



Example Shared Well Agreement

MANITOBA RESIDENTIAL SHARED WATER WELL EASEMENT DECLARATION

MADE PURSUANT TO SECTION 76.2 OF THE REAL PROPERTY ACT, Cap R30, F.S.M. 1970, and amendments thereto by (the "Declarant") with reference to the following facts:

The Declarant, _____ and _____ are the registered owner, or entitled to be the registered owner, of an estate in fee simple in possession of all those parcels of land described as follows:

LOT _____ PLAN _____ WLTO
IN

(hereinafter referred to as the "Servient Tenement"),

LOT _____ PLAN _____ WLTO
IN

(hereinafter referred to as the "Servient Tenement"),

WHEREAS the Declarant is desirous of establishing certain rights, privileges and easements to facilitate the sharing of a water well located, or to be located, on the Servient Tenement,

AND WHEREAS the Declarant desires to bind all successors in title to the terms of this declaration,

NOW, THEREFORE, the Declarant hereby declares that:

WELL LOCATION

1.0 The Declarant(s) wish to provide water to the Servient Tenement and the Dominant Tenement from a drilled well to be jointly owned by the said Tenements and to be situated on the Servient Tenement and to create an easement over and upon the Servient Tenement for the purposes stated herein.

STYLE AND USE

1.1 The Servient Tenement shall maintain and keep in repair, or cause to be maintained and kept in repair, the said well and appurtenances thereto, and the cost of such

maintenance and repair shall be borne equally by the Servient Tenement and the Dominant Tenement. If the Dominant Tenement fails to pay its share of such costs promptly, the Servient Tenement shall be entitled to take such action as may be available at law in respect to such default on 14 days written notice to the Dominant Tenement. Without limiting the generality of the foregoing, on default, the Servient Tenement shall be entitled to stop the flow of water to the Dominant Tenement, save and except in the event the Dominant tenement is encumbered or charged by way of mortgage then no such right shall exist unless authorized in writing by the mortgagee. In the event the Servient Tenement fails to maintain and repair the water well as so required, the Dominant Tenement may make such expenditures as are necessary to effect the required maintenance or repair and may seek payment from the Servient Tenement with the right of offset in addition to all other remedies at law.

- 1.2 The Servient Tenement shall provide hydro to any pressure system and/or submersible pump situated on the Servient Tenement and attached directly to the water well, and maintain and keep any such pressure system and/or submersible pump in good repair, and the cost of such maintenance and repair will be borne equally by the Servient Tenement and the Dominant Tenement; the Dominant Tenement shall pay its proportionate share of the costs of the hydro (such share shall have a minimum of \$75.00 per year), it being the intent that the costs of power be shared equally by the Servient Tenement and the Dominant Tenement. If no pressure system and/or pump is attached directly to the well for the mutual benefit of the Tenements hereto, then no hydro payment shall be required.
- 1.3 The cost of hydro shall be payable annually in advance on the first day of January in each and every year and, if this declaration takes effect prior to the first day of January, then the proportionate payment shall be made at the time of attachment to the water well. The cost of maintenance and repair shall be paid within thirty (30) days of invoice, such invoice to clearly state the nature of the repair or maintenance required and the cost incurred. The costs set out in this section 1.3 shall be subject to the provisions of the sections above.
- 1.4 A successor in title shall be accountable for all proportionate costs from the date of ownership or occupancy, whichever shall first come.
- 1.5 A successor in title shall be responsible, each to his own, for individual pressure systems and/or holding tanks if required.
- 1.6 A successor in title shall be entitled to obtain sufficient water from the water well to supply their domestic needs and no other party may hook up to the water well or connecting water pipes without the express written consent of all Tenements hereto.
- 1.7 A successor in title shall not do or cause to be done, any act, deed or thing to prevent the water from flowing and being pumped from the water well or connecting water pipes to the respective Tenements except as herein provided.
- 1.8 The water well and all appurtenances are deemed, for the purposes of maintenance and repair, a common water well and no part thereof shall be deemed an encroachment.
- 1.9 No additional party may use the common water well or connecting water pipes without the express written consent of all Tenements hereto.

LIFE OF EASEMENT DECLARATION

- 2.1 In the event that successors in title shall at any time hereafter cause their respective parcels of land and dwellings to be connected to and served by any municipal or other water well or water works system, or provide their own water well, and disconnect their parcel from the water well herein referred to, such successor in title shall be relieved from any terms, conditions, obligations and liabilities insofar as same apply to costs of any repair or replacement, or to perform any work, or to supply any material and any such requirements shall be the responsibility of the then remaining Tenement consistent with the terms hereinbefore set out. The easements created hereunder shall in no way whatsoever be affected so far as the rights of the remaining parties are concerned.
- 2.2 This easement shall be for the term of the natural life of the water well, and the rights, privileges and easements herein shall run with the land and be binding upon all successors in title and shall ensure for the benefit of the owner or owners to such time as the owner absolutely disposes of his interest in the land at which time he shall thereupon cease to be liable for the covenants herein contained except for breaches and damage committed and caused during his respective ownership.

