

0827 PAGE 0774

985142

This Road Maintenance Agreement is made this 10th day of February, 1998, by and between:
JAMES R. NEIGHBORS & ANN B. NEIGHBORS,
RICHARD H. MANSELL, JR. & CAROLE PRATT MANSELL,
RICHARD H. MANSELL, SR. & MILDRED JAY MANSELL, *- Not property owners*
IRA S. CRAWFORD & BETTY LOU CRAWFORD,
TIMOTHY C. SUTPHIN,
JOHN R. COLE & CELIA M. COLE,
ERISMAN C. TATE,
W. RAYMOND HOOKEY & LIESELOTTE HOOKEY,
ARNOLD LEE HEDGE & DIANNE HARKRADER HEDGE,
ROBERT THEFORD HEDGE,
ANGELA LEE HEDGE,
KATHRYN REED BAYLESS,
EVELYN H. TATE,

herein collectively called Landowners or the parties.

(Index all parties as both grantors and grantees).

W I T N E S S E T H

Whereas, Landowners are all of the present title owners of properties located in "Tate Estates" in the Ingles Magisterial District of Pulaski County, Virginia, access to/from all of which properties is by a private roadway, located within the area of a non-exclusive right of way, leading from/to Virginia Secondary Route 672, as such right of way was granted in a series of deeds of easement, most dated April 19, 1989, most recorded in the Pulaski County Circuit Court Clerk's Office in Deed Book 471, pages 434, *et seq.*; and

Whereas, Landowners desire to effect a new agreement to better provide for maintenance of the private roadway;

1





Therefore, for adequate consideration, Landowners agree, for themselves and their respective heirs, assigns, and successors in interest, as covenants running with the respective lands of all parties, that:

1. The road maintenance Agreement, dated April 19, 1989, recorded in the Pulaski County Circuit Court Clerk's Office in Deed Book 471, page 424, is hereby vacated and nullified in its entirety and superseded by this agreement.
2. The title owner(s) of each lot in "Tate Estates" with a residential dwelling unit (whether temporary/seasonal or permanent/year-around) thereon (a "contributing lot") shall be jointly obligated to effect regular annual and emergency annual road maintenance and to pay for the cost thereof by assessments (as provided below). The minimum number of such contributing lots shall initially be 10 (based on the present number of dwelling units), and shall never be less than 10 no matter how many lots any particular Landowner(s) may now or later own, but shall increase whenever any new/additional residential dwelling units are constructed/established on any existing or newly created (by sub-division or otherwise) lot(s). Such lots shall become contributing lots beginning as of the year in which the new/additional dwelling is first occupied. Any and all subsequent grantees of any Landowner, whether a grantee of a portion or all of the property of any Landowner, shall automatically become subject to the terms of this agreement as a party.
3. Voting for all purposes hereunder shall be on a per contributing lot basis: one vote per contributing lot. Non-contributing lots shall have no vote. Co-owners (e.g., husband & wife), no matter how many there are, of a contributing lot together have only one vote for that lot. Subject to the provisions below, the vote of a simple majority (>50%) of the then current owners of contributing lots may determine when and what maintenance is to be performed. At least 75% of the then current owners of contributing lots must vote for any emergency assessment, and the vote and the emergency assessment can be only for the then current year. At least 87.5% of the then current owners of contributing lots must vote in favor of any addition, modification, revocation, or rescission to/of this agreement, which must (1) be in writing, (2) be recorded in the Pulaski County Circuit Court Clerk's Office, (3) affirmatively state under oath that such changes were effected in full compliance with the terms of this agreement, and (4) be signed and acknowledged by all those so voting. At least one meeting of all Landowners shall be held annually, and other special meetings may, and shall, be held on request of at least 50% of the then current Landowners. Ten days prior written notice shall be given to all Landowners for any and all

SRA:0527 PAGE 0776

meetings.

4. The regular, annual road maintenance assessment shall be \$200.00 per contributing lot. The emergency, annual road maintenance assessment may be up to \$100.00 per contributing lot. All road maintenance assessment monies shall be maintained in a separate bank account, as a trust fund, and any and all interest earned on that account shall become part of the road maintenance fund, and shall be used solely for effecting road maintenance (as defined herein). Any Landowner may inspect all records related to assessments, collections, and expenditures of road maintenance monies at any time after reasonable, prior notice to the custodian of such records.

