**Prepared by, and Return to:**

St. Amand & Efird PLLC (JKG)

3315 Springbank Lane, Suite 308

Charlotte, North Carolina 28226

|  |  |
| --- | --- |
| **STATE OF NORTH CAROLINA****COUNTY OF UNION** | **RESTRICTIVE COVENANTS, ACCESS & SHARED USE EASEMENT AGREEMENT** |

**THIS** **RESTRICTIVE COVENANTS, ACCESS & SHARED USE EASEMENT AGREEMENT** (this “**Agreement**”) is made as of the \_\_\_\_\_\_ day of November, 2024, by and between **WICKENHEISER PROPERTIES**, a North Carolina limited liability company as to a 65% undivided interest, and **JOSH GUEDESSE**, as to a 35% undivided interest with an address of 10926 Quality Drive #411282 Charlotte, NC 2241 (each an “**Owner**” and collectively the “**Owners**”).

 W I T N E S S E T H :

 **WHEREAS**, the Owners are the recorded titleholders of the of certain property in Union County, North Carolina as shown on that Plat (the “Plat”) recorded in Plat Cabinet \_\_\_\_\_\_\_ Page \_\_\_\_\_\_ in the Union County Register of Deeds and more fully described in the attached **Exhibit A** (the “**Owner’s Property**”); and

 **WHEREAS**, the Plat provides for a thirty foot (30’) Access Easement across that area denoted as Area = 10.26 Acres (Tract 1); and

 **WHEREAS**, the remaining two tracts denoted as “Area – 25.27 Acres” (“Tracts 2 an 3”) respectively, are adjacent to Tract 1;

 **WHEREAS**, the Owner currently intends to develop the Property, without any obligation to do so, into a residential community served by various roads (herein, the “**Roads**”);

 **WHEREAS**, Owner wishes to grant to certain easements on, over, under, and across the Tract 1 on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of TEN AND 00/100 DOLLARS ($10.00), and the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged and confessed, the Owners for themselves and their respective successors and assigns, covenant and agree as follows:

**ARTICLE 1**

**INCORPORATION OF RECITALS**

1. Incorporation of Recitals. The Owners acknowledge that the foregoing recitals are true and correct and are incorporated into this Agreement as if fully set forth herein.

**ARTICLE 2**

**ACCESS EASEMENTS**

2.1 Road Easement. Subject to the provisions of this Section 2.1, Owner hereby grants, bargains, sells and conveys unto a perpetual, non-exclusive appurtenant easement and right for access, ingress, and egress over and across the Roads (the “**Road Easement**”). The Road Easement granted in this Section 2.1 shall terminate (without need for any action of any party) upon the dedication by Owner of the Roads and Access Easement Area to a governmental authority in charge of maintenance of the same. The grant of the Road Easement is subject to the installation of the Roads by the Owner, as the same shall be evidenced by a completion certificate and related permits issued by the applicable governmental authority (herein, the “**Road Completion**”). In any event, the Road Easement shall not be effective, if ever, until such time as the Road Completion.

2.2 Access Easement. Owner hereby grants, bargains, sells and conveys a perpetual, non-exclusive appurtenant easement and right for access, ingress, and egress over across that certain portion of the Owner Property shown and depicted as “30’ Access Easement” (herein, the “**Access Easement**”) on the recorded Plat in Plat Cabinet \_\_\_\_\_\_, Page\_\_\_of the Union County Register of Deeds as shown in Exhibit A (the “**Access Easement Area**”). The Access Easement granted in this Section 2.1 shall terminate (without need for any action of any party) upon the dedication by Owner of the Access Easement Area to a governmental authority in charge of maintenance of the same.

2.3 No Dedication to Public. Notwithstanding anything contained herein to the contrary, Owner shall have the right to assign, dedicate and/or convey the Road Easement or Access Easement to the public, a governmental authority or public utility (each a “**Public Entity**”).

2.4 Road Assessment. The assessments levied in accordance with this Agreement shall be used exclusively for the care and maintenance of the Easement herein described including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision. The Pro-rata Share of each Owner for purposes of this Agreement shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Real Estate ("Pro-rata Share"). Additionally, the annual budget shall include the collection of a sum sufficient to pay annual repair costs. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year. Such budget shall serve as the basis for establishing the annual road assessments.

The Owner of Tract 1 shall keep proper books and records of the levy and collection of each annual Road Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Owner of Tract 1 and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours. The Owner of Tract 1 shall cause written notice of all Assessments levied upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

The Owner of Tract 1 shall keep and maintain an Escrow Account for Road Assessments and contributions as set forth in Section 2.5. Balance records of Escrow Account shall be provided to remaining tract Owners within fifteen (15) business days of receipt of request in addition to preparation of meetings.

