

APN NUMBER(S): Portion of  
09-270-04

WHEN RECORDED RETURN TO:

Donald L. Hull  
P.O. Box 1068  
Eureka, Nevada 89316

MAIL TAX STATEMENTS TO:

Jerry E. Todd  
P.O. Box 73  
Eureka, Nevada 89316

The undersigned hereby affirm that this document,  
including any exhibits, submitted for recording does  
not contain the social security number of any person  
or persons (Per NRS 239B.030)

EUREKA COUNTY, NV

Rec:\$35.00

\$35.00 Pgs=13

MARVEL & MARVEL, LTD

LISA HOEHNE, RECORDER

**2018-235768**

**08/08/2018 11:18 AM**

**ROAD EASEMENT AND MAINTENANCE AGREEMENT**

THIS ROAD EASEMENT AND MAINTENANCE AGREEMENT (the "Easement") is made and entered into this 31<sup>st</sup> day of July, 2018, by and between Donald L. Hull ("Grantee") and Jerry E. Todd ("Grantor") with reference to the following facts and based on the conditions contained herein:

**RECITALS**

- A. Grantee is the owner of certain real property situated in White Pine County, Nevada, and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Eastern Farm").
- B. Grantor is the owner of certain real property situated in Eureka County, Nevada and White Pine County, Nevada, and more particularly described on Exhibit "B" attached hereto and made a part hereof (the "Western Farm").
- C. Access to the land that comprises the Eastern Farm has been taken over a road existing across the Western Farm.
- D. Grantee and Grantor desire to establish a permanent easement for ingress to and egress from the Eastern Farm over the existing road and to make reasonable arrangements for the maintenance thereof as set forth below.

NOW THEREFORE, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and based on the benefits to be derived from the Easement, Grantor does convey to Grantee forever a perpetual road easement over and through the existing access road identified on Exhibit "C" attached hereto and made a part hereof (the "Easement Area"):

## EASEMENT

1. Description – This Easement is a non-exclusive easement. The Easement granted is perpetual, subject to the termination conditions and limitations set forth below, and is for the use and benefit of the Eastern Farm and any guests, licensees and invitees of the owners thereof.
2. Scope and Purpose – This Easement is granted for roadway and ingress and egress purposes including, without limitation, vehicular and pedestrian access over and across the Easement Area for ingress to and egress from the Eastern Farm in connection with the existing residential and commercial agricultural uses and operation existing on the Eastern Farm and any reasonable expansion or intensification thereof.
3. Reasonable Use – Any entrance upon or movement across the Easement Area by any person whose rights arise under this Easement shall be conducted such that it does not damage the Easement Area or any improvements thereon, or unreasonably interfere with the rights of free use and enjoyment of the Easement Area or improvements thereon by other persons whose rights arise under this Easement, or otherwise unreasonably increase the burden on the Easement Area or any improvements thereon. Either party damaging the Easement Area or any improvement thereon shall repair and/or replace (or bear the expense of such repair and/or replacement) any damage caused or allowed by such party or his guests, licensees or invitees such that the repair meets the reasonable approval of the parties hereto.
  - a. Speed Limit – Motor vehicles operated in the Easement Area shall not be allowed to exceed the speed of 10 miles per hour in the section of the Easement Area between the western boundary of the Western Farm and the first utility pole East of Grantor's eastern barn. Motor vehicles shall be operated at a reasonable speed from the utility pole described above to the eastern boundary of the Western Farm.
  - b. Signage – Grantee, and his successors and assigns, shall be allowed to erect reasonably-sized signs identifying the location of the Eastern Farm. Such signage may be attached to any fence on Grantor's property, erected adjacent to the entrance to Grantor's property, or both.
  - c. Time Restriction – Grantee must not schedule commercial invitees to use the Easement Area between the hours of 10:00 p.m. and 5:30 a.m. except in the case of emergencies or with the prior written approval of Grantor.
4. Right of Grantor to Relocate Portion of Easement Area – The parties hereto contemplate that over time, the Western Farm may develop in such a manner that the Easement Area may need to be relocated. Notwithstanding the location of the Easement Area as depicted on Exhibit "C" hereto, Grantor shall have the right to relocate the Easement Area without the consent of Grantee, or his successors and assigns, provided however, that any such relocation must not affect the point at which Grantee, or his successors and assigns, access the Eastern Farm on the property boundary shared by the Western Farm and the Eastern Farm, that any such relocation be at the sole expense of Grantor, and that no such relocation shall materially and adversely interfere with the use and enjoyment of the Eastern Farm.

