each owner for the immediately succeeding calendar year.

Section 3. Special Assessments.

In addition to the assessments specified herein-above, the Association may levy special assessments for the purpose of supplementing the annual assessments if the same are inadequate to pay the reasonable maintenance and capital expenses and operating costs of the Association as described in Section 2 hereof, provided that any such special assessments shall have the assent of a majority of each class of the voting members of the Association at a duly called meeting.

Section 4. Removal of Obstructions, Signs and Unsightly Growth, Debris and Materials.

(a) The Association may remove any obstructions of any nature located within road rights-of-way or other Common Property, Common Open Space and Park Utility and Maintenance Easements (including but not limited to signs, trees, shrubs and mailboxes) which, in the opinion of the Association, either might produce a hazard, be unsightly or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(b) The Association shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Owner who directly, or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way or other Common Property, Common Open Space, and Park Utility and Maintenance Easements and such Owner shall indemnify and save the Association harmless from all liability, claims, damages and expense imposed upon the Association, at law or in equity, caused by or resulting from the placement of the obstruction in the road rights-of-way or other Common Property, Common Open Space and Park Utility and Maintenance Easements. In the event the Owner responsible for such charge or liability as aforesaid fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity, including without limitation,

the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said lot or dwelling unit.

(c) If the Association, in its sole discretion, determines that any lot has become unsightly due to grass or weeds that have not been mowed, or due to debris of any nature having accumulated on the lot, or that there is an unapproved installation of any sign, then the Association, its agents or assigns shall have the right from time to time to enter the said lot without any liability for damage, for wrongful entry, trespass or otherwise to any person for the purpose of mowing the grass, removing the unapproved sign or removing the debris. At least ten (10) days prior to entering a lot for said purpose, the Association shall advise the Owner by letter, sent to his last known address, of the action to be taken if the Owner does not remedy the problem within the said ten (10) day period. The Association shall take reasonable steps to avoid damage to any trees planted on such lot, to the extent that the Association has been put on written notice in advance by the Owner of the approximate location on a chart or map of such lot showing the location of planted trees to be avoided.

(d) The Association shall have the right, in its sole discretion, to charge back the actual cost of mowing the grass or removing the debris against the Owner. In the event the Owner responsible for such charge or liability as aforesaid fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his lot and may enforce collection of the charge or liability thereon, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided to the end that such charge or liability shall become a charge against the said lot or dwelling unit.

Section 5. Duty to Make Repairs.

(a) Until accepted for maintenance by governmental authority, the obligation for the repairs, maintenance and improvements of the roads as shown on the aforesaid plat(s) or any other Common Property shall be the responsibility of the Association with the Owner of each lot except as provided herein, being responsible for payment of the assessments levied by the Association, which assessments shall be the personal obligation of the Owner of each lot. Notwithstanding anything herein to the contrary, nothing herein shall require the Association or the Declarant to cause the roads to be accepted for maintenance by the North Carolina Department of Transportation.

(b) The decision to expend Association funds to repair and maintain the roads, road rights of way, Common Property, Common Open Space and Park Utility and Maintenance Easements shall be made by a majority of the board of directors of the Association. By such vote, the board may delegate such authority to any committee of the board. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his lot.

(c) Notwithstanding the foregoing, each Owner of a lot shall be solely responsible for any repairs to a road right-of-way, Common Property, Common Open Space or Park Utility and Maintenance Easements, caused by the negligent act or acts of said Owner, his or her invitees, agents, licensees, or guests. For these purposes, it shall be a negligent act for any building material to be unloaded on any road or road right-of-way.

