

WHEN RECORDED RETURN TO:

KATY J. ARCHER P.C.
110 Columbia Street, Suite 107
Stevenson, WA 98648

**SKAMANIA COUNTY
REAL ESTATE EXCISE TAX**

NA
JUL - 7 2016

PAID *NA*
Cy deputy
SKAMANIA COUNTY TREASURER

DOCUMENT TITLE(S)

Well Easement and Maintenance Agreement - This document is signed in counterparts

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR(S):

Tim Fortenbury and Diana Fortenbury

GRANTEE(S):

Adam Baylor and Claire Baylor

ABBREVIATED LEGAL DESCRIPTION:

SE 1/4, SECTION 26, T2N, R6EWM

TAX PARCEL NUMBER(S):

02 06 26 4 0 1003 00

ym 7/7/16

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

After recording return to:
KATY J. ARCHER P.C.
Attorney at Law
Columbia Shores Offices
110 Columbia Street, Suite 107
Stevenson, Washington 98648

WELL EASEMENT AND MAINTENANCE AGREEMENT

THIS AGREEMENT is between TIM FORTENBURY and DIANNA FORTENBURY, Husband and Wife, herein "FORTENBURY" and ADAM BAYLOR and CLAIRE BAYLOR, Husband and Wife, herein "BAYLOR".

RECITALS

1. FORTENBURY has sold to BAYLOR one parcel (Tax Parcel 02062640100300), retaining the parcels described in Exhibit "A" (Tax Parcel 02062640100400) owned by FORTENBURY. FORTENBURY shall provide BAYLOR with the right of access to a well located on the FORTENBURY Lot, together with the right to use of water from a future water tank holding area which may be installed on the FORTENBURY lot, for water supply for one residence on the BAYLOR lot, provided the parties share in the sampling, maintenance, repairs and utility costs of the well. jm 7/7/16

2. FORTENBURY is the owner of the Tax Lot referenced above and more particularly described as: A tract of land in the Southwest Quarter or the Southeast Quarter of Section 26, Township 2 North Range 6 East of the Willamette Meridian, in the County of Skamania, State of Washington and more particularly described as "Parcel I" and "Parcel III" in the legal descriptions attached hereto as Exhibit "A".

3. BAYLOR is the owner of the Tax Lot referenced above described as: A tract of land in the Southwest Quarter or the Southeast Quarter of Section 26, Township 2 North Range 6 East of the Willamette Meridian, in the County of Skamania, State of Washington and more particularly described as "Parcel II" in the legal description attached hereto as Exhibit "B".

4. FORTENBURY may, at the sole discretion of FORTENBURY, install a water tank holding area in the area designated on Exhibit "C". Said water tank holding area to be used by mutual agreement of the parties herein, to supply water for irrigation only, not to exceed irrigation for more than a one-half acre (1/2) of land on the FORTENBURY Lot and BAYLOR Lot as set forth herein.

5. The parties desire to enter into this agreement for their mutual benefit;

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **OWNERSHIP/NON-EXCLUSIVE USE.** The well to be situated on the FORTENBURY lot, together with the pumphouse, pump, water lines, distribution system and all appurtenances and equipment relating thereto, except the water lines serving each individual house, shall be for the mutual and non-exclusive use and benefit of one single family dwelling on the BAYLOR Lot and one single family dwelling on the FORTENBURY Lot, or additional single family dwelling unit on the FORTENBURY LOT or as allowed by the regulations applicable under the Skamania County Code and Class B Water Systems regulations now in effect or as hereinafter amended. The uses to which the well and water system shall be put are for normal domestic water supply to single-family residences, including landscaping and household garden use, including irrigation use for up to one-half (1/2) of an acre for each single family dwelling unit.