5. Maintenance of Roadway – Grantor, and his successors and assigns, shall have the exclusive right and duty to maintain and repair the Easement Area, from the western boundary of the Western Farm to the eastern boundary of the Western Farm and any improvements thereon in a reasonable condition in support of the use of the Eastern Farm described in Paragraph 2. Notwithstanding the foregoing, in the event there is severe weather or other emergency situation, Grantee may maintain and repair the Easement Area from the western boundary of the Western Farm to the eastern boundary of the Western Farm, however, Grantee's maintenance and repair of the Easement Area shall be done using the least intrusive option available under the circumstances. Grantee, and his successors and assigns, shall have the right, but not the obligation, to maintain the cattle guard in the Easement Area on the shared boundary between the Western Farm and the Eastern Farm and the associated approach area on both properties. In no case shall Grantee's maintenance of the approach area encroach more than 30 feet into the Western Farm.

6. Term – This Easement shall be deemed effective for all purposes as of the date first set forth above, and shall continue in perpetuity unless extinguished or terminated as described herein.

7. Future Access – In the event Grantee, and his successors and assigns, desire to expand or intensify the use of the Eastern Farm beyond the scope of this Easement, new access to the Eastern Farm must first be established. Upon 30 days written notice of completion of the new access, Grantor, and its successors and assigns, must reimburse Grantee, and its successors and assigns, one half of the actually incurred cost of establishing the new access, to a maximum of \$50,000.00. This Easement shall extinguish by its own terms and be of no further force or effect upon such payment.

8. Default – A default occurs when (i) any representation of a material fact expressed herein was materially false at the time it was made, or if a continuing representation, becomes materially false as a result of a subsequent event or occurrence; or (ii) any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence; or (iii) Grantor, Grantee, or their successors and assigns, repudiate, breach or fail to perform any covenant, material term or provision in this Easement as and at the time required; or (iv) Grantor, Grantee, or their successors and assigns, misrepresent a material fact, or omit to state a material fact, for the purpose of inducing Grantor, Grantee, or their successors and assigns, to act or which is intended to be relied upon in deciding a course of action during the administration of this Easement.

a. Notice and Opportunity to Cure - In the event of a curable default, the non-defaulting party shall provide notice and the defaulting party shall have 10 days (or such other longer or shorter period agreed upon in writing between the parties) from the date that the notice of default is deemed delivered to cure the default.

b. Remedies – In the event of default that is not cured within the time specified, the non-defaulting party may suspend any counter-performance due hereunder, bring an action for damages or injunctive relief, or pursue any other remedy specifically provided in this Easement or afforded by law or equity, including termination of the Easement. These remedies are

cumulative with another and with any other remedy afforded by applicable law or in equity, and the pursuit of one remedy does not constitute an exclusive selection of that remedy or a waiver of or election not to pursue any other remedy.

c. Waiver - Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy and shall not be construed as in any manner estopping any party from enforcing in full the provisions hereof. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future. A party's acceptance of partial performance shall not be deemed to be an accord and satisfaction or a waiver of or change to any term, covenant or condition of this Easement.

d. Attorneys' Fees and Costs - In the event of any legal or administrative proceeding between Grantee, and his successors and assigns, and Grantor, and his successors and assigns, concerning this Agreement, or the rights and duties of Grantee, and his successors and assigns, and Grantor, and his successors and assigns, the prevailing party shall be entitled to its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs.

e. Venue - Venue for any action arising out of this Easement shall be in the Seventh Judicial District Court of the State of Nevada, in and for White Pine County.