Section 6. Easement for Utilities and Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas, park utility and maintenance easements, buffers and other easement areas on each Lot as shown on the recorded map of the Subdivision and/or as set forth herein and over, upon, across and under the common open space for maintenance and/or the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment, and for maintenance of ponds and detention ponds and the installation and maintenance of pumps, fountains or other equipment related to said maintenance. Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonable necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, fountains, pumping stations and tanks on common open space, or to locate same upon any Lot with permission of the Owners of the Lots immediately adjacent to such Lot. It shall not be necessary to obtain the consent of Owners of Lots adjoining any existing utilities or pump stations. Such rights may be exercised by the licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the Subdivision which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, no owner shall erect any structure, including without limitation walls, fences or paving or within any areas designated on the Plat of the Subdivision as a "Drainage Easement," "Storm Drainage Easement", "Sanitary Sewer Easement", "General Purpose Utility Easement," or "Park Utility and Maintenance Easement", nor shall any Owner change the grade of any such easement area, provided however, that driveways may cross utility and drainage easements at the front of the Lots subject to prior approval of Declarant and that any planting in easement areas shall not interfere with the applicable easement and shall be limited to grassing and small shrubbery. Each Owner shall keep drainage ditches and swales located on such Owner's Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity.

The easements referred to in this paragraph are, without limitation, those shown upon the recorded plat(s) of the Subdivision; as set out in easements of record; upon the plans of the Subdivision; or which are located on, over or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under all common open space and all streets and roads within the Subdivision for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines, sewer lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purpose of installing additional utilities and drainage facilities. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Subdivision for the purpose of maintaining, repairing, cutting grass, removing debris, replacing and operating any of the drainage facilities, pumps, fountains, pipes, ditches and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. No Owner shall erect any structure or fence within such easement areas without prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures, plants, trees or other items which may be located in such utility and drainage easements, and Declarant shall have no obligation to replace any such structures or plantings which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves itself, its successors and assigns, perpetual, alienable, commercial easements over and under all Lots along an area 10 feet in width inside each side boundary line of each Lot and 15 feet in width along the front and rear of each Lot for the purpose of installation, construction, maintenance, repair, replacement use and operation of utilities and utility systems of all kinds (including but not limited to water, sewer, electric and natural gas), drainage (including but not limited to storm water and surface drainage) and access. These easements shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Subdivision which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns, whether or not such property is made a part of the Subdivision and whether or not such property adjoins the Subdivision.

Section 7. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Lot for the

purpose of landscaping, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing rubbish and trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Declarant or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement, but not the obligation, to maintain and/or repair the outer portions of any building, if the Owner shall fail to maintain such building in keeping with the standards of the Subdivision. The cost of such maintenance and/or repair shall constitute a special Assessment against the Lot on which the building is located and the Owner of said Lot as provided in Article VII, Section 3 herein.

Section 8. Road Construction Easement. Declarant reserves a temporary construction easement of 50 feet in width along both sides and running parallel to the right of way of streets and roads, which easements shall expire eighteen (18) months after the particular road construction commences.

Section 9. Late Charges and Interest on Unpaid Assessments.

Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the board of directors of the Association, which interest rate shall not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is \$25.00 and shall be charged as to any assessment that is not paid within thirty (30) days of its due date. The initial interest rate for late payment is 18% per year (1.5% per month) which shall commence to accrue on any assessment or other account balance that is not paid within thirty (30) days of the date due. The initial date upon which liens may be filed for failure to make payment of assessments and other charges is thirty (30) days after the due date. The board of directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.

Section 10. Lien for Unpaid Assessments.

(a) In the event the Owner of any lot fails and refuses, after demand by the Association, to pay any annual or special assessment, then the Association shall have a lien against said lot and may enforce collection of said assessment in law or in equity. The Association may enforce assessment obligations as permitted by law, including, without limitation, by filing and foreclosing a claim of lien in accordance with the procedures set forth in N.C.G.S. ' 47F-3-116, and/or by bringing an action at law against the Owner personally obligated to pay the assessment and/or foreclosure the lien against his Lot to collect said assessment. Interest, late charges and reasonable attorney fees and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure.

Foreclosure may be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought under Chapter 45 of the North Carolina General Statutes, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON AREA OR ABANDONMENT OF HIS LOT.

(b) To secure the payment of the annual and special assessments as are levied by the Association, together with the cost of collection including attorney fees, all such charges shall be a continuing lien upon the lot against which the assessments are made. Such charges shall also be the personal obligation of the person(s) who were the Owner or Owners of such lot at the time the assessment came due. Their personal obligation shall remain a lien upon the lot upon transfer of title but shall not become the personal obligation of the purchasers thereof unless expressly assumed by them.