INSTALLATION, MAINTENANCE, REPAIR, TESTING

- 3.1 The owner from time to time of the Dominant Tenement may at his own expense, construct, lay, install, maintain and repair a water pipe from the water well over the Servient Tenement to his premises on the property hereinbefore described as the Dominant Tenement for the purpose of leading water to his premises for domestic use only, provided that the costs of constructing, laying, installing, maintaining and repairing done to the water pipes connecting his property to the Servient Tenement shall be born solely by the owner of the Dominant Tenement.
- 3.2 The owners from time to time of the Dominant Tenement shall, as often as it becomes necessary for them or their agents, servants, employees or workmen to enter upon the Servient Tenement for the purposes hereinbefore mentioned, carry out such constructing, laying, installing, maintaining and repairing in an expeditious manner and will do so without undue interference with the occupation and possession of the owner of the Servient Tenement.
- 3.3 The owners from time to time of the Dominant Tenement shall ensure that any damage caused to the Servient Tenement due to the performance of constructing, laying, installing, maintaining and repairing the water pipes shall be repaired by the offending party so as to leave the Servient Tenement in as nearly as possible the same condition as prior to the commencement of such work and if the land later settles because of any excavation made or other work done, the party or parties responsible shall from time to time fill in any depressions caused by such settling and thereby restore the surface of the land to the same condition as it was prior to the commencement of such work.
- 3.4 The owners from time to time of the Dominant Tenement shall indemnify the Servient Tenement against liability for any claim by any person for damage arising out of the construction, maintenance, and operation of the water pipe by the owners of the Dominant Tenement, their servants, agents, or employees, or by an independent contractor hired by them, including any liability for claims by a person for creation of a

nuisance.

- 3.5 The Servient Tenement shall ensure that routine water quality testing is completed as outlined in Schedule A; shall share the results of that testing with all parties to the agreement; and shall immediately notify all parties to the agreement (as soon as reasonably practical) of any test results that indicate the presence of bacteria in the water in accordance with the emergency notification requirements described in Schedule B. Schedules A and B are considered intrinsic to the agreement.
- 3.6 The Dominant Tenement shall pay its proportionate share of the costs of water quality testing and analysis, it being the intent that the costs of testing and analysis be shared equally by the Servient Tenement and the Dominant Tenement. The cost of testing and analysis shall be paid within thirty (30) days of invoice, such invoice to clearly state the nature of the test or analysis and the cost incurred
- 3.7 The parties shall act diligently and in good faith in remedying any deficiency in the potability of the water supply, including any deficiency identified in the course of any testing.
- 3.8 An easement is hereby created over and upon the Servient Tenement as required for the within purposes and the rights, privileges, and easement shall be exercisable forthwith and at any and all times hereafter by the successors in title to the Dominant Tenement.

ARBITRATION

- 4.1 The following provisions shall apply to any dispute, difference, or question that arises among the parties hereto concerning any Section or Sections of the Declaration to which arbitration applies:
 - a) **Initiation of Arbitration**
Arbitration shall be initiated by one party giving notice (the "Arbitration Notice") to the other party or parties to the dispute of his/her desire to have a matter arbitrated in accordance with this section, and shall state the matter which the initiating party wishes to have arbitrated;
 - b) **Single Arbitrator**
The matter requiring arbitration shall be referred to a single arbitrator if one can be mutually agreed upon by the parties to the dispute, difference, or question within seven business days of the Arbitration Notice being given;
 - c) **Multiple Arbitrators**
In the event that the parties to the dispute, difference, or question cannot agree upon a single arbitrator, then each party involved in the arbitration shall name one arbitrator within a further period of seven business days therefrom, and the arbitrators so named shall appoint one more arbitrator, unless the appointing of one more arbitrator would result in there being an even number of arbitrators, in which case the arbitrators shall appoint two more arbitrators;
 - d) **Refusal to Appoint**

If one of the parties to the arbitration refuses or neglects to appoint an arbitrator within the period herein set out, then the arbitrator appointed by the other party to the arbitration shall sit and hear the arbitration;

e) Reference to Court

In the event that the arbitrators named by the parties to the arbitration cannot agree upon the additional arbitrator or arbitrators as above provided within seven business days of the date of the appointment of the last of them, then, after the expiry of such seven business day period, any one of the parties to the arbitration may apply to a judge of the Court of Queen's Bench of Manitoba or its successor to appoint the additional arbitrator or arbitrators to sit and hear the arbitration;

f) Arbitration Decision

The decision arrived at by a single arbitrator or a majority of the arbitrators, as the case may be, shall be binding upon all the parties to the arbitration and no appeal shall lie therefrom;

g) Submission under Act

The provisions of this section shall be deemed to be a submission to arbitration within the provisions of *The Arbitration Act* (Manitoba).

