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A Shared Well Agreement

When buying a property with a shared well, a legal agreement is essential, in order to protect your access to the water supply and to spell out the costs and responsibilities involved in maintaining the system. For more information on this topic, refer to the wellcare® information sheet, "Sharing a Well."

Below is a sample-Shared Well Agreement, based on the U.S. Department of Housing and Urban Development (HUD) model, from the U.S. Department of Agriculture Rural Development website. All situations are different and individuals should seek independent legal advice before entering into a contract. This form is intended to be a starting point, and should be reviewed and modified by an attorney prior to being finalized. Each state has different legal rules that must be considered.

SHARED WELL WATER AGREEMENT¹

This Agreement, made and entered into this1stday of September, 2008
by and between Gardiner party of the first part, hereinafter
referred to as the "supplying party", and Keller and Keeley and/or Shannon, party of the
second part, an approved United States of America, Rural Housing Services, mortgagor,
and hereinafter referred to as the "supplied party":
Keller/Keeley & Shannon
WITNESSETH:
THAT WHEREAS, the supplying party is now the owner of property known as
Lot #52, Crescent Lake (Parcel 1) ² , located in the County of
Deschutes , State of Oregon , which property is more fully described as
follows, to wit:
Cabin #52, David Gardiner, Crescent Lake, 24728 Crescent Lake Highway, Crescent Lake, OR 97425
Location of Well: County=Klamath, Township= 24.00S, Range=6.00E, Section 15, SW 1/4 of the SW 1/4, TaxLot Cabin 52

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are the owners WHEREAS, the supplied party is the owner of Lot #51 and Lot #53
(Parcel 2) ² , located in the County of <u>Klamath</u> , State of <u>Oregon</u> , which property is more fully described as follows, to wit:
Lot #51, George Keller,
Cabin #51, Crescent Lake, 24726 Crescent Lake Highway, Crescent Lake, OR 97425 and
Lot #53, Tim Keeley and/or Bob Shannon,
Cabin #53, Crescent Lake, 24830 Crescent Lake Highway, Crescent Lake, OR 97425 and
WHEREAS, the undersigned parties deem it necessary to provide a well system to service the parcels described herein, and an Agreement has been reached relative to supplying water from the well and the cost of supplying said water; and
adjacent to Lot #52, Crescent Lake WHEREAS, there is located a well upon (Parcel

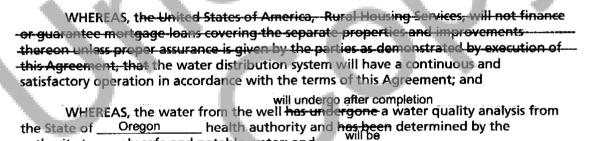
WHEREAS, it is the intention and purpose of the undersigned parties that the well and water distribution system shall be used and operated to provide an adequate supply of water for each of the properties connected thereto, for the domestic consumption of the occupants of said properties, and to assure the continuous and satisfactory operation and maintenance of the well and water distribution system for the benefit of the present and future owners, their heirs, successors and assigns of the properties connected thereto; and

1)², together with water distribution facilities, hereinafter referred to as "water distribution system", for the purpose of supplying water to all properties connected to

the said water distribution system; and

authority to supply safe and potable water; and

WHEREAS, the said well is deemed by the parties hereto to be of adequate capacity to supply a single family dwelling on each of the parcels described herein with water from the well for all domestic uses of a single family residing therein; and



WHEREAS, the parties hereto desire to enter this Agreement for the purpose of reducing to writing their respective rights and obligations pertaining to said well and water distribution system.

NOW THEREFORE, in consideration of the promises and covenants herein contained, it is agreed that the well and water distribution system situated on

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adjacent to Lot #52, Crescent Lake (Parcel 1) shall be used by the parties to this Agreement, as well as by all future owners and occupants of said parcels, upon the following terms and conditions:

- 1. That until this Agreement is terminated, as hereinafter provided, the parties hereto, their heirs, successors and assigns, for the exclusive benefit of the respective parcels of real estate, and for the exclusive use of the household residing thereon, are hereby granted the right in common with the other parties to this Agreement, to draw water from the well located on adjacent to Lot #52, Crescent Lake for quotidian domestic use excluding the right to draw water to fill swimming pools of any type.
- 2. That the owners or residents of the dwellings located on Lot #51 & Lot #53 (Parcel 2)³, as of the date of this Agreement shall:
- a. Pay or cause to be paid to the supplying party, an annual fee for this use of the well and water distribution system;

