

NON-STANDARD
FILING



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Workflow# 2671221
Buncombe County, NC
Otto W. DeBruhl Register of Deeds
BK **4652** PG **984-991**

Please return to **Box 80**, Robert E. Dungan, The Dungan Law Firm, P.A., One Rankin Avenue, Third Floor, Asheville, NC 28801

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Deed References: Deed Book 982, Page 613
Deed Book 1122, Page 632
Deed Book 1144, Page 681
Deed Book 1171, Page 437
Deed Book 1187, Page 224
Deed Book 1225, Page 703
Deed Book 1288, Page 355

Amended and Restated Common Restrictive Agreement for Ballantree

WHEREAS, Ballantree Project, a general partnership, was the declarant and developer for Lots 1 through 9; 24 through 38, and 46 through 53 as shown on that Plat recorded in Plat Book 36, Page 11, Buncombe County Registry of Deeds, which lots are collectively known as Section A of Ballantree (hereinafter Section A);

WHEREAS, Ballantree Project as declarant recorded a Restrictive Agreement for Section A of Ballantree in Deed Book 982, Page 613, Buncombe County Registry of Deeds on June 24, 1968 ("Section A Restrictions"); and

WHEREAS, Ballantree Properties, Inc. was the successor declarant and developer at Ballantree for all the lots shown on the plats for the respective Sections recorded in the Buncombe County Registry of Deeds as follows:

<u>Ballantree Section</u>	<u>Plat Book</u>	<u>Page</u>
B	40	106
C	42	56
D	42	124
E	42	167
F	46	79

(hereinafter Sections B, C, D, E, F respectively); and

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WHEREAS, Ballantree Properties, Inc. as successor declarant for Ballantree recorded Restrictive Agreements which are the same or very similar to each other as well as the Restrictive Agreement for Section A. Those Restrictive Agreements were recorded as follows in the Buncombe County Registry of Deeds:

Section B - Deed Book 1122, Page 632
Section C - Deed Book 1144, Page 681
Section D - Deed Book 1171, Page 437
Section E - Deed Book 1187, Page 224
Section F - Deed Book 1225, Page 703

("Section B-F Restrictive Agreements"); and

WHEREAS, the Individual Owners of lots in Section F-2 of Ballantree recorded a plat in Plat Book 46 at Page 151, Buncombe County Registry of Deeds, which lots are collectively known as Section F-2 (hereinafter Section F-2); and

WHEREAS, the Individual Owners of lots in Section F-2 of Ballantree, on their own behalves, recorded a Restrictive Agreement for Section F-2 which is the same or very similar to the Restrictive Agreements for Sections A through F of Ballantree and which is recorded in Deed Book 1288, Page 355, Buncombe County Registry of Deeds; and

WHEREAS, all lot owners at Ballantree have been members of the Ballantree Homeowners Association, Inc. since its incorporation even though the lots in the various sections have been submitted to individual Restrictive Agreements; and

WHEREAS, in order to have a more cohesive and uniform community with respect to restrictions and their enforcement, the lot owners desire to amend the individual Restrictive Agreements for all the sections by replacing them with a uniform Common Restrictive Agreement; and

WHEREAS, the lot owners in each section have voted section by section to amend the Restrictive Agreements and approved the Common Restrictive Agreement by a majority of the lot owners in each section as required by each of the Restrictive Agreements; and

WHEREAS, the President of the Ballantree Homeowners Association has certified and can attest to the approval through the voting of all sections;

NOW THEREFORE, in accordance with the votes of the lot owners in each section at Ballantree, the Restrictive Agreement for Sections A, B, C, D, E, F, and F-2 are hereby struck in their entirety and replaced by the following Common Restrictive Agreement for Ballantree:

Common Restrictive Agreement for Ballantree

1.

The Ballantree Homeowners Association, Inc. ("Association"), a North Carolina non-profit corporation, shall manage and administer the Ballantree Community.

All Owners by virtue of their ownership of a lot in the Community are members of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Common Restrictive Agreement (the Agreement) and in accordance with the Bylaws. Such Owners shall be entitled to one (1) vote for each developed Lot in which they hold the interest required for membership. A Lot is considered "developed" when ground is broken for construction.

Acting by and through its Board of Directors, the Association shall have the powers and duties necessary for the administration of the affairs of the Community which shall include, but not be limited to, the following:

1. Adopt and amend Bylaws and Rules and Regulations;
2. Adopt and amend budgets for revenues, expenditures, and reserves;
3. Collect dues for common expenses for Lot Owners;
4. Hire and terminate independent contractors and managing agents;
5. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Community;
6. Make contracts and incur liabilities;
7. Regulate the use, maintenance, repair, replacement, and modification of common elements;
8. Cause improvements to be made on common elements;
9. Hold and convey in its own name any right, title or interest to real or personal property;
10. Grant easements through or over the common elements;
11. Impose reasonable charges for the preparation and recordation of amendments to the Common Restrictive Agreement;
12. Provide for the indemnification of and maintain liability insurance for its officers, directors, and agents;
13. Exercise all other powers that may be exercised in this State by non-profit corporations; and
14. Exercise any other powers necessary and proper for the governance and operation of the Association.

