

160001192

RIGHT OF WAY AND ROAD MAINTENANCE AGREEMENT

THIS RIGHT OF WAY AND ROAD MAINTENANCE AGREEMENT, made and entered into this 22nd day of April, 2016, by and between JOHN BLOOMER, REBECCA SUTPHIN ODUM and ANITA STURGILL WAGNER, Trustees of SUNNY HILLS COMMUNITY CHURCH, 2973 N. 4th Street, Wytheville, VA 24382, hereinafter collectively referred to as "the Trustees", GRANTORS and GRANTEES for purposes of indexing; and ALAN C. WILDER and KIMBERLY S. WILDER, husband and wife, 2975 N. 4th Street, Wytheville, VA 24382, hereinafter "the Wilders", GRANTORS and GRANTEES for purposes of indexing.

WHEREAS, the Trustees, having been appointed as Trustees of Sunny Hills Community Church by Orders of the Circuit Court for Wythe County, Virginia, of record in the Wythe County Clerk's office at CM06-100 and CM16-92, hold title to the following described tract or parcel of land lying and being situate in the Town of Wytheville, County of Wythe, Virginia, [hereinafter "the Sunny Hills Parcel"] to-wit:

Tax Map Number: 25-29E & 25-29A]

"BEGINNING at a rod set in the southern right of way line of State Rte. 52; thence continuing with said right of way line N 73° 53' 11" E 160.99 to a rod set; thence leaving said right of way line S 07° 23' 27" E 184.30 feet to a point in pond; thence N 76° 41' 22" E 376.48 feet to a rod set; thence S 04° 55' 37" E 842.62 feet to a spike found at base of post; thence S 81° 46' 25" W 533.72 feet to a rod set in fence line; thence N 04° 59' 17" W 148.92 feet to a rod set a base of corner post; thence N 28° 53' 28" E 133.40 feet to a rod found; thence N 87° 12' 07" W 76.75 feet to a point; thence N 05° 49' 39" W 363.91 feet a ½" rod found; thence N 04° 33' 09" W 337.42 feet to the point of BEGINNING, being PARCEL NO. 1,

1 Examined May 18, 2016
Amy Campbell & Munique
Res. Billy King . Dep. Clerk

containing 10.656 acres, more or less, but this is a conveyance by the boundary and not by the acreage, according to a survey and plat by Pillar Engineering & Surveying, P.C., dated April 27, 2006, bearing the following legend, to-wit:

**"Plat Of Survey Of
5.003 Acre Parcel And
10.656 Acre Parcel
Property Of
Larry H. Bradbury And
Brenda A. Bradbury
Located In
West Wytheville Magisterial District
Town of Wytheville, Virginia" "**

BEING the same real estate conveyed by Larry H. Bradbury and Brenda A. Bradbury, husband and wife, to Anita Sturgill Wagner, Rebecca Sutphin Odum and Randal Craig Wright, Trustees of Sunny Hills Community Church, by deed dated April 28, 2006, of record in the Wythe County Clerk's Office as Instrument No. 060001760, and

WHEREAS, the Wilders are the owners of the following described tract or parcel of land lying and being situate in the Town of Wytheville, County of Wythe, Virginia, [hereinafter **"the Wilder Parcel"**] to-wit:

[Tax Map Number: 25-29F]

"BEGINNING at an iron pin, corner to other property of the party of the first part, and running thence S 02° 35' 13" E 405 feet to a post; thence with a fence S 83° 57' 20" W 545.69 feet to a post; thence N 01° 25' 49" W 405 feet to an iron pin; thence N 83° 53' 39" E 537.53 feet to the beginning, containing 5.02 acres, more or less. For the same consideration, there is granted to the parties of the second part a 50-foot right of way over the existing road leading to U. S. Route 52, as shown on a plat made by H. L. Louthen, C.L.S., dated December 21, 1984, (revised 1-3-85), a copy of which is attached hereto and made a part hereof."

BEING the same real estate conveyed by Larry H. Bradberry and Brenda A. Bradberry to Alan C. Wilder and Kimberly S. Wilder as tenants by the entirety with right of survivorship as at common law, by deed dated November 8, 2006, of record in the Wythe County Clerk's Office as Instrument No. 060004781, and

WHEREAS, the Wilder Parcel is accessed by means of a nonexclusive right of way fifty feet (50') in width and approximately one thousand and seventy five feet (1075') in length, extending from the southern right of way line of Virginia State Rte. 52 in a generally southerly direction across the Sunny Hills Parcel to the northern boundary of the Wilder Parcel [**hereinafter "the Right of Way"**]; and

WHEREAS, there is presently constructed within and along the entire length of the Right of Way a driveway used both by the Wilders and their invitees, as well as by the congregation, staff and other invitees of the Sunny Hills Church [**hereinafter "the Driveway"**]; and

