

2023-001537

Klamath County, Oregon



00312194202300015370080086

03/07/2023 11:30:28 AM

Fee: \$117.00

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Albert and Alyson Bernal  
PO Box 602  
Bonanza, OR 97623

Returned at Counter

**WELL SHARE AGREEMENT/GRANT OF EASEMENT**

THIS WELL SHARE AGREEMENT/GRANT OF EASEMENT dated this 3<sup>rd</sup> day of March, year 2023 by and between **Brian Downer** and **Mary Downer**, herein termed "Grantors" and, **Albert L. Bernal II** and **Alyson M. Bernal**, husband and wife, and as Trustees of the Bernal 1993 Trust dated July 6, 1993, herein termed "Grantee(s)," witnesseth that:

WHEREAS, the Grantors, **Brian Downer** and **Mary Downer**, own as their property the following described real estate in Klamath County, Oregon, hereinafter sometimes referred to as "Parcel 1":

Lot 10 in Block 63 of KLAMATH FALLS FOREST ESTATES, HIGHWAY 66 UNIT, PLAT NO. 3, according to the official plat thereof on file in the office of the County Clerk of the County of Klamath County Oregon.

AND WHEREAS, the Grantees, **Albert L. Bernal II** and **Alyson M. Bernal**, husband and wife, and as Trustees of the Bernal 1993 Trust dated July 6, 1993, own as a marital community, the following described adjacent real estate in Klamath County, Oregon, hereinafter sometimes referred to as "Parcels 2 and 3":

Lots 11 and 12 in Block 63 of KLAMATH FALLS FOREST ESTATES, HIGHWAY 66 UNIT, PLAT NO. 3, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

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

**WHEREAS, there is a well located upon Parcel 1, 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**

**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**

**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 United States of America, Rural Housing Services, will not finance or guarantee mortgage loans covering the separate properties and improvements thereon unless proper assurance is given by the parties as demonstrated by execution of this Agreement, that the water distribution system will have a continuous and satisfactory operation in accordance with the terms of this Agreement; 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 One (\$1.00) Dollar and the mutual promises hereinafter set forth, the parties agree as follows:**

**1. GRANT. The Grantors hereby grant, sell and convey to the Grantees an undivided One-Half ( $\frac{1}{2}$ ) interest in and to the well, casing, and pump, and the right to take One-Half ( $\frac{1}{2}$ ) of the water from said well, now located upon the real estate of the Grantors first described above, Parcel 1, under the terms and conditions hereinafter set forth.**

**2. LIMITATIONS OF USE. This grant is for the use of the Grantees, and their heirs, successors and assigns for domestic purposes only in and upon the residence and grounds of the real estate now owned by the Grantees second described above, Parcels 2 and 3, and the Grantees shall not extend the uses of the water to any subdivision of their present property nor to adjacent properties or users without the express written consent of the Grantors, their heirs, successors and assigns, being first obtained.**

**3. SERVICE PIPELINE AND ACCESS. The Grantees shall have reasonable access for the maintenance and replacement of the existing service pipeline over and across the Grantor's property, but shall restore the surface of the land to its existing condition at the Grantee's expense immediately after any excavations for inspection or repair. The expense of maintaining Grantee's service pipeline from the holding tank being their sole responsibility.**

**4. JOINT EXPENSE OF MAINTENANCE AND REPLACEMENT.** This conveyance is made upon the condition that the Grantees, their heirs and assigns shall bear One-Half (½) of all expenses connected with the operation of, or replacement of, the pump, well casing, holding tank and associated pipes, valves and equipment, and shall pay annually or upon some other regular period, as may be fixed by the Grantors, their heirs and assigns, the cost of electricity for operation of said water system, as determined by invoice from electrical supplier, said payment to be to the Grantors who shall be responsible for payment to the supplier. In like fashion, the Grantees, their heirs and assigns, shall be responsible for payment to the Grantors, their heirs and assigns, One-Half (½) the cost of replacement of pump, casing, holding tank or pipes and valves, and if the parties cannot agree, the decision of the Grantors shall be determinative of the need of repair, replacement, or extension.

**5. DUTY AND MAINTAIN.** Both parties agree to keep and maintain their service piping and associated equipment in good order so that there will be no leakage or seepage therefrom, and either party shall, on demand of the other, repair his portion of the system, or the now offending party may seek specific performance of this portion of this agreement, and for his court costs, to include reasonable attorney fees.

**6. DEFAULT CURE.** 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.

**7. GRANT OF EASEMENT.** 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.

**8. LANDSCAPING.** That no party may install landscaping or improvements that will impair the use of said easements.

**9. EMERGENCY ACCESS.** 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.

**10. LIMITATION OF USE.** That only those parcels of real estate hereinabove described, and the dwellings located thereon, or to be erected 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, without the consent of all parties.

