

RECORDING COVER SHEET

State of Oregon
County of Umatilla



Instrument received
and recorded on
09/09/2019 04:09:49 PM

in the record of instrument
code type DE-AG

Instrument number 2019-6900434
\$141.00
Office of County Records

Steve Churchill
Records Officer P10

After recording return to: ORS 205.234(1)(c)

Molly Tucker Hasenbank

Monahan, Grove & Tucker

105 N. Main St.

Milton-Freewater, OR 97862

1. Title(s) of the transaction(s) ORS 205.234(1)(a)

AGREEMENT AND EASEMENT FOR USE OF WELL AND WATER

2. Direct party(ies) / grantor(s) ORS 205.234(1)(b)

MARLA J. MCNARY, PERSONAL REPRESENTATIVE OF THE ESTATE OF SHIRLEY J. MCNARY

3. Indirect party(ies) / grantee(s) Trust Deed / Mortgage Assignee Address ORS 205.234(1)(b)&(g)

4. True and actual consideration:

ORS 205.234(1) Amount in dollars or other

\$.00

Other:

5. Send tax statements to:

ORS 205.234(1)(e)

NO CHANGE

6. Satisfaction of lien, order, or warrant:

ORS 205.234(1)(f)

FULL

PARTIAL

7. The amount of the monetary obligation imposed by the lien, order, or warrant: ORS 205.234(1)(f)

\$

8. Previously recorded document reference:

9. If this instrument is being re-recorded complete the following statement:

ORS 205.244(2)

"Rerecorded at the request of

to correct

previously recorded in book _____ and page _____, or as fee number _____."

AGREEMENT AND EASEMENT FOR USE OF WELL AND WATER

THIS AGREEMENT AND EASEMENT is made and entered this date by Marla J. McNary, Personal Representative of the Estate of Shirley J. McNary, Deceased, hereinafter called "McNary Estate", as the owner of three tax lots located outside of Milton-Freewater, Umatilla County, Oregon. Upon the future sale of any of the three tax lots, said new owner shall be subject to this Agreement as though the owner had entered into the same Agreement. The owners of the three tax lots are hereafter referred to collectively as the "Parties" and individually as "Party."

WITNESSETH:

WHEREAS, the McNary Estate owns three tax lots, identified as 6N 35 24 D Tax Lot 900, 6N 35 24 D Tax Lot 901 and 6N 35 24 D Tax Lot 1000, all of which are serviced by a single well located on 6N 35 24 D Tax Lot 900; and

WHEREAS, the well currently has two separate pumps inserted into it with one pump servicing 6N 35 24 D Tax Lot 900 and 6N 35 24 D Tax Lot 901 and the other pump servicing 6N 35 24 D Tax Lot 1000; and

WHEREAS, the McNary Estate anticipates selling the three tax lots and wants to have an agreement in place setting forth the rights and obligations of the future owners of the properties to the well and water from the well located on 6N 35 24 D Tax Lot 900.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Property Ownership. The McNary Estate owns 6N 35 24 D Tax Lot 900. Said property is described on Exhibit A attached hereto and incorporated herein by reference ("Tax Lot 900"). Tax Lot 900 has a well located on the property that currently services all three of the tax lots that are owned by the McNary Estate and subject to this Agreement. The McNary Estate owns 6N 35 24 D Tax Lot 901 described on Exhibit B attached hereto and by this reference incorporated herein ("Tax Lot 901"). Tax Lot 900 and Tax Lot 901 have historically been used as orchard and farm property. The McNary Estate owns 6N 35 24 D Tax Lot 1000 described on Exhibit C attached hereto and by this reference incorporated herein ("Tax Lot 1000"). Tax Lot 1000 consists of a home and approximately 2.38 acres. The three tax lots are collectively referred to as the "Properties."

2. Water Delivery System. Water for domestic, agricultural and irrigation purposes is provided to the Properties through an interconnected water delivery system consisting of a well, casing, two separate pumps, electrical improvements and buried irrigation lines delivering water from where the well is located on Tax Lot 900 to the Properties. All portions of the water delivery

system up to the point where it provides water exclusively to an individual property is referred to as the "Water Delivery System."

