

Type: CONSOLIDATED REAL PROPERTY
Recorded: 2/21/2019 11:50:11 AM
Fee Amt: \$38.00 Page 1 of 18
Buncombe County, NC
Drew Reisinger Register of Deeds

BK 5745 PG 1166 - 1183

Prepared by and return to: Goosmann **Rose** Colvard & Cramer, P.A. (Box 81) (jrr/cnt)

Title Not Examined and No Opinion Rendered

State of North Carolina
County of Buncombe

**Declaration of Covenants, Conditions and Restrictions
for Baldwin Commons Townhomes**

This Declaration of Covenants, Conditions and Restrictions for Baldwin Commons Townhomes (herein "Declaration") is made to be effective as of this the 11 day of February, 2019 by **Baldwin Commons Developers, LLC**, a North Carolina limited liability company (herein "Declarant") and all future owners of properties and townhomes with Baldwin Commons Townhomes, and defined herein, a planned unit development.

Witnesseth:

That Whereas, Declarant is the owner and developer of that certain parcel of real property located in Buncombe County, North Carolina, and more particularly described in **Record Book 5641, at Page 381** of the Buncombe County, NC Register's Office (herein "Property"), together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property and all articles of personal property now or hereafter provided by Declarant and intended for use in connection therewith, which all or a portion of the Property will be divided into lots for townhome units as may be shown on those plats entitled Baldwin Commons Townhomes as currently or subsequently recorded by Declarant, including without limitation that plat recorded in **Plat Book 192, at Page 122** of the Buncombe County, NC Register of Deeds (collectively herein "Plat" or "Plats"); and

Whereas, Declarant, in anticipation of its initial sale or conveyance of townhome lots and/or the construction of townhome dwellings upon such lots, and in furtherance of its development of the remainder of the Property for residential use, desires to establish an integrated

complex and desires to provide for certain reciprocal rights, easements and restrictions affecting the Property pursuant to this Declaration.

Now, Therefore, Declarant hereby declares that the Property hereto shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the Property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

Article I

Submission of the Property to the Act and Creation of the Association

Section 1. Submission of the Property and Creation of a Planned Community. Pursuant to the provisions of Chapter 47F of the North Carolina General Statutes (herein "Act"), Declarant hereby creates a planned community comprised of the Property. Declarant hereby submits the Property to this Declaration and to the Act.

Section 2. Name. The name of the Planned Community created by this Declaration is Baldwin Commons Townhomes.

Section 3. Separately owned lots with townhome units. As shown on the Plats and to establish a plan of ownership, Declarant has or will construct townhome units upon all or a portion of the Property, and does hereby designate all such lots and townhome units, as may be shown on the Plats, for separate ownership.

Section 4. Reservation of Special Declarant Rights. Declarant hereby reserves unto itself, its heirs or successors in interest and assigns, as Special Declarant Rights, as follows:

A. Declarant reserves all the rights set forth in the Act and specifically those rights set forth in and described in Sections 47F-1-103(28) and 47F-3-104 of the Act;

B. Declarant reserves the right to use all types of easements through the common elements within the Property for the purpose of making improvements, resolving encroachments, connecting to utilities and/or granting access within said common areas or upon adjacent parcels or phases within the Property and to change or alter road access and rights-of-way at any time (including without limitation, use and control by the Declarant of those access and utility easements or rights of way benefitting the Property as may be obtained upon and across property adjacent to the Property);

C. Declarant reserves the right to exercise development rights and not to be subject to specific restrictions set forth herein for purposes of development;

D. Declarant reserves the right to maintain sales offices, management offices, and models within on any townhome lot, upon Common Areas, or elsewhere upon the Property;

E. Declarant reserves the right, but not the obligation, to withdraw or add certain separate portions of the Property, or real estate as shown on the Plats, or otherwise owned by Declarant to the Baldwin Commons Townhomes development;

F. Declarant reserves the right to build or design additional lots, and to relocate the boundaries of any lots, including the right to designate portions of the common area as set forth on Plats of the Property as additional lots or as part of an existing lot;

