

Appendix B

Memorandum of Understanding

This Agreement is entered into as of September 11, 2023 by and between the North Carolina Housing Finance Agency, a public agency and instrumentality of the State of North Carolina (the "Agency") and Balsam Edge, LLC a North Carolina limited liability company (the "Developer").

WHEREAS, the Agency administers the Rental Production Program (the "Program") to make loans to developers to construct or rehabilitate affordable apartments in North Carolina; and

WHEREAS, the Program is funded, in part, with federal funds (the "HOME Funds") under the HOME Investment Partnership Act (Title/Section II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended) (the "Act"); and

WHEREAS, the Act requires the Agency to complete the environmental review process under 24 CFR Part 58 prior to committing any HOME funds to a project; and

WHEREAS, the Agency proposes to loan HOME Funds to the Developer under the Program for the construction of an 84-unit affordable housing apartment complex to be known as Balsam Edge located at approximately 291 Howell Mill Road, Waynesville, NC 28786 (the "Project"); and

WHEREAS, in its environmental review for the Project the Agency identified mitigation measures required to be taken by the Developer as a condition for making a loan to the Developer; and

WHEREAS, the Agency and the Developer desire to enter into this Agreement for the purposes of establishing the mitigation measures under which the Project must be developed.

NOW, THEREFORE, in consideration of the mutual covenants and promises and obligations contained herein, and as a condition of the Agency making a Program loan to the Developer, the parties agree as follows:

I. Mitigation Measures.

The Developer agrees to construct the Project and otherwise implement the mitigation measures listed below to reduce, avoid, or eliminate adverse environmental impacts. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The Developer is fully responsible for implementing and monitoring mitigation measures.

- A. A riparian wetland is located on the southwest central portion the Site (see "Wetland Area" in attached Exhibit A). The Developer agrees that no ground disturbance (either temporary or permanent) other than activities permitted in 24 CFR 55.12(c)(7)(i) will occur in the wetland and no portion of the project will be constructed in the wetland. If HUD provides a waiver of 24 CFR §58.22 (a) or such other approval or action that HUD deems appropriate to allow the Developer to receive HOME funds to construct the Project, the Developer agrees to record a restrictive covenant (in substantially the form attached hereto as Exhibit B) on the Wetland Area prior the closing of any financing.
- B. Due to the identified presence of limited soil and groundwater impacts, the Developer agrees to report the release incident identified in the Limited UST Closure Assessment Report dated August 30, 2023, and associated assessment data to the North Carolina Department of Environmental Quality (NCDEQ) UST Section. A complete State approved remediation plan will be required prior to receipt of the necessary Agency signatures to complete the environmental review and publishing or posting a combined NOI-RROF/FONSI. Removal of the UST and the abatement of grossly impacted soil and a Notice of Residual Petroleum (NRP) to address the groundwater contamination on the Site will likely be requested by the NCDEQ.

II. Documentation; Repayment.

The Developer must demonstrate and document to the Agency that it has complied with all of the mitigation measures listed above. In the event that any mitigation measure is not completed to the Agency's satisfaction, the Agency may rescind its obligation to loan any HOME funds to the Developer or the Developer may be required to repay to the Agency any HOME funds loaned to the Developer under the Program for the Project.

III. Monitoring and Reporting.

The Developer agrees to provide detailed written reports to the Agency, at the Agency's request, to sufficiently document the work undertaken under this Agreement. The Agency shall have the ability to conduct unannounced site visits to monitor and review the construction process including these mitigation measures.

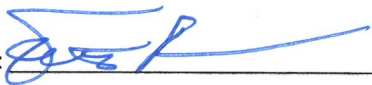
IV. Miscellaneous.

- A. This Agreement shall bind all successors and assigns of the Developer.
- B. This Agreement shall be governed by and construed under North Carolina law. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the North Carolina State Courts.
- C. Any modifications to this Agreement shall be in writing and signed by both parties.
- D. This Agreement may be executed in one or more counterparts and shall become effective on the date first written above.
- E. Any provision herein contained which by its nature and effect is required to be observed, kept or performed after the execution of this Agreement shall survive said execution and remain binding upon and for the benefit of the parties until fully observed, kept, or performed.

Now, therefore, the parties have caused this Agreement to be duly approved and duly executed.