2.5 Road Contribution Every Owner other than the Developer shall be responsible for an initial Road Contribution in the amount of one thousand dollars ($1,000.00). After the first conveyance of a Lot from Developer to an Owner, such capital contribution shall be in an amount to be determined by a quorum of the property Owners. Such Road Contribution shall be due upon transfer of the title to any portion of the Property to a new owner.

2.6 Shared Expenses**.** The Owners, their heirs, assigns and successors in title, shall share in the expense of maintaining the Road Easement in a neat, aesthetically pleasing, and clean condition for all weather and all seasons, which expenses and costs shall be shared proportionally among the Owners. The shared expenses shall include, but not be limited to, ad valorem taxes, repair costs, landscaping maintenance costs, debris removal costs, driveway maintenance costs, and all other expenses reasonably required to upkeep and maintain the Road Easement.

2.7 Construction Activities; Repairs**.** All construction, landscaping or other work commenced on the Road Easement must be continued with reasonable diligence to completion and no partially completed improvements shall be permitted to exist on the Road Easement, except during a reasonable time period as is necessary for completion of construction.

2.8 Meetings. The Owners shall meet from time to time, at a minimum once annually and agree upon any budget for the maintenance, repair, and/or service work to be performed to the Road Easement. Such meetings shall be called by any Owner with written notice to the other Owner and may be conducted by telephone or other convenient method. Any Owner desiring to make any improvement, addition, alteration, restoration or change described shall submit the plans and specifications therefore, showing the nature, kind, shape, height, materials and location of the same, to the Owners of the which shall evaluate such plans and specifications.

To implement an annual budget for the maintenance, repair, improvement, addition, alteration and/or service work to be performed to the Road Easement a vote of the majority of the owners shall be determined before enactment.

2.9 Payment of Expenses, Costs, and Taxes; Lien. Upon approval of the nature and extent of the maintenance, expense and/or repair required, each Owner shall be responsible for payment of their proportional share within thirty (30) days (the "Due Date") of the submission of any invoice, statement, bill, or budget to the Owner of Tract 1 overseeing the said maintenance, expense and/or repair. In the event an Owner fails to pay the proportional share by the Due Date, that Owner's proportional share, together with interest accruing at the legal rate, court costs and reasonable attorney fees, shall be a charge to Owner (a "Defaulting Owner"), and the Non-Defaulting Owner may bring an action against the Defaulting Owner.

The Non-Defaulting Owner shall have a lien against the Property owned by the Defaulting Owner to secure payment of the outstanding maintenance assessments, as well as interest, late charges (subject to limitations of North Carolina law), and costs of collection (including attorney fees and expenses). Subject to North Carolina law, such lien shall be superior to all other liens, except: (i) the lien of all taxes, bonds, assessments, and other levies which, by law, would be superior, and (ii) the lien or charge of any recorded first deed of trust (meaning any recorded deed of trust with first priority over other deeds of trust) made in good faith and for value.

The Owners acknowledge and agree that each owner shall be responsible for purchasing and maintaining sufficient insurance on their property, including the Road Easement. Owners agree to provide proof of insurance to one another when requested.

The Owners acknowledge and agree that should any act of one owner, either through negligence, misconduct and/or lack of maintenance which causes damage to any portion of the Road Easement, that Owner shall be solely responsible for cost to repair the damage within thirty (30) days from receipt of Notice of Repair from other Owners.

2.10 Dispute. In the event of any dispute arising out of this Agreement, the matter shall be submitted to arbitration unless the parties otherwise agree.

**ARTICLE 3**

**MISCELLANEOUS**

3.1 Compliance with Law**.** Grantee shall comply with all applicable local, state and federal statutes, laws, codes and ordinances concerning or with respect to the use of the easement rights granted herein.

3.2 Effective Date. This Agreement will be effective as of the date set forth above.

3.3 Amendment. This Agreement may be modified or amended, in whole or in part, only by the written consent of all owners in interest evidenced by a document that has been fully executed and acknowledged and recorded.

3.4 Waiver. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

3.5 Construction. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each include the others whenever the context so indicates. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumptions or other rule regarding and construction against the person or entity preparing the Agreement or any part thereof.

3.6 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each such term, covenant or condition of this Agreement shall be valid and enforceable to the full extent permitted by law.