5. All Landowners shall remit all assessments to the designated Landowner who is "treasurer" at that time within 30 calendar days of his/her/their receipt of the billing therefor. At any time after 30 days after any annual or emergency assessment payment is due but remains unpaid, the other Landowners collectively may record and enforce a lien against the property of any Landowner who does not fully pay his/her/their annual assessment as billed, in accordance with the current provisions of Virginia Code §§55-516.B-G. Any and all such liens shall be and remain subordinate to any and all existing mortgage (deed of trust) liens, to any and all subsequent, *purchase money* mortgage (deed of trust) liens, and to any and all refinance mortgage (deed of trust) liens of any of the foregoing mortgage liens, at any time, on any parties' respective property(-ies).

6. a. As used in this agreement, "road maintenance" includes, but is not limited to, gravel replacement, other road resurfacing, paving, grading/scraping, erosion control, ditching/drainage work, brush cutting, and snow and storm debris removal, and labor therefor.

b. Any paving of the roadway using maintenance funds shall begin at the intersection with Route 672 and work from there, and any paving of branches of the road shall be in equal proportion.

c. Notwithstanding the terms of this agreement, any Landowner(s), at his/her/their own expense, may voluntarily improve or maintain all or any part of the roadway, including, but not limited to, full or partial paving.

d. Nothing here shall *obligate* the parties to improve or upgrade the roadway to a better condition than that which exists as of the date hereof, but by majority vote, as provided above, the parties may elect to do so at any time.

e. Each Landowner hereby consents to entry onto that portion of his/her/their property, on a temporary basis, as is necessary to effect periodic maintenance of the roadway.





Page: 4 of 8

7. The terms of this agreement may be enforced by any party in privity of contract or estate hereunder, civilly at law and/or in equity, and in the case of any misappropriation of road maintenance funds by any trustee(s) thereof, criminally. In the event of civil enforcement against any of the parties to this agreement or their successors, they shall be additionally liable to the plaintiff(s) in such litigation for plaintiffs' litigation costs and attorneys' fees if they are adjudged to be in breach of this agreement. No road maintenance monies may be used to pay any attorney's fees or litigation costs whatsoever.

8. All Landowners hereby affirm that the right of way within which the subject roadway is located constitutes a private, non-exclusive, easement appurtenant to each lot in "Tate Estates" for access to/from each such lot to Route 672, and that the roadway shall remain private and shall not be dedicated, in whole or in part, to/for public use or maintained by any governmental entity.

9. This agreement shall become effective and binding only after all Landowners have signed and acknowledged this agreement, and it has been duly recorded in the Pulaski County Circuit Court Clerk's Office.

Witness the following signatures and seals of the parties:

James R. Neighbors (Seal)
James R. Neighbors

Ann B. Neighbors _____ (Seal)

Richard H. Mansell (Seal)

A a. Carolee Pratt _____ (Seal)
Carole Pratt Manoell ATP

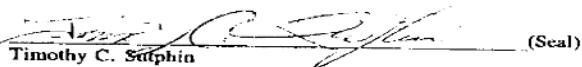
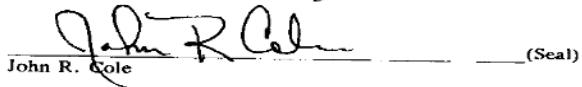
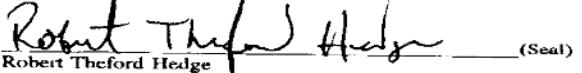
Not property owner - This (Seal)
Richard H. Maxwell, Sr.

Property Purchased by Kathryn R. Bayless
(Seal)
Mildred Jay Mansell

Ira S. Crawford (Seal)
Ira S. Crawford

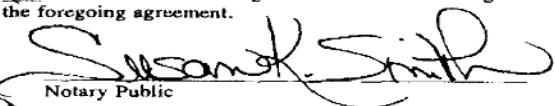
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Betty Lou Crawford (Seal)
Timothy C. Sapphin (Seal)
John R. Cole (Seal)
Celia M. Cole (Seal)
Erisman C. Tate (Seal)
W. Raymond Hookey (Seal)
Lieselotte Hookey (Seal)
Arnold Lee Hedge (Seal)
Dianne Harkrader Hedge (Seal)
Robert Theford Hedge (Seal)
Angels Lee Hedge (Seal)
Kathryn Reed Bayless (Seal)
Evelyn H. Tate (Seal)