**11. FAILURE OF WELL.** 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.

**12. REASONABLE TIME.** 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 water source.

**13. CONTINUITY.** That the respective rights and obligations of the parties shall continue until the parties who wish to terminate their participation in this Well Agreement have executed and filed a written statement of termination at the Office of the Register of Deeds of the County of Klamath, State of Oregon, and to the "supplying party". Upon termination of participation in this Agreement, the owner and occupant of each residence which is terminated from the Agreement shall have no further right to the use of the well. The terminated parties shall disconnect their respective lateral connection from said well system and shall have no further obligation to pay or collect for maintenance and related expenses incurred thereafter. The costs of disconnection from the well and water system shall be borne by the owner of the pertinent parcel.

**14. SAMPLING.** That the undersigned parties shall permit well water sampling and testing by a responsible authority at the request of an undersigned party, state or local authority, mortgagee, or the United States of America, Rural Housing Services and the costs of such well tests are shared like any other expense.

**15. PARCEL LIMITS.** That said, Well and this Agreement, if amended, shall serve no more than four single family dwelling units and/or four parcels, with respective dwelling units thereon, notwithstanding the ability of the parties to make other amendments to this Agreement.

**16. AMENDMENTS.** That the parties may amend this Agreement to assure equitable distribution of shared costs and responsibilities; however, this Agreement may not be amended during the term of a Federally-insured (direct) or guaranteed mortgage on any property served, except as provided herein, for the purpose of adding to the prescribed number of parties.

**17. PERPETUITY.** That the term of this Agreement shall be perpetual, except as herein limited.

**18. COVENANTS BINDING.** That the benefits and burdens of this Agreement shall constitute a covenant running with the parcels of land herein described and shall be binding upon the heirs, successors in title and assigns of the parties hereto.

**19. DISPUTE RESOLUTION.** Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected

shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal:

Dated this 3<sup>rd</sup> day of March, year 2023.

GRANTORS:

[Signature]  
Brian Downer

[Signature]  
Mary Downer

GRANTEES:

[Signature]  
Albert L. Bernal II, Trustee

[Signature]  
Alyson M. Bernal, Trustee

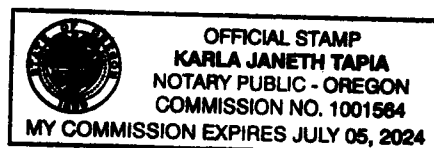
STATE OF OREGON

COUNTY OF KLAMATH

On this day personally appeared before me Brian Downer  
Karla Tapia, to me known to be the  
individual(s) described in and who executed the within and foregoing instrument, and acknowledged  
that she/he/they signed the same as his (her/his/their) free and voluntary act and deed,  
for the uses and purposes therein mentioned.

Given under my hand and official seal this 3<sup>rd</sup> day of March, year 2023.

[Signature] NOTARY



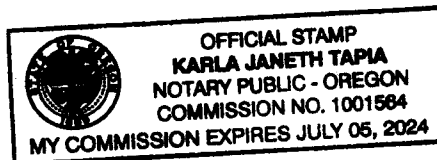
STATE OF OREGON

COUNTY OF KLAMATH

On this day personally appeared before me Mary Dawner  
Karla Tapia, to me known to be the  
individual(s) described in and who executed the within and foregoing instrument, and acknowledged  
that she/he/they signed the same as her (her/his/their) free and voluntary act and deed,  
for the uses and purposes therein mentioned.

Given under my hand and official seal this 3rd day of March, year 2023.

Karla Tapia NOTARY



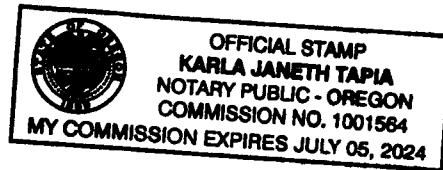
STATE OF OREGON

COUNTY OF KLAMATH

On this day personally appeared before me Albert L. Bernal II  
Karla Tapia, to me known to be the  
individual(s) described in and who executed the within and foregoing instrument, and acknowledged  
that she/he/they signed the same as us (her/his/their) free and voluntary act and deed,  
for the uses and purposes therein mentioned.

Given under my hand and official seal this 3rd day of March, year 2023.

Karla Tapia NOTARY



STATE OF OREGON

COUNTY OF KLAMATH

On this day personally appeared before me Alyson M. Bernal  
Karla Tapia, to me known to be the  
individual(s) described in and who executed the within and foregoing instrument, and acknowledged  
that she/he/they signed the same as us (her/his/their) free and voluntary act and deed,  
for the uses and purposes therein mentioned.

Given under my hand and official seal this 3rd day of March, year 2023.  
Karla Tapia NOTARY

