

WALTER R GERUS, JR  
1405 LITHIA SPRINGS RD

CHRISTIANSBURG, VA 24073 JUL 30 '91  
711 0389

THIS DEED, EASEMENT AND ROAD MAINTENANCE AGREEMENT is made on this the 18th day of January, 1991 by and between Marvin NESTER and Elda Adeline NESTER, Husband and Wife; Marvin Wayne NESTER and Donna Short NESTER, Husband and Wife; Jeffrey L. EPPERLY and Elise Y. EPPERLY, Husband and Wife; Lois Gaye and GLENN R. ROBINSON, her husband; ROBINSON, Unmarried; Walter R. GERUS, Jr., Unmarried; David A. BEASLEY and Leslie A. BEASLEY, Husband and Wife, James C. TURK, Jerry K. JEBO, George L. EDWARDS, John D. BUCK, John C. QUIGLEY, Jr. and Samuel H. TOLLISON, all Trustees; and CRESTAR Bank (successor to First and Merchants National Bank and United Virginia Bank), A. T. & T. Family Federal Credit Union, Charles D. BOURNE, DOMINION Bank, National Association and FIRST National Bank of Christiansburg, all beneficiaries.

W I T N E S S E T H:

That Marvin Nester and Elda Adeline Nester, Husband and Wife, are the owners of a tract of land in the Riner Magisterial District of Montgomery County, originally consisting of 124 acres, more or less, including a certain tract of land twenty feet wide leading from said 124 acre parcel through the lands formerly owned by John H. Bolt and others to the present U.S. Route 11 (about which tract of land and the road which runs over said tract there is presently a dispute among the parties hereto and others, and which is the subject of a law suit currently pending in the Circuit Court of Montgomery County, Virginia), which land was obtained by them by deed dated July 3, 1953 and recorded in the Circuit Court Clerk's Office of the said county

2 PLATS  
Recorded in Plat Book  
15 page 463

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in Deed Book 182, Page 367, and from which 124 acre parcel the parcel owned by Marvin Wayne Nester et ux, described hereinbelow, was taken; by Deed of Trust recorded in the said Clerk's Office in Deed Book 229, Page 349, they conveyed the property to Richard H. Poff, James C. Turk and John N. Dalton, Trustees to secure repayment of a loan from First and Merchants National Bank (now the Crestar Bank).

That Marvin Wayne Nester and Donna Short Nester, Husband and Wife, are the owners of a certain 1.934 acre parcel of land which they acquired from Marvin Nester et ux by deed dated July 23, 1976, recorded in the said Clerk's Office in Deed Book 373, Page 772, which parcel came from and is adjacent to the abovedescribed 124 acre parcel owned by Marvin and Elda Nester; the 20 foot strip of land and road described above runs to the edge of this 1.934 acre parcel, and is used by Marvin Wayne Nester and Donna Short Nester as their only source of ingress and egress to and from U.S. Route 11; by Deed of Trust recorded in the said Clerk's Office in Deed Book 373, Page 775, they conveyed the property to John N. Dalton and Jerry K. Jebo, Trustees to secure repayment of a loan from First and Merchants National Bank.

That Lois Gaye Robinson is the owner of a certain parcel of land adjoining the abovedescribed 20 foot strip of land and road, which she acquired from the Will of Harry Edward Goodwin, recorded in the said Clerk's Office in Will Book 27, Page 116.

That Jeffrey L. Epperly and Elise Y. Epperly, Husband and Wife, are the owners of a certain parcel of land adjoining the abovedescribed 20 foot strip of land and road, which they ac-

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quired by deed recorded in the said Clerk's Office in Deed Book 500, Page 745; by Deed of Trust dated 24 June 1987 and recorded in Deed Book 578, Page 309, they conveyed that property to Jerry K. Jebo, Trustee to secure repayment of a loan from A. T. & T. Family Federal Credit Union.

That Walter R. Gerus, Jr., Unmarried, is to purchase a certain parcel of land adjoining the abovedescribed 20 foot strip of land and road, which he is acquiring from Brenda B. Kimberly (formerly Brenda B. Henry) and Robert Lee Kimberly, Jr., Husband and Wife, which deed is to be recorded in the said Clerk's Office simultaneously with this Agreement; said Walter R. Gerus, Jr. is to convey said property to Samuel H. Tollison and William J. McGhee, Trustees, to secure the repayment of a loan from First National Bank of Christiansburg, which deed of trust will be recorded immediately following the recordation of said deed.

