

**RECORDING REQUESTED BY:**

Generation Mortgage Co.

**AND WHEN RECORDED MAIL TO:**

Generation Mortgage Co.  
3565 Piedmont Rd, #300  
Atlanta, GA 30305

SPACE ABOVE FOR RECORDER'S USE ONLY

SHARED WELL WATER AGREEMENT

Title of Document

## SHARED WELL WATER AGREEMENT

This Agreement, made and entered into this 15 day of June, 2009 by and between David and Christina Ellis, Owners of Lot 22, described further below, party of the first part, hereinafter referred to as the "supplying party", and the owners of record of Lot 23, Thomas and Jean Brophy, of Lot 24, Frederick and Christina Wilhelm, Jr., and Donald and Carolyn McIntosh, Owners of Lot 25 also all in The Mesa and described further below, party of the second part, and hereinafter referred to as the "supplied parties"

WITNESSETH:

THAT WHEREAS, the supplying party is now the owner of property known as Lot 22, The Mesa according to Plat Book 4, Page 50 located in the County of Santa Cruz, State of Arizona; and

WHEREAS, the supplied parties are the owners of Lots 23, 24, and 25, located in the County of Santa Cruz, State of Arizona, which property is more fully described as follows, to wit: Lot 23 The Mesa according to Plat Book 4, Page 50; Lot 24, The Mesa according to Plat Book 4, Page 50; Lot 25, The Mesa according to Plat Book 4, Page 50. and

WHEREAS, the undersigned parties deem it necessary due to the nonexistence of city supplied water in the area, to provide a well system to service the parcels described herein connected thereto, and an Agreement has been reached relative to supplying water from the well and the cost of supplying said water; and

WHEREAS, there is located a well upon Lot 22, The Mesa, 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, Federal Housing Administration and 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 water from the well has undergone a water quality analysis from the State of Arizona health authority and has been determined by the authority to supply safe and potable water; 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 Lot 22, The Mesa, 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 Lot 22 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 22, 23, 24 and 25, as of the date of this Agreement shall 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 four, it being understood that the supplying party and the supplied party shall pay an amount equal to one fourth 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 whether such repair or maintenance is required due to actions or damage done by either residents or guests at their property. If damage to any part of the water distribution system is from a source outside of the current parties of this agreement then costs shall be shared in accordance to Section 5 below.
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. All repairs performed on the water distribution system shall, at a minimum, return the system to the original system performance.
6. That the supplied parties when connected shall pay their proportionate share for the cost of energy for the operation of the pumping equipment. Such payments shall be made on an agreed upon schedule. An agreed upon caretaker shall be appointed to oversee the necessary care of the system, including the fund.
7. 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.

8. 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.
9. That no party may install landscaping or improvements that will impair the use of said easements.
10. 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.
11. 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.
12. 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.
13. 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.
14. That the respective rights and obligations of the parties shall continue until the parties who wish to terminate their participation in the Well Agreement have executed and filed a written statement of termination at the Office of the Register of Deeds of the County of Santa Cruz, State of Arizona. 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.
15. That the undersigned parties shall permit periodic well water sampling and testing by a responsible authority at the request of an undersigned party, mortgagee or the United States of America, Rural Housing Services. If testing reveals a significant water quality deficiency, corrective repairs shall be required in accordance with section 5 above.
16. That the said well agreement, if amended, shall serve no more than four single family dwelling units or four parcels, notwithstanding the ability of the parties to make other amendments to this Agreement.
17. 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.

18. That the term of this Agreement shall be perpetual, except as herein limited.
19. 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.
20. The parties agree that this Agreement can be executed in separate and that the 5 pages contained represent the whole of the Agreement and supersede any previous Shared Well Agreements.
21. No Septic or Sewer facilities can be located within 50 feet of the Well System and/or proposed new construction of Septic and Sewer must be located at a distance of greater than 100 feet from the water distribution system.
22. The parties agree to binding arbitration should a dispute arise regarding the Well System or the terms of this agreement. Binding arbitration shall be through the American Arbitration Association or similar body and may be initiated at any time by any party to the agreement. Arbitration costs shall be equally shared by the parties to the agreement.

