

**SECOND AMENDMENT TO
WATER RIGHT PURCHASE AND SALE AGREEMENT**

DATE: September ____, 2017

PARTIES: **SELLER:** Craig Schnebly and Nancy Schnebly (sometimes referred to herein as “Schnebly”)
BUYER: Kittitas County, a political subdivision of the State of Washington (sometimes referred to herein as “County”)

RECITALS

A. The above parties entered into that certain Water Right Purchase and Sale Agreement dated and effective February 24, 2016 (the “Agreement”), containing the terms and conditions for sale and transfer of specified portions of the 1886 Water Right and 1871 Water Right, as defined in Agreement Recitals A and B, respectively.

B. The parties subsequently entered into that certain First Amendment to Water Right Purchase and Sale Agreement, dated and effective December 12, 2016 (the “First Amendment”), which provided for specified modifications to then-filed administrative water right change applications with the Washington Department of Ecology (“Ecology”) to better accomplish the parties’ mutual goals under the Agreement.

C. As described in Recital “D” to the First Amendment, the Agreement provided for the retention or reservation by Seller of two portions of the 1871 Water Right, namely: (1) 20.0 consumptive acre feet to be utilized by Seller for future home development or water banking purposes (“Schnebly Development Water”); and (2) an additional quantity of consumptive use water necessary for Seller to irrigate 23.05 acres of specified lands owned by Seller (“Schnebly Irrigation Water.” For purposes of the First Amendment, both such portions of retained water were together described as the “Retained Water.”

D. Paragraph 10 of the Agreement (Leaseback Provisions) established a minimum quantity of water to be leased back from the County by Schnebly for irrigation purposes during a ten-year period following Closing. Under the Agreement, water sufficient for irrigation of at least 85 acres was established as the annual “Minimum Leaseback Water.” Schnebly has subsequently determined that acreage to be irrigated under the Leaseback Provisions of the Agreement will not exceed 82 acres.

E. In connection with purchase and sale of additional consumptive use water under this Second Amendment to Water Right Purchase and Sale Agreement (“Second Amendment”), the parties are separately entering into that certain *Option Agreement* of even date. Under said Option Agreement, Schnebly is being granted an option from the County to purchase up to 34 Package B mitigation credits for the development of Schnebly-owned real property, but expressly contingent upon the County’s ability to provide Schnebly with up to 34 Package B mitigation certificates from the County’s water banks by January 1, 2019.

F. The parties now wish to further amend the Agreement and First Amendment to address three items: (1) Buyer's additional purchase of the above-described Schnebly Development Water under the 1871 Water Right; (2) clarification and confirmation that Seller will retain a quantity of consumptive use water necessary to irrigate 25.05 acres of lands owned by Seller and family members – not "23.05 acres", as provided in the Agreement and First Amendment; and (3) change and confirmation that Minimum Leaseback Water under the Agreement shall be for the irrigation of 82 acres – not "85 acres" as provided in the Agreement.

G. All capitalized terms herein refer to and shall have the meanings ascribed to them under the Agreement, First Amendment, and this Second Amendment.

NOW, THEREFORE, pursuant to Paragraphs 26 and 29 of the Agreement concerning amendments, the parties mutually agree to amend the Agreement and First Amendment solely as to the following:

1. **Retained Water.** The Agreement, including, without limitation, Paragraphs 3, 4 and 5, together with Paragraph 1.4 of the First Amendment, are modified only as necessary to confirm the parties' below understandings and agreements:

1.1 Subject to the below terms and conditions, Seller agrees to sell and Buyer agrees to purchase the Schnebly Development Water, title interest and use rights in which were to have been retained by Seller under the terms of both the Agreement and First Amendment.

1.1.1 The Schnebly Development Water shall be *added* to portions of the 1871 Water Right already earmarked for Buyer's purchase under the Agreement, together with the entirety of the 1886 Water Right. (Under May 10, 2017, modification letters, Ecology has now quantified and approved the consumptive use quantities associated with both the 1871 and 1886 water Rights.) The Schnebly Development Water shall be acquired by and paid for by Buyer, at Closing, consistent with all other terms and conditions under the Agreement.

1.1.2 In the event the County, for any reason, is unable to provide Schnebly with the 34 Package B mitigation certificates as described in Recital "E," above, County shall so notify Schnebly and County shall take all such actions necessary to re-convey the Schnebly Development Water to Schnebly, in exchange for refund by Schnebly of the portion of the Purchase Price represented by the Schnebly Development Water, to wit: \$92,649.00. Schnebly and the County shall share equally in any costs associated with the reconveyance of the Schnebly Development Water to Schnebly.

1.2 Schnebly Irrigation Water, as defined in Recital "C," to be retained and not conveyed to the County shall be the quantity of consumptive use water necessary to irrigate 25.05 acres of lands owned by Seller and immediate family members.

2. **Leaseback Provisions.** Paragraph 10 of the Agreement is modified only as necessary to confirm that Minimum Leaseback Water shall be the quantity of water necessary for the irrigation of 82 acres.

3. **Entire Agreement.** Except as to the above, all other terms and conditions under the Agreement, as amended by the First Amendment, shall remain as provided therein.

EXECUTED in duplicate original as of the date and year first above written.

BUYER:

KITTITAS COUNTY

By: _____
Paul Jewell, Chair, Kittitas County Board of Commissioners

SELLER:

CRAIG AND NANCY SCHNEBLY

By: _____
Craig Schnebly

By: _____
Nancy Schnebly

State of Washington)
) ss.
County of Kittitas)

I certify that I know or have satisfactory evidence that **Commissioner Paul Jewell** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

DATED this ____ day of _____, 2017.

Notary Public in and for the State of
Washington
Residing in _____
My Commission Expires: _____

State of Washington)
) ss.
County of Kittitas)

I certify that I know or have satisfactory evidence that **Craig Schnebly and Nancy Schnebly** are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

DATED this ____ day of _____, 2017.

Notary Public in and for the State of
Washington
Residing in _____
My Commission Expires: _____