

Deschutes County Official Records
Nancy Blankenship, County Clerk

2017-33737



\$78.00

AFTER RECORDING RETURN TO:

Tillman
6460 NW Atkinson Avenue
Redmond, OR 97756

D-EAS Cnt=1 Str=2 JS
\$30.00 \$11.00 \$21.00 \$10.00 \$6.00

08/24/2017 11:11:32 AM

**EASEMENT
AND
WELL SHARING AGREEMENT**

THIS EASEMENT AND WELL SHARING AGREEMENT ("Agreement") is made by and between Andrew C. Tillman and Cheryl L. Tillman, husband and wife ("Grantor"), and Tillman's Ranch, LLC, an Oregon limited liability company ("Grantee").

RECITALS:

- A. Grantor 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 "Grantor Property")

- B. Grantee 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. Grantee 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. 20420 Property and 20440 Property are commonly referred to as "Grantee Property".

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- E. The owners of the subject properties desire to enter into this Agreement to provide for the use and maintenance of a domestic well which is located on Grantor Property.
- F. The well is located approximately 200 feet North of the SE Corner of the 20440 Property and approximately 50 feet East of the 20440 Property line within the public utility easement on the Grantor Property.

AGREEMENT

In consideration of the promises, covenants and agreements contained herein, the parties hereby agree as follows:

1. The System. There is a well, well head, well house, pressure tank, submersible variable speed pump, computer drive, transformer and water meter for the Grantor Property, the 20420 Property and the 20440 Property located on the Grantor Property. These items and the components necessary for their operation shall be called the "System". The System does not include water lines to each individual parcel of property. Each of those private lines from the Grantor Property to the 20420 Property or the 20440 Property are the responsibility of the respective owner of that line to construct, maintain and repair.
2. Grantor reserves the right, in addition to the use of the well for domestic water and up to one-half acre (1/2 acre) of water for irrigating around the dwelling, the right to take from the System such additional water as is reasonable and necessary for Grantor's use on Grantor property related to livestock.
3. Subject to Grantor's reservation above in No. 2, Grantor hereby grants a one-third (1/3) interest in the System on Grantor's property to Grantee as owner of 20420 Property and the right to take one-third (1/3) of the water from the well and to convey such water from the well to Grantee's 20420 Property by means of a water pipe line. Grantee's use of the water from the System is limited to domestic use for a single family on Grantee's 20420 Property, including irrigation of not more than one-half acre (1/2 acre) around the dwelling. Grantee assumes responsibility for replacing the waterline across Grantor's Property, if necessary, at a sufficient depth to protect the line from livestock and light commercial vehicle use.
4. Subject to Grantor's reservation above in No. 2, Grantor hereby grants a one-third (1/3) interest in the System on Grantor's property to Grantee as owner of 20440 Property and the right to take one-third (1/3) of the water from the well and to convey such water from the well to Grantee's 20440 Property by means of a water pipe line. Grantee's use of the water from the System is limited to domestic use for a single family on Grantee's 20440 Property, including irrigation of not more than one-half acre (1/2 acre) around the dwelling. Grantee assumes responsibility for replacing the waterline across Grantor's Property, if necessary, at a sufficient depth to protect the line from livestock and light commercial vehicle use.

5. Grantor further grants to Grantee as owner of 20420 Property for the purpose of conveying said well water as described above, a water pipe line easement across a strip of land ten (10) feet wide, the center line of such strip of land is the existing pipe line beginning at the well and extending in a northerly direction to 20420 Property. This easement is appurtenant to Grantee's 20420 Property.
6. Grantor further grants to Grantee as owner of 20440 Property for the purpose of conveying said well water as described above, a water pipe line easement across a strip of land ten (10) feet wide, the center line of such strip of land is the existing pipe line beginning at the well and extending in a westerly direction to 20440 Property. This easement is appurtenant to Grantee's 20440 Property.
7. Grantor retains the right to relocate the waterline and easement at Grantor's expense after the expiration of a ninety (90) day written notice to the owner of the affected Grantee Property. Grantor agrees to minimize any temporary disruption to Grantee's water supply system.
8. Grantor further grants to Grantee (owner of 20420 Property) a construction, maintenance and repair access easement along the water pipe line easement described in No. 5 above. The maintenance and repair access easement shall also include an area extending twenty (20) feet around the well. This easement is appurtenant to Grantee's 20420 Property but may be relocated as set forth above. Any repair or maintenance along this easement by Grantee will be done by licensed and bonded professional contractors at Grantee's sole expense. If any lien is claimed or recorded against Grantor property due to Grantee's use, repair or maintenance of the waterline or work in the easement, Grantee shall hold Grantor harmless from any such claim or lien and defend and indemnify Grantor from any such claim. Grantor has the right to use the surface of the waterline and maintenance easement but will not construct any permanent structure on the easement.
9. Grantor further grants to Grantee (owner of 20440 Property) a construction, maintenance and repair access easement along the water pipe line easement described in No. 6 above. The maintenance and repair access easement shall also include an area extending twenty (20) feet around the well. This easement is appurtenant to Grantee's 20440 Property but may be relocated as set forth above. Any repair or maintenance along this easement by Grantee will be done by licensed and bonded professional contractors at Grantee's sole expense. If any lien is claimed or recorded against Grantor property due to Grantee's use, repair or maintenance of the waterline or work in the easement, Grantee shall hold Grantor harmless from any such claim or lien and defend and indemnify Grantor from any such claim. Grantor has the right to use the surface of the waterline and maintenance easement but will not construct any permanent structure on the easement.