WHEREAS, the northern portion of the Driveway (from the southern right of way line of Virginia State Route 52 to the southernmost point of the entrance to the parking lot used by the staff, congregation and other invitees of the Sunny Hills Church) [**hereinafter "the Northern Section of the Driveway"**] is presently a gravel road approximately fifteen feet (15') in width; and

WHEREAS, the southern portion of the Driveway (from the southernmost point of the entrance to the parking lot used by the staff, congregation and other invitees of the Sunny Hills Church southward to the northern boundary of the Wilder parcel) [**hereinafter "the Southern Section of the Driveway"**] is presently a paved road approximately nine feet (9') in width; and

WHEREAS, the parties wish to enter into an agreement regarding their respective responsibilities regarding the proper maintenance, repair and improvement of the Driveway and the Right of Way; and

WHEREAS, the parties hereby intend to bind themselves, their heirs, successors

and assigns; Now therefore

WITNESSETH:

For and in consideration of the premises and the mutual covenants contained herein, the parties do hereby agree as follows:

1. THE TRUSTEES' SECTION. The Trustees and their successors will be responsible for maintenance of the Northern Section of the Driveway and the Right of Way on each side thereof. Such maintenance shall include:

- A. keeping the Driveway covered with stone (a minimum of two inches (2") after compaction);
- B. keeping the Driveway graded as needed so as to keep the Driveway free from potholes and "washboarding";
- C. snow removal from the Driveway so as to keep the Driveway passable by front wheel drive vehicles. Snow removal shall be accomplished within forty eight (48) hours following the cessation of any snow storm event; and
- D. regular maintenance of the right of way on each side of the Driveway, to include mowing, debris removal and ditch maintenance as needed.

2. THE WILDERS' SECTION. The Wilders and their successors will be responsible for maintenance of the Southern Section of the Driveway and the Right of Way on each side thereof. Such maintenance shall include:

- A. filling of potholes as needed;
- B. snow removal from the Driveway so as to keep the Driveway passable by front wheel drive vehicles. Snow removal shall be accomplished within

forty eight (48) hours following the cessation of any snow storm event; and

- C. regular maintenance of the right of way on each side of the Driveway, to include mowing, debris removal and ditch maintenance as needed.

3. COOPERATION OF PARTIES. The parties shall consult and mutually determine when maintenance of the Driveway and Right of Way is needed (including but not limited to snow removal), and shall, whenever practicable, contract for maintenance of the Driveway and Right of Way as a whole. Each party shall pay for its proportional share of such maintenance based upon the division of responsibility as set forth in Paragraphs 1 and 2 above.

4. MAJOR IMPROVEMENTS. Unless otherwise agreed upon by the parties in writing:

- A. the Trustees and their successors shall be responsible at their sole expense for any and all widening or paving of the Northern Section of the Driveway;
- B. the Wilders and their successors shall be responsible at their sole expense for any and all widening or repaving of the Southern Section of the Driveway;
- C. all paving and repaving shall consist of not less than two inches (2") of compacted asphalt over not less than six inches (6") of compacted stone;
- D. after paving or repaving, each party shall thereafter be responsible for maintenance, repair and replacement of all pavement installed in its respective section of the Driveway, including but not limited to the prompt filling of potholes as needed.

5. FENCING AND GATES. The following provisions shall govern the erection of fences along, and gates across, the Right of Way:

- A. the Trustees and their successors may at any time, in their discretion and at their sole cost, erect and maintain fencing along either or both sides of the Right of Way or any portion thereof;
- B. if the Wilders or their successors wish to erect and maintain fencing along either or both sides of the Right of Way or any portion thereof, they shall first obtain written permission to do so from the Trustees;
- C. if the Trustees or their successors at any time keep livestock on the Trustees' Parcel, they shall, upon written request by the Wilders or their successors, erect and maintain fencing along either or both sides of the Right of Way so as to keep such livestock out of the Driveway;
- D. neither party shall erect any gate across any portion of the Right of Way, except as follows:
 - 1. if the Trustees or their successors elect to erect a fence or fences running from east to west across the Trustees' parcel, they shall be entitled, at their own expense, to install a gate at each point where a fence crosses the Driveway;
 - 2. if the Trustees or their successors wish to install a gate pursuant to paragraph D.1 above, they shall so notify the Wilders or their successors in advance, and shall, upon request of the Wilders or their successors, install cattle guard(s) instead of gates.

6. DISPUTES. Either party may at any time notify the other in writing of maintenance needed and required to be done by the other party pursuant to this agreement. If the party responsible for the needed maintenance does not promptly

carry out such maintenance, the party requesting that the maintenance be done may contract for the performance of such maintenance and shall be entitled to reimbursement from the other party for the reasonable cost thereof. If legal action is instituted to collect such payment, the prevailing party shall be entitled to costs and reasonable attorney's fees incurred.

