

CC

ALASKA

2009-005132-0

Recording Dist: 101 - Juneau

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DRIVEWAY AND UTILITY EASEMENT

WHEREAS the City and Borough of Juneau, a municipal corporation, with its principal office at 155 South Seward Street, Juneau, Alaska 99801 ("Grantor" or "CBJ") is the owner of Lot 3, U.S. Survey 3816 ("CBJ's property"), Juneau Recording District, First Judicial District, State of Alaska; and

WHEREAS Irene F. Marvich, Trustee of the Irene F. Marvich Revocable Trust of 2545 SW Terwilliger Blvd., Apt. 412, Portland, Oregon 97201 ("Grantee") is the owner of Lot 6, U.S. Survey 3297, Juneau Recording District, First Judicial District, State of Alaska ("Lot 6, U.S. Survey 3297");

WHEREAS, Grantee desires a driveway and utility easement across CBJ's property and CBJ Resolution No. 2343 and CBJ 53.09.300 authorize CBJ to convey such an easement; and

WHEREAS, Grantee is a member of the Smugglers' Cove Road Association ("SCRA") and SCRA executed a Driveway Maintenance and Indemnity Agreement with CBJ which agreement was recorded on February 7, 2006, at Serial No. 2006-000880-0 of the Juneau Recording District, First Judicial District, State of Alaska;

NOW THEREFORE for and in consideration of ten dollars (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged, Grantor transfers, grants and conveys to Grantee, a driveway and utility easement across a fraction of Lot 3, U.S. Survey 3816, Juneau Recording District, First Judicial District, State of Alaska, as more particularly described in attached Appendix A (the "easement").

This easement shall be subject to the above-referenced Driveway Maintenance and Indemnity Agreement and to the following terms and conditions:

I. TERM The easement shall be effective upon execution by both parties and recordation, and shall be enjoyed in perpetuity, unless and until revoked or terminated in accordance with Section III below. The easement shall be a continuing covenant running with the land for the benefit of Lot 6, U.S. Survey 3297, and shall be binding upon and in favor of the successors and assigns of Grantor and Grantee.

II. AUTHORIZED USE The sole purpose of the easement is to authorize the construction, use and maintenance of a driveway for access to Lot 6, U.S. Survey 3297, and to provide a utility corridor to serve the same lot. This easement is not for commercial use and shall be used only to serve single family or duplex residences on said Lot 6, U.S. Survey 3297. No improvements or changes to improvements may be made within the easement without prior written approval of the CBJ.

III. REVOCATION OR TERMINATION Upon 30 days written notice, the following events or circumstances shall cause the termination or revocation of the easement:

(a) **Unauthorized Use.** The easement is used for unauthorized purposes.

(b) **Non-Use.** Grantee does not use the easement for five consecutive years.

(c) **Dedicated, Constructed Road.** Grantee's property is served by a constructed and dedicated CBJ street, as provided in IV(i).

IV. ADDITIONAL PROVISIONS

(a) **Non-Exclusivity.** This easement is not exclusive. Grantor may grant other overlapping easements or uses.

(b) **Construction and Maintenance.** Grantee is responsible for construction and maintenance of any improvements in the easement, and for snow removal.

(c) **Pedestrian Access.** Grantor reserves the right of public pedestrian access through, along, and across the easement.

(d) **Use by Grantor.** Grantor reserves the right to use portions or all of the driveway alignment for a dedicated public street.

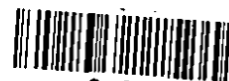
(e) **Gate.** At its own cost and expense, Grantee may install and maintain a gate in the driveway to control vehicular access, in a manner consistent with terms of this easement.

(f) **Permitting.** The Grantee shall obtain all authorizations and permits required to construct a driveway and/or to install utilities in the easement, including a grading permit.

(g) **Survey.** Grantee shall provide an as-built survey, in accordance with CBJ surveying standards, within ninety (90) days of completion of the driveway improvements.. Upon making any changes or additions to such improvements, including the construction or installation of any utility lines, Grantee shall provide the manager with as-built drawings showing such changes or additions.

(h) **Relocation.** The CBJ Assembly, by resolution, may direct Grantee to relocate Grantee's improvements within the easement or to relocate the improvements to a new easement granted by the CBJ for that purpose. Such relocation shall be at the sole expense of Grantee, and the CBJ shall not be liable to the Grantee for reimbursement of any expenses or compensation for any losses or damages suffered by Grantee or others arising out of the relocation. Unless the Assembly, in the resolution directing the relocation of the improvements, permits otherwise, Grantee shall remove all improvements Grantee have constructed in the area to be vacated. No compensation shall be due the CBJ for the value of resources which must necessarily be cut, damaged or removed to permit the relocation, nor shall Grantee be liable for the cost of any survey required to describe a new easement area. If CBJ 53.09.300(i) is modified subsequent to issuance of the easement, the newer legislation pertaining to relocation shall apply.

