

RB910 P0479

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DECLARATION AND COVENANTS AGREEMENT
AND EASEMENT

DRAFTED BY: GEORGE S. THOMAS
RETURN TO: BAILEY & THOMAS, P.A., PO BOX 52, WINSTON-SALEM, NC 27102

THIS DECLARATION AND COVENANTS AGREEMENT AND EASEMENT (hereinafter referred to as "Declaration"), is made and entered into this the 22nd day of September, 2008, by and between JUDY HARDING SNYDER, unmarried and ELIZABETH HARDING CARTER, unmarried, (collectively referred to herein as "Snyder and Carter"); and A. KEITH PHILLIPS and wife, KIMBERLY C. PHILLIPS (herein referred to as "Phillips").

W I T N E S S E T H:

WHEREAS, Snyder and Carter are the owners of that certain tract containing approximately 37.743 acres in Yadkin County as more particularly described on survey of Judy Harding Snyder and Elizabeth Harding Carter prepared by Kenneth L. Foster and Associates, dated July 28, 2008 and more particularly described as follows:

BEGINNING at a granite monument, said monument being the southeast corner of the property of Icie Marie Dinkins as described in deed recorded in Book 06E at Page 252, Yadkin County Registry and the northeast corner of property of Shandra W. Young as described in deed recorded in Book 497 at Page 701, Yadkin County Registry, said monument also being a southwest corner of A. Kenneth Phillips as described in deed recorded in Book 500 at Page 250, Yadkin County Registry; thence from said **beginning point** along a south and west line of Phillips the two (2) following courses and distances, to-wit: South 56 degrees 30 minutes 55 seconds East 909.52 feet to a granite monument and South 01 degree 50 minutes 53 seconds West 1599.30 feet to a granite monument in the north line of the property of Daniel Reeder as described in deed recorded in Book 782 at Page 363, Yadkin County Registry;

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thence along Reeder's north line and falling in with a north line of the aforementioned Young property North 88 degrees 13 minutes 53 seconds West 980.12 feet to an iron; thence along Young's east line North 07 degrees 09 minutes 01 second East 1052.32 feet to an iron; thence continuing with Young's east line North 07 degrees 51 minutes 49 seconds East 1035.61 feet to the point and place of BEGINNING.

WHEREAS, Phillips is the owner of certain real estate which lies between the 37.743 acre tract and Georgia Road (SR 1717), a 60 foot public right-of-way; and

WHEREAS, Phillips has agreed to convey a certain 50-foot easement of right of way to Snyder and Carter to provide access to the 37.743 acre tract of land subject to certain conditions and restrictions.

NOW, THEREFORE, Snyder and Carter, and Phillips hereby declare, agree, covenant and consent that the 37.743 acre tract of the real estate described above shall be subject to the following restrictions, covenants and conditions which are imposed on such real property to run with the real property and be binding on and inure to the benefit of all Parties having any right, title or interest in the described Parcels or any part thereof, their heirs, successors and assigns for the purpose of development and operation of the respective Parcels of the 37.743 acre tract. Further, in consideration of the mutual promises, the agreements and the covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

BASIC DEFINITIONS

Section 1.1 "Right-of-Way or Access Road" shall mean a 50-foot non-exclusive easement of right-of-way granted to Snyder and Carter by Phillips.

Section 1.2 "Parcel" shall mean and refer to any parcel of land located on the 37.743 acre tract, which contains a minimum of 10 acres.

Section 1.3 "Restricted Area" shall mean the entire 37.743 acre tract described above.

Section 1.4 "Owner" shall mean Phillips and Carter and Snyder and their heirs, successors and assigns.

ARTICLE II

USE

Section 2.1 No portion of the Restricted Area may be subdivided into parcels containing less than 10 acres.

Section 2.2 Use Restrictions.