That David A. Beasley, is the owner of certain parcels of property adjacent to the said strip of land and road which they acquired by deed dated 27 March 1990 recorded in the said Clerk's Office in Deed Book 677, Page 142; by Deed of Trust dated 11 May 1990 and recorded in the said Clerk's Office in Deed Book 677, Page 144 he conveyed that property to John C. Quigley, Jr., Trustee to secure repayment of a loan from Dominion Bank, NA. Leslie A. Beasley, Wife of David A. Beasley, joins in this agreement to evidence her full consent herein.

That the parties hereto wish to live harmoniously and to use the subject road, if at all, without interfering with or denying the rights of any of the others to mutual use of said road; and in order to resolve the issue of title to and rights to

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use of and maintenance of the said road, each of the parties enters into this agreement to grant a nonexclusive easement in and to the said road and to set forth and determine the mutual obligations, if any exist now or in the future, for maintenance of said road, and to settle the boundary lines of the various parcels; in return for which the said Marvin and Elda Adeline Nester, husband and wife, will release any right to a fee simple interest in the said 20 foot strip to the other parties, and all the other parties shall release to the relevant other parties any right to the fee simple interest in property hereby decided to be within the boundaries of each parties' parcels.

Now therefore, in consideration of the foregoing and the mutual covenants and conditions hereof all the parties hereto and each of them, for themselves, their heirs, successors and assigns, hereby covenant and agree to all of the following, to-wit:

1. Each party hereby bargains, grants, sells and conveys to each of the other parties hereto a perpetual, non-exclusive appurtenant easement and right of way along, over, across and upon the road described hereinbelow, having the location and dimensions set forth hereinbelow, for the purpose of vehicular and pedestrian traffic for ingress to and egress from their various lands to U.S. Route 11, and also for placement of public utilities within said right of way.

2. Such road and right of way is to be located where the road is now located on the date of this agreement and is to be twenty (20) feet in width; that is, the centerline of the present road



is to be the center line of the right of way granted herein and the right of way is to be ten (10) feet on either side of said center line. It is expressly agreed and covenanted by the parties hereto, that the survey of the subject 20 foot strip and current road made by a Michael E. Horton, Land Surveyor, entitled "Plat of Road Location Survey" dated March 19, 1990 and designated Plan No. 436 shall be deemed the current location of said road, and is attached hereto and expressly incorporated herein, and shall be recorded in the Circuit Court Clerk's Office with this agreement upon execution hereof.

3. Each of the four (4) parties named Nester hereto hereby releases, remises and quitclaims to each of the other parties any and all right, title and interest they may have in and to the fee simple title to the land over which the subject easement and right of way is located, and hereby agree that their land and boundaries shall be set and described to specifically exclude that land. All the other parties hereby agree that their relevant boundaries shall consist of the centerline of the said road in its existing location and each does hereby release, remise and quitclaim any and all right, title and interest they may have in and to the property encompassed within the boundaries of any of the other parties by the operation of this deed.

4. The parties hereto represent and agree that at present the four (4) parties named Nester use the said road continuously and exclusively for access to their properties; that the said Lois Gaye Robinson rarely if ever uses the said road; that the said Jeffrey L. and Elise Y. Epperly and David A. Beasley and Leslie A. Beasley use a short section of the said road on a regular

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basis, but not to the extent that their use significantly affects the condition or wear and tear on the road; and that the said Walter R. Gerus, Jr. uses or will use the road continuously as his only means of ingress and egress, but for only about half the full length thereof; for these reasons, it is agreed that the said Nesters shall be responsible for one-half (1/2), and the said Walter R. Gerus, Jr. shall be responsible for one-half (1/2) of the cost of maintaining the said road in substantially the same condition it is in on the date of this agreement up to that point shown as "P" on said map, and that the said Nesters shall be responsible for all of the maintenance of the road from that point on to their property; however, should the said Epperlys, Beasleys and/or Ms. Robinson, or their heirs or successors in title, change the amount of use to which they put the said road, or should any use by them cause damage to the road beyond normal wear and tear, then and in that event the other parties or any of them shall have the right to require contribution from the one or ones so increasing their use or causing damage, for the costs of maintenance and/or repair of the road; and the said Nesters and Walter R. Gerus, Jr. hereby agree to be responsible in the same manner for damages caused by them beyond normal wear and tear; provided however, that no party hereto shall be obligated to maintain, or for contribution to the maintenance of the road beyond the type of road now existing, that is, as a two-lane gravel way for domestic travel; and provided further that should there be a dispute about this maintenance obligation, such dispute shall be resolved as set forth immediately below.