 one third of the total expense of the complete well installation, connection and water testing for Lot #52.
 - b. Pay or cause to be paid promptly, a proportionate share of all expenses for the operation and maintenance of the well and water distribution system that may become necessary. Each respective share shall be determined by dividing the amount of each expense by two, it being understood that the supplying party and the supplied party shall pay an amount equal to one half of the total of such necessary repair or replacement. Shared expenses include the cost of electricity for pumping, repairs and maintenance on said well and water distribution system.
- 3. That the cost of any removal or replacement of pre-existing site improvements on an individual parcel necessary for system operation, maintenance, replacement, improvements, inspection or testing, damaged as a result of repair of the well or water distribution system maintenance will be borne by the owner of the affected parcel, except that costs to remove and replace common boundary fencing or walls damaged as a result of repair shall be shared equally between or among parties so damaged.
- 4. That each of the parties hereby agrees that they will promptly repair, maintain and replace all water pipes or mains serving their respective dwellings.
- 5. That the consent of all parties to pay a proportionate share of costs shall be obtained prior to embarking upon expenditures for system maintenance, replacement or improvement, except in emergency situations. An arbitrator shall be chosen by the parties; shall be consulted in the event the parties cannot agree regarding the said expenditures; and the arbitrator's decision shall be definitive.
- 6. That the supplied party shall pay to the supplying party⁶ his⁷ proportionate share for the cost of energy for the operation of the pumping equipment. This cost shall be determined by a separate meter-upon each dwelling and for each parcel.

- 7. That it is the agreement of the parties hereto that the payment for energy cost shall be made not later than the <u>First</u> day, of each succeeding month during the term of this Agreement. In the event that any such payment remains unpaid for a period of 20 days, the supplying party may terminate the supply of water to the supplied party until all arrearages in payment are received by the supplying party.
- 8. That it is the agreement of the parties that they shall permit a third party to cure a default of payment or other obligation and shall permit water distribution service to be reinstated upon such curative action.
- 9. That each of the parties to this Agreement does hereby grant to the other, his heirs, successors and assigns, such easements over, across and through the respective parcels as shall be reasonably necessary for the construction of the well, maintenance of water pipes, pumping equipment, mains, electrical wiring and conduit consistent with the purposes of this Agreement. These easements are described below, to wit: (Describe easements, if any and cite Warranty Deed)

Well and supply lines to all parties are located on National Forest Property, and	each
dwelling is a defined lot on National Forest Property.	

- 10. That no party may install landscaping or improvements that will impair the use of said easements.
- 11. That each party shall have the right to act to correct an emergency situation and shall have access to the pertinent parcel in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system to deliver water upon demand.
- 12. That only those parcels of real estate hereinabove described and the dwellings located thereon shall be permitted to receive water from said well and pumping equipment; and each of the parties hereto does hereby covenant and agree that he/she will not allow or permit other persons, other than household guests, to take, draw, use or receive water from the well, nor permit other persons to connect to the pipes or mains serving his/her respective parcel.
- 13. That in the event the referenced well shall become contaminated and shall no longer supply water suitable for domestic consumption, or shall no longer supply water adequate for the needs of all relevant parties, or in the event that another source of water shall become available to the respective parcels, then the rights and obligations of the parties created by this Agreement shall cease and terminate in accordance with the terms and conditions hereinafter described.

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14. That upon the availability of such other source of water, it is contemplated that a reasonable time shall be allowed to effectuate the necessary connections to the new source.

and to the owners of the other parcels

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> COMMISSION NO. A411964 MY COMMISSION EXPIRES NOVEMBER 16, 2010

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FOOTNOTES

- 1. This Well Agreement is written for two parties, viz. a "supplying party" and a "supplied party"; however, the language, where appropriate, may be adjusted to encompass up to four parties, one of whom would be the supplying party. The same format is to be used for legal descriptions for additional parcels. The parties may elect to choose a trustee to receive payments and manage the maintenance and satisfactory operation of the well and water distribution system.
- 2. The terms "Parcel 1" and "Parcel 2" are used herein for convenience; any accurate description of the relevant land may be used in this Agreement.
- 3. In accordance with Footnote 1, if there are more than two parcels, the following language may be substituted:

"That the owners or residents of the dwellings located on said parcels, as of the date of this Agreement, shall..."

- 4. This Well Agreement need not necessarily require an annual fee. If the parties agree not to charge an annual fee, then the language of "a" may be eliminated.
- 5. If there are more than two parcels, expenses should be divided by the number of parties to the Agreement. The following language may be substituted:

"Each respective share shall be determined by dividing the amount of each expense by _____, the number of parties to the Agreement."

6. The following language may be substituted if there are more than two parties:

P.O. Box 4 Crescent Lake, Oregon 97425 USA Phone 541-433-2593 globilg@hotmail.com

October 28, 2008

TO WHOM IT MAY CONCERN

I, William D. Gibbs, Notary Public for the State of Oregon, witnessed the signing of the *Well Agreement*, by David L. Gardiner, George H. Keller and Tim Keeley, on September 1, 2008.

William D. Gibbs

Notary Public - Oregon

Commission No. A411964

A:billsklamathcountyclerk.wps