10. Subject to Grantor's reservation above in No. 2, in consideration for the one-third (1/3) interest in the well granted to Grantee owner of 20420 Property and Grantee owner of 20440 Property hereby agrees as follows:
 - A. Grantor will manage the well operation and maintenance.
 - B. Grantor will be responsible for reviewing and collecting any and all power bills and/or maintenance costs from the other current users.
 - C. There are three water meters that record each of the three properties (the Grantor Property, the 20420 Property and the 20440 Property) water use. There is one electric meter related to the System (water usage determines the percentage of electricity cost incurred by each property owner). Annually Grantor will bill and collect all sums according to usage for water and electricity. The bill will cover the time period January 1 to December 31 and will be sent to Grantee no later than February 1 of the following calendar year. Grantee shall pay 30 days after presentment. Failure of Grantor to timely send the bill will not void Grantor's right to collect.
 - D. Grantee accepts that Grantor makes no warranty or representation that the well or water delivery system is suitable for domestic purposes.
11. Grantee agrees to bear one-third (1/3) of all expenses incurred in the operation of the well, including the pump, computer-controlled drive, and electricity, and to bear one-third (1/3) of all expenses connected with the maintenance and repair of the well and all accessories to the well, including the pump, pumping equipment and pump house.
12. As set forth above, Grantee shall be responsible and maintain at its own expense the individual pipeline from the well, pump and pump house to the place of residence or place of use on the 20420 Property and the 20440 Property respectively.
13. Grantor, their heirs and assigns and Grantee, its successors and assigns, hereby agree to keep and maintain the well, pump, pump equipment, pump house and water pipes in good order so that there will be no leakage or seepage from the same or any defects that may cause injury to the land and premises of Grantor or Grantee.
14. Grantee or the then record owner of the 20420 Property and the 20440 Property respectively may elect to construct a well and related equipment on its own property and terminate any and all interest in the System. If such election is made, Grantee or its successor in interest, will provide Grantor with at least 90 days written notice of its intention to terminate its interest in the System and pay any outstanding obligations due or to become due under the terms of this

Agreement. Grantee agrees to execute a termination of its respective interest in the System and this Agreement, which Grantor agrees to execute after any and all obligations of Grantee under this Agreement have been fully paid. Grantee shall cause the fully executed termination to be recorded in the official records of Deschutes County before the termination becomes effective.

- 15. The parties agree that the terms of this Agreement are perpetual and the easements are exclusive and 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.
- 16. Grantor hereby warrants good title to the above-described premises and the right to grant the rights contained in this Agreement.
- 17. The parties agree that this Agreement is the final expression of the entire agreement between Grantor and Grantee with respect to the subject matter of the Agreement and supersedes all prior or contemporaneous, written or oral, understandings, representations or negotiations between the parties.
- 18. 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/their/its agent duly authorized in writing.
- 19. 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 Agreement, 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.
- 20. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to paragraphs and subparagraphs are part of this Agreement.

GRANTOR

Andrew C. Tillman
Andrew C. Tillman

GRANTOR

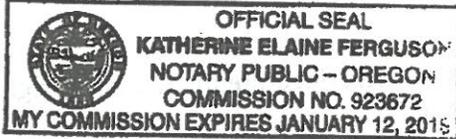
Cheryl L. Tillman
Cheryl L. Tillman

GRANTEE

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

STATE OF OREGON)
) ss.
County of Deschutes)

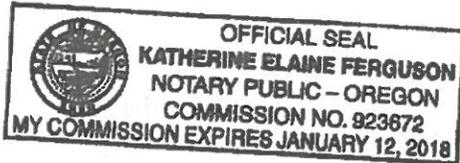
Personally appeared the above-named Andrew C. Tillman and acknowledged the foregoing instrument to be his voluntary act and deed, before me this 24 day of August, 2017.



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