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5. Any dispute arising concerning the effect or application of this document and the terms thereof which cannot be resolved by the parties hereto, shall be submitted to binding but informal arbitration by an odd-numbered group of persons, with one person in the group for each parcel of property whose owner or owners is involved in the dispute chosen by the owner or owners of that parcel (said parcels defined and limited to the number of parcels existing on the date of this agreement; that is, an owner who subdivides his property shall have only one person in the arbitration group and not the number of sub-parcels after such subdivision), and one (or two, if required to make an odd number) person(s) chosen by those picked by the said owners, and the decision of said arbitration group shall be final as to all questions submitted to it.

6. The parties hereby covenant and agree that each of the others shall have quiet and peaceable possession of the interests granted without interference from the other parties or their heirs, successors, assigns, agents, employees, guests or invitees.

7. All parties hereto agree to execute such further documents as may be necessary to carry into effect the provisions of this agreement.

8. This deed shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns or other successors in interest, and shall pass with and be a covenant running with the land affected thereby, including any sub-parts thereof.

Witness the following signatures and seals.

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Glenn R. Robinson (SEAL)  
Glenn R. Robinson

Marvin Nester (SEAL)  
Marvin Nester

Elda Adeline Nester (SEAL)  
Elda Adeline Nester

Marvin Wayne Nester (SEAL)  
Marvin Wayne Nester

Donna Short Nester (SEAL)  
Donna Short Nester

Lois Gaye Robinson (SEAL)  
Lois Gaye Robinson

Jeffrey L. Epperly (SEAL)  
Jeffrey L. Epperly

Elise Y. Epperly (SEAL)  
Elise Y. Epperly

Walter R. Gerus, Jr. (SEAL)  
Walter R. Gerus, Jr.

David A. Beasley (SEAL)  
David A. Beasley

Leslie A. Beasley (SEAL)  
Leslie A. Beasley

James C. Turk, Trustee (SEAL)  
James C. Turk, Trustee

Jerry K. Jebo, Trustee (SEAL)  
Jerry K. Jebo, Trustee

George L. Edwards, Trustee (SEAL)  
George L. Edwards, Trustee

John D. Buck, Trustee (SEAL)  
John D. Buck, Trustee



\_\_\_\_\_  
Samuel H. Tollison, Trustee (SEAL)

AT & T Family Federal  
Credit Union

~~A. T. & T. Family~~  
~~Federal Credit Union~~  
Crestar BANK

Dominion Bank, National  
Association

First National Bank of  
Christiansburg

Karen A. Ockerson  
Notary Public

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Commonwealth of Virginia

City/County of Montgomery, to-wit:

The foregoing agreement was acknowledged before me this 18th day of January, 1991 by Marvin Wayne Nester and Donna Short Nester, husband and wife.

My Commission expires: 28 June 1992

Loren A. Dickerson  
Notary Public

Commonwealth of Virginia

City/County of Giles, to-wit:

The foregoing agreement was acknowledged before me this 1st day of February, 1991 by Lois Gaye Robinson, and Glenn R. Robinson, husband and wife, ~~unmarried~~. My Commission expires: Feb. 2, 1992

Sandra M. Ramos  
Notary Public

Commonwealth of Virginia

City/County of Radford, to-wit:

The foregoing agreement was acknowledged before me this 28th day of May, 1991 Jeffrey L. Epperly and Elise Y. Epperly, husband and wife.

My commission expires February 7, 1992

Anna Lee Walker  
Notary Public

Commonwealth of Virginia

City/County of Montgomery, to-wit:

The foregoing agreement was acknowledged before me this 10th day of July, 1991 by Walter R. Gerus, Jr., Unmarried.

My commission expires July 31, 1994

Nancy P. Phillips  
Notary Public

I was commissioned as Nancy Ellen Phillips.

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Commonwealth of Virginia

~~City~~/County of Montgomery, to-wit:

The foregoing agreement was acknowledged before me this  
3<sup>rd</sup> day of May, 1991 by David A. Beasley and Leslie  
A. Beasley, Husband and Wife.