Section 11. Administrative Proceedings.

(a) Association Administrative Proceedings Including Hearings Regarding Fines and Suspension of Services under N.C.G.S. ' 47F-3-102(11) or (12) and N.C.G.S. ' 47F-3-107.1. The Association may conduct any administrative proceedings permitted or provided for under the Declaration, the Act or as otherwise provided by law, including without limitation, the right of the Association, after notice and an opportunity to be heard, to (1) impose reasonable fines for violations of the Declarations, Bylaws, rules and regulations of the Association, or (2) to suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association or during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer. Prior to pursuing the imposition of a fine or the suspension of privileges or services as allowed by the Act and as provided herein, the offending Owner will be notified and given ten (10) days in which to cure his violation or nonpayment. In the event the violation or nonpayment is not cured within this ten (10) day period, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if the offending Owner should be fined or if privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings shall be held before the Board. The offending Owner charged shall be given notice of the charge, an opportunity to be heard and to present evidence and notice of the decision. If it is

decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs; provided, however, that fines imposed shall be subject to the following minimums:

- (i) The fine for the first violation or the first day of any continuing or repetitive violation shall not be less than \$25.00.
- (ii) The fine for the second violation or the second day of any continuing or repetitive violation shall not be less than \$50.00.
- (iii) The fine for the third violation or the third day and subsequent days of any continuing or repetitive violation shall not be less than \$100.00.

Fines imposed shall be assessments secured by liens under N.C.G.S. ' 47-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the delinquency is paid if imposed pursuant to ' 47F-3-102(11) or until one violation is cured or sixty (60) days, whichever is longer, if imposed pursuant to ' 47F-3-102(12).

(b) Association Collections. The association may institute actions or proceedings permitted by law or the Act to collect any sums due and owing to it.

(c) Abatement Violations. In the event of any violation of the Declarations, Bylaws, Architectural Guidelines or Rules and Regulations of the Association, the Association, or its designated agents, may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Property) enter upon the Lot where such violation exists, and abate or remove the same at the expense of the Owner; provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall immediately be deemed a Special Individual Assessment levied by the Association against such violating Owner and such Owners Lot, shall become a personal obligation of such Owner and shall become a lien upon such Lot. Notwithstanding the foregoing, the Association shall not have the right to exercise the foregoing powers without an order from an arbitrator or a court of competent jurisdiction if the abatement sought by the Association involves the alteration or demolition of any improvements within the property.

ARTICLE III

MEMBERSHIP, VOTING RIGHTS, OFFICERS AND MEETINGS

Section 1. Membership. Every Owner of a lot which is subject to this Declaration shall be a member of the Association. Membership is appurtenant to each lot and may not be assigned. If and when Declarant develops additional Sections in the Subdivision, the Owners of those lots shall be members of the Association. The Declarant shall also be a member so long as it owns property within this expandable Subdivision.

Section 2. Class Membership Voting The Association shall have two (2) classes of membership:

Class A

Class A members shall be all lot Owners with the exception of Declarant, and shall be entitled to one vote for each lot owned. When more than one (1) person owns an interest in a lot, all such persons shall be members; but the vote for such lot shall be exercised as they, among themselves, shall determine in writing, which writing shall be filed with the Secretary of the meeting prior to voting, but in no event shall more than one vote be cast with respect to any lot.

Class B.

(a) Class B members shall be entitled to vote ten (10) votes for each lot owned. Class B membership shall consist of the Declarant, or its successors or assigns, until the happening of one of the following events, whichever occurs earlier:

1. The earlier of four months after ninety percent (90%) of all the lots in the Subdivision are sold, as well as all adjacent undeveloped acreage sold and conveyed by the Declarant to unrelated third parties; or

2. Ten (10) years from date of recordation of this Declaration; or

3. At such time as Declarant voluntarily relinquishes majority control of the Association by a duly recorded instrument.

(b) Upon the happening of the earlier of one of the three above-described events, Class B membership shall cease and terminate and shall be converted to Class A membership.