North Carolina Housing Finance Agency

Balsam Edge LLC

By: 

By: 

Scott Farmer, Executive Director

Date: 9/25/23

Date: 9/21/2023

Memorandum of Understanding

LEGEND

PROPERTY LINE _____

TIE LINE _____

PROPERTY LINES NOT SURVEYED _____

CENTERLINE ROAD _____

FENCE _____ X _____ X _____ X _____ X _____ X _____ X _____ X _____

POWER / UTILITY LINES _____

WALL _____

RIGHT OF WAY _____

CENTER LINE BRANCH _____

EDGE OF WATER _____

EDGE OF PAVEMENT _____

EDGE OF GRAVEL _____

RAILROAD _____

CONCRETE _____

SIDEWALK _____

WOODED AREA / VEGETATION _____

SETBACK AREA _____

- IRON PIN SET
- IRON PIN FOUND
- POINTS
- UTILITY POLE
- △ CONTROL
- △ WELL
- GAS
- SEPTIC - SEWER MANHOLE
- TREE
- MANHOLE
- FINE HYDRANT
- ELECTRIC TRANSFORMER
- TELEPHONE PEDESTAL
- WATER METER / VALVE
- WETLAND FLAG

PDE PERMANENT DRAINAGE EASEMENT
 RCGB REINFORCED CONCRETE BOX CULVERT
 CMP CORRUGATED METAL PIPE

Zone	Mount Mill Urban Residential (R40-UR)
a	Building Setback (feet)
b	Principal Front
c	Other Side / Secondary Front
d	Side (from adjacent lot)
e	Setback between lots
f	Rear
g	Accessory Structure Setbacks
h	Other
i	Front
j	Other Side/Rear

Ingles Markets, Inc.
D.B. 430 / Pg. 646

Parcel 1 & 2
Timothy R. Shook, &
Patricia Shook
D.B. 486 / Pg. 475
P1-PIN B616-42-3400
P2-PIN B616-42-3404

Parcel 3
Timothy R Shook
DB 133 Pg 170
PIN 8815-42-0671

Parcel 4
Timothy R Shook
& Patricia Shook
D.B. 488 / Pg. 204
PIN 0518-12-0329
0.000 Acres

Parcel 5
Timothy R Shook,
& Patricia Shook
D E 486 / Pg 481
PIN 6616-42-5167

Period: 6
 Timothy R Shook
 & Patricia Shook
 D B 486 / Pg 472
 PUN 8816-42-4173

Parcel 7
Timothy R Shook,
and Patricia Shook
DB 486 / Pg 475
PIN 2618-42-3060
D 320 Acres

Total Area Surveyed
5,630 Acres

- (1) Class of survey: Class A
- (2) Positional accuracy: ± 10 to ± 20 m
- (3) Type of GPS: Real-time kinematic (RTK)
- (4) Dates of survey: 21-25/2011
- (5) Deliverables: Shapefile (2011)
- (6) Published/Peer-reviewed: Yes
- (7) Grant number: GE010218 (JICA)
- (8) Call number for data: 0007000
- (9) Under US Survey Fee

NOTES

1 NCDOT Project No. S8022 2 1 Reference No. 03A112
2 This property may be subject to any federal, state and/or local laws or regulations of record.
3 Area completed by geotechnical method
4 All dimensions are horizontal measurements
5 No NCG's present within 200'
6 Property is not in a special flood hazard area

State of North Carolina
County of Howard

Review Officer: 91 Heywood County, certify that the shop or plant to which this certification is submitted meets all statutory requirements for recording for which the review officer has reasonably as provided by law 1/23, 2022

Review Officer: Bridi Churnin Date: _____

DC Plus, LLC
D.B. 486 / Pg. 475

Exempt pursuant to the Town of Waymonte Land Development Ordinance
in accordance with North Carolina Statute

(Scholarship administered by "Union Surveying")
in compliance with North Carolina Statutes governing recordable documents
and the terms of the scholar's agreement with the Wakeham County Register of Deeds.

I, Richard M. Owens Jr. certify that this plot was drawn under my supervision from an actual survey made under my supervision of data recorded in Book 480, page 264, Book 486, page 478, Book 486, page 472, Book 486, page 491, Book 486, page 478 & Book 133, page 179; that the boundaries not surveyed are clearly indicated as drawn from information as shown on plot; that the ratio of precision to positional accuracy is calculated as 1:10,000; that this plot was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, license number and seal this 17th day of January, A.D. 2023.

Signature is:
Richard M. Owens Jr.
Date received

Richard M. Owens Jr. PLS
+ name

THIS SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND

Owens Surveying, PLLC
P-2242

Richard M. Owens Jr. PLS
18 Forge Plaza Loop
Waynesville, North Carolina
Telephone (828) 456-8500
owenssurveying.com

SHEET 1 OF 1

OWNER OF RECORD

PROPERTY DESIGNATION

SURVEY DATE

PROJECT NUMBER

SURVEY FOR

Waynesville Township
Wayne County, NC

DRAWN BY

APPROVED BY	
-------------	--

DRAWING SCALE

.....