7. NOTICES. Any notices required hereunder shall be sent by certified mail, return receipt requested, to:

Trustees: Sunny Hills Community Church
2973 N. 4th Street
Wytheville, VA 24382

Attn: Church Trustees

or any successor contact person which shall be designated and communicated to the other party in writing.

Wilder: Alan C. Wilder and Kimberly S. Wilder
2975 N. 4th Street
Wytheville, VA 24382

or any successor contact person which shall be designated and communicated to the other party in writing:

8. ENTIRE AGREEMENT; BINDING ON SUCCESSORS, ETC. The parties agree that this contract shall be binding upon them and their respective successors in title, assigns, heirs and personal representatives; that this agreement, unless amended in writing and signed by both parties, contains the complete agreement of the parties; that they shall not be bound by any terms, conditions, oral statements, warranties or representations not contained herein; and that this contract shall be construed according to the laws of the Commonwealth of Virginia.

9. RECORDATION. Either party may record this Road Maintenance Agreement among the land records of the Clerk of the Circuit Court for Wythe County, Virginia.

WITNESS the following signatures and seals:

SUNNY HILLS COMMUNITY CHURCH

By: John D. Bloomer (SEAL)
JOHN BLOOMER, TRUSTEE

STATE OF VIRGINIA
COUNTY OF WYTHE, to-wit:

I, Ethan Michael Lavalley, a Notary Public in and for the State of Virginia, County of Wythe, do hereby certify that John Bloomer, Trustee of Sunny Hills Community Church, whose name is signed to the foregoing Road Maintenance Agreement bearing date of April 22, 2016, has this day personally appeared before me in my State and County aforesaid and acknowledged the same.

My commission expires: 11-30-2019

Notary I.D. No.: 7648132



Ethan Michael Lavalley
Commonwealth of Virginia
Notary Public
Commission No. 7648132
Commission Expires 11/30/2019

[Signature]
Notary Public

By: Rebecca S. Odum (SEAL)
REBECCA SUTPHIN ODUM, TRUSTEE

STATE OF VIRGINIA
COUNTY OF WYTHE, to-wit:

I, Shan Michael Lavallee, a Notary Public in and for the State of Virginia, County of Wythe, do hereby certify that Rebecca Sutphin Odum, Trustee of Sunny Hills Community Church, whose name is signed to the foregoing Road Maintenance Agreement bearing date of April 22, 2016, has this day personally appeared before me in my State and County aforesaid and acknowledged the same.

My commission expires: 11-30-2019

Notary I.D. No.: 7648132

[Signature]
Notary Public

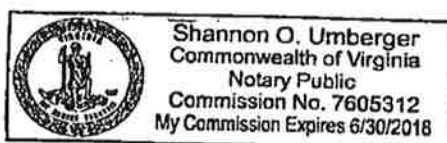
By: Anita S. Wagner (SEAL)
ANITA STURGILL WAGNER, TRUSTEE

STATE OF VIRGINIA
COUNTY OF WYTHE, to-wit:

I, Shannon O. Umberger, a Notary Public in and for the State of Virginia, County of Wythe, do hereby certify that Anita Sturgill Wagner, Trustee of Sunny Hills Community Church, whose name is signed to the foregoing Road Maintenance Agreement bearing date of April 22, 2016, has this day personally appeared before me in my State and County aforesaid and acknowledged the same.

My commission expires: June 30, 2018

Notary I.D. No.: 7605312



Shannon O. Umberger
Notary Public

 (SEAL)
ALAN C. WILDER

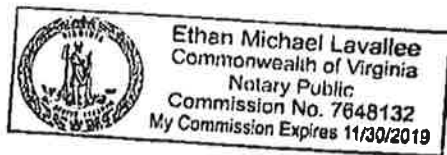
 (SEAL)
KIMBERLY S. WILDER


STATE OF VIRGINIA
COUNTY OF WYTHE, to-wit:

I, Ethan Michael Lavalley, a Notary Public in and for the State of Virginia, County of Wythe, do hereby certify that Alan C. Wilder and Kimberly S. Wilder, whose names are signed to the foregoing Road Maintenance Agreement bearing date of April 22, 2016, have this day personally appeared before me in my State and County aforesaid and acknowledged the same.

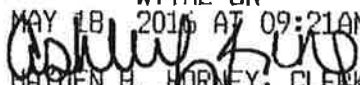
My commission expires: 11-30-2019

Notary I.D. No.: 7648132




Notary Public

**NEITHER OF THE PARTIES HERETO HAS REQUESTED THAT
TITLE TO THE OTHER'S PARCEL BE EXAMINED BY THE
LAW FIRM OF LACY, CAMPBELL & MUNIQUE, PC.**

INSTRUMENT #160001192
RECORDED IN THE CLERK'S OFFICE OF
WYTHE ON
MAY 18, 2016 AT 09:21AM

HAIDEN H. HORNEY, CLERK
RECORDED BY: ADC