

After Recording Mail to:

Sanchez Family  
5022 SE 37<sup>th</sup> Ave.  
Portland, OR 97202

See 31869

**DOCUMENT TITLE: Water Agreement and Mutual Easement**

**Reference Number(s) of related documents:**

On page \_\_\_\_\_ of document(s)

**Grantor(s)**

1. Excelsior Management Group LLC
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

Additional names on page \_\_\_\_\_ of document

**Grantee(s)**

1. Lois R Wallin-Sanchez, David Sanchez
2. Lorin M Sanchez & Lily Sanchez
3. Sean I. Sanchez
4. Rebecca Sanchez

Additional names on page \_\_\_\_\_ of document

**Legal Description:**

See attached See 20, T2N, R5E

Additional legal description is on page 18 of document

**Assessor's Property Tax Parcel / Account Number:**

02-05-20-0-0-0700-00 / 02-05-20-0-0-0700-06 / 02-05-20-0-0-  
0702-00 / 02-05-20-0-0-0702-06 / 02-05-20-0-0-0701-00  
02-05-20-0-0-0703-00

## Water Agreement and Mutual Easement

This Agreement is entered into by and between the undersigned Purchaser and Seller, each of whom signs this Agreement as a party; moreover, each signs an integral part of the prospective purchase of certain acreage in Skamania County, Washington. It is now agreed as follows:

### I. Introduction, Parties, and General Provisions

#### I.1. General Subject and Purpose: **WATER SOURCE.**

This agreement is entered into between adjoining property owners, to provide for the shared use and maintenance responsibility of an existing natural spring or similar water source, together with a primitive collection and distribution system, located on the property described in Exhibit "A" attached hereto, but presently used by and serving both that property and also the property described on Exhibit "B" attached hereto.

I.2. Purchaser. The Purchasers of the property described on Exhibit "A" attached hereto (hereafter, "A Property", or , more simply, "A") are David Sanchez and Lois Sanchez, husband and wife, who are signing this Agreement as parties, and also their children and family members whose signatures appear below. It is understood, acknowledged, and anticipated, however, that, at closing or shortly thereafter, the property purchased by them will be transferred into another entity (most likely, an LLC) in which they will be members or will otherwise hold an equity interest.

I.3. Seller. The Seller of the "A" Property is Excelsior Management Group, LLC, an LLC organized, established, and duly licensed under the laws of the State of OR. Seller likewise signs this Agreement as a party.

**I.4. Adjoining Property.** Seller is also the owner of the property described on Exhibit "B" (hereafter "B Property", or, more simply, "B"), which adjoins the "A" Property and shares a common border (composed of straight lines, with various right-angle turns, and approximating seven-eighths of a mile in total length) with it.

**I.5. Property Overview.** In brief summary, the "A" Property and the "B" Property are each approximately 40 acres in size, aggregating approximately 80 acres altogether. The "A" Property adjoins a public road, and the "B" Property lies easterly of "A" and has no direct road access.

**I.6. Spring.** "A" Property has within it a natural spring or similar feature, whose rate of flow or meaningful water production varies considerably with the season. Associated with this spring is a small pond and a very small "well" (more precisely, a cistern-type structure placed vertically in the ground), and pipes leading from this "well" to serve buildings on both "A" Property and "B" Property.

**I.7. General Intent.** It is the intent of both Purchaser and Seller to create an easement for the shared use and maintenance of the spring (hereafter, this spring, together with [unless the context requires otherwise] the associated pond, cistern, and pipes, are collectively referred to as the "water source") serving both the "A" Property and the "B" Property. Each party acknowledges that this sharing of the source and the water it produces, the corresponding sharing of the costs associated with the source, and also the certainty provided by the permanent and enforceable provisions of an easement, will be of benefit to them in the use and enjoyment of their own property, but will simultaneously impose legal responsibilities on them so that, reciprocally, the other party can also fully enjoy the benefits of the source and of the terms of this Agreement.