(a) During the term of this Declaration, without the written consent of Phillips, no easement of right-of-way shall be granted to any other party. However, easements of right-of-way may be granted to any owner or owners of parcels located within the boundaries of the 37.743 acre tract of land

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described above, and which owners shall also be bound by the terms of this Declaration. It is the intent of this provision that no easement of right-of-way be granted to any property owner adjacent to the 37.743 acre tract.

(b) All consents contemplated in this Section 2.2 must be in writing, and may be withheld in the sole and absolute discretion of Phillips. These restrictions are not intended to restrict who may own a Parcel, but are only intended to restrict the use of the Restricted Area.

ARTICLE III

DEVELOPMENT

Section 3.1 Performance of Construction Work Generally. All construction, alteration or repair work undertaken by Snyder and Carter shall not unreasonably interfere with the use and enjoyment of Phillips property and shall not block or impede access to or from Georgia Road to Phillips.

Section 3.2 Maintenance of Easement. All maintenance, grading and upkeep of the 50-foot access right-of-way easement shall be shared with Snyder and Carter paying expense directly resulting from their use and the use of their successors and assigns. Phillips, in his sole discretion, and without approval from any other party, shall be entitled to improve said 50-foot access right-of-way easement at his sole cost and expense. If any party desires to repair said 50-foot access, they may do so at their sole cost and expense.

DEFAULT; REMEDIES

Section 4.1 Default. The failure to observe or perform any of the covenants, conditions or obligations of this Declaration within thirty (30) days after the issuance of a notice by another Owner(s) (the "Non-Defaulting Owner") specifying the nature of the default claimed shall constitute a material default and breach of this Declaration by the Non-Performing Owner (the "Default Owner").

Section 4.2 Other Remedies. Each permitted Non-Defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owner hereto, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for such amounts. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Declaration or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 4.3 No Waiver. No delay or omission of any Owner in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. No waiver by any Owner of any default under this Declaration shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by a Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time

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Owner and no such waiver shall be implied from any omission by a Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.

Section 4.4 No Termination for Breach. No breach, whether or not material, of the provisions of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this Declaration.

Section 4.5 Limitation of Liability. Notwithstanding the foregoing, any person acquiring fee or leasehold title to a Parcel, or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired or possessed by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold Owner or occupant of such Parcel or portion of the Parcel; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer.

Section 4.6 Breach. In the event of breach or threatened breach of this Declaration, any owner may bring an action to enforce this Declaration. In the event of a breach hereof, the non-prevailing Owner, as determined by a court of competent jurisdiction, shall pay the reasonable attorney's fees of the prevailing Owner(s).

ARTICLE IV

MISCELLANEOUS

Section 5.1 Term and Perpetuity. The agreements, easement, conditions, covenants, and restrictions created and imposed herein shall be effective upon the date hereof and shall continue in full force and effect in perpetuity, to the benefit of and be binding upon all Owners, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties, unless terminated by the consent of all the Owners pursuant to a writing recorded in the real property records of the county and state in which the Development is located. Said agreements and restrictions shall be unaffected by any change in the ownership of any real property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein.

Section 5.2 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

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Section 5.3 No Public Dedication. Nothing contained herein shall be deemed or implied to be a gift, grant or dedication of the 50-foot easement of right-of-way or any portion thereof, to the general public, or for any public use or purpose whatsoever. However, Phillips reserves, in his sole discretion, to make such gift, grant or dedication for any public use or purpose.

Section 5.4 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

Section 5.5 Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties hereto or the Owners. It is understood that the relationship between the Parties hereto and Owners is an arm's length one that shall at all times be and remain that of separate owners of real property. No Party hereto nor any Owner shall have the right to act for or on behalf of another Party or Owner, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party or Owner to be charged or bound, except as otherwise specifically provided herein.