3. Water Delivery System Easements: The Parties shall be entitled to obtain water from the Water Delivery System through the existing water lines across the Properties to provide the water to the Properties. Each Party has an easement across the property of all other Parties corresponding with the existing water lines of the existing Water Delivery System that delivers water to the Party's property. The easement shall extend for 10 feet on each side of the existing water line ("Easement Area"). The Parties shall have a perpetual right to access the Easement Area for purposes of repair, maintenance and replacement of the Water Delivery System. The Water Delivery System shall be maintained, repaired and replaced along the existing location of the water lines and improvements. Any Party may, at its expense, survey the exact location of the existing Water Delivery System and, after reasonable proof that the survey accurately identifies the location of the water lines, require the other Parties to amend, by surveyed legal description, the location of components of the Water Delivery System and the location of the easement.

4. Joint Use: The parties hereby grant to each other the right to obtain water from the well through the Water Delivery System to the Properties as provided herein. The parties agree that water from the well shall be shared based on percentage of ownership as follows:

- a. Tax Lot 900. Tax Lot 900 consists of approximately 9.26 acres. The owner of Tax Lot 900 shall have the right to remove and take forty-eight percent (48%) of the water from the well located on Tax Lot 900 for domestic, agricultural and irrigation purposes.
- b. Tax Lot 901. Tax Lot 901 consists of approximately 7.50 acres. The owner of Tax Lot 901 shall have the right to remove and take forty percent (40%) of the water from the well located on Tax Lot 900 for domestic, agricultural and irrigation purposes.
- c. Tax Lot 1000. Tax Lot 1000 consists of approximately 2.38 acres. The owner of Tax Lot 1000 shall have the right to remove and take twelve percent (12%) of the water from the well located on Tax Lot 900 for domestic, agricultural and irrigation purposes.

5. Managing Party: The Parties hereby designate the owner of Tax Lot 900 to be the contact person and overseer of the Water Delivery System (hereinafter "Managing Party"). The

Parties may change the Managing Party by 60 days written notice wherein a majority of the Parties agree in writing to name a different Party as Managing Party.

6. Maintenance and Repair. The Water Delivery System currently includes two separate pumps. One pump services Tax Lot 900 and Tax Lot 901. The other pump services Tax Lot 1000. All costs associated with the repair, maintenance and replacement of the pump that provides water to Tax Lot 900 and Tax Lot 901 including, but not limited to, all power and utilities associated with respect to the operation of said pump shall be shared between the owners of Tax Lot 900 and Tax Lot 901 in the same percent as the Parties are entitled to share to water. The owner of Tax Lot 1000 shall be solely responsible for all costs associated with the repair, maintenance and replacement of the pump and motor that provides water to said Tax Lot 1000 including, but not limited to, all power and utilities associated with respect to the operation of said pump. If, for any reason, the well and casing will no longer accommodate two pumps and motors, then all maintenance of the existing pump and motor and all utility charges shall be shared between the Parties in the same percent as the Parties are entitled to share to water. Except as specifically provided above, the Parties shall be jointly responsible for, and divide the costs of all repairs, maintenance and necessary replacements relating to the well and casing, in the same percent as the Parties are entitled to share water. Each Party shall be solely responsible for the costs associated with maintaining the pump servicing the owner's property and repairing, maintaining and replacing any pipes or other irrigation lines necessary to deliver water from the well to each property. The Managing Party will send repair bills to the Parties, along with a breakdown of each Party's respective share of the cost, and each Party will pay their proportionate share of the bill to the Managing Party within 15 days of billing.