**I.8. Known Limitation.** The parties know, and mutually acknowledge, that the flow of water from the water source varies substantially from one season to the next. The capacity of the water source to simultaneously support two separate households, particularly during the late summer and early fall seasons, has never been tested, and may prove inadequate.

**I.9. No Guarantee of Water.** Neither party, and particularly not the Purchaser as the owner of "A" Property where the water source is located, makes any guarantee to the other concerning either the volume/quantity/flow of water to be produced by the water source, or the sufficiency/quality/purity

of this water for human consumption or for any other use. The parties each understand that both the flow and the purity of the water at any given time will be the result of natural factors beyond the control of either party. Neither party, however, will do anything to impair or to adversely impact the flow or purity of the water.

**I.10. Covenant Running With the Land.** The parties further intend that the easement shall be perpetual, benefiting not only themselves, but also their successors in interest as the respective owners of "A" Property and of "B" Property. To that end, they establish and provide that all benefits and also all responsibilities created herein shall attach to both "A" Property and "B" Property, and shall for all purposes be treated as covenants running with the land; accordingly, this Agreement shall be part of all transfers and conveyances of either property, or of any portion(s) thereof.

**I.11. "Party" Defined.** Since this is expressly established as a Covenant and Easement attached to both "A" Property and "B" Property, the term "Party" as used herein shall include not only the signatories hereto, but also their successors as owners of either "A" or "B", or of any portion(s) thereof.

**I.12. Status as Contract; Additional Parties.** The parties signing this Agreement further intend and expect that the terms hereof, in addition to constituting an easement, shall also constitute a contract between adjoining or neighboring property owners. The parties' successors and assigns, as owners of "A" Property, or of "B" Property, or of any portion of either, shall therefore, merely by virtue of their status as owners, become parties to the contract, benefiting from, and bound by, these contractual terms the same as the original parties hereto.

## **II. Easement Rights of Use and Access; Other Owners Excluded**

**II.1. Broad Right of Use Guaranteed.** Each party reserves for itself, and grants and guarantees to the other, as a shared benefit in common with one another, the right of access to and use of the water source, with no encumbrances, limitations, or restrictions except as may be set forth herein or as may arise from natural causes or from temporary emergency, for all reasonable or legitimate purposes which may benefit their property, or their personal enjoyment of their property; provided, that the right of each party to use the water for normal household or personal consumption shall take precedence over the right of any party to use the water for gardening,

landscaping, nursery, tree farming, or other agricultural purposes.

**II.2. Limitation; Not for Use by Other Properties.**

The right to use the water source is expressly limited to "A" Property and "B" Property; under no circumstance shall any party cause, permit, or allow the owner/occupant/etc of any other property to tap into the water source, or otherwise divert any water originating from it, for the use or benefit of another property.

**II.3. Easement Granted.** Purchaser now grants and confirms to themselves, and to Seller, and to the successors and assigns of each, a permanent easement for the shared use of, and for reasonable access to, the water source, including the right of inspection and emergency repair of any pipes or other water system components that are, or that are reasonably thought to be, adversely impacting the water source or the availability of water to "B" Property; Purchaser similarly accepts the grant and benefit of a reciprocal easement from Seller, obligating Seller to share in the cost of maintaining, (and possibly of further developing) the water source, as more fully set forth herein. And, simultaneously, Seller now grants and confirms to Purchaser, and to Purchaser's successors and assigns, a permanent easement onto "B" Property, for access, inspection, and emergency repair of any pipes or other water system components that are, or that are reasonably thought to be, adversely impacting the water source or the availability of water to "A" Property; Seller similarly accepts the grant and benefit of a reciprocal easement from Purchaser, obligating Purchaser to share in the cost of maintaining, (and possibly of further developing) the water source, as more fully set forth herein. The benefits and burdens of both such easements are more fully set forth herein, and, in the future, both such easements shall be construed and applied in accordance herewith.