Summit

Tel

Telephone (828) 253-1111

456-8500

VICINITY MAP
NOT TO SCALE

19

11

EXHIBIT B
to
Memorandum of Understanding

Prepared by and return to:

STATE OF NORTH CAROLINA

_____ COUNTY

CONSERVATION DECLARATION

This Conservation Declaration ("Conservation Declaration") is made on this 21st day of September, 2023, by Balsam Edge, LLC, a North Carolina LLC ("Declarant").

RECITALS & CONSERVATION PURPOSES

- A. Declarant is the sole owner in fee simple of the certain real property as more particularly described on **Exhibit A** attached hereto and by this reference incorporated herein, upon which is located certain real property described as "Wetland Area" (the "Property") as shown on **Exhibit B** attached hereto; and
- B. The purpose of this Conservation Declaration is to maintain wetland resources and other natural values of the Property, and prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition. The preservation of the Property in its natural condition is required by Section 288 of the Cranston-Gonzales National Affordable Housing Act and (i) the North Carolina

Housing Finance Agency (acting as the responsible entity in accordance with Section 288 of the Cranston-Gonzales National Affordable Housing Act) to facilitate compliance with Executive Order 11990 (Protection of Wetlands) as implemented at 24 CFR Part 55, particularly 55.12(c)(6), and this Conservation Declaration may therefore be enforced by the United States of America.

NOW, THEREFORE the Declarant hereby unconditionally and irrevocable declares that the Property shall be held and subject to the following restrictions, covenants and conditions as set out herein, to run with the Property and be binding on all parties that have or shall have any right, title, or interest in said Property.

ARTICLE I. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Declaration is prohibited. The Property shall be maintained in its natural scenic and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of this Conservation Declaration set forth above.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

- A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited.
- B. Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the Property.
- C. Industrial, Commercial and Residential Use. Industrial, residential and/or commercial activities, including any right or passage for such purposes are prohibited on the Property
- D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, animal husbandry and horticultural use of the Property are prohibited.
- E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or vegetation on the Property, except that which is necessary to prevent injury to life or damage to property, or maintain the natural features of Property.
- F. Roads and Trails. There shall be no construction of roads, trails or walkways on the Property.
- G. Signage. No signs shall be permitted on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property, signs giving directions or proscribing rules and regulations for the use of the Property and/or signs identifying the Declarant as owner of the property.

- H. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other material on the Property is prohibited.
- I. Excavation, Dredging or Mineral Use. There shall be no grading filling, excavation, dredging, mining or drilling; no removal of topsoil, sand gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Property, except to restore natural topography or drainage patterns.
- J. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices or disruption or alteration of existing drainage patterns on the Property. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands or floodplains, polluting or discharging into waters, springs, seeps or wetlands, or use of pesticide or biocides is prohibited on the Property.
- K. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Declaration shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- L. Vehicles. The operation of mechanized vehicles including, but not limited to, motorcycles, dirt bikes, all-terrain vehicles, cars and trucks prohibited on the Property.
- M. Other Prohibitions. Any other use of, or activity on, the Property which is or may become inconsistent with the purposes of Executive Order 11990, the preservation of the Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

ARTICLE II. ENFORCEMENT & REMEDIES

- A. This Conservation Declaration is intended to ensure continued compliance with Executive Order 11990 (Protection of Wetlands) as implemented at 24 CFR Part 55, particularly 55.12(c)(6); therefore, this Conservation Declaration may be enforced by the United States of America and the North Carolina Housing Finance Agency. This covenant is to run with the land and shall be binding on all parties and all persons claiming under the Declarant.
- B. The North Carolina Housing Finance Agency, their employees and agents and their successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Declarant, Declarant's representatives or assigns are complying with the terms, conditions and restrictions of this Conservation Declaration.

- C. Nothing contained in this Conservation Declaration shall be construed to entitle the North Carolina Housing Finance Agency to bring any action against Declarant for any injury or change in the Property caused by third parties, resulting from causes beyond the Declarant's control, including, without limitation, fire, flood, storm, and earth movement or from any prudent action taken in good faith by the Declarant under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to Property or harm to the Property resulting from such causes.

ARTICLE III. PUBLIC ACCESS

- A. This Conservation Declaration does not convey to the public the right to enter the Property for any purposes whatsoever.

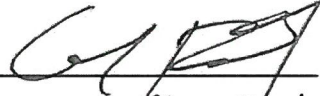
ARTICLE IV. DOCUMENTATION AND TITLE

- A. Conservation Purpose. Declarant, for itself, its successors and assigns, agrees that the Property shall be held exclusively for conservation purposes.
- B. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Declaration and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Declaration. If any provision is found to be invalid, the remainder of the provisions of this Conservation Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- C. Recording. Declarant shall record this instrument and any amendment hereto in timely fashion in the official records of Haywood County, North Carolina, and may re-record it at any times as may be required to preserve its rights.
- D. Environmental Condition of the Property. The Declarant warrants and represents that to the best of its knowledge after appropriate inquiry and investigation: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances, wastes or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in the recitals.

