

Record Date:10/2/2019 3:58 PM

Electronically Recorded King County, WA EXCISE TAX NOT REQUIRED BY LISA OHLEN, DEPUTY

**After Recording Return To:**

Brandon R. Carroll  
 Carroll, Biddle, & Bilanko, PLLC  
 801 2nd Avenue, Suite 800  
 Seattle, WA 98104

<b>DOCUMENT TITLE</b>	Access Easement Agreement
<b>REFERENCE NO. OF DOCUMENTS ASSIGNED/ RELEASED</b>	N/A
<b>GRANTOR</b>	Anne W. McTavish, an individual
<b>GRANTEES</b>	Odysseus George Constantine and Kay Marie Constantine, husband and wife
<b>LEGAL DESCRIPTION OF GRANTOR PROPERTY</b>	Schmids Vitus E Seattle Acre Trs 90 Ft of E ½ of 9 W 20 Ft of E ½ of 10 & W 20 ft of N 30 ft of E ½ of 9
<b>LEGAL DESCRIPTION OF GRANTEE PROPERTY</b>	Schmids Vitus E Seattle Acre Trs N 30 Ft of E ½ of 9 & E ½ of 10 Less W 20 Ft Thof
<b>ASSESSOR'S PARCEL NO.</b>	7598100191 (Grantee), 7598100192 (Grantor)

*no consideration***ACCESS EASEMENT AGREEMENT****1ST AM***CM-5321*

This Access Easement Agreement ("Easement") is made effective this 9 day of September, 2019, by Anne W. McTavish, an individual, ("Grantor" or "McTavish") as owner of the real property commonly known as 8815 SE 44<sup>th</sup> St, Mercer Island, WA 98040 ("Grantor Property" or "McTavish Property"), and legally described on **Exhibit A** attached hereto, and Odysseus George Constantine and Kay Marie Constantine, husband and wife ("Grantee" or "Constantine"), as owners of the real property commonly known as 8813 SE 44<sup>th</sup> St, Mercer Island, WA 98040 ("Grantee Property" or "Constantine Property"), and legally described on **Exhibit B** attached hereto.

**RECITALS**

A. An unimproved 12' wide (approximate) gravel road beginning adjacent to the northwest corner of the Constantine Property at SE 44<sup>th</sup> Street and running to the southern half of the McTavish's Property currently serves as the primary access for the McTavish property to SE 44<sup>th</sup> Street (the "Old Access Road"). The Old Access Road, in part, encroaches onto the Constantine Property.

B. Constantine may subdivide the Constantine Property into two (2) legal lots (the "Subdivision").

C. The parties now wish to (i) relocate the portion of the Old Access Road that is presently located on Constantine Property back onto the McTavish Property inside the area more fully described on the attached Exhibit C (the "Easement Area") and depicted on the attached Exhibit D (the "New Access Road"); (ii) extinguish any rights McTavish may have over any portion of the Constantine Property; (iii) grant the Constantine Property an access and utility easement over the Easement Area; (iv) agree that Constantine will complete work along the New Access Road and receive reimbursement from McTavish for 50% of the construction costs; and (v) agree to jointly maintain the New Access Road.

NOW, THEREFORE, the parties hereby declare, reserve, grant and convey, and agree to the terms and conditions set forth below.

1. **Easement Area** McTavish hereby grants Constantine and the Constantine Property an irrevocable access easement for ingress/egress and utilities to and from SE 44<sup>th</sup> Street to the Constantine Property, as well as Constantine's guests, invitees, agents and/or contractors, over, under, across and on the Easement Area. McTavish further grants Constantine, their agents and contractors, a construction easement over the McTavish Property to construct and/or maintain the road-way improvements (including utilities)/maintenance contemplated by the Easement. The Easement Area may also be used by firefighting, emergency and other public vehicles and personnel for public services, emergencies, fires and similar events.

2. **Construction of New Access Road.** Constantine shall complete the below improvements to the New Access Road as set forth herein, at the direction of Constantine, and pursuant to the schedule established by Constantine, in their discretion. Constantine shall:

(a) remove one (1) Douglas fir (to be identified and marked by Constantine) along the Old Access Road, remove associated brush, chips and debris, as well as grind the remaining stump to grade ("Tree Removal"). The estimated cost of the Tree Removal is \$1,300 plus Washington State Sales Tax, and

(b) grub out approximately 2'-3' feet (not to exceed 500 SF) of undergrowth and 8" of topsoil in the location determined by Constantine, install crush rock & pack, install 1" refresher dressing of 5/8" crush rock over the New Access Road and pack ("Road Improvements"). The estimated cost of the Road Improvements is \$2,650 plus Washington State Sales Tax.