Section 3. Board of Directors. There shall be three (3) members of the board of directors of the Association who shall serve until such time as their successors are duly

elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called at the request of the president of the Association or by any two (2) directors. So long as the Declarant, or its successors and assigns, is the Class B member, it shall select the board.

Section 4. Suspension of Voting Rights. The Association shall have the right to:

(a) Suspend the voting rights (if any) of an Owner for any period during which assessment on his lot remains unpaid and enforce collection of the same; and

(b) Suspend the voting rights (if any) of each Owner who is a contract buyer for any period of time during which payments to the Declarant pursuant to terms of said contract are delinquent, during which period of time the Declarant shall succeed to the voting rights of said contract buyer.

Section 5. Additional Sections. The Declarant reserves the right (but is not obligated) to develop or to allow to be developed one or more additional Sections of SKYECROFT SUBDIVISION and incorporate the same within the provisions of this Declaration.

ARTICLE IV

CONVEYANCE OF COMMON PROPERTY

Within ten (10) years from the date of recording of this Declaration, Declarant will convey by deed its right, title, and interest in and over the road rights-of-way and any other Common Property within the Subdivision to the Association.

ARTICLE V

ARCHITECTURAL CONTROL

(a) In order to control design and location of the houses and other improvements to be constructed, erected, placed, or installed (hereinafter "improvements") upon the lots in the Subdivision, the Declarant hereby creates an Architectural Review Committee (hereinafter "Committee") for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for such improvements (regardless of when such improvements are made), and the landscaping of each lot. This Committee is also created for the purpose of reviewing, approving, suggesting changes to, and rejecting swimming pools, flag poles, outdoor play equipment, swing sets, trampolines, basketball goals and similar outdoor play structures, out-buildings, driveways, enclosures for satellite dishes, and if Declarant so desires, mailbox design. This Committee will be responsible for the control of size, color, materials, and content of rental and sales signs in this Subdivision, and for the approval or disapproval of boats, boat trailers, travel or other types of trailers,

motor homes, tractor trailer trucks, or any other such vehicle, that are kept or maintained or located upon any lot unless located within enclosed garages. The Committee will also be responsible for the control of temporary construction shelters or vehicles in this Subdivision.

(b) The Architectural Review Committee (ARC) shall have exclusive jurisdiction over all construction, modifications, additions or alterations on any portion of the properties. The Committee shall consist of at least three persons designated or appointed from time to time by the Declarant, its successors or assigns. As long as Declarant owns Lots which are subject to this Declaration or retains the right to add additional phases, the Declarant retains the right to appoint all members of the ARC. The members of the ARC do not have to be Owners. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC.

(c) Except within the building site (unless within 20' of the main dwelling), no trees of any kind in excess of 6 inches in diameter at ground level may be removed from any lot without prior approval of the Committee. No building, fence, wall, outbuilding, or any other accessory feature to the dwelling or any other structure upon any lot shall be commenced, erected, placed, maintained, or altered on any lot or combination of contiguous lots until the complete construction plans (hereinafter "Plans") are approved in writing by the Committee or its designated agents.

(d) The Plans include the complete construction plans, the plot plan (showing proposed location and elevation of such building, fences, walks, drives, parking area, etc.) proposed building plans and specifications, exterior color, finish, and materials. The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure and all accessory buildings, structures and improvements on the lot, the location of any well, the size and plan of the garage or carport, location and manner of construction of each driveway, swimming pool, utility building, patio, tennis court, and other improvements for athletic, recreational, or gymnastic purposes, and all other exterior improvements, the composition and color of raw and finished materials used on the exterior of all structures, and the location and type of any landscaping, shrubbery, and other plantings. A \$600.00 architectural review fee must accompany three sets of plans when they are submitted for review. Before any construction, clearing or grading whatsoever begins, a \$2500 refundable road bond is required or when house plans are submitted. These fees may be adjusted from time to time by the Committee, as the Committee in its sole discretion shall determine. This bond is intended to insure the Homeowners Association from unnecessary road repairs caused by careless contractors.