2. **CONSTRUCTION/USE OF HOLDING TANK.** FORTENBURY and BAYLOR hereby agree that, in the sole and absolute discretion of FORTENBURY, its successors or assigns, a water tank holding area may be constructed as designated approximately in the location shown on Exhibit "C". If constructed, said water holding tank shall be for use of water for irrigation purposes only, and for up to one-half an acre for each dwelling unit. FORTENBURY and BAYLOR agree that, if FORTENBURY, his successors or assigns, elects to construct/place a holding tank on the FORTENBURY Lot, all costs, including the costs to procure, construct, place, certify and maintain the holding tank shall be shared equally between the owners of dwelling units then served by the holding tank. PROVIDED THAT the dwelling units using water from the water holding tank only use said water for the permitted use of irrigation of up to a one-half acre of land. PROVIDED FURTHER, if electrical costs for the pump are shown to materially increase, the parties agree to act in good faith to adjust the apportionment of electrical costs as will best correlate to each parties' approximate additional electrical load costs created by the parties' irrigation. FORTENBURY, his successors heirs and assigns agree that any water holding tank placed on the Lot will be in good taste and obscured from view on all sides.

3. **USE RESTRICTIONS.** The well protection area shall at all times be preserved from contamination, and all well users shall abide by such restrictions as may from time to time be enacted by any civil local, state or federal authority relative to the preservation of wells from contamination.

4. **EASEMENT.** FORENTBURY, hereby grants, bargains, sells and convey to BALYOR, a non-exclusive ten-foot (10) wide easement, (five feet on either side of the existing water

line that is for the BAYLOR Lot) for use and maintenance of the existing waterline serving the BAYLOR Lot that passes under and over the FORTENBURY Lot as shown approximately in the sketch attached as Exhibit "C". Said easement for the purpose of carrying water from the well located on the FORTENBURY lot to a residence located on the BAYLOR lot and maintenance of said water line. PROVIDED THAT said waterline maintenance and use satisfies all set back and buffer requirements required by applicable Skamania County Code, Skamania County Board of Health, and any other local, State and Federal regulations.

5. **TERM.** The term of this agreement shall be perpetual and without limit and shall be binding upon and inure to the benefit of the heirs, legal representatives successors and assigns of the parties and shall constitute covenants running with each of the parcels described above and any parcels subsequently created by virtue of further short platting/subdivision, or as currently allowed by the regulations applicable under the Skamania County Code and Class B Water Systems regulations now in effect or as hereinafter amended, applicable to the FORTENBURY Lot. This agreement represents the entire understanding of the parties and shall continue as an encumbrance against their respective lands terminable only upon mutual written agreement.

6. **CONSERVATION/EXCESS USE.** In the event of a water shortage, each party agrees to restrict water use as much as possible in order to attempt to meet the basic water needs of each residence.

7. **GENERAL MAINTENANCE FEES & COSTS.**

- a. Each party will be solely responsible for maintenance and repair of the Lot Owner's own individual water pipes, from the point where the pipe hooks into the pump.
- b. Except as provided in Section c below, each of the parties shall share equally in the costs of maintenance or repairs required to maintain the well and the pump in a safe and operational condition, provided that the maintenance or repairs benefit both parties.
- c. The cost of any repairs related to the well for extraordinary damage caused by a party shall be borne by the party responsible for the damage, and as further set forth in Section 9 of this Agreement. PROVIDED THAT, if extraordinary damage that is not caused by either party to this Agreement exceeds the then current balance in the "Well Maintenance account" (described below), the parties agree to act in good faith to agree on an estimate for repairs and share equally in the costs estimated for repairs.
- d. Each Lot owner shall pay Twenty-Five dollars (\$25.00) per month, due on the first of each month, or upon unanimous agreement of all Lot owners, Three Hundred dollars (\$300.00) per year, due on the first day of June for maintenance in connection with the use of the well (the "Maintenance Fees").
- e. The fees set forth in Section (d) above shall be deposited into an account with a local bank or such other depository account as the parties may agree to in writing and shall be designated as the "Well Maintenance Account".