G. Declarant reserves the right to access and connect to rights of way, easements, utilities, and common facilities for the benefit of adjacent parcels or phases developed by Declarant;

H. Declarant reserves the right to involve and include all or a portion of the Property in cost-sharing agreements with development property adjacent to the Property to cover the cost of installation, maintenance and/or repair of access and utility easements and rights of way as will benefit Property;

I. Declarant reserves the right to amend this Declaration, without approval or joinder of any owners within the Property, until ninety percent (90%) of all lots as shown on the Plats are sold (and instruments of conveyance are recorded) by the Declarant;

J. Declarant reserves the right to amend boundaries of any common area as shown on the Plats and to grant easements for encroachments upon any such common areas for any improvements within the community as determined by Declarant or for improvements constructed by Declarant on adjacent property; and

K. Declarant reserves the right not to be assessed or to be responsible for any fees or assessments from the owners' association for Baldwin Commons Townhomes or otherwise for townhome lots, units or other dwelling within the Property titled in the name of the Declarant unless such applicable townhome lot, unit or other dwelling shall be occupied as a residence or leased out by Declarant.

Article II
Definitions

In accordance with Section 47F-1-103 of North Carolina Planned Community Act contained in Chapter 47F of the North Carolina General Statutes (herein the "Act"), and unless specifically provided otherwise or the context otherwise requires, the following terms as used in this Declaration and the Association Bylaws for this Planned Community shall mean the following:

Section 1. "Association" shall mean and refer to Baldwin Commons Townhomes Owners Association, Inc., its successors and assigns, and/or any other owners association hereafter formed to administer the obligations and responsibilities of the Association as set forth in this document as they pertain to the Property which is the subject of this Declaration as set forth above.

Section 2. “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any townhome lot or other ownership designation or parcel within the Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 3. “Property” and/or “Planned Community” shall mean and refer to all or any portion of the Property.

Section 4. “Common Area” shall mean and refer to (i) private roads designated on the Plats, as well as any other private road constructed by the Developer serving the property as shown on the Plats and any other Portion of the Property; (ii) any property designated as such by the Declarant; and (iii) any real estate owned by the association, other than a parcel within the Property that is designated for the construction of a dwelling.

Section 5. “Common Expenses” shall mean and include: (a) all sums lawfully assessed against the Owners by the Association; (b) expenses of administration, installation, construction, operation, maintenance, repair, and replacement within the Common Areas for facilities, including recreational facilities, streets and driveways, parking areas and spaces, but subject to specific designation of parking space use for specific townhome lots by Declarant and/or the Association, and landscaping; (c) expenses agreed upon as common expenses by the Association; (d) hazard insurance premiums as required for the Association for the Common Elements and for the master insurance coverage premiums for all of townhome units or other dwelling units within the Property that include party-wall construction; (e) public utilities, including gas, water, sewer, cable television, and electricity serving the Common Area; and (f) monetary obligations owing from the Association and the owners under any cost-sharing agreements with adjacent development property outside the community to cover the cost of installation, maintenance and/or repair of access and utility easements and rights of way or other items as may benefit the Property.

Section 6. “Lot” and/or “Lots” shall mean and refer to any numbered plots of land as shown on the Plats.

Section 7. “Declarant” shall mean and refer to Baldwin Commons Developers, LLC, a North Carolina limited liability company, and its successors and/or assigns. The definition of Declarant shall also include those such successors or assigns of Declarant who: (a) acquire more than one undeveloped Lot from Declarant for the purpose of development within the Property; or (b) acquire title to more than one Lot within the Property from Baldwin Commons Developers, LLC, or its successors or assigns, under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale in any deed of trust.

Section 8. “Limited Common Area” shall mean and refer to a portion of the Common Area as set forth in this Declaration or as shown and noted on any recorded Plat for the exclusive use of one or more but fewer than all of the Lots; including but not limited to any area noted as driveway, porch or patio

Section 9. “Unit” shall mean and refer to a townhome building situated upon a Lot and intended for use and occupancy as a single-family residence.

Section 10. “Member” shall mean and refer to any person or entity that holds Membership with voting rights in the Association.