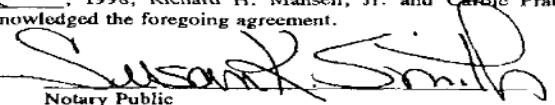
COMMONWEALTH OF VIRGINIA, at large:

This 18th day of March, 1998, James R. Neighbors and Ann B. Neighbors each personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

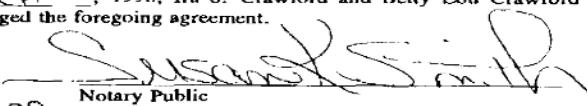
COMMONWEALTH OF VIRGINIA, at large:

This 3rd day of April, 1998, Richard H. Mansell, Jr. and Carole Pratt ~~Mansell~~ each personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

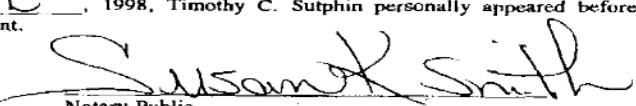
COMMONWEALTH OF VIRGINIA, at large:

This 18th day of MARCH, 1998, Ira S. Crawford and Betty Lou Crawford each personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

COMMONWEALTH OF VIRGINIA, at large:

This 2nd day of APRIL, 1998, Timothy C. Sutphin personally appeared before me and acknowledged the foregoing agreement.

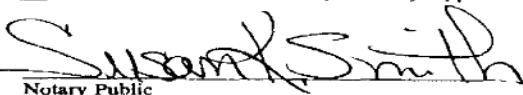

Notary PublicMy commission expires: 12-31-99.LR1998005142
Page: 6 of 8

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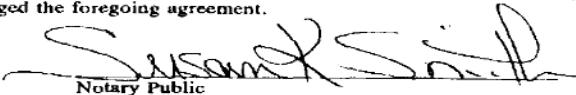
COMMONWEALTH OF VIRGINIA, at large:

This 1st day of APRIL, 1998, Erisman C. Tate personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

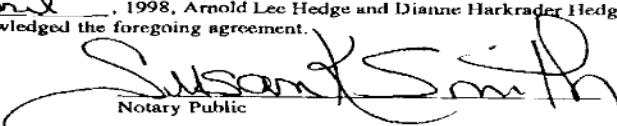
COMMONWEALTH OF VIRGINIA, at large:

This 21st day of AUGUST, 1998, W. Raymond Hookey and Lieselotte Hookey each personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

COMMONWEALTH OF VIRGINIA, at large:

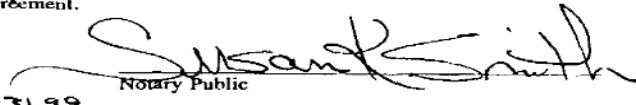
This 1st day of April, 1998, Arnold Lee Hedge and Dianne Harkader Hedge each personally appeared before me and acknowledged the foregoing agreement.


Notary Public

My commission expires: _____.

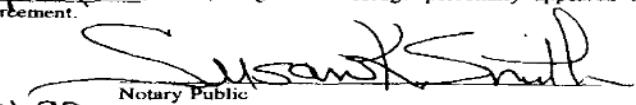
COMMONWEALTH OF VIRGINIA, at large:

This 31st day of April, 1998, Robert Theford Hedge personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

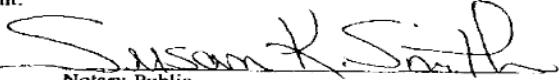
COMMONWEALTH OF VIRGINIA, at large:

This 3rd day of April, 1998, Angela Lee Hedge personally appeared before me and acknowledged the foregoing agreement.


Notary PublicMy commission expires: 12-31-99.

STATE OF Virginia
COUNTY OF Pulaski

This 11th day of APRIL, 1998, Kathryn Reed Bayless personally appeared before me and acknowledged the foregoing agreement.

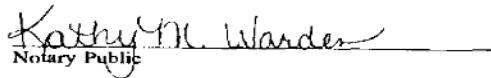


Notary Public

My commission expires: 12-31-99.

COMMONWEALTH OF VIRGINIA, at large:

This 10 day of February, 1998, Evelyn H. Tate personally appeared before me and acknowledged the foregoing agreement.



Notary Public

My commission expires: 1-31-99.

INSTRUMENT #998005142
RECORDED IN THE CLERK'S OFFICE OF
PULASKI COUNTY ON
SEPTEMBER 4, 1998 AT 02:08PM
R. GLENNWOOD LOOKABILL, CLERK

BY:  (DC)

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