The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common areas, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of a majority of the total Association vote at an annual or special meeting. No Rule or Regulation shall be in conflict with either the Agreement or Bylaws and such Rules or Regulations shall not be intended as an amendment of the Agreement.

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The allocated interest in the common expense liability of and votes in the Ballantree Community for each developed Lot is equal. The dues obligation of each developed Lot is equal.

If the Owner of a developed Lot does not pay its allocated interest in the common expense liability, the Lot Owner loses its voting privileges.

2.

The Common Restrictive Agreement runs with the land and is binding on all parties and all persons claiming under them until January 1, 2013, at which time said Agreement shall be automatically extended for successive periods of ten (10) years. The Agreement may be amended at any time by a majority vote of all Lot Owners held at any annual or special meeting or by a majority vote of all Lot Owners procured by written ballot as allowed by North Carolina non-profit corporation act (NCGS, Chapter 55A). The Agreement applies to all Lots within the Community.

If the parties hereto, or any of them or their heirs or assigns, violate or attempt to violate any of the restrictions in the Agreement, it is lawful for any Owner, or the Association, which has standing hereby, to enforce and to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restriction and either to prevent that person or those persons from so doing, or to recover damages or other dues for such violation. The Board will review an alleged violation only upon receipt of written complaint from two or more Lot Owners. The Board will determine whether there is a violation, considering the general standard of the Community, and will attempt to resolve the issue. If it cannot be resolved, the Board will determine whether it is appropriate for the Association to pursue arbitration or legal action.

Invalidation of any of these restrictions by waiver, judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect. Settlement or failure to prosecute a violation does not constitute a waiver of the restriction.

3.

None of the Lots as shown on the recorded plats of Ballantree Community property shall be re-subdivided so as to create an additional lot.

The Association in its sole discretion may allow a transfer of a small portion of one Lot to an adjacent Lot Owner as will benefit not only both Lot Owners concerned but the Community as a whole. Any decision by the Association in allowing the conveyance of said small portion shall be in writing and shall be affixed to the deed conveying said small portion.

4.

No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residential dwelling not to exceed two stories in height above the

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basement and a private garage for not more than three cars. Other appurtenant structures may be erected only with prior written permission from the Association.

All developed Lots shall include a private garage sufficient to accommodate at least two cars and adequate provision for off-street parking sufficient to accommodate all vehicles that can reasonably be anticipated to be owned by or in the ordinary use of the occupants of the property.

Driveways shall have a minimum width of nine (9) feet of asphalt, concrete or other hard surface material. Said hard surface material must be in place within twelve (12) months of the start of construction of any residence on a Lot, beginning with the grading of the Lot.

The minimum livable floor area of any residence shall be not less than fifteen hundred (1500) square feet of heated living space. In any residence of two stories there shall be a minimum of twelve hundred (1200) square feet of heated living space on the ground level and in any residence of split-level construction, there shall be a minimum of thirteen hundred (1300) square feet of heated living space in the combined area of the single-story portion plus the area of either story of the two-story portion. Basements, unfinished attic space, storage space, garages, porches, or any area not enclosed in the main structure shall not be counted as part of the required heated living floor space.

Each residence must conform to all local building codes and be permanently constructed onto a permanent foundation.

No mobile home or manufactured home shall be allowed on any Lot.

No portion of any building, including outbuildings, shall be located nearer than thirty (30) feet from the front street property lines or side street lines and twelve (12) feet from any side lot line. Where steep or unusual terrain creates a severe hardship on construction, the Association may grant permission to alter the setback restrictions to accommodate the construction. This permission to vary setback restrictions must be obtained in writing from the Association before construction is begun.

In the event of unintentional violation of any of the set-back or side line restrictions, the Association may, by written instrument, approve a change of such set-back or side line, provided that such change does not exceed 15% of the marginal requirement of the same and only if all Owners affected by the change agree in writing.

In cases where, prior to the adoption of these restrictions, an Owner has erected a structure or made material changes to a structure with the required approval of the Association, the structure remains approved under these restrictions. In a case where, prior to the adoption of these restrictions, an Owner has erected a structure or made material changes to a structure without the required approval from the Association, such structure or material changes are subject only to the Restrictive Agreement in existence at the time of the construction. In either case, upon replacement of or material changes to such structure, these restrictions apply.

Utility easements shall be as shown on the recorded plats for each section

5.

A primary purpose of the Association is to preserve the desirability of the Community and the value of the properties therein. Toward that goal, the Association considers it important to ensure that new structures and alterations to existing structures are compatible with the quality and appearance of the neighborhood.