**II.4. Restrictions/Interference Prohibited.**

Although the parties recognize that acts of nature, component breaks and resulting repairs, or other emergencies, can each adversely affect or even completely stop the flow of consumable water to their property, no party shall do anything to the water source, or commit any act, or allow to remain without repair or correction, any use, act, or circumstance that will interfere with or restrict either the quantity or quality of water available from the water source, or another party's lawful use of or access to the water source, or the water produced thereby.

### III. Use and Maintenance of Water Source

III.1. General Purpose. The parties understand that their benefit as a user of the water source will be meaningful only if the water source is maintained to a standard that is suitable for the production of water suitable for household use and personal consumption.

III.2. Guiding Principles. As already stated herein: the parties shall have the right to share in the water source; no water shall be used or diverted for the benefit of any property other than "A" Property or "B" Property; use for domestic household purposes shall always have precedence over agricultural, irrigation, or landscaping purposes; and neither party guarantees that any specified quantity or quality of water will be available from the water source for the use of the other.

III.3. Maintenance Decisions. Decisions on maintenance of those components of the water source which serve or benefit all parties shall be a shared decision of the parties hereto, with each party's vote to be weighted in the same proportion as their share of the cost of maintenance. A majority of the weighted votes is necessary for any decision. Provided, that if a "losing" party on any maintenance issue believes that the majority decision is unreasonable or violates the rights granted herein, they shall have the right to submit the matter to arbitration as provided herein. The arbitrator may overrule the majority only upon finding, by clear and convincing evidence, that the majority decision violates the specific terms or broad purposes hereof, or that, as a practical matter, it denied to a party the right to share in the water source as provided herein.

III.4. Maintenance Responsibility/Costs; Main Source. Maintenance of the water source (excluding pipes or other components whose sole purpose or function is to deliver water from the source to the property or structures of one specific owner; such costs shall be borne by that owner) is a shared responsibility of all parties. Costs of this maintenance shall be shared by all owners in proportion to the number of houses or similar structures they own that draw from the water source.

III.5. Individual Responsibility for Costs. As an exception to the general principle of shared costs set forth herein, each party shall be individually responsible for paying for any maintenance or repair costs made necessary by their actions which damaged or impaired the water source.

III.6. Right of Access. The fact that each party has a right to use the water, and a corresponding responsibility to share in the cost, gives to each party a right of access to the



water source and all components thereof (including, as may be appropriate, pipes or similar components serving another owner and located on another's property) for purpose of reasonable inspection or maintenance.

### **III.6. Use of Water Source by Additional Structures.**

At the present time there is one home (not currently occupied or in active use) on "A" Property, and one home under construction (as a substantial expansion and upgrade from a small infrequently-used "hunter's cabin") on "B" Property. The rights of these two structures shall be deemed primary, and if the water source is insufficient to service any additional homes or structures that may be built, then the owner of such additional structures shall be responsible for obtaining and providing water to his/her structures.

### **III.7. Payment and Enforcement.**

Each party shall pay their share (as determined or computed pursuant to the terms hereof) of maintenance costs, regardless of whether that share is 100% (for repairing conditions attributable to or benefitting only that one owner) or some smaller portion. If, within thirty days, any party has refused to pay, then any other party may file a "lien of nonpayment", which shall be formal and public notice of a claim against both the defaulting party and that portion of "A" Property or "B" Property owned by the defaulting party. Any party may then submit the matter to binding arbitration as provided herein; if the sole or substantial issue at such arbitration is whether a party did (and/or should) pay their appropriate share, the arbitrator shall make every effort to conduct the proceedings and render an award expeditiously, so that the award can then be filed as a judgment.

## **IV. Future Development of Water Source**

### **IV.1. Mutual Feasibility Study.**

The parties shall jointly undertake a study of the water source, by an experienced expert or specialist, to evaluate the potential of the water source and to recommend those steps or improvements that could increase the capacity of the source for the benefit of all. The parties shall identify and retain such expert within 90 days of closing the sale of "A" Property to Purchaser; if the parties are unable to agree on an expert, the selection shall be submitted to arbitration as provided herein. Similarly, if, upon receiving the findings and recommendations of the expert, the parties are unable to agree on the course of action to then follow, that matter shall be submitted to arbitration.