Article III **Property Rights**

Section 1. Owners’ Easements for Use and Enjoyment. Every Owner shall have a right and easement for use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

A. The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for (i) any period during which any assessment by the Association against his, her or its Lot remains unpaid; and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

B. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members (as such Members are defined below). No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of each class of Members, agreeing to such dedication or transfer, has been recorded.

C. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use.

A. Any Owner may delegate, in accordance with the Bylaws of the Association, his, her or its rights or enjoyment of the Common Area and facilities to the Owner’s family, tenants, or contract purchasers who reside on the Property. In any case, the rights to and enjoyment of the Common Area and facilities, including such recreational facilities, shall be limited to those persons actually occupying the Unit; extension of these rights to guests or invitees of such occupants shall be subject to rules and regulations imposed by the Association.

B. Leases must be for a minimum of six (6) months pursuant to Article VII, Section 14. Rentals. In those situations where the Owner of a Lot leases the townhome pursuant to Article VII, Section 14. Rentals: (a) the occupants under the lease of said Lot shall be entitled to enjoyment of the Common Area to the exclusion of the Owner (i.e. an Owner and their occupants under the lease of their Lot shall not be entitled to enjoy the Common Area at the same time); (b) the occupants under the lease of an Owner’s Lot shall be subject to all of the protective covenants and Common Area use regulations and restrictions set forth herein (as if the occupant was the Owner), and all the rules and regulations of the Association for the Common Area; (c) the Owner of Lot so leased shall be responsible for non-compliance with the rules and regulations of the Association and/or damage within the community caused by the occupants under the lease of an Owner’s Lot; and (d) occupants under the lease(s) of an Owner’s Lot shall be excluded from

enjoyment of any recreational amenities within the Common Area for the periods of time the assessments for an Owner's Lot remain unpaid.

Article IV **Membership and Voting**

Section 1. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting Membership:

A. **Class A:** Class A Members, which Class specifically excludes the Declarant, shall be all Owners who shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

B. **Class B:** The Class B Member(s) shall be the Declarant (including without limitation those who hold title to multiple Lots or property as set forth in the definition of Declarant above) and such Member(s) shall be entitled to four (4) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

- (1) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership;
or
- (2) On the 1st day of January, 2028.

Article V **Covenant for Maintenance Assessments**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Planned Community, hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall be the personal obligation of the person or entity who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his, her or its successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the properties and in particular for the acquisition, improvement, and maintenance of properties, services and facilities devoted to this purpose and related to the exterior maintenance of the residential Units situated upon the properties or for the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements, and additions, the cost of labor, equipment, materials, management, and supervision, any or all of which may be obtained from Declarant, under contract, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance related to the Common Area, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. Any such Assessment charged and collected shall relate to the cost of maintenance of the Common Areas and any road maintenance and may include a reserve fund in a reasonable amount in anticipation of such costs, as determined by the Association.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Declarant, pursuant to the Special Declarant Rights set forth in Article I, Section 4 hereof, the Developer Control Period and thereafter the Association, may issue Special Assessments for capital improvements to Common Elements within the Subdivision.

Section 4. Notice and Quorum for any Action Authorized Under Sections 2 and 3. Written notice before any meeting called for the purpose of taking any action authorized under Sections 2 or 3 of this Article V shall be sent to all Members not less than ten (10) days and no more than sixty (60) days in advance of the meeting. At such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all of the votes of each class of Membership shall constitute a quorum. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy, and the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots (on either a per Lot and/or per square foot basis) and must be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot when construction of the Unit on such Lot is complete or upon the conveyance of such Lot by Declarant to an individual Owner of such Lot other than Declarant, whichever event shall first occur. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment against each Lot and send written notice of each assessment to every Owner subject thereto. The due dates of such assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 7. Effect of Nonpayment of Assessments and Remedies of the Association.