Prior to beginning the construction or installation of any new structure or making material alterations to the exterior of any structure or driveway or paved area, plans with specifications must be submitted to the Association for approval, by delivering such plans to the Association's president or vice president. Plans submitted accordingly will be approved or disapproved by the Association within forty-five (45) days of submission. If plans are disapproved and amended plans are re-submitted, such plans will be approved or disapproved within fifteen (15) days. If the Association fails to approve or disapprove submitted plans within the time indicated, the Association is deemed to have waived the requirement for written approval. Construction or installation of any new structure or the making of material alterations shall not begin until the Association approves such plans in writing or has been deemed to have waived the requirement. Any material changes to approved plans must be approved in writing. The Association will retain approved plans until the project is completed.

Plans must include drawings of the front and side elevations of any new structure or of alterations to an existing structure. Plans for any new structure must include its placement on the Lot. The Lot must be marked off with stakes so that the structure's location can be easily identified and all trees, stumps and shrubbery to be removed from the Lot must be marked before construction or installation begins.

Any material repairs or replacements shall be made with similar materials and of similar design as the original structure. The Association may approve other materials or design if such changes are determined to be compatible with the quality and appearance of the Community.

Construction of any residence on a Lot shall be completed within twelve (12) months of the start of construction, beginning with the grading of the Lot. Other construction or material alterations of an existing structure shall be completed in a reasonable time, as estimated in the plans approved by the Association.

No structure shall have exposed concrete block. All concrete block must be veneered with brick or stone, or covered with stucco or other high-quality exterior finishing material. Reference to any such building requirements of the Association shall not be interpreted as limiting the authority of the Association to make other requirements concerning such plans and specifications.

No fence or wall shall be erected on any Lot without the prior written approval of the Association. No fence or wall shall be erected which may interfere with vision of any street or driveway so as to endanger the safety of pedestrians or drivers of vehicles.

No chain link fence of any kind shall be allowed to exist between any part of the residence, including the garage, and the street or streets bordering the Lot.

No storage tank of any kind shall be installed or erected above ground.

During construction on any Lot, the Owner and any contractor or builder shall minimize disturbance of neighbors. Owners shall require their contractors or builders to observe reasonable work hours and otherwise respect other Lot Owners. The street or streets bordering the Lot shall be kept free of equipment, building materials and rubbish.

6.

In order to assure a community of congenial resident Owners and thus protect the value of the Lots, the leasing of any residence is restricted as follows, except by written permission of the Association: Homes may be rented only in their entirety; no fraction or portion may be rented. No transient tenants shall be permitted. Any lease must be for a term of not less than twelve (12) months. No timeshare or timeshare-like arrangements shall be permitted.

All Lots shall be known and described as single-family residential lots and no Lot shall be used for any other purpose, and particularly, no religious, trade or commercial enterprise of any type shall be carried on upon any Lot. A private home office may be maintained in a residence so long as such use is incidental to the primary residential use of the Lot and does not involve significant coming and going of members of the public.

Occupancy of a residence shall be strictly limited to a single family and any family member's personal caretakers. For purposes of this restriction, "Single Family" means a traditional family unit, a single housekeeping unit, or persons substantively structured as an integrated family unit such that any of these must function as a family within the dwelling and the composition of the family unit must be relatively stable and permanent.

No trailer, camper, or recreational vehicle, basement of a house, tent, shed, garage, or any outbuilding shall at any time be used as a residence, temporarily or permanently.

The property shall not be used or configured for any purpose or maintained in any way that may endanger the health of or unreasonably disturb or be a nuisance to the Owner of any Lot or any resident thereof

No sign of any kind shall be displayed on any Lot after the residence has been built and occupied other than one sign not more than four (4) square feet in size offering a Lot for sale. Specifically, no sign shall be displayed offering a property for rent. No signs shall be posted in any common area, including for-sale signs at the entrance, other than an "open house" sign within seven (7) days of the event, with the exception of notices of Ballantree Homeowners Association events. Political signs are permitted on a Lot, but no more than one per candidate and not more than four (4) square feet in size. Any such political sign may be erected no earlier

than thirty (30) days before an election day and must be removed immediately after an election day.

Property, including structures, lawns, shrubbery and landscaping shall be maintained in an adequate and reasonable fashion relative to the general standard of the Community.

7.

No motor vehicles (other than private passenger vehicles), boat, boat trailer, mobile home, motor home, trailer, or any similar items shall be stored on any Lot.

The undersigned, being the President of the Ballantree Homeowners Association, Inc., hereby certifies and attests that Sections A, B, C, D, E, F, and F-2 have individually voted to adopt the above Common Restrictive Agreement.

This the 18th day of February, 200~~7~~⁷.

Ballantree Homeowners Association, Inc.

by: Maureen Christian
President

Attest: Sarah R. McKee
Secretary

NORTH CAROLINA
BUNCOMBE COUNTY

I Karen Sullivan, Notary Public for said County and State, certify that Maureen Christian personally came before me this day and acknowledged that (s)he is ^{President} Secretary of Ballantree Homeowners Association, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by (her)himself as its Secretary.

Witness my hand and official seal, this the 18th day of February, ~~2008~~²⁰⁰⁷.



Karen Sullivan
Notary Public

My commission expires 2/11/2012.