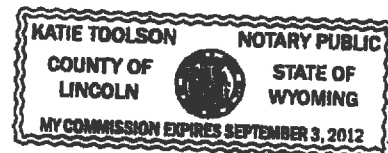
IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first above written.

Lot 22, The Mesa  
 BY [Signature] [Signature]  
 David Ellis Christina Ellis  
 DATE June 15, 2009 DATE June 15, 2009

Sworn and subscribed before me this 15<sup>TH</sup> day of JUNE, 2009.  
[Signature]

Notary Public

My commission expires: 9/3/2012



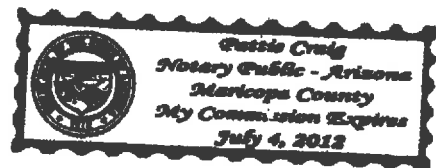
Lot 23, The Mesa

BY Thomas J. Brophy Virginia R. Brophy  
 Thomas Brophy Virginia Jean Brophy  
 DATE June 18, 2009 DATE June 18, 2009

Sworn and subscribed before me this 18 day of June, 2009

Notary Public

My commission expires: July 4, 2012



Lot 24, The Mesa

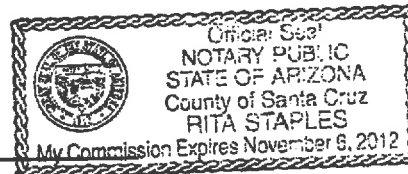
BY Frederick Wilhelm Jr. Christina Wilhelm  
 Frederick Wilhelm Jr. Christina Wilhelm, Lot 24  
 DATE 05/28/09 DATE 05/28/09

Sworn and subscribed before me this 28th day of May, 2009

Rita Staples

Notary Public

My commission expires: 11/06/2012



Rita Staples  
 Santa Cruz - Arizona  
 Comm Exp: 11-6-2012

Lot 25, The Mesa

BY \_\_\_\_\_  
 Donald McIntosh Carolyn McIntosh  
 DATE \_\_\_\_\_ DATE \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

Lot 23, The Mesa

BY \_\_\_\_\_

Thomas Brophy

Jean Brophy

DATE \_\_\_\_\_ DATE \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.

Notary Public

My commission expires: \_\_\_\_\_

Lot 24, The Mesa

BY \_\_\_\_\_

Frederick Wilhelm Jr.

Christina Wilhelm Jr., Lot 24

DATE \_\_\_\_\_ DATE \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.

Notary Public

My commission expires: \_\_\_\_\_

Lot 25, The Mesa

BY Donald McIntosh Carolyn McIntosh

Donald McIntosh

Carolyn McIntosh

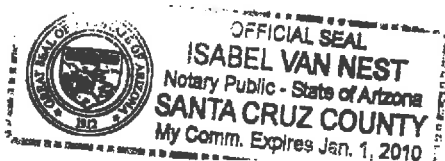
DATE May 26, 2009 DATE May 26, 2009

Sworn and subscribed before me this 26th day of May 2009.

Isabel Van Nest

Notary Public

My commission expires: Jan 1, 2010





2009-11079

Page 1 of 21

Requested By: THE MESA HOMEOWNERS ASSOC.

SUZANNE SAINZ, RECORDER

SANTA CRUZ COUNTY, ARIZONA

12-10-2009 03:22 PM Recordings Fee \$30.00

Requested By:

*The MESA Homeowners Association*

*c/o James V. McMahon, Esq*

*PO Box 950*

*Patagonia, AZ 85624*

Return To:

*James V. McMahon*

*PO Box 950*

*Patagonia, AZ 85624*

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CAPTION HEADING

*The MESA Homeowners Association*

*Conditions, Covenants and Restrictions*