Any assessment not paid within fifteen (15) days of the due date shall be subject to a late payment fee in the amount of \$20.00. Any assessment that remains outstanding for more than thirty (30) days of the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose its lien against the Lot against which the delinquent assessment has been levied. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage of any Owner. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof; shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent and any mortgagee, at its option, from paying any delinquent obligations of a property Owner. The Association shall notify by registered mail, return receipt requested, any mortgagee of any delinquency or default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgagee.

Article VI
Architectural Control

No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties, any Lot or the Common Area, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, color, height, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography of the Planned Community by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. This Article VI shall not apply to the original construction of any Unit upon any Lot by Declarant, unless Declarant otherwise agrees in writing that this Article shall be applicable to it. Declarant reserves the right to make changes in the plans and specifications of the Units constructed on the Lots.

Article VII
Protective Covenants

Section 1. Residential Use. All Lots shall be used, improved, and devoted exclusively to residential use, provided that Declarant shall have the right to maintain a model unit on any Lot it may own until such time as all Lots have been sold and conveyed by Declarant to individual Owners. Nothing herein shall be deemed to prevent the Owner of any Lot from leasing a unit, subject to all provisions of this Declaration.

Section 2. Trade or Business. With the exception of Declarant until Section 1 hereof, no trade or business shall be carried on upon any Lot, but this provision shall not prohibit a home occupation, which does not cause any noxious or offensive activity within the Planned Community. There can be no employees working for a business operating out of a Unit unless the employee is also a permanent resident of the Unit. The leasing or rental of a residential Unit shall not constitute a prohibited business hereunder. In any event, no business may be conducted which shall: (i) result in the emission of light, sound or odor beyond the boundary of the Owner's Lot; (ii) violate any zoning ordinance; (iii) involve door to door, postal, telephonic or electronic solicitation of any Owners; (iv) increase traffic within the Community or require more than two (2) deliveries per day; or (v) threaten the security or safety, or in any way constitute a nuisance, hazard or offense to any resident or Owner within the Subdivision. The Board shall be the exclusive and final arbitrator with respect to the issue of whether any particular home occupation constitutes a noxious or offensive activity hereunder.

Section 3. Nuisances. No noxious, offensive or illegal activities shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood or community.

Section 4. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by an Owner and no portion less than all of any such Lot nor an easement or other interest less than the entire fee therein shall be conveyed or transferred by an Owner, except as herein authorized or as may be required due to the exercise by a governmental body of the power of eminent domain.

Section 5. Animals. No Lot Owner shall maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, anywhere on a Lot or within any Unit, except that the keeping of no more than two (2) orderly domestic pets, including dogs, cats and caged birds, on any Lot or within any Unit shall be permitted, subject to any further limitations as may from time to time be established by the Association. Notwithstanding the foregoing, all such domestic pets must be kept and maintained under the control of the respective Owner when outside the Owner's Unit or Lot and must not become a nuisance to other residents in the Community. Owners shall be responsible for collecting and disposing of all pet excrement. Any failure of an Owner to properly dispose of pet excrement shall subject such Owners to a reasonable fine as determined and assessed by the Association.

Section 6. Parking. Each Owner shall be permitted to park two (2) vehicles in their driveway to accommodate those vehicles owned or regularly used by an Owner. Parking of the vehicles owned or regularly used by an Owner in areas designed by the Association for guest parking is prohibited. Overnight parking of all vehicles and recreational equipment shall be only in areas designated by the Association for such parking. Except for emergency repairs, no person shall repair or restore any vehicle, boat, or trailer upon any portion of the properties except with the prior consent of the Association.

Section 7. Motor Vehicles. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions, or otherwise. No motor vehicles shall be driven on pathways or unpaved Common Areas.

Section 8. Outside Antennae. No outside radio or television antennae shall be erected on any Lot within the properties, except as approved in writing by the Architectural Committee.

Section 9. Outside Drying. No drying or airing of anything which may include but not limited to clothing or bedding shall be permitted outdoors on any Lot within the Planned Community.