(i) **Dedication of Right-of-Way.** If and at such time as a right-of-way is dedicated and developed allowing for the uses and purposes contemplated by this easement, this easement shall thereupon immediately terminate and Grantee, for him/herself, his/her successor, and assigns agrees to execute such documents as may be needed to clear title to the lands as to which the easement has been terminated. In the event that, after dedication of the right-of-way, Grantee requires the use of a portion of the easement to connect up to such dedicated right-of-way, the easement shall terminate only as to those portions that are not



necessary to connect to the dedicated right-of-way. Any total or partial termination of the easement shall provide for preservation of the Grantee's right of access to his/her property.

(j) Exculpatory Clause. Grantor shall not be liable for injury or damage to persons or property occurring on the easement unless caused or resulting from the sole active negligence of Grantor or any of Grantor's agents, servants, or employees.

(k) Indemnification. Grantee agrees to defend, indemnify, and save CBJ, its officers, agents and employees with respect to any action, claim, or lawsuit arising out of the use, occupancy and/or maintenance of the easement. This agreement to defend, indemnify, and hold harmless is without limitation as to the amount of fees, and without limitation as to any damages resulting from settlement, judgment, or verdict, and includes the award of any attorneys fees even if in excess of the fees authorized by Alaska Civil Rule 82. The obligations of Grantee arise immediately upon notice to the CBJ of any action, claim, or lawsuit. The CBJ shall notify Grantee in a timely manner of the need for defense or indemnification, but such notice is not a condition precedent to Grantee's obligations and may be waived where the Grantee has actual notice. This agreement applies, and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against the CBJ.

(l) Governing Law. The laws of the State of Alaska shall govern this instrument and venue for any proceedings brought to enforce it shall be in the First Judicial District at Juneau, Alaska.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date and year set forth below.

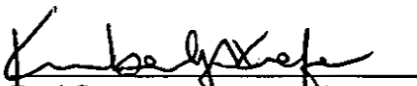
GRANTOR:
CITY AND BOROUGH OF JUNEAU

GRANTEE:
IRENE F. MARVICH, TRUSTEE OF
THE IRENE F. MARVICH
REVOCABLE TRUST

By:

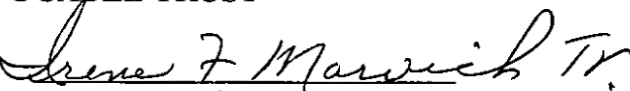
Name:

Its:


~~Red Swape~~ **Kimberly A. KIEFER**
City and Borough Manager

By:

Name: Irene F. Marvich, Trustee



GRANTOR ACKNOWLEDGMENT

STATE OF ALASKA)

)

: ss.

First Judicial District)

This is to certify that on the 1st day of JULY, 2009, before the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared ~~Red Swape~~ **Kimberly A. KIEFER** to me known to be the Manager of the City and Borough of Juneau, Alaska, a municipal corporation which executed the above and foregoing instrument, who on oath stated that he was duly authorized to execute said instrument on behalf of said



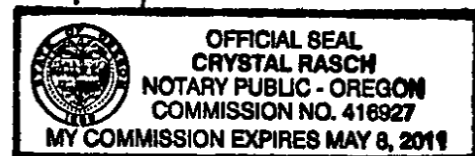
corporation, who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal on the day and year in this certificate first above



Anga Hull
Notary Public in and for the State of Alaska
My Commission Expires: 05/14/11

GRANTEE ACKNOWLEDGMENT



STATE OF OREGON)
Multnomah County }

: ss.

This is to certify that on the 18 day of June, 2009, before the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Irene F. Marvich, Trustee of the Irene F. Marvich Revocable Trust to me known to be the identical individual(s) described in and who executed the foregoing instrument and who on oath stated that s/he was duly authorized to execute said instrument and did so freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal on the day and year in this certificate first above written.

Crystal Rasch
Notary Public in and for the State of Oregon
My Commission Expires: May 8, 2011

Approved as to Form: Cynthia Johnson, ^{Deputy Land} ~~Lands and Resources~~ Manager
Approved as to Content: James E. Helms 7/1/09, Law Department

Please record in the Juneau Recording District and return to:

Irene Marvich
Trustee
Irene F. Marvich Revocable Trust
2545 SW Terwilliger Blvd., Apt. 412
Portland, OR 97201

Driveway and Utility Easement, Lot 6, USS 3297

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