The total estimated cost for the Tree Removal and Road Improvements is \$3,950 plus Washington State Sales Tax. The Tree Removal and Road Improvements shall be completed in a commercially reasonable manner, as determined by Constantine, in the location determined

by Constantine. Within 10 days of McTavish's execution of this Easement, McTavish shall pay Constantine 50% of the estimated Tree Removal and Road Improvement costs and fees. Upon receipt of payment, Constantine shall diligently pursue the Tree Removal and Road Improvements; provided, however, that such construction shall be completed pursuant to the schedule established by Constantine, at Constantine's determination. In the event that Constantine applies for, and City of Mercer Island subsequently approves, the removal of additional trees located on and around the Easement Area, along with the approval of the placement of power and telephone conduits within the Easement Area, Constantine shall provide a good faith estimate of such additional construction cost and fees for McTavish to review and approve. At which time McTavish shall to pay to Constantine 50% of such costs prior to Constantine's commencement of such work.

Nothing herein shall be construed as a cap on the cost of construction of the New Access Road, Tree Removal and/or Road Improvements. Following completion of such work, Constantine shall provide McTavish with a summary of the actual costs incurred. Within 10 days of receipt of such summary McTavish shall pay any unpaid portion of her 50% share of construction costs to Constantine.

3. **Release of Old Access Road.** Upon completion of the Tree Removal and Road Improvements, McTavish hereby irrevocably releases and waives any adverse possession, prescriptive easement or other claim for ownership or use of any portion of the Constantine Property as described on Exhibit B attached hereto. McTavish further agrees to execute any document, including but not limited to a quit claim deed, to confirm Constantine's fee simple ownership of the Constantine Property as set forth on Exhibit B.

4. **Maintenance and Repair.** The New Access Road shall be jointly maintained by the then-owners of the McTavish and Constantine Properties, with the owner(s) of each property paying an equal fractional share of the reasonable costs of repair and maintenance. In the event that Constantine completes the Subdivision of the Constantine Property (or if McTavish subdivides the McTavish Property), the maintenance and repair obligations set forth in the provision shall be fractionally shared among the separate legal lots located on the Constantine and/or McTavish Properties (e.g. Constantine lot A & B and the McTavish Property).

5. **Future Dealings.** In the event that the applicable jurisdiction requires modification to the location of the New Access Road, the parties agree to work cooperatively together, and in good faith, to make necessary modifications to the location of the Easement Area and New Access Road.

6. **Successors and Assigns.** The benefits and burdens of this Easement shall be binding upon and inure to the benefit of the owner(s) of the Grantor and Grantees' Property and their respective successor owners and assigns and shall run as covenants with the land.

7. **Amendment.** This Easement shall not be modified, amended or terminated except by written instrument signed by the record owners of the Grantor and Grantees' Property.

8. **No Merger.** This Easement shall not be extinguished by operation of law in the event title to either of the properties are vested in the same party.

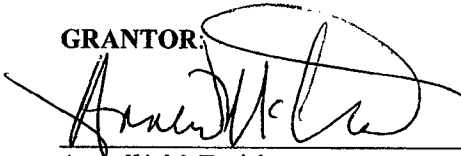
9. **Attorney Fees and Costs.** In the event the Grantor or Grantee retain an attorney to enforce the provisions or the terms of this Easement, the prevailing party shall be entitled to reimbursement for its attorney fees and costs incurred, whether or not said fees and costs are incurred in arbitration, litigation, mediation, declaratory action, bankruptcy, pre- or post-judgment or otherwise.

10. **Benefit of Agreement.** This Easement created hereunder and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the heirs, successors and assigns of the parties to this Easement, and shall run with the parcels of real property affected hereby.


IN WITNESS WHEREOF, the parties have executed this Easement as of the date of the signatures set forth below.

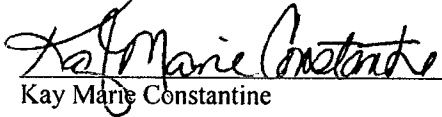
[SIGNATURES ON FOLLOWING PAGE]

GRANTOR:

  
Anne W. McTavish      9/9/19  
Date

GRANTEES:

  
Odysseus George Constantine      9/5/19  
Date

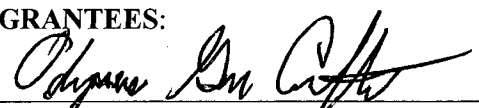
  
Kay Marie Constantine      9/5/2019  
Date

**GRANTOR:**

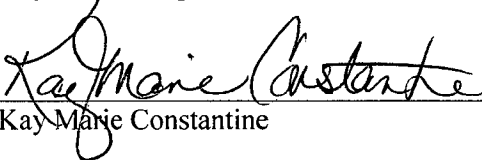
\_\_\_\_\_  
Anne W. McTavish

\_\_\_\_\_  
Date

**GRANTEES:**

  
\_\_\_\_\_  
Odysseus George Constantine

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kay Marie Constantine

9/20/2019  
\_\_\_\_\_  
Date

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I do hereby certify that **Anne W. McTavish** executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal this 9th day of Sept, 2019