### **IV.2. Standards.** Any party (whether acting

individually or in concert with other parties) who undertakes a project to improve, enhance, or expand the water source shall assure that such work is built in compliance with all then-existing government regulations applicable to private water systems.

**IV.3. Costs.** The cost of any improvement that benefits one owner (for example, new pipes, pumps, or storage tanks) shall be borne by that owner. The cost of any improvement to the system as a whole, for the benefit of all users, shall be shared equally between such users.

**IV.4. Placement of New Pipes or Components.** Any party, in developing or installing pipes or other components that, exclusively or primarily, will benefit their property, shall, when placing those components on or across the property of another, coordinate such placement with the affected owner; if reasonably possible, the parties shall then try to place or route such components along the same general route of the private road (unsurveyed and unpaved) serving these properties.

## **V. Arbitration**

**V.1. General Principles.** If the parties hereto are unable to resolve any difference regarding their rights, responsibilities, or duties under this agreement, the matter shall be submitted to binding arbitration.

**V.2. Appointment of Arbitrator.** If the parties themselves can not agree to the appointment of a single arbitrator, any party may petition the Superior Court of Skamania County to do so. Any arbitrator shall be disinterested, and, if at all possible, shall have background or experience in the particular issue or dispute in question.

**V.3. Right to File Lis Pendens.** Upon the appointment of an arbitrator to hear and decide any issue or dispute hereunder, any affected party may file a Lis Pendens or similar notice as a matter of public record; instead of referencing the Court proceeding (by definition, the proceeding will be non-judicial before an arbitrator, rather than a matter of Court record), such notice shall briefly summarize the matter or issue in dispute, and shall give the name/address/phone of the arbitrator.

**V.4. Rules and Procedure.** The arbitrator may establish the rules, procedures, and schedule of the arbitration proceeding. The parties now agree that giving each party a reasonable opportunity to present their position, and then reaching



a fair and expeditious decision that enforces the purposes of this Agreement, are more important values than following legal rules of evidence or technical guidelines.

**V.5. Both Easement and Contract.** The parties intend, and in conducting any arbitration proceeding the arbitrator shall be guided by, the fact that two distinct bodies of law apply both to the rights and responsibilities of the parties, and therefore to their ability to enforce such matters in arbitration. Specifically, an arbitrator shall consider this agreement under real estate law as an easement, and under contract law as a contract, and may apply principles from both bodies of law in reaching his/her decision.

**V.6. Decision; Costs and Fees.** The decision of the arbitrator shall be binding, and may be registered in Superior Court as a Judgment. In rendering his/her decision, the Arbitrator shall have the right to award attorneys fees, costs, and their own fee.

**V.7. Dual Nature of Judgment.** Any judgment registered in Superior Court, based on the decision or award of an arbitrator in any proceeding to determine the duties and responsibilities of the parties hereto, shall have a dual nature or dual effect. First, it shall be a personal judgment against the indicated party(ies) as judgment debtors, and, second, it shall be a judgment lien against whatever portion of "A" Property or "B" Property is associated with the judgment debtor(s); for these purposes, property "associated with" the judgment debtors shall include, in addition to that portion of "A" or "B" they then own, any portion of "A" or "B" which they sold/transferred/ conveyed subsequent to the events or conduct that gave rise to the arbitration matter and the eventual judgment. Provided, however, that the resulting judgment lien against any formerly-owned-but-subsequently-conveyed property shall take effect as of the date the arbitration decision is registered with the Court, or the date a "lien of nonpayment" or "lis pendens" or similar notice was filed as a public record, whichever first occurred.

## **VI. Amendment**

**VI.1. General Provision.** This Agreement may be amended at any time by unanimous agreement, written, signed by all then-owners of "A" Property or "B" Property, or the then-portions thereof, and duly recorded in the records of Skamania County, Washington.