- f. When the balance in said "Well Maintenance Account" reaches One Thousand Five Hundred Dollars (\$1500.00) the Lot owners shall not be required to make any further Maintenance Fees payments until such time that the balance falls below One Thousand Dollars (\$1000.00).
- g. Within 30 days of all parties receiving written copies verifying the account balance of the Well Maintenance Account in an amount below One Thousand Dollars (\$1000.00) each Lot Owner shall recommence payment of monthly Maintenance Fees until such time that the account balance in the Well Maintenance Account reaches One Thousand Five Hundred Dollars (\$1500.00).
- h. FORTENBURY and BAYLOR will each be individually responsible for the maintenance of their own separate water lines serving their respective properties and agree not to disturb or disable the other parties' water lines during the course of any maintenance or improvements on their separate respective water lines serving their respective Lots. Neither FORTENBURY or BAYLOR will unreasonably limit the other party from maintenance on their respective water lines.

8. PERMISSIBLE EXPEDITURES FOR MAINTENANCE OF WATER SYSTEM. Permissible expenditures for the water system shall include, but not be limited to:

- a) Sampling
- b) Shared electricity costs to run the well and pump
- c) Supplies and repairs of the well and pump
- d) System replacement cost, in the event the system fails to meet applicable Local, State or Federal regulations
- e) Costs required pursuant to Local, State or Federal regulations applicable to a Group

9. RESPONSIBILITY FOR REPAIRS CAUSED BY LOT OWNER'S NEGLIGENCE. FORTENBURY AND BAYLOR agree that negligence of a party to this agreement will result in sole responsibility for costs, repairs or damages caused thereby. "Negligence" as used herein would include, but is not limited to; the party leaving water running while on vacation. "Negligence" as used herein would not include a break in the water line that was not caused by the actions of either party.

10. REMEDIES FOR BREACH OF AGREEMENT. If party to this Agreement, their heirs, successors or assigns fails to comply with the terms of this Agreement, including the non-payment of their shared maintenance costs as set forth in Section 7 of this Agreement within forty-five days (45) of the due date or written demand to make payment, whichever comes first, the remaining parties or non-breaching party may cause corrective action to be taken. Corrective action may include, but is not limited to:

- a) Recording a lien against the Lot owned by the breaching party
- b) Termination of the water service of the breaching party with actual costs owed by the breaching party for disconnect and reconnect

c) Costs for recording, professional fees for collection

10. **RELEASE OF LIABILITY.** Except as provided herein, each of the parties shall release and hold the others harmless from any liability arising out of the use, maintenance or repair of the well and water system and the easement granted hereunder.

11. **ATTORNEY FEES.** In the event any dispute arises with regard to the terms of this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

[SIGNATURE PAGES TO FOLLOW]

Unofficial
Copy

IN WITNESS WHEREOF, the parties have set their hand and seal the day and year first above written.

BAYLOR:

X *Adam C. Baylor*
ADAM BAYLOR

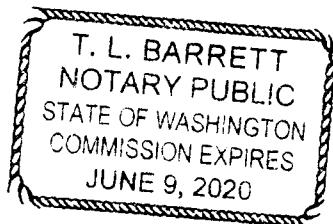
X *Claire M. Zandoli*
CLAIRE BAYLOR ZANDOLI *cg*

STATE OF WASHINGTON)

COUNTY OF *Clark*) ss.

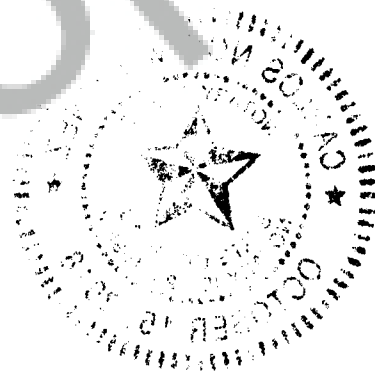
De I certify that I know or have satisfactory evidence that **ADAM BAYLOR and CLAIRE BAYLOR**, are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this *28* day of *June*, 2016.