Section 10. Trash and Recycling Receptacles. All trash and recycling materials shall be kept only in trash and/or recycling receptacles and in areas upon a Lot as established by the rules of the Architectural Committee. Any trash or recycling receptacle placed upon the margin of any community road, driveway or Common Area for collection shall not be so placed more than twelve (12) hours prior to the scheduled collection, and shall not be permitted to remain more than twelve (12) hours after such collection. The Board may establish rules limiting the days which collection may be permitted, or may contract for garbage or recycling removal on behalf of the Owners and include any expense related thereto to the assessments collected.

Section 11. Trash Burning. Trash, leaves, and other similar materials shall not be burned upon any Lots on the Property.

Section 12. Signs. No signs shall be displayed to public view on any Lot or Unit or in the Common Area except a sign which specifically complies with rules and regulations set by the Association or approved by the Architectural Committee. Notwithstanding the above, Declarant may have such signs marketing Lots or Units for sale on any Lot the Declarant owns or on the Common Areas as the Developer, in his sole discretion, deems appropriate.

Section 13. Mailboxes and Newspaper Boxes. Only mailboxes and newspaper boxes meeting the design standards of the Architectural Committee shall be permitted.

Section 14. Rentals. No Unit shall be rented for a period of less than six (6) months; provided, however, the Association hereby reserves its right to grant variances to this rental restriction at its discretion. Any Owner who wishes to lease their Unit(s) has an affirmative obligation to immediately report such potential lease, the period of the lease, and the names of the tenant(s) to the Association by providing a copy of the lease to the Association. The Association reserves the right interview any potential tenant(s) and perform a background check on the potential tenant(s) prior to approving the lease. The Owner shall be responsible for any fees associated with such interview and background check. Prior to any tenant(s) taking possession of any Unit upon the approval of a lease by the Association, the Owner of such Unit must submit a three hundred and no/100 dollars (\$300.00) deposit to the Association to cover any potential damage caused by any tenant(s) to the Common Area; such deposit shall be returned to the Owner at the discretion of the Association upon the Association's assessment of any damage caused by the tenant(s) within thirty (30) days of the tenant vacating the Unit. The maximum number of Units to be under a lease at any given time is sixteen (16). Notwithstanding the provision set forth under this rental restriction, the Association hereby reserves its right to grant variances to this rental restriction at its discretion.

Section 15. Rules. The Architectural Committee shall adopt general rules and implement the general purposes of architectural control set forth in Article VII herein and interpret the covenants of this Section. All general rules may be amended by a two-thirds (2/3) vote of the Architectural Committee, following a public hearing for which due notice has been provided, and pursuant to an affirmative vote of two-thirds (2/3) of the Board of Directors of the Association. All general rules and subsequent amendments thereto shall be placed in its book or resolutions and shall be open to inspection by Members of the Association during normal business hours.

Article VIII **Party Walls**

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

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of party walls shall be shared equally by the Owners of Lots or Units adjoining or sharing such party wall.

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

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

Section 5. Alteration. The Owner of any Lot may not construct, reconstruct, extend, or modify any party wall in any manner without the prior approval of the Architectural Committee and of any other Owner adjoining the said party wall, which such approval shall not to be unreasonably withheld.

Section 6. Right of Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Owner's land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owners that no Contribution is Due. If any Owner desires to sell his, her or its Lot and in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article VIII, such Owner may request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Owner to make such certification immediately upon request

and without charge. Where the adjoining property Owner does claim a right of contribution, the certification shall contain a recital for the amount claimed and the basis on which the claim is made.

Section 8. Encroachment Easement. Units may be joined together by a party wall. The center line of such party wall is intended to be located upon the dividing line between the two Lots upon which the Units are constructed. If any portion of a party wall or of a Unit (including any deck, porch, balcony, or patio attached thereto) of such Units shall encroach upon any adjoining Lot or Common Area, either by reason of original construction or otherwise, or if any such encroachment shall hereafter arise because of settling or shifting of the building or other cause, there shall be an easement in favor of the Owner of the encroaching party wall or Unit (including any deck, porch, balcony, or patio attached thereto) over, across and upon such adjoining Unit or Lot or Common Area for such encroachment so long as the same shall exist.

Section 9. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute may be settled by the Board of the Association with the consent of the Owners involved, otherwise by arbitration as provided by the then existing laws of North Carolina relating to arbitration.