3.7 Governing Law. The terms of this Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina.

3.8 Attorneys’ Fees. In the event that any party hereto (or any third-party beneficiary of this Agreement) shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action shall be entitled to his court costs and reasonable attorneys’ fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorneys’ fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

3.9 Notice. All notices required or desired to be given under this Agreement shall be in writing and either (a) hand-delivered, (b) sent by certified mail, return receipt requested, (c) sent via FedEx or similar overnight service, or (d) sent via electronic mail. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (i) when delivered, if by hand delivery, (ii) three (3) business days after deposit in a U.S. Post Office or official letter box, if sent by certified mail, (iii) one (1) business day after timely deposited in a FedEx or similar overnight service depository for “next day” delivery, or (iv) upon transmission by sender if sent via electronic mail. All notices shall be delivered or sent prepaid for the specified service by the party giving notice and shall be addressed as set forth in the introductory paragraph of this Agreement.

 Any new owner may record a notice describing this Agreement and changing the address set forth in this Section for notices to the owner of the relevant property owned by that new owner.

3.10 Heirs, Successors and Assigns. This Agreement, and all covenants contained herein, shall affect and run with the land and shall exist and be binding upon all Owners, and those persons or entities claiming under them forever. This Agreement is deemed to create reciprocal rights, duties and obligations and benefits, and it shall be lawful for any person, persons, or entity owner of a Property, to prosecute any proceeding in law or equity against the person, firm or corporation violating or attempting to violate this Agreement to prevent or restrain such violation. Purchasers of any Property, or other Owners claiming under them by future conveyance or transfer of title are deemed to have agreed to this Agreement as part of the consideration for their purchase by acceptance and recordation of any deed for any Property.

3.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Owners, individually or by and through their duly authorized representative, hereto have executed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
|  | **OWNER:****WICKENHEISER PROPERTIES**, a North Carolina limited liability companyBy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

STATE OF NORTH CAROLINA )

)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 I\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a notary public, certify that\_\_\_\_\_\_\_\_\_\_\_\_as Member/Manager of Wickenheiser Properties LLC, a North Carolina limited liability company personally appeared before me this day, each acknowledging to me that he/she isMember/Manager of Wickenheiser Properties LLC, a North Carolina limited liability company, and that he/she, as Member/Manager being authorized to do so, executed the foregoing on behalf of the Limited Liability Company.

Witness my hand and official seal this \_\_\_\_\_ day of October 2024.

.

Date:

 Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL] My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN WITNESS WHEREOF, the Owners, individually or by and through their duly authorized representative, hereto have executed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
|  | **OWNER: JOSH GUEDESSE**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_JOSH GUEDESSE  |

STATE OF NORTH CAROLINA )

)

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a notary public, certify that the JOSH GUEDESSE personally appeared before me this day, each acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein.

Witness my hand and official seal this\_\_\_\_day of October, 2024

 Official Signature of Notary Public

Notary printed or typed name

[OFFICIAL SEAL] My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT “A”**

Being all that 30’ access easement as shown on that Plat in Plat Cabinet \_\_\_\_\_\_, Page\_\_\_of the Union County Register of Deeds and more particularly described as follows:

A 30’ access easement, being located on Highway 205 in the State of North Carolina, in the County of Union, Goose Creek Township, being described on a plat prepared for Eric Wickenheiser by CBS Surveying and Mapping Inc. dated August 22, 2024.

Commencing at a magnetic nail in center line of said NC Highway 205, and being a common property line of Christian & Pollyanna Cunningham (DB 4948 PG 555) and Raymond Griffin III, LLC (DB 4088 PG 68), thence running along the center line of NC Highway 205 for N 08°44’08” W for 15.08’, to a point in center line of NC Highway 205 and being the center line of a 30’ access easement, thence leaving NC Highway 205 and running along the center of a gravel road N 75°11’25” E for 2005.17’ to a spike set in gravel road. Said spike being located N 56°01’34” W for 19.94’ from an existing stone having NC Grid Coordinates of N 489769.05 E 1588882.45’. Thence continuing along the center line of the 30’ access easement the following courses; N 53°50’22” E for 123.23’ to a spike, thence N 57°33’03” E for 138.54’ to a spike, thence N 59°39’26” E for 259.19’ to a spike, thence N 67°01’00” E for 83.54’ to a spike, thence N 70°12’48” E for 104.74’ to a spike, thence N 75°08’08” E for 141.89’, N 81°32’59” E for 78.62’ to a spike, thence N 85°31’48” for 38.90’ to a spike set in the center line of the 30’ access easement located on the common property line of Anna Pope (DB 7035 pg 644) and Raymond Griffin III, LLC (DB 4088 PG 68).