7. Determination of Need to Repair. Unless an emergency requires immediate repair, all repairs for any jointly owned or used portion of the Water Delivery System shall be made upon a majority vote of the Parties whose property is directly affected. By way of an example, if the owner of Tax Lot 901 believes his/her pump needs replaced, the owner of Tax Lot 901 shall get the approval of Tax Lot 900, who also shares use the pump, before replacing the pump. Similarly, if a repair to the well casing is required, the approval of a majority of the owners of Tax Lot 900, Tax Lot 901 and Tax Lot 1000 shall be required to make said repair. However, if the owner of Tax Lot 1000 believes his/her pump needs replaced, no other consent or approval is required as said pump only services Tax Lot 1000. Any Party may recommend repairs to jointly owned or used portion of

the Water Delivery System and submit to the other parties recommended repairs to the jointly owned or used portion Water Delivery System along with a written estimate of repair costs. If any of the Parties determine that repairs are required for long-term maintenance of the jointly owned or used portion Water Delivery System, said party shall provide to the other Parties a written description of the recommended repairs and the estimated cost. If a majority of the Parties agree to the proposed Water Delivery System repair, then the party proposing said repairs may proceed. The Managing Party shall proceed with the proposed repairs upon the approval in writing of a majority of the Parties.

8. Emergency Repairs. If the Managing Party determines there to be an emergency requiring immediate repair of a jointly owned or used portion of the Water Delivery System, then the Managing Party may proceed with said repair without getting a majority of the Parties to approve. The Managing Party shall provide notice to the Parties of the repairs and estimated cost of repair as soon as practical. If any Party pays more than his or her proportionate share of costs associated with the Water Delivery System, said Party shall provide the other Parties invoices showing the work done and amount of bill, and the other Parties shall, within fifteen (15) days, pay said Party's proportionate share of the billing.

9. Metered Water. Each Party shall install and maintain a water meter that will accurately measure the total amount of water used by the Party. The meter shall be installed near the point where water enters each property and easily accessible and available to the Managing Party. Each Party shall be responsible for the cost of installing and maintaining the meter for their water usage.

10. Usage: If, for any reason, the water is insufficient to satisfy the needs of the owners of the Properties serviced by this well, water shall be allocated between the tracts in the same percent as described in Paragraph 4. In the event that a Party finds that said Party cannot use all of his or her share of the water from the well, and in the event that another Party needs more than his or her share of the water from the well, then it is agreed that the Party in need of the extra water can use the extra water until it is needed by the Party that has not previously used his or her share of the available water. The Parties acknowledge that this agreement cannot alter water rights held through the Oregon Department of Water Resources, and this agreement is intended to divide water to the extent that it is possible under Oregon law. The owner of Tax Lot 901 and Tax Lot 1000 may terminate this agreement at any time by recording written notice abandoning and forfeiting all rights

and obligations under this agreement.

11. Dispute Resolution: If any of the parties or their heirs and assigns disagree as to any matter associated with the provision of water from the well, the use of the well, the cost or type of repairs and maintenance to the well or casing, or other matters concerning the use of the water from the well, and said parties cannot resolve their differences, then the two parties shall agree upon an arbitrator and shall submit the dispute to arbitration for resolution. The parties agree that this shall be construed as a mandatory arbitration provision. If the parties cannot agree upon an arbitrator within fourteen (14) days or notice of the dispute between the two of them, then either party shall be entitled to request a court of competent jurisdiction to name one arbitrator under ORS 36.300, et seq. (or any subsequent statutory provision which replaces this provision) and the matter shall be arbitrated pursuant to the rules of arbitration contained in ORS 36.300, et seq. as presently existing, or as hereafter amended. The costs of arbitration shall be shared equally between the parties, provided that the arbitrator shall have the authority to allocate all of the costs to either party if he or she determines that the position of such party was unreasonable or unwarranted. In addition, the arbitrator shall have the power to enforce the arbitration award by suspending or terminating entirely one party's right to use the well if such party does not adhere to, and follow the decision of the arbitrator.

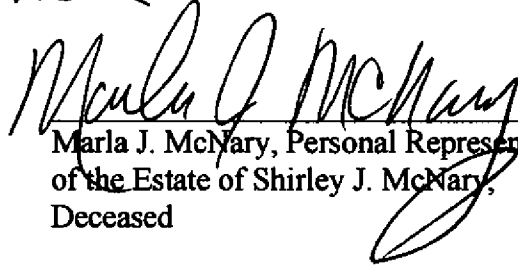
12. Binding Effect, Benefit and Burdens: The covenants, agreements and easements shall bind the Properties, the owners of the Properties and the Parties heirs, successors and assigns and shall benefit and burden the three tax lots of real property as described herein and shall run with the land. The Parties agree that upon execution by the McNary Estate, binding both the McNary Estate and any and all future owners of the Properties, this document shall be recorded in Umatilla County, Oregon records and shall be included and specifically referenced in any future sale of the Properties. This Agreement shall not be subject to rules and law merging title in the owner of the Properties.