Article IX

Exterior Maintenance

In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance for each Lot for all area outside of the Unit, which is subject to assessment hereunder and shall include as follows: paint, repair, replace, maintenance and care of roofs, gutters and down spouts, exterior building surfaces, walks or walkways, drives or driveways, trees, shrubs, lawns, landscape beds and all other exterior improvements; however, such exterior maintenance shall not include any doors, glass surfaces, screens, light fixtures or air-conditioning units as such items shall be the responsibility of the Lot Owner. In order to enable the Association to accomplish the foregoing duties of exterior maintenance, there is hereby reserved to the Association the right of unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided for in this Article.

In the event that the need for maintenance, repair, or replacement as herein described is caused through the willful or negligent act of the Owner, his, her or its family, guests, or invitees, or is caused by fire or lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the same are defined and explained in North Carolina standard fire and extended coverage insurance policies, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Lot is subject.

Article X

Insurance Assessments

Section 1. Physical Damage Insurance. The Declarant, for each Lot owned within the Planned Community, hereby irrevocably nominates, and each Owner of any Lot by acceptance of

a deed for any Lot, whether or not it shall be so expressed in such deed, is deemed to irrevocably nominate the Association, as Trustee, with authority to obtain and maintain fire and extended coverage insurance on the Units located on all Lots, insuring the buildings and fixtures located therein in an amount sufficient to cover the full replacement costs thereof. The fixtures to be covered by such insurance policy obtained by the Association shall be those fixtures common to all of the Units located within Baldwin Commons Townhomes and the Association shall have the responsibility of providing each Owner with an itemized list of those fixtures covered by such insurance. All additional fixtures located within such Units should be insured in the individual insurance policies described in Section 3 hereof. Insurance obtained by the Association, to the extent available, may include coverage against water damage, vandalism, and malicious mischief. Such policies of physical damage insurance (1) shall be written in the name of the Association, as Trustee for each Owner, (2) shall be described as primary policies of insurance on the items covered by such policies, (3) shall contain waivers of subrogation and of any reduction of prorata liability of the insurer as a result of any insurance carried by any Owner or of the invalidity arising from any acts of the insureds or any Owner, and (4) shall provide that such policies may not be canceled or substantially modified without at least ten (10) calendar days prior written notice to all of the insureds including any mortgagee of any Lot.

Each such policy of physical damage insurance shall contain a mortgagee clause as requested by the Owner and any loss thereunder shall be payable to such mortgagee as its interest may appear. All such policies shall provide that adjustment of loss may be made by the Association and that the net proceeds thereof shall be payable to the Association as Trustee for such Owner.

Section 2. Payment of Assessments. The premiums for insurance obtained by the Association on each Lot shall be a part of the maintenance assessments described herein.

Section 3. Individual Insurance Policies. An Owner shall not be prohibited from carrying additional insurance for the Owner's own benefit, provided that such policies contain waivers of subrogation and further provided that the liability of the carrier issuing the insurance procured by the Association shall not be affected nor diminished by reason of any such additional insurance carried by any Owner. Each Owner shall maintain insurance coverage against loss by reason of fire or other casualty of his, her or its personal contents located within each Lot as well as reasonable liability insurance and rental coverage, if applicable.

Section 4. Damage to or Destruction of the Unit. In the event of damage to or destruction of any Unit located on a Lot as a result of fire or other casualty, the Owner of such Unit shall have the responsibility of repairing or reconstructing said Unit. The Association shall collect and make available to said Owner the proceeds from the property damage insurance referred to above and repair or rebuilding shall proceed in conformity with the standards approved by the Architectural Committee as described in Article VI hereof. In the event the cost to repair or reconstruct said Unit shall exceed the balance of insurance proceeds payable by the Association, after first deducting the costs to the Association and discharging interests of mortgagees, the cost to repair or reconstruct shall be the expense of the Owner of said Unit located on said Lot. In case of default by any such Owner in the payment in full of the cost to repair or reconstruct said Unit, the Association is authorized to advance, for the benefit of said Owner and other Owners within

the Planned Community, the balance necessary to pay for said repair or reconstruction, in which case said sums advanced, together with costs and reasonable attorneys fees incurred in connection with the collection thereof, shall be a continuing lien against the Lot against which such additional costs were incurred and shall also be a personal debt of the Owner of said Lot at the time of such damage or destruction. The collection of such costs advanced can be enforced in the same manner as a lien for annual or special assessments as the same is set forth in Article V hereof.