GOVERNING LAW

5.1 This declaration and the application or interpretation of it shall be governed exclusively by the terms and by the laws of the Province of Manitoba and each party irrevocably attorns to the jurisdiction of the courts of Manitoba.

HEADINGS

6.1 The headings appearing throughout this declaration shall not form part of this declaration. The parties desire that this declaration be given a broad and liberal interpretation.

SEVERABILITY

7.1 Each provision of this declaration shall be severable. If any provision of it is illegal or invalid, the illegality or invalidity shall not affect the validity of the remainder of this declaration.

NUMBER AND GENDER

8.1 This declaration is to be read with all changes in gender or number as required by the context.

TIME

9.1 Time shall in all respects be of the essence of this declaration.

COUNTERPARTS

10.1 This declaration may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same declaration.

10.2 This declaration may be executed by the parties and transmitted by facsimile and if so executed and transmitted, this declaration shall be for all purposes as effective as if the parties had delivered an executed original declaration.

10.3 This declaration may be executed and transmitted by the parties by electronic mail and if so executed and transmitted, this declaration shall be for all purposes as effective as if the parties had delivered and executed original declaration. The form of execution shall be acknowledgement of acceptance of the document attached to the said acknowledgement and delivered by e-mail, whether acceptance or counter offer.

DECLARATION BINDING

11.1 This Declaration shall have the same force effect and create the same rights as if the provisions herein were incorporated in a well declaration between separate registered owners of the said parcels and all rights and declarations herein created shall be effective as if the same had been created by separate registered owners of the said parcels.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the ____ day of _____, 20__.

SIGNED AND DELIVERED

In the presence of:

Witness

Per: _____

SIGNED AND DELIVERED

in the presence of:

Witness

Per: _____

Schedule A

Routine Drinking Water Quality Testing Requirements

Quarterly Bacteriological Testing (total coliforms and *E. coli*)

- Conduct a bacteriological test every February, May, August, and November to ensure the security of the source well.
- Conduct a test if any change to water quality occurs (i.e., change in taste, odour, colour, or clarity).

Nitrate Testing

- Conduct a nitrate analysis every 3 to 5 years, or if there are infants, pregnant women, or women planning a pregnancy consuming the water.
- More frequent testing is recommended for wells with confirmed nitrate results or if the type of well construction increases the vulnerability to nitrate contamination. Wells at greater risk to nitrate contamination include shallow wells (less than 50 feet depth), wells completed into shallow sand and gravel aquifers, or wells completed into shallow bedrock with little overburden protection.

Trace Element Testing (arsenic, barium, boron, fluoride, uranium, manganese)

- Conduct an initial test to determine if any concerns exist.
 - If no trace element concentrations are identified, conduct another test in 5 years.
 - If any trace elements are detected, but concentrations are below drinking water quality guidelines, conduct another test in 2 years.
 - If any trace element concentrations are detected and above the drinking water quality guideline, conduct a retest to confirm the result.
 - If the retest confirms the elevated concentration, consider drinking water treatment options to reduce the concentration or switch to an alternate safe source of drinking water such as bottled water or connecting to a municipal system.

Common Minerals (hardness, iron, manganese, chloride, sodium, sulphate, etc.)

- Conduct an initial test to determine if there are any elevated concentrations that may cause aesthetic concerns with the water (i.e., staining of laundry and plumbing fixtures, taste, odour).
- A common-minerals test is also required when determining drinking water treatment options.

Schedule B Emergency Notification Requirements

Notification of Water users: The Servient Tenement (owner of the property where the well is located) shall immediately notify all parties to the agreement (as soon as reasonably practical) of any test results that indicate the presence of bacteria in the water.

Notification shall be by live voice contact, either in-person or by phone. Where live voice contact cannot be achieved, the Servient Tenement shall leave a recorded voicemail message, send a text, and/or post a notice to the front door stating that:

“Bacteria has been found in the well water. Do not drink or otherwise consume the well water unless it has been boiled for one minute. Please contact me ASAP for additional information.”