13. Time is of the Essence: Time is of the essence of these covenants, agreements and easements.

14. Full Agreement: These covenants, agreements and easements are the full and complete covenants, agreements and easements between the Parties concerning the matters covered herein. There are no other covenants, agreements or easements concerning these matters, written oral or otherwise.

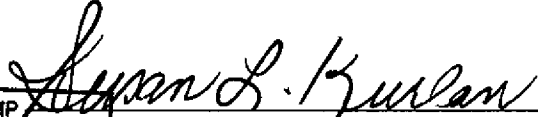
15. Attorney's Fees: If any litigation arises out of this Agreement or any arbitration decision, the prevailing party shall be entitled to recover his reasonable attorney's fees, costs and expenses from the other at trial and on appeal.

DATED this 7 day of September 2019.


Marla J. McNary, Personal Representative
of the Estate of Shirley J. McNary,
Deceased

STATE OF OREGON,)
)ss.
County of Multnomah)
September 7 , 2019.

Personally appeared the above named Marla J. McNary, Personal Representative of the Estate of Shirley J. McNary, Deceased, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me.



OFFICIAL STAMP
SUSAN LYNN KURLAN
NOTARY PUBLIC-OREGON
COMMISSION NO. 978395
MY COMMISSION EXPIRES AUGUST 22, 2022

Exhibit A

Tax Lot 900

A parcel of land lying in the South Half of the Southwest Quarter of The Southeast Quarter of Section 24, Township 6 North, Range 35 East and being more particularly described as:

Commencing at the Southwest corner of the said Southeast Quarter of Section 24; thence North 01 degrees 18'40" West a distance of 20.00 feet; thence North 89 degrees 00'14" East a distance 20.00 feet to the intersection of the North right of way of Co. Rd. 550 (Birch Cr. Rd.) and the East right of way of Co. Rd. No. 505 (Tum- A-Lum Rd.); said point being the True point of Beginning for this description;

Thence North 01 degrees 18'40" West along said East right of way line a distance of 640.49 feet to a point on the North line of said South Half; thence North 88 degrees 55'27" East, along said North line, a distance of 650.01 feet; thence South 01 degrees 22'57" East a distance of 341.40 feet; thence South 89 degrees 00'15" West a distance of 44.48 feet; thence South 01 degrees 22'57" East a distance of 300.00 feet to a point on the said North right of way of Birch Cr. Rd.; thence South 89 degrees 00'15" West, along said North right of way a distance of 606.33 feet to the point of beginning for this description.

Also, subject to an easement for a Septic Tank drainfield on the following described parcel:

A parcel of land lying in the South Half of the Southwest Quarter of The Southeast Quarter of Section 24, Township 6 North, Range 35 East and being more particularly described as:

Commencing at the Southwest corner of the said Southeast Quarter of Section 24; thence North 1 degree 18' 40" West a distance of 20.00 feet; thence North 89 degrees 00'15" East a distance 20.00 feet to the intersection of the North right of way of Co. Rd. 550 (Birch Cr. Rd.) and the East right of way of Co. Rd. No. 505 (Tum-A-Lum Rd.); thence continuing North 89 degrees 00'15" East, along said North right of way and parallel to the South line of said Section 24, a distance of 606.33 feet; thence North 01 degrees 22'57" West a distance of 120.00 feet to the True point of Beginning for this description;

Thence South 89 degrees 00'15" West a distance of 50.00 feet; thence N 01 degrees 22' 57" West a distance of 150. 00 feet; thence North 89 degrees 00'16" East a distance of 50.00 feet; South 01 degrees 22'57" East a distance of 150.00 feet to the point of beginning.

All being in the South Half of said Southwest Quarter of the Southeast Quarter of Section 24.