Article XI

Additions to the Property Subject to this Declaration

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is all that certain real Property as described herein.

Section 2. Additional Property. Regardless of Section 1 hereof, Developer may, at its option, subject additional portions of property to this Declaration or restrictions which are similar in form to those contained herein, in furtherance of the scheme of the Planned Community set forth herein. Owners of Lots in additional phases of the Planned Community shall become members of the Association upon recordation of Amendments and/or Declarations for such additional phases.

Article XII

Conveyance of Common Area to the Association

Section 1. Title to the Common Area. Prior to the conveyance of the last Lot in the Planned Community, the Declarant will convey to the Association all of the Common Area as described herein.

Section 2. Encumbrances. The Declarant agrees that, in connection with the conveyance of Common Area as referred to herein, such conveyance to the Association shall be free and clear of all liens and financial encumbrances, except easements and rights of way of record and Buncombe County taxes for the year of the conveyance.

Section 3. Easement for Construction Purposes. The Declarant shall have full rights of ingress and egress to and through, over and about the Common Area in the Planned Community during such period of time as the Declarant is engaged in any construction or improvement work on or within the Property or on any property adjacent thereto, and shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc., which are being utilized in said construction. No Owner, his, her or its guests or invitees, shall in any way interfere or hamper Declarant, his employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Declarant or its contractors or subcontractors shall, so far as practicable, use reasonable efforts to mitigate any interfere with the quiet enjoyment of the Owners of Lots within the Planned Community.

Section 4. Driveways and Roads. The driveways and any walkways crossing the Common Area are to be used by the Owners of the Lots to provide non-exclusive ingress, egress and regress to and from the Lots. The Owners of the Lots are hereby granted an easement over,

across and upon said driveway and walkways in order to provide ingress, egress and regress to the said Lots. The Declarant, for itself and for its successors and assigns does hereby reserve the right for the appurtenant benefit of all property shown on the Plat to cross over and upon the common driveway area as shown on the Plat for ingress, egress and regress to Baldwin Road. The roads and paved or impermeable surfaces areas providing access to and from the Planned Community are controlled by the Declarant (and thereafter by the Baldwin Commons Townhomes Property Owners Association) and each Owner of any Lot by acceptance of a deed for any Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to be responsible for his, her or its prorata share of the maintenance of said road(s) pursuant to the terms and conditions of this Declaration.

Section 5. Parking Areas and Spaces. All parking areas and spaces within the Common Area shall be a Common Expense with all spaces to be for the general use and enjoyment of all Owners within the Planned Community. Owners and their guests are prohibited from parking their vehicles on the streets. Guests must park their vehicles in designated off street parking areas or in the Owner's garage or driveway. Contractors making repairs are allowed to temporarily park in the street if there is not a space available in the driveway of the Owner who is having work performed on his/her Unit. All vehicles parked on the streets are subject to being towed and retrieved at the expense of the owner of the vehicle.

Section 6. Other Easements. Notwithstanding any other provision herein, Declarant shall have the right to grant easements for utilities and drainage purposes over the Common Areas, said utilities shall include, but not be limited to, water, sewer, electricity, natural gas, telephone and cable television.

Article XIII **Obligation to Mortgagees**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgage to include deeds of trust or other security instruments) encumbering Lots located within the Planned Community:

A. The Association shall be obligated to notify the holder of any first mortgage on a Lot, upon request of such holder, of any default by the Owner of said Lot in the performance of any of such Owner's obligations described herein (including failure to pay assessments when due) which is not cured within sixty (60) days from the date of such default.

