

Deschutes County Official Records  
Nancy Blankenship, County Clerk

2017-33738

After Recording Return To:

Tillman  
6460 NW Atkinson Avenue  
Redmond, OR 97756



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\$68.00

08/24/2017 11:11:32 AM

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\$20.00 \$11.00 \$21.00 \$10.00 \$6.00

### ROAD MAINTENANCE AGREEMENT

This Road Maintenance Agreement is made by and between Andrew C. Tillman and Cheryl L. Tillman, husband and wife ("Tillman"), and Tillman's Ranch, LLC, an Oregon limited liability company ("TRLLC"). Tillman and TRLLC are collectively referred to as the "Parties".

#### RECITALS

- A. Tillman is the owner of real property commonly known as 20470 Swalley Road, Bend, Deschutes County, Oregon, Tax Lot 1612210000203 and legally described as follows:

Parcel 1, Partition Plat No. 2011-13.

(hereinafter "20470 Property" or "Tillman Property")

- B. TRLLC is the owner of real property commonly known as 20420 Swalley Road, Bend, Deschutes County, Oregon, Tax Lot 1612210000201 and legally described as follows:

Parcel 1, Partition Plat No. 2010-05.

(hereinafter "20420 Property").

- C. TRLLC is the owner of real property commonly known as 20440 Swalley Road, Bend, Deschutes County, Oregon, Tax Lot 1612210000202 and legally described as follows:

Parcel 2, Partition Plat No. 2010-05.

(hereinafter "20440 Property").

- D. There is an existing 20-foot road access easement located on Tillman Property for the benefit of the 20420 Property and the 20440 Property (the "Easement"). The Easement is depicted on Partition Plat No. 2011-13 in the official records of Deschutes County, State of Oregon.
- E. The owners of the subject properties desire to enter into this Agreement to specify their respective rights and obligations with respect to use and maintenance of the Easement.

DS  
JRM

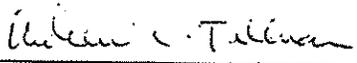
For good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

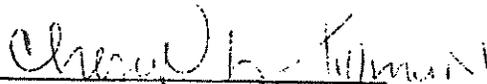
- (1) The Parties acknowledge and agree the Easement is for single family residential driveway and pedestrian ingress and egress purposes only for the Parties, their guests and invitees, as well as the public utility easement depicted on Partition Plat No. 2011-13. Recreational use of the Easement by ATV, motorcycle, skateboard, or BMX style bicycle is not permitted. Farming activities are allowed as set forth in the Deschutes County Code.
- (2) The Parties may not relocate any part of the Easement except upon written agreement signed by each party and duly recorded. If a part of the Easement is relocated by agreement then the parties will execute a new grant of easement mapping the location of the new easement and will then record the amended easement.
- (3) Except as otherwise provided herein, maintenance, repair and improvement costs shall be shared equally among the parties based on the three properties using the Easement (costs split 1/3 1/3 1/3). Tillman will determine what maintenance, repairs or improvements to the Easement are reasonable and necessary in their discretion.
- (4) Shared costs are anticipated to include, but are not limited to, snow removal, maintenance of the Easement road and its shoulder, which is necessary for draining water off of the Easement roadway, among other periodic maintenance, repairs and improvements. The current Easement roadway surface consists of "state spec" 3/4" minus gravel with a 10-12 foot wide shoulder. When costs are incurred, Tillman will submit a bill to TRLLC (or the then record owner of the 20420 Property and 20440 Property respectively) for its share of the costs, which sums shall be due 30 days after it is sent as described in Section 15 below.
- (5) When a residence is constructed on the 20420 Property, the 20440 Property or the 20470 Property, that property owner will be solely responsible for any costs associated with repairs or maintenance to the Easement due to construction. If the responsible property owner fails to cause such repairs or maintenance to be performed, Tillman may cause the work to be performed and bill the respective property owner as set forth in No. 4 above. Garbage and construction debris will be removed from the Easement area daily.
- (6) Except as expressly set forth herein, the cost of maintaining, repairing and improving the Easement together with the rights and remedies regulating such enforcement shall be determined pursuant to the provisions of Oregon Revised Statutes (ORS) 105.170 to 105.185, or as they may be amended or renumbered from time to time. Any costs of maintaining and replacing utility lines servicing TRLLC's land will be at its sole expense.
- (7) Nothing contained herein will be deemed to be a gift or dedication of any portion of the Easement to the general public, for the general public, or for any public use or purpose whatsoever.

- (8) The Parties agree not to interfere with the others use of the Easement.
- (9) The Parties agree that this Agreement is the final expression of the entire agreement between the Parties with respect to use, maintenance, repairs and improvements to the Easement and supersedes all prior or contemporaneous, written or oral, understandings, representations or negotiations between the Parties.
- (10) The Parties further agree that this Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under it be waived except by written instrument signed by the party to be charged or by his/her agent duly authorized in writing.
- (11) The parties agree that the terms of this Agreement shall be binding upon the heirs, successors, assigns and personal representatives of the owners of each parcel of land described in Paragraphs A, B and C above.
- (12) If this Agreement is placed in the hands of an attorney for enforcement, or referred to arbitration, or if any action or suit is instituted to enforce any of the terms of this easement, the prevailing party shall be entitled to recover attorney fees, costs and disbursements including, but not limited to, expert witness and deposition expenses at arbitration, trial and on appeal, in addition to all other sums provided by law.
- (13) The terms or provisions of this Agreement will not be deemed to create a partnership between or among the parties, nor will it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor will it be construed to create any third-party beneficiary rights in any person who is not an owner of the Tillman Property, the 20420 Property or the 20440 Property.
- (14) TRLLC and its members, manager, heirs, successors, beneficiaries and assigns will indemnify and hold Tillman harmless from and against all claims, damages, losses, causes of action, costs, and expenses (including, without limitation, attorney fees), which may be asserted against or incurred by Tillman as a result of any act or omission of TRLLC or its agents, members, contractors, employees, tenants, or invitees related to the use of the Easement by any users.
- (15) Any notice required or permitted by this Agreement must be in writing and given by delivering the same in person to the recipient or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the address of the party (or their successor), as applicable, as shown on the current records of the tax assessor for Deschutes County, Oregon, with respect to the land in question.

**ANDREW C. TILLMAN**

  
\_\_\_\_\_  
Andrew C. Tillman

**CHERYL L. TILLMAN**

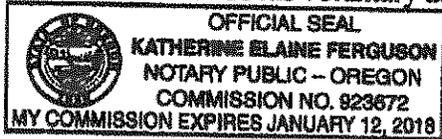
  
\_\_\_\_\_  
Cheryl L. Tillman

**TILLMAN'S RANCH, LLC**

Andrew C. Tillman  
Tillman's Ranch, LLC  
By: Andrew C. Tillman  
Its: Member

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

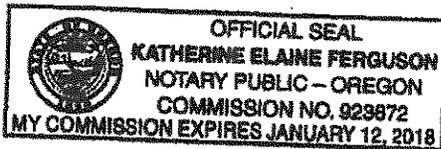
Personally appeared the above-named Andrew C. Tillman and acknowledged the foregoing instrument to be his voluntary act and deed, before me this 24 day of August, 2017.



Katherine Elaine Ferguson  
Notary Public for Oregon  
My Commission Expires: 1-12-2018

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Personally appeared the above-named Cheryl L. Tillman and acknowledged the foregoing instrument to be her voluntary act and deed, before me this 16 day of August, 2017.



Katherine Elaine Ferguson  
Notary Public for Oregon  
My Commission Expires: 1-12-2018