GRANT OF EASEMENT

Subject to all of the above provisions and conditions contained in this Declaration, **A. Keith Phillips and wife, Kimberly C. Phillips** hereby grant to **Judy Harding Snyder (unmarried) and Elizabeth Harding Carter (unmarried)** a perpetual non-exclusive easement for the purpose of ingress, egress and regress and for the installation and maintenance of utilities. Said easement being 50 feet in width leading from the east line of the 37.743 acre tract as described in the above declaration to a point in the center of Georgia Road (SR 1717). The center line of said easement being described as follows:

BEGINNING at a point in the east line of 37.743 acre tract owned by Judy Harding Snyder and Elizabeth Harding Carter, said point being located South 01 degree 50 minutes 53 seconds West 663.91 feet from a granite monument at the northeast corner of said Snyder and Carter property, said monument also being a corner with A. Keith Phillips as described in deed recorded in Book 500, Page 250, Yadkin County Registry; thence from said beginning point the nine (9) following courses and distances, to-wit: South 46 degrees 49 minutes 42 seconds East 180.88 feet to a point; South 56 degrees 35 minutes 35 seconds East 209.98 feet to a point; South 347 degrees 15 minutes 49 seconds East 142.05 feet to a point; South 23 degrees 14 minutes 50 seconds East 627.217 feet to a point; South 88 degrees 44 minutes 22 seconds East 583.61 feet to appoint, on a curve to the right, the radius of which is 45 feet, having a length of 65.47 and a chord bearing and distance of South 46 degrees 33 minutes 41 seconds East 59.85 feet to appoint; South 04 degrees 53 minutes 00 seconds East 416.50 feet to a point, South 07 degrees 26 minutes 04 seconds East 209.96 feet to appoint, and South 29 degrees 09 minutes 29 seconds East 173.73 feet to a point in the centerline of Georgia Road (SR 1717), the terminus of said easement.

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IN WITNESS WHEREOF, Judy Harding Snyder and Elizabeth Harding Carter have hereunto set their hands and adopted the printed word (SEAL) as their own seal as of the day and year first written above.

Judy Harding Snyder (SEAL)
JUDY HARDING SNYDER
Elizabeth Harding Carter (SEAL)
ELIZABETH HARDING CARTER

STATE OF NORTH CAROLINA - COUNTY OF FORSYTH

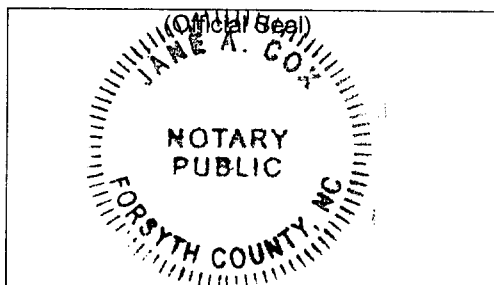
I certify that the following person (s) personally appeared before me this day, each acknowledging to me that she voluntarily signed the foregoing document for the purpose stated herein and in the capacity indicated: Judy Harding Snyder and Elizabeth Harding Carter

Date: 9/23/2008

Jane A. Cox
Official Signature of Notary

My comm. expires: 6/22/2010

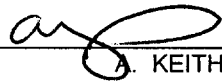
Jane A. Cox
Notary's printed or typed name



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A. KEITH PHILLIPS AND KIMBERLY C. PHILLIPS SIGNATURE PAGE FOR DECLARATION AND
COVENANTS AGREEMENT AND EASEMENT

IN WITNESS WHEREOF, A. Keith Phillips and Kimberly C. Phillips have hereunto set their hands and adopted
the printed word (SEAL) as their own seal as of the day and year first written above.

 (SEAL)
A. KEITH PHILLIPS

 (SEAL)
KIMBERLY C. PHILLIPS

STATE OF NORTH CAROLINA - COUNTY OF FORSYTH

I certify that the following person (s) personally appeared before me this day, each acknowledging to me that he
or she voluntarily signed the foregoing document for the purpose stated herein and in the capacity indicated:

A. Keith Phillips and Kimberly C. Phillips

Date: September 29, 2008


Official Signature of Notary

My comm. expires: 01/19/2013

John W. Koment
Notary's printed or typed name