B. Written notice by the Association shall be sent, upon request, to the holder of all first mortgages encumbering any of the Lots located within the Planned Community setting forth the purpose of the meeting not less than thirty (30) days in advance of any meeting being called for the purpose of amending, extending or renewing any of the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association. No such amendment, extension or renewal shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot located within the Planned Community unless such mortgage holder shall consent thereto in writing.

C. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) and the Owners (other than the Declarant) of the Lots in the Planned Community have given their prior written approval, the Association shall not be entitled to:

(1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, for the benefit of the Lots in the Planned Community. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this clause;

(2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(3) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or Units, the exterior maintenance of Lots or Units, the maintenance of the Common Area, walkways or common fences and driveways, or the upkeep of lawns and plantings in Planned Community;

(4) Fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(5) Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area property;

D. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area, and any first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots in the Planned Community duly executed by the Association, and an original or certified copy of such agreement shall be furnished to Declarant.

E. No provision hereof shall be construed to give any Owner or any other party, priority over any rights of first mortgagees of Lots in the Planned Community pursuant to their mortgages in the case of a distribution to an Owner or Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Article XIV

General Provisions

Section 1. Duration. The covenants and restrictions contained in this Declaration shall run with and bind the properties which are made subject hereto for a period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds for Buncombe

County, North Carolina, after which time, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each period.

Section 2. Amendment. This Declaration may be amended: (a) pursuant to Article I, Section 4 hereof, the Developer reserves the absolute and exclusive right to modify and/or amend this Declaration in whole or in part as the Developer deems proper and appropriate, or (b) after expiration of the Special Declarant Rights, by the Owners in accordance with the provisions of the North Carolina Planned Community Act. No amendment of this Declaration shall be effective until recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.

Section 3. Enforcement. The Association, any Owner, or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 5. Management. The Declarant reserves the right to enter into a contract with a management firm, which said contract shall provide for payments to said firm for services rendered on behalf of the Association in connection with maintenance and control of the Common Areas and all other duties delegated herein to the Association. The contract shall have terms not to exceed one (1) year and shall be cancellable by the Association upon the giving to said management firm ninety (90) days written notice prior to such cancellation.

Section 6. Captions. The captions for the various paragraphs of this Declaration are for convenience of reference only.

Section 7. Singular, Plural, Masculine, Feminine, Owners. As used herein, the singular includes the plural and where there is more than one (1) Owner of any Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and the feminine.

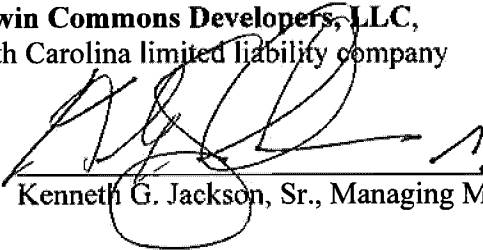
Section 8. Applicable Law. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina and Chapter 47F of the North Carolina General Statutes. In the event of a conflict between this Declaration and the Act, then this Declaration shall be deemed to govern. The Act is incorporated herein by reference to the extent not inconsistent with the specific terms set forth herein.

In Witness Whereof, Declarant has caused the due execution of this Declaration as of the date and year first written above.

[SIGNATURE PAGES ATTACHED HERETO]

Signature Page
to
Declaration of Covenants, Conditions and Restrictions for
Baldwin Commons Townhomes

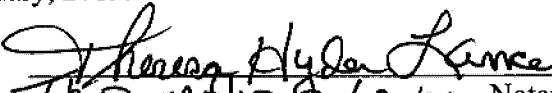
Declarant: **Baldwin Commons Developers, LLC,**
 a North Carolina limited liability company

By: 
Kenneth G. Jackson, Sr., Managing Member

State of North Carolina
County of Buncombe

I, a Notary Public of said County and State certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document: **Kenneth G. Jackson, Jr., as the Managing Manager of Baldwin Commons Developers, LLC, a North Carolina limited liability company.** Witness my hand an official stamp or seal on this the 11th day of February, 2019.

[Notarial Seal]


Theresa Hyder Lance, Notary Public
My Commission Expires: 6-13-20