9. Severability - In the event any portion of this Easement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Easement, and the remaining parts hereto shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Easement.

10. Governing Law and Interpretation - Each and every term, condition, or covenant of this Easement is subject to and shall be construed in accordance with the provisions of Nevada law without regard for any conflicts of laws provision thereof. This Easement shall be interpreted as though fully negotiated and drafted by both parties equally. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Easement.

11. Entire Easement - This Easement constitutes the entire Easement between the parties relating to the above-described easement and the associated maintenance rights and duties. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Easement are of no force or effect. Any amendment to this Easement shall be of no force or effect unless it is in writing, signed by the parties hereto, and recorded in the official record of Eureka and White Pine Counties.

12. Reservation of Rights - Grantor reserves all rights attendant to its ownership of the Easement Area, including, but not limited to, the use and enjoyment of the Easement Area for all purposes not inconsistent with the terms and conditions established herein.

13. No Dedication - This Easement is not a public easement, license or right-of-way. It is understood that the Easement is a non-exclusive reservation of rights for the benefit of Grantee, and his successors and assigns. In no way will this instrument be construed as a public dedication of the Easement Area.

14. Representation of Authority - Grantor covenants and agrees that it is the fee owner of the Easement Area and that it has the authority to grant this Easement.

15. Notices – All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the Parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

To Grantor: Jerry E. Todd  
P.O. Box 73  
Eureka, Nevada 89316

With a copy to: Woodburn & Wedge  
Attn: Shay Wells, Esq.  
6100 Neil Road, Suite 500  
PO Box 2311  
Reno, Nevada 89505

To Grantee: Donald L. Hull  
P.O. Box 1068  
Eureka, Nevada 89316

With a copy to: Marvel & Marvel Ltd.  
Attn: Dustin Marvel, Esq.  
217 Idaho Street  
Elko, Nevada 89801

16. Binding Nature of Easement – This Easement is binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Road Easement and Maintenance Agreement on the date first set forth above.

GRANTOR:

GRANTEE:

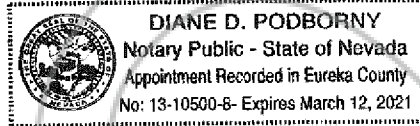
Jerry E. Todd  
Jerry E. Todd

Ronald L. Hull  
Donald L. Hull

**ACKNOWLEDGMENTS**

STATE OF NEVADA )  
 ) ss.  
COUNTY OF Eureka )

This instrument was acknowledged before me on July 31, 2018, by Jerry E. Todd.



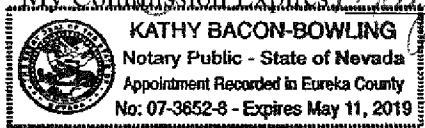
Diane D. Podborny  
Notary Public  
My Commission Expires: March 12, 2021

STATE OF NEVADA )  
 ) ss.  
COUNTY OF Eureka )

This instrument was acknowledged before me on July 31, 2018, by Donald L. Hull.



Kathy Bacon-Bowling  
Notary Public  
My Commission Expires: May 11, 2019



**EXHIBIT "A"**

**Legal Description – Eastern Farm**

All that certain real property situate, lying and being in White Pine County, State of Nevada, more particularly described as follows:

Township 17 North, Range 54 East, M.D.B.M.

Section 16: SE1/4  
Section 21: E1/2  
Section 22: NW1/4

**EXHIBIT "B"**

**Legal Description – Western Farm**

All that certain real property situate, lying and being in White Pine and Eureka Counties, State of Nevada, more particularly described as follows:

Township 17 North, Range 54 East, M.D.B.M.

Section 16: W1/2

Section 21: W1/2



# EXHIBIT "C"

## Easement Area