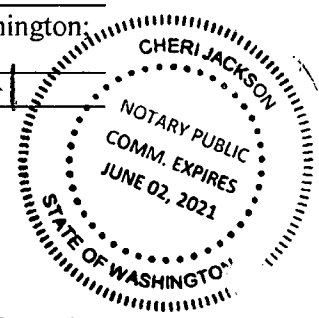
Maricel Aziz Maricel AZ  
Print Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington;  
residing at: Mercer Island, WA  
My commission expires: Mar 5, 2022

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I do hereby certify that Odysseus George Constantine executed the within and foregoing instrument, and acknowledged said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal this 20th day of September, 2019.

Cheri Jackson  
Print Name CHERI JACKSON  
NOTARY PUBLIC in and for the State of Washington;  
residing at: Kennett, WA  
My commission expires: June 2, 2021

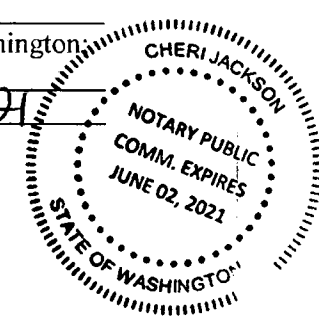


STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I do hereby certify that Kay Marie Constantine executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal this 20th day of September, 2019.

Cheri Jackson  
Print Name CHERI JACKSON  
NOTARY PUBLIC in and for the State of Washington;  
residing at: Kennett, WA  
My commission expires: June 2, 2021





**EXHIBIT A**

**LEGAL DESCRIPTION OF GRANTOR'S PROPERTY**

THE SOUTH 90 FEET OF THE EAST HALF OF TRACT 9 AND THE WEST 20 FEET OF THE EAST HALF OF TRACT 10 AND THE WEST 20 FEET OF THE NORTH 30 FEET OF THE EAST HALF OF TRACT 9 IN BLOCK 8, VITUS SCHMID'S EAST SEATTLE ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS AT PAGE 76, RECORDS OF KING COUNTY, WASHINGTON.

APN: 759810-0192

**EXHIBIT B**

**LEGAL DESCRIPTION OF GRANTOR'S PROPERTY**

THE NORTH 30 FEET OF THE EAST 1/2 OF LOT 9 AND THE EAST 1/2 OF LOT 10, LESS THE WEST 20 FEET THEREOF; BLOCK 8 VITUS SCHMID'S EAST SEATTLE ACRE TRACTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 7, PAGE 76 OF PLATS, SITUATE KING COUNTY, WASHINGTON.

APN: 759810-0191

**EXHIBIT C**

**LEGAL DESCRIPTION OF EASEMENT AREA**

A PORTION OF THE FOLLOWING DESCRIBED PARCEL;

THE SOUTH 90 FEET OF THE EAST HALF OF TRACT 9 AND THE WEST 20 FEET OF THE EAST HALF OF TRACT 10 AND THE WEST 20 FEET OF THE NORTH 30 FEET OF THE EAST HALF OF TRACT 9 IN BLOCK 8, VITUS SCHMID'S EAST SEATTLE ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS AT PAGE 76, RECORDS OF KING COUNTY, WASHINGTON;

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 10 ;  
THENCE SOUTH 88°24'34" EAST, A DISTANCE OF 150.00 FEET ALONG THE NORTH LINE OF SAID LOT 10 ALSO BEING THE SOUTHERLY MARGIN OF SE 44TH STREET AND THE POINT OF BEGINNING;  
THENCE SOUTH 88°24'34" EAST CONTINUING ALONG THE NORTH LINE OF SAID LOT 10 AND THE SOUTHERLY MARGIN OF SE 44TH STREET, A DISTANCE OF 20.00 FEET;  
THENCE SOUTH 1°00'58" WEST, A DISTANCE OF 149.98 FEET;  
THENCE NORTH 88°24'34" WEST, A DISTANCE OF 20.00 FEET;  
THENCE NORTH 1°00'58" EAST, A DISTANCE OF 149.98 FEET TO NORTH LINE OF SAID LOT 10 AND THE SOUTHERLY MARGIN OF SE 44TH STREET AND THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 3,000 SQUARE FEET, MORE OR LESS.

**EXHIBIT D**  
**DEPICTION OF EASEMENT AREA**

**[ON FOLLOWING PAGE]**