SEPARATE SIGNATURE PAGE FOLLOWS

SEPARATE SIGNATURE PAGE FOR
CONSERVATION DECLARATION

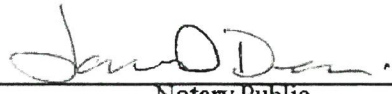
IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal effective the day and year first above written.


By: Geoffrey Barton

STATE OF NORTH CAROLINA)
)
COUNTY OF Buncombe)

I, James D Dennis, a Notary Public of the County and State aforesaid, certify that Geoffrey Barton as President of MHE, Inc., the Managing Member Balsam Edge LLC, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument in said capacity.

WITNESS my hand and notarial seal or stamp, this the 21st day of September, ~~201~~ 2023



Notary Public

My Commission Expires: 12/01/2024
[Notarial Seal/Stamp]

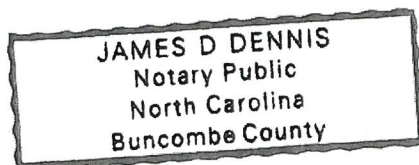


EXHIBIT A
LEGAL DESCRIPTION

Beginning at a point in the northern boundary of Howell Mill Road (SR 1184), said point being the southwest corner of the property of Dawn Jones Marshall, now or formerly, as shown on the plat recorded in Map Cabinet D at Page 1056, Haywood County Registry; and from the Beginning Point thus established, with the northern boundary of Howell Mill Road (SR 1184) the following five (5) courses and distances: (1) South 63°11'07" West 91.63 feet to an iron pin found, (2) South 64°18'54" West 138.84 feet to a point, (3) South 63°17'32" West 34.00' to a point, (4) South 63°16'50" West 26.00' to a point, (5) South 63°20'40" West 16.49' to an iron pin set; thence leaving the northern boundary of Howell Mill Road (SR 1184) North 10° 07' 35" West 195.49 feet; thence South 76°07'25" West 52.01 feet to a point in the eastern boundary of Calhoun Road (SR 1185); thence with the eastern and southern boundaries of Calhoun Road (SR 1185) the following twenty-two (20) courses and distances: (1) North 08°37'21" West 40.26' to a point, (2) North 04°47'17" West 53.39' to a point, (3) North 02°43'23" East 43.56' to a point, (4) North 08°40'32" East 43.67' to a point, (5) North 05°43'16" East 28.32' to a point, (6) North 06°00'42" West 37.96' to a point, (7) North 14°45'23" West 50.48' to a point, (8) North 13°34'32" West 60.81' to a point, (9) North 06°12'58" West 52.50' to a point, (10) North 03°59'10" East 33.93' to a point, (11) North 13°51'58" East 16.90' to a point, (12) North 26°33'35" East 28.77' to a point, (13) North 41°45'40" East 30.17' to a point, (14) North 49°48'30" East 25.66' to a point, (15) North 56°23'04" East 47.68' to a point, (16) North 57°38'45" East 46.44' to a point, (17) North 58°13'16" East 47.15' to a point, (18) North 57°41'04" East 47.55' to a point, (19) North 56°34'03" East 46.28', and (20) North 56°48'56" East 17.20' to a point; thence leaving the boundary of Calhoun Road (SR 1185) and with the western boundary of the property of Romualda B. McRorie, now or formerly, by Deed recoded in Book 188 at Page 8, Haywood County Registry, South 10°28'04" East, passing an iron pin set at 20.00 feet, 165.13 feet to an iron pin set; thence with the southern line of the Romualda B. McRorie property South 73°53'04" East 123.60 feet to an iron pin set in the western boundary of the First Tract of the property of Jean C. Palmer, now or formerly, by Deed recorded in Book 264 at Page 670, Haywood County Registry; thence with the western boundary of the Jean C. Palmer property South 10°28'04" East 101.70 feet to a concrete monument in the northeast corner of the property of Dawn Jones Marshall, now or formerly, as shown on the plat recorded in Map Cabinet D at Page 1056, Haywood County Registry; thence with the northern boundary of the Dawn Jones Marshall property South 63°33'16" West 120.21 feet to a concrete monument; thence with the western boundary of the Dawn Jones Marshall property South 10°30'33" East 357.01 feet to the Beginning Point.

Being all of Parcels 1-6, containing 5.310 acres, more or less, shown on the Survey for Mountain Housing Opportunities, Inc. dated January 25, 2021, by Richard M. Owens Jr., PLS of Owens Surveying, PLLC, Project No. 21-2-1190.