My commission expires May 31, 1994

Donna D. Jernelle  
Notary Public

Commonwealth of Virginia

City/~~County~~ of RADFORD, to-wit:

The foregoing agreement was acknowledged before me this  
18 day of JUNE, 1991 by James C. Turk, Trustee.

My commission expires May 30, 1992

And. Miller  
Notary Public

Commonwealth of Virginia

City/~~County~~ of Radford, to-wit:

The foregoing agreement was acknowledged before me this  
30<sup>th</sup> day of May, 1991 by Jerry K. Jebo, Trustee.

My commission expires March 31, 1995

Patricia A. Smith  
Notary Public

Commonwealth of Virginia

City/~~County~~ of \_\_\_\_\_, to-wit:

The foregoing agreement was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1990 by George L. Edwards, Trustee:

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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Commonwealth of Virginia  
City/County of \_\_\_\_\_, to-wit:

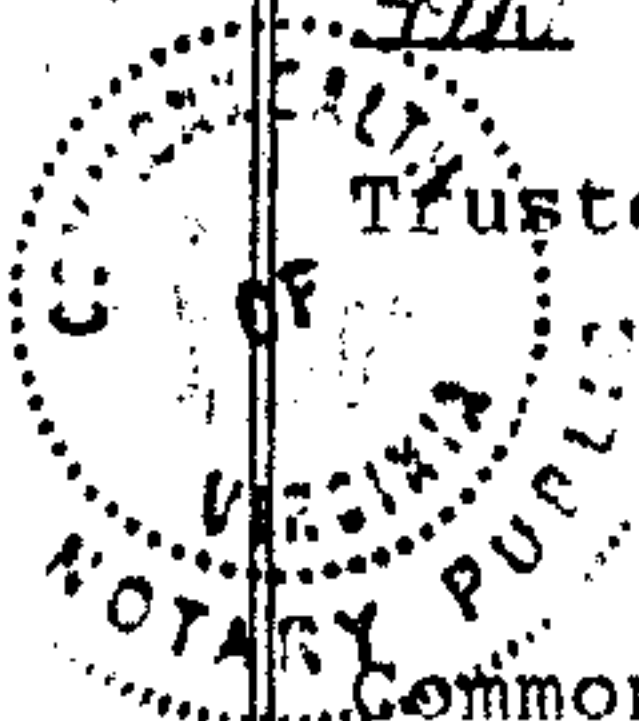
The foregoing agreement was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1991 by John D. Buck, Trustee.

My commission expires \_\_\_\_\_

Notary Public

Commonwealth of Virginia  
City/County of Radford, to-wit:

The foregoing agreement was acknowledged before me this  
4th day of June, 1991 by John C. Quigley, Jr.,  
Trustee. My commission expires 2-26-93



Zona F. Briggs  
Notary Public

Commonwealth of Virginia  
City/County of Radford, to-wit:

The foregoing agreement was acknowledged before me this  
29th day of May, 1991 by Donald A. Dalton,  
\_\_\_\_\_ of Crestar Bank.

My commission expires Sept. 22, 1992

Peggy D. Shaulley  
Notary Public

Commonwealth of Virginia  
City/County of Pulaski, to-wit:

The foregoing agreement was acknowledged before me this  
29th day of May, 1991 by Anna E. Handy,  
\_\_\_\_\_ of A. T. & T. Family Federal Credit Union.

My commission expires My Commission Expires May 22, 1993

Susan C. Rooney  
Notary Public  
Commission issued 5/2/91

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Commonwealth of Virginia

City/County of Montgomery, to-wit:

The foregoing agreement was acknowledged before me this  
4<sup>th</sup> day of June, 1991 by T.W. Johnson, Jr.  
V.P. of Dominion Bank, National Association.

My commission expires June 19, 1992

Bennett L. Royal  
Notary Public

Commonwealth of Virginia

City/County of \_\_\_\_\_, to-wit:

The foregoing agreement was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1991 by Charles D. Bourne.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commonwealth of Virginia

Montgomery County, to-wit:

The foregoing agreement was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 1991 by Samuel H. Tollison,  
President of and on behalf of First National Bank of  
Christiansburg and as Trustee.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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VIRGINIA: In the Office of the Circuit Court of Montgomery County  
10<sup>th</sup> day of July, 1991 The foregoing  
instrument was this day presented in said Office and with certificate  
annexed admitted to record at 2:50 o'clock PM.

Teste:

JOHN B. MYERS, JR., CLERK  
By Diana Vaughn c.

DEC 1

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