T. L. Barrett
Print: *T. L. Barrett*
NOTARY PUBLIC in and for
the State of Washington
My commission expires *6-9-20*

Unofficial
Copy



STATE OF WASHINGTON }
COUNTY OF Grant }ss

I certify that I know or have satisfactory evidence that Tim Fortenbury is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledge it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: June 21, 2014



Yesenia M. Garibay
Notary Name:
Notary Public in and for the State of Washington
Residing in ~~Vancouver~~ Quincy
My appointment expires: 2-15-2020

EXHIBIT "A"

Parcel I

A tract of land in the Southwest Quarter of the Southeast Quarter of Section 26, Township 2 North, Range 6 East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Beginning at a point 68.5 feet North of the Southeast corner of the Southwest Quarter of the Southeast Quarter of said Section 26, said point being on the Northerly right of way line of State Road No. 14 as presently constructed and located; thence North along the East line of the Southwest Quarter of the Southeast Quarter of said Section 26, a distance of 424.5 feet; thence North 81 degrees 13' West 802 feet to the initial point of the true point of beginning; thence North 25 degrees 14' East 237 feet; thence North 82 degrees 45' East 289.5 feet; thence South 81 degrees 13' East 35 feet; thence South 25 degrees 14' West 312 feet; thence North 81 degrees 13' West 264 feet to the true point of beginning.

Parcel II

A tract of land in the Southwest Quarter of the Southeast Quarter of Section 26, Township 2 North, Range 6 East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Commencing at a point 68.5 feet North of the Southeast corner of the Southwest Quarter of the Southeast Quarter of said Section 26, said point being on the Northerly right of way line of State Road No. 14 as presently constructed and located; thence North along the East line of the Southwest Quarter of the Southeast Quarter of said Section 26, a distance of 424.5 feet; thence North 80 degrees 13' West 802 feet; thence North 25 degrees 14' East 237 feet to the true point of beginning; thence continuing North 25 degrees 14' East to the Northeast corner of a tract of land conveyed to Donald P. Skarns et al by instrument record in Book 67, Page 413; thence South 81 degrees 13' East to a point that is North 81 degrees 13' West 35 feet from the Northeast corner of a tract of land conveyed to Byron L. Dale et al by instrument recorded in Book 66, page 244; thence South 82 degrees 45' West 289.5 feet to the point of beginning.

EXHIBIT "B"

Parcel II

A tract of land in the Southwest Quarter of the Southeast Quarter of Section 26, Township 2 North, Range 6 East of the Willamette Meridian, in the County of Starnes, State of Washington, described as follows:

Beginning at a point 68.5 feet North of the Southeast corner of the Southwest Quarter of the Southeast Quarter of said Section 26, said point being on the Northernly right of way line of State Road No. 14 as presently constructed and located; thence North along the East line of the Southwest Quarter of the Southeast Quarter of said Section 26, a distance of 434.5 feet; thence North 51 degrees 13' West 536 feet to the true point of beginning; thence North 25 degrees 14' East 312 feet; thence South 51 degrees 13' East 116 feet; thence South 02 degrees 45' West 236 feet; thence South 51 degrees 13' East 200 feet; thence South 02 degrees 45' West 78 feet; thence North 51 degrees 13' West 463 feet to the true point of beginning.

EXHIBIT "C"

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 6 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 62.5 FEET NORTH OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SAID SECTION 26, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF STATE ROAD NO. 14 AS PRESENTLY CONSTRUCTED AND LOCATED; THENCE NORTH ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SAID SECTION 26, A DISTANCE OF 424.5 FEET; THENCE NORTH 81° 13' WEST 538 FEET TO THE INITIAL POINT OF THE TRACT HEREBY DESCRIBED; THENCE NORTH 25° 14' WEST 312 FEET; THENCE SOUTH 81° 13' EAST 115 FEET; THENCE SOUTH 02° 45' WEST 235 FEET; THENCE SOUTH 81° 31' EAST 200 FEET; THENCE SOUTH 02° 45' WEST 70 FEET; THENCE NORTH 81° 13' WEST 463 FEET TO THE INITIAL POINT;