(e) The Committee or its designated agents shall have thirty (30) days after physical receipt of the Plans to accept or reject the same in whole or in part. If no response by the Committee has been made in writing within said thirty (30) days, the

Plans shall be deemed to be approved as submitted. After the Plans are approved and after the Committee gives written permission for construction to begin, the actual construction shall be commenced and completed in accordance with the approved Plans, together with the requirements of the Declaration and, in this regard, each Owner shall provide the Committee with the foundation survey as soon as it is made. The Committee shall have the right to waive setback violations when the remedial costs of correcting such violation, in the Committee's opinion, would impose undue hardship upon the violator. The Committee will publish Design Review Guidelines, Architectural Guidelines and Handbook, an approved plant list, an Application for Architectural Review and has the right to publish any other rules, regulations, guidelines and requirements as the committee in its sole discretion deems necessary. These guidelines and requirements may be revised and amended at any time by the Architectural Review Committee, in its sole discretion, as needed to serve the needs of an evolving community.

(f) The actual construction shall be the responsibility of the Owner of the lot and his builder. Any permission granted for construction under this covenant and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or the Committee or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such buildings or other improvements.

ARTICLE VI

GENERAL USE RESTRICTIONS

Declarant does hereby covenant and agree with all persons, firms or corporations hereafter acquiring title to any portion of the Property, that the Property shown on the recorded plat(s) herein referred to, and all Property presently owned as part of SKYECROFT SUBDIVISION, which plat(s) are to be recorded, and all Property which may be acquired in the future to be made a part of SKYECROFT SUBDIVISION, is made subject to the Declaration of Restrictive Covenants of SKYECROFT SUBDIVISION as may be amended or modified (hereinafter referred to as "Restrictions") which Restrictions shall be recorded separately and shall refer to this Declaration and incorporate it by reference.

ARTICLE VII

CAPTIONS, ENFORCEMENT AND INVALIDATION

Section 1. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

Section 2. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

Section 3. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In the event it is necessary to enforce this Declaration by appropriate legal or equitable proceedings, the party or parties violating or attempting to violate the same shall be liable for the cost of such proceedings including reasonable attorneys' fees.

Section 4. Invalidation of any one or more of these covenants by judgment or court shall not adversely affect the balance of this Declaration, which shall remain in full force and effect.

Section 5. The Declarant reserves the right to amend this Declaration from time to time without joinder of any of the Owners for the following purposes:

- (a) To clarify the meaning of or to correct clerical errors in the Declarations.
- (b) To correct grammar, spelling, capitalization and other matters of syntax.

All other amendments to this Declaration shall require an affirmative vote of at least sixty-seven percent (67%) of the lot Owners and the vote of the Declarant, its successors, and assigns.

ARTICLE VIII

THESE RESTRICTIONS RUN WITH THE LAND

This Declaration of Covenants, Conditions and Restrictions of SKYECROFT SUBDIVISION and SKYECROFT HOMEOWNERS ASSOCIATION, INC. are to run with the land and shall benefit and be binding on all parties and persons (and their respective heirs, representatives, successors and assigns) claiming title to any of the Property herein described for a period of thirty (30) years from the date this Declaration is recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty-seven percent (67%) of the then Owners of the lots and the Declarant has been recorded agreeing to change said Declaration in whole or in part.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions of SKYECROFT SUBDIVISION and SKYECROFT HOMEOWNERS ASSOCIATION, INC. to be duly executed this 2nd day of September, 2004.

GRAHAM P.C. INVESTMENTS, LLC
By: Graham B Allen
Manager

STATE OF NORTH CAROLINA
COUNTY OF Union

This 2 day of September, 2004, personally came before me Graham B. Allen who, being by me duly sworn, says that he is a manager of GRAHAM P.C. INVESTMENTS, LLC and that said writing was signed and sealed by him, in his capacity as manager by its authority duly given.

Notary Public: Maxine W. Turner
Commission expires: 6-20-2008