**VI.2. Special Provision.** If the parties do not

unanimously agree on any requested amendment, a "losing" party may have the matter submitted to arbitration as provided herein. If the arbitrator then finds, by clear and convincing evidence, both: that a substantial change of circumstance has occurred since the signing and recording hereof, or that through oversight or carelessness some appropriate or reasonable provision has been omitted from this agreement, and that such provision is an important part of assuring to each party the right and the opportunity to their share (as established herein) of the reasonably supply of water available from the water source, and/or of assuring to each party the meaningful right and opportunity to have others share in certain costs as provided herein; and also, that the proposed amendment would ameliorate the adverse effects of such substantial change, oversight, or carelessness, and would further the purposes hereof, then the arbitrator shall render a decision to implement the proposed amendment.

## VII. Signing

**VII.1. Counterpart Signatures.** The parties and each signatory agree that, if more convenient, they may each sign separate copies of this agreement; these separate signature pages may then be combined with one another, and, together, they shall be treated as one fully-signed document.

DATED this 19<sup>th</sup> day of November, 2010.

DRJ:drj  
C:\WP51\10-111023\JANINEZ\WELLRIGHT

Buyer(s)

Lois R. Wallin Sanchez  
LOIS R. WALLIN-SANCHEZ  
Lois Sanchez

LORIN M SANCHEZ

Sean I. Sanchez  
SEAN I SANCHEZ

David Sanchez  
DAVID SANCHEZ

Lily Young  
LILY YOUNG

Rebecca Sanchez  
REBECCA SANCHEZ

Unofficial Copy

STATE OF Washington

)  
) ss.  
)

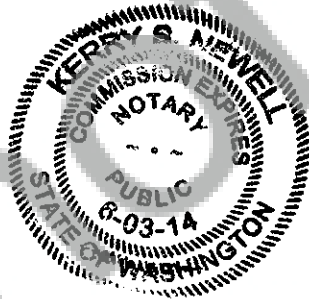
COUNTY OF Clark

I certify that I know or have satisfactory evidence that Lois R. Wallin-Sanchez, David Sanchez and Rebecca Sanchez signed this instrument, and acknowledged it to be they free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: November 19, 2010

Kerry S. Newell

Name: Kerry S Newell  
Notary Public in and for the State of Washington,  
residing at Ridgefield  
My appointment expires: June 3, 2014



STATE OF Georgia  
COUNTY OF Dekalb

)  
) ss.  
)

I certify that I know or have satisfactory evidence that Sean I Sanchez signed this instrument, and acknowledged it to be they free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: November 22, 2010



Order Number: 19450kn

Therese Trent Voorhees  
Name:  
Notary Public in and for the State of Georgia  
residing at Stone Mountain, GA  
My appointment expires: 12/27/11

**Therese Trent Voorhees**  
**Notary Public**  
**Dekalb County, Georgia**  
**My Commission Exp. Dec. 27, 2011**

Unofficial Copy

STATE OF Georgia  
COUNTY OF Dekalb

)  
) ss.  
)

I certify that I know or have satisfactory evidence that Lorin M. Sanchez and Lilly Young signed this instrument, and acknowledged it to be they free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: November 22, 2010

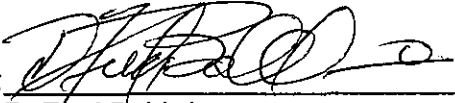
Therese Trent Voorhees  
Name:  
Notary Public in and for the State of Georgia  
residing at Stone Mountain, GA  
My appointment expires: 12/27/11

Order Number: 19450kn

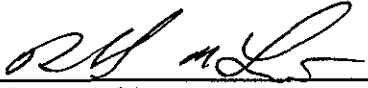
**Therese Trent Voorhees**  
**Notary Public**  
**Dekalb County, Georgia**  
**My Commission Exp. Dec. 27, 2011**