Area = 9.26 acres

Exhibit B

Tax Lot 901

A parcel of land lying in the South Half of the Southwest Quarter of The Southeast Quarter of Section 24, Township 6 North, Range 35 East and being more particularly described as:

Commencing at the Southwest corner of the said Southeast Quarter of Section 24; thence North 01 degrees 18'40" West a distance of 20.00 feet; thence North 89 degrees 00'15" East a distance 20.00 feet to the intersection of the North right of way of Co. Rd. 550 (Birch Cr. Rd.) and the East right of way of Co. Rd. No. 505 (Tum- A-Lum Rd.); Thence North 01 degrees 18'40" West along said East right of way a distance of 640.49 feet to a point on the North line of said South half; thence North 88 degrees 55'27" East, along said North line, a distance of 650.01 feet to the North South centerline of said Southwest Quarter, said point also being the True Point of Beginning for this description;

Thence North 88 degrees 55'27" East, along said North line, a distance of 670.02 feet to the East line of said Southeast Quarter; thence South 01 degrees 27'15" East a distance of 584.11 feet to a point on the Revised North line of Birch Cr. Rd. as described on Instrument 2016-6410409 ; thence along said revised North line the following courses and distances; South 73 degrees 18'34" West a distance of 89.17 feet; South 86 degrees 34'50" West a distance of 268.93 feet ; thence South 88 degrees 45'57" West a distance of 10.46 feet; thence North 01 degrees 22'57" West a distance of 277.30 feet; thence South 89 degrees 00'15" West a distance of 305.52 feet to a point on the North South centerline of said Southwest Quarter; thence North 01 degrees 22'57" West along said North South centerline a distance of 341.40 feet to the Point of Beginning for this description.

All being in the South Half of said Southwest Quarter of the Southeast Quarter of Section 24.

Area = 7.50 acres

Exhibit C

Tax Lot 1000

A parcel of land lying in the South Half of the Southwest Quarter of The Southeast Quarter of Section 24, Township 6 North, Range 35 East and being more particularly described as:

Commencing at the Southwest corner of the said Southeast Quarter of Section 24; thence North 01 degrees 18'40" West a distance of 20.00 feet; thence North 89 degrees 00'15" East a distance 20.00 feet to the intersection of the North right of way of Co. Rd. 550 (Birch Cr. Rd.) and the East right of way of Co. Rd. No. 505 (Tum-A-Lum Rd.); thence continuing North 89 degrees 00'15" East along said North right of way a distance of 606.33 feet to the True Point of Beginning for this description;

Thence North 01 degrees 22'57" East a distance of 300.00 feet; thence North 89 degrees 00'15" East a distance of 350.00 feet; thence South 01 degrees 22'57" East a distance of 277.30 feet to a point on the revised North line of Birch Creek Road as described in Instrument No. 2016-6410409 ; thence South 88 degrees 45'57" West along said North line a distance of 51.29 feet; thence South 01 degrees 15'37" East a distance of 22.48 feet to the original 20 foot North right of way line; thence South 89 degrees 00'15" East along said North line 298.66 feet to the Point of Beginning for this description.

And, including an easement for a Septic Tank drainfield on the following described parcel:

A parcel of land lying in the South Half of the Southwest Quarter of The Southeast Quarter of Section 24, Township 6 North, Range 35 East and being more particularly described as:

Commencing at the Southwest corner of the said Southeast Quarter of Section 24; thence North 1 degree 18' 40" West a distance of 20.00 feet; thence North 89 degrees 00'15" East a distance 20.00 feet to the intersection of the North right of way of Co. Rd. 550 (Birch Cr. Rd.) and the East right of way of Co. Rd. No. 505 (Tum-A-Lum Rd.); thence continuing North 89 degrees 00'15" East, along said North right of way and parallel to the South line of said Section 24, a distance of 606.33 feet; thence North 01 degrees 22'57" West a distance of 120.00 feet to the True point of Beginning for this description;

Thence South 89 degrees 00'15" West a distance of 50.00 feet; thence N 01 degrees 22' 57" West a distance of 150. 00 feet; thence North 89 degrees 00'16" East a distance of 50.00 feet; South 01 degrees 22'57" East a distance of 150.00 feet to the point of beginning.

All being in the South Half of said Southwest Quarter of the Southeast Quarter of Section 24.

Area = 2.38 acres