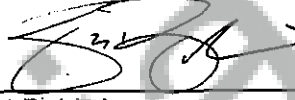
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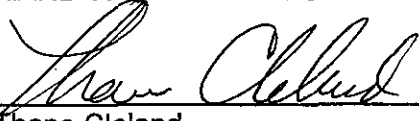


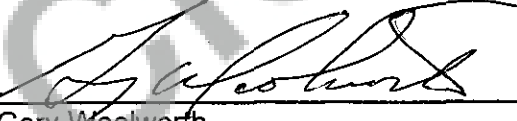
BY:   
D. Fred Baldwin  
Member

BY:   
Rick Baldwin  
Member

BY:   
Richard M. Linn  
Member  
CLELAND WOOLWORTH CAPITAL GROUP, LLC

BY:   
Scott Baldwin  
Member

BY:   
Thane Cleland  
Member

BY:   
Gary Woolworth  
Member

Unofficial Copy

STATE OF Washington

)

) ss.

COUNTY OF Clark

)

I certify that I know or have satisfactory evidence that D. Fred Baldwin, Rick Baldwin, Richard M. Linn and Scott Baldwin signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it as the Members of Excelsior Management Group, LLC and Tangerine, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

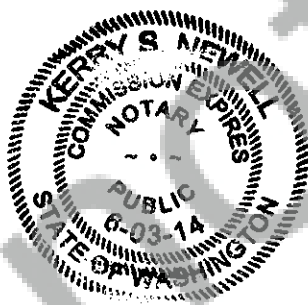
Dated: November 30, 2010

*Kerry S. Newell*

Name: Kerry S. Newell

Notary Public in and for the State of Washington,  
residing at Ridgefield

My appointment expires: June 3, 2014



STATE OF Washington

)

) ss.

COUNTY OF Clark

)

I certify that I know or have satisfactory evidence that Thane Cleland & Gary Woolworth signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it as the Members of Cleland Woolworth Capital Group, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: November 30, 2010

Kerry S. Newell

Name: Kerry S Newell

Notary Public in and for the State of Washington,  
residing at Ridgefield

My appointment expires: June 3, 2014

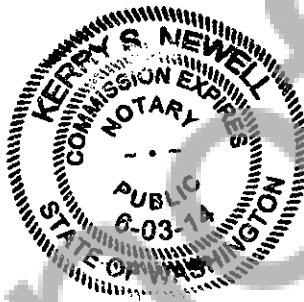


EXHIBIT 'A'

PARCEL I

The Southwest Quarter of the Northwest Quarter of the Northeast Quarter of the Southwest Quarter, the North Half of the Northwest Quarter of the Southwest Quarter all in Section 20, Township 2 North, Range 5 East of the Willamette Meridian in the County of Skamania, State of Washington.

EXCEPT the Northeast Quarter of the Northeast Quarter of the Northwest Quarter of the Southwest Quarter of said Section 20.

Together with the following:

A tract of land in Section 19, Township 2 North, Range 5 East of the Willamette Meridian in the County of Skamania, State of Washington, described as follows:

Beginning at a point 2509.35 feet North of the Southeast Corner of said Section 19, thence North 50°48' West, a distance of 206.71 feet; thence East 160.19 feet, to the quarter corner of Section 19; thence South along the East line of Section 19, a distance of 130.65 feet, to the point of beginning.

PARCEL II

The South Half of the Northwest Quarter of the Southwest Quarter of Section 20, Township 2 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington.

EXHIBIT 'B'

PARCEL III

The Northeast Quarter of the Northeast Quarter of the Northwest Quarter of the Southwest Quarter and the North Half of the Northeast quarter of the Southwest Quarter all in Section 20, Township 2 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington.

EXCEPTING therefrom the Southwest Quarter of the Northwest Quarter of the Northeast Quarter of the Southwest Quarter of said Section 20.

PARCEL IV

The South Half of the Northeast Quarter of the Southwest Quarter of Section 20, Township 2 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington.