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Kittitas County CDS

**Agreement by and between SSHI LLC, d/b/a/ D.R. Horton and Kittitas
County**

This Agreement by and between SSHI, LLC, d/b/a D.R. Horton and Kittitas County ("Agreement") is entered effective the 2nd day of November 2021, by and between SSHI LLC, d/b/a/ D.R. Horton ("DRH"), and Kittitas County ("County"), who shall be collectively referred to as the "Parties."

WHEREAS, DRH owns that certain real property commonly known as Black Horse at Whiskey Creek ("DRH Property"), identified as Kittitas County Assessor Parcel number 18-18-27010-0002 and legally described in Exhibit A hereto and incorporated herein by this reference;

WHEREAS, the County approved a preliminary plat for the DRH Property under Ordinance 2007-006 (the "Project");

WHEREAS, DRH has completed a majority of the plat infrastructure, including roadway and utility construction, throughout the plat and anticipates full completion of the plat infrastructure during 2021 based on plans approved January 27, 2021;

WHEREAS, DRH has posted a performance bond for all work within the plat, constructed or not;

WHEREAS, DRH removed the existing culvert at Whiskey Creek (as it crosses under Bender Road) and installed a new fish passable culvert and flow restrictor pursuant to an HPA from Washington State Department of Fish and Wildlife, Permit 2020-3-7+01, issued January 24, 2020, expiration January 24, 2025; approval from the Army Corp of Engineers; and permits issued by the County in December 2019 to February 2020;

WHEREAS, DRH has removed fill previously placed in the floodplain and left the ground at near original elevations, the County has confirmed via survey;

WHEREAS, as part of its plat construction work DRH will be regrading all existing stormwater ponds to reflect their functionality as evaporation ponds (per Section 6.4 of the Department of Ecology Stormwater Management Manual for Eastern Washington (Stormwater Manual)) based on approved engineering review by the County;

WHEREAS, DRH will install trench dams throughout the site to aid in the re-direction of irrigation return flows away from the newly created evaporation ponds to ensure functionality of said ponds;

WHEREAS, DRH has filled in Pond 4, to protect the Ellensburg Water Company ("EWC") canal, and will install a stormwater lift station along Bender Road to pump the flows previously discharged into Pond 4 up to the northerly end of the site where the flows will be released into a series of evaporation ponds as approved by the County. Due to supply chain delays, the expected complete installation of the stormwater lift station is now anticipated for late 2021 or early 2022.

DRH has provided to the County for approval, an interim pumping plan that will simulate the future lift station pumping configuration, so that the first phase of the final plat may be recorded;

WHEREAS, the interim pump plan has been negotiated with Kittitas County allowing final plat recording, the County desires limiting construction of new housing starts to foundation only permits until such time the pump station construction is complete and accepted by Public Works;

WHEREAS, DRH will install a closed pipe system to direct any emergency overflow from Pond 3 to the stormwater lift station at Bender Road. The stormwater lift station and force main have been sized to handle the additional flow in case of an emergency;

WHEREAS, starting in March 2021, DRH has continued to measure inflow into Pond 3 (measurement is provided from level loggers installed in the pond) and irrigation return flow water appears to be impacting Pond 3 performance;

WHEREAS, shallow groundwater impact is an anticipated design element impacting evaporation pond performance requiring mitigation;

WHEREAS, Pond 3 is mitigated by collecting and conveying pond overflow via pump station to a series of evaporation ponds;

WHEREAS, DRH has been monitoring Pond 3 since March 2021 and continued monitoring of the pond inflow vs. outflow (data from level loggers) under the herein-provided monitoring period will provide additional data to ensure that Pond 3 will perform as required during the irrigation season; and

NOW, THEREFORE, in consideration of the mutual benefit from the promises herein and nothing more, the Parties agree as follows:

1. **Stormwater Infrastructure Maintenance Monitoring Period.** DRH will enter into a maintenance and monitoring agreement with the County concerning all required stormwater control improvements, as depicted on attached Exhibit C, for a period of twenty-four (24) months from the date the County accepts the last of such stormwater infrastructure improvements on the DRH Property. (In connection therewith, the Parties agree that the detailed design requirements for such improvements are depicted on the County and City-accepted plan set consisting of 102 sheets, dated for approval as January 24, 2021 and January 27, 2021, respectively. The approved set is for road, storm and grading approval only as the sewer and water plans were previously approved. Said requirements are deemed incorporated herein and made a part of this Agreement.) DRH will monitor all storm ponds and storm infrastructure serving the Project for twenty-four (24) months from date that the system is fully brought online and is actively utilized to serve the Project, based on monitoring criteria established by DRH and the County and attached hereto as Exhibit B ("Criteria").

DRH will install data collectors to monitor the water levels and infiltration/evaporation rates within the ponds. DRH will gather and provide data to the County on a quarterly basis and copy EWC on all such data submittals. Upon County acceptance of the last stormwater infrastructure improvement as described and depicted on Exhibit C, data collection and monitoring

of the stormwater system as a whole, as described on Exhibit B, will commence. At the end of twenty-four (24) months of data collection and monitoring of all County-accepted improvements, the County will assess all infiltration/evaporation ponds and associated pumping and pipeline facilities identified on Exhibit C, which together comprise the onsite, intertied stormwater control system, for compliance with the County regulations, including all stormwater control requirements under Ordinance 2007-006 and supporting SEPA preliminary determination, and expected performance. In connection therewith, and in order for the County to ascertain whether monitoring data submitted by Horton hereunder are reflective of onsite stormwater retention exclusively, as required by Ordinance 2007-0006, the County shall be permitted at all times during the herein-provided monitoring period (including any extension thereto) to inspect the western boundary area of the Project south of 29th Avenue, for the purposes of identifying any point or non-point sources within that area, which are discharging or likely to discharge into the EWC Main Canal. An EWC representative shall be entitled to accompany Staff during such inspections. Upon identifying such point or non-point source contribution generated by the Project, the County shall contact Horton immediately to initiate a plan for timely removal of same, including restoration of adjacent Project lands to their pre-discharge condition. Upon Horton's completion of discharge removal and restoration requirements, to the satisfaction of the County, the County may then establish any further, additional monitoring period, or extension thereto, as may be the case (up to and including a full reset of the then-current monitoring period, in the County's sole discretion).

If the system, including each individual pond, has met all Criteria within that timeline, the County will accept the system and no further monitoring will be necessary. If, however, the system, including any individual pond(s) or associated facilities, does not meet the Criteria, DRH will undertake system repairs or other remediation measures, including tract configuration changes as deemed necessary, which together are expected to meet the Criteria and will provide an additional twenty-four (24) months of system monitoring data following completion of such repairs or modifications. Any necessary remediation will be per the Operations and Maintenance Manual (O & M Manual) (see Item 3) or as coordinated with and approved by County staff.

To allow for additional expansion of the evaporation pond system, if necessary, DRH will designate a section of lots currently located in the floodplain to remain undeveloped within a future development tract upon recording of the first division of the plat. This tract area will remain undeveloped until at least twenty-four (24) months have passed with monitoring as provided for herein.

2. **Stormwater Lift Station.** The stormwater lift station that will pump flows from its location at Bender Road to the northerly portion of the site shall be located within a separate Tract owned by the Project's Homeowner Association (the "HOA"). The HOA shall contract with a utility company that can provide continuing operation and maintenance of the intertied pond system and lift station, on terms satisfactory to the County. The HOA's obligations shall be established in the Project's recorded CC&Rs with obligation to operate and maintain in perpetuity, with reference thereto on all recorded final plat approvals. Further, DRH shall retain secondary responsibility for continuing operation and maintenance of the intertied pond system and lift station until County disposition of all final plat applications for phases south of 29th Avenue.

3. **O&M Manual and Pest Management Plans.** DRH will prepare and administer a detailed O & M Manual as well as a Pest Management Plan for the evaporation ponds. Both will be in place within 60 days of completion of all stormwater control improvements. A clear route to access all ponds will be provided as part of the maintenance proposal.

4. **Flood Monitoring.** After a storm event, DRH will monitor flooding at Whiskey Creek from the flow restrictor at the Bender Road culvert along the Bender Road frontage to the Ellensburg Water Company Town Ditch. As provided for in the Maintenance/Monitoring and Removal Protocol DRH will remove materials and repair any erosion damage at the flow restrictor. Monitoring shall continue until January 24, 2025, or until the undershot at the EWC canal crossing with Whiskey Creek is removed, whichever occurs first.

5. **Sediment Removal.** Until January 24, 2025, or until the flow restrictor at the Bender Road culvert is removed, whichever event occurs first, and upon reasonable notice and authorization by EWC, DRH will remove that sediment in EWC's Town Ditch which EWC identifies as having been deposited between 15 feet upstream to 20 feet downstream of the Bender Road crossing and is the result of flood overflow from Whiskey Creek running along Bender Road. Under this term, EWC will immediately provide notice to DRH and the County, including the timeframe within which sediment buildup must be removed for the protection of canal operations and water deliveries to its shareholders. When DRH can meet that timeframe with its own equipment and resources, DRH shall undertake the sediment removal project, using industry-established best management practices. If not, EWC will undertake the project on its own, with reasonable and customary expenses therefor to be paid from a \$10,000.00 escrow account established for such purposes.

6. **Siphon Contribution.** DRH will contribute a total of \$250,000 to the construction of a siphon at the crossing of the Ellensburg Town Ditch and Whiskey Creek as noted herein. Of this amount, DRH will deposit \$125,000 in escrow upon submittal of the final plat for each of the first two divisions, respectively. Upon recording of each division, DRH will release the respective \$125,000 to the County for its use in designing, permitting and/or construction of a siphon at the EWC canal crossing with Whiskey Creek. The County shall hold the funds in an interest-bearing account and shall expend such on the siphon, construction of which shall be complete and the siphon operational by January 24, 2025 (expiration date of the current HPA for the flowrestrictor at the Bender Road crossing). In the event the County does not fully expend these funds within this timeframe, the County shall return the funds to DRH with any interest earned by the County in a manner to be agreed upon by the Parties at such future time.

7. **Compliance with Plat Conditions.** Pursuant to Kittitas County Ordinance 2006-007, as well as KCC 16.18.30, EWC has authority to provide written notification to the County stating its certification that the final plat (including phased final plat approvals, as applicable) of Black Horse at Whiskey Creek meets EWC's requirements. Upon submittal of each final plat, EWC will have two weeks to provide its written certification to the County to allow staff to meet timing deadlines noted in KCC 16.12.020.

To provide for this phasing, the County recognizes that EWC has legal ability to review and provide its review, approval and any conditions on a per-phase basis. Further, DRH agrees to defer recording of any division south of 29th Avenue until at least twenty-four (24) months after

the recording of the first division. If any such improvement(s) fails to perform to requirements established in Paragraph 1, then DRH shall further defer recording of any division south of 29th Avenue until such improvement(s) are reconstructed or modified and confirmed by the County to operate to Paragraph 1 requirements during the required two (2) year monitoring period extension.

Upon confirmation that all improvements perform to Paragraph 1 requirements under the timing requirements of this Paragraph 7, then DRH may begin recording south of 29th Avenue.

The County acknowledges that DRH and EWC are separately negotiating concerning additional Project stormwater control improvements and mitigation items, on which EWC requires final and binding agreement as an express condition on its exercise of irrigator plat signoff authority under this Paragraph 7. In connection therewith, the County understands and agrees to monitor and enforce DRH's compliance with all stormwater control requirements agreed to with EWC.


8. Additional Terms.

- a. Binding and Enforceable. The Parties agree this Agreement is binding and enforceable and shall bind and inure to the benefit of the Parties hereto.
- b. Assignment of Interests, Rights and Obligations. This Agreement shall be binding and inure to the benefit of the Parties. No party may assign its rights under this Agreement without the written consent of the other Parties, which consent shall not unreasonably be withheld. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of DRH.
- c. Severability. The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the remainder of this Agreement, or the validity of its application to other persons or circumstances, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other person or circumstances.
- d. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in Kittitas County Superior Court.
- e. No Third-Party Beneficiaries. This Agreement is for the benefit of the Parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a signatory to this Agreement shall have any third-party beneficiary or other right whatsoever under this Agreement. No other person or entity not a party to this Agreement may enforce the terms and provisions of this Agreement.

- f. Authority. The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.
- g. Police Power. Nothing in this Agreement shall be construed to diminish, restrict or limit the police powers of the County granted by the Washington State Constitution or by general law.

Agreed to by:

SSHI LLC, a Delaware limited liability company
By: SHLR of Washington, Inc., a Washington corporation, its manager

By: 
Name: Kevin Caporale
Title: Division President

Kittitas County


By: 
Name: Mark R Cook
Title: Director

EXHIBIT A

LEGAL DESCRIPTION

The West Half of the Northeast Quarter of Section 27, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;

EXCEPT right of way for Reecer Creek County Road and Bender County Road;

AND EXCEPT a parcel of land laying in the Northeast Quarter of Section 27, Township 18 North, Range 18 East, W.M., Commencing at the Northwest corner of said quarter section; thence 30.0 feet along the North line of said quarter to the East right of way line of Reecer Creek Road and the true point of beginning; thence 10.0 feet along the North line of said quarter; thence Southerly and parallel with the East right of line of Reecer Creek Road 2,139.26 feet; thence Northwesterly 17.10 feet to a point on the East right of line for Reecer Creek Road right of way; thence Northerly 2,125.25 feet to the true point of beginning;

AND EXCEPT a parcel of land laying in the Northeast Quarter of Section 27, Township 18 North, Range 18 East, W.M. Commencing at the Southwest corner of said Quarter, thence North 00°09'12" East 29.92 feet along the West line of said quarter, thence South 89°50'48" East, 18.05 feet to the intersection of the right of ways for Reecer Creek Road and Bender Road and the true point of beginning; thence South 89°35'18" East, 47.69 feet along the North right of way line of Bender Road to the beginning of a curve to the right, a cord bearing North 44°53'31" West, a cord length of 67.80 feet, a curve length of 75.199 feet to the end of the curve, thence South 00°11'44" East 47.69 feet along the East right of way for Reecer Creek Road and the true point of beginning;

AND EXCEPT that portion conveyed to Kittitas County, State of Washington, by Deed recorded March 1, 2005, under Auditor's File No. 200503010021.

AND EXCEPT all rights as conveyed by that certain mineral deed, recorded October 11, 2006 under Auditor's File No. 200610110009.

EXHIBIT B

MONITORING CRITERIA

Prior to final acceptance of pond design performance, DRH will collect pond performance data and provide monthly reports during the monitoring period (two years beginning in April of each year) following the issuance of final plat for Divisions 1 and 2. The following data will be collected and reported to the County:

- Pond water surface elevation at the end of each month
- Changes in pond volume monthly
- Changes in pond volume annually
- An analysis of pond disposal rate compared to design rate.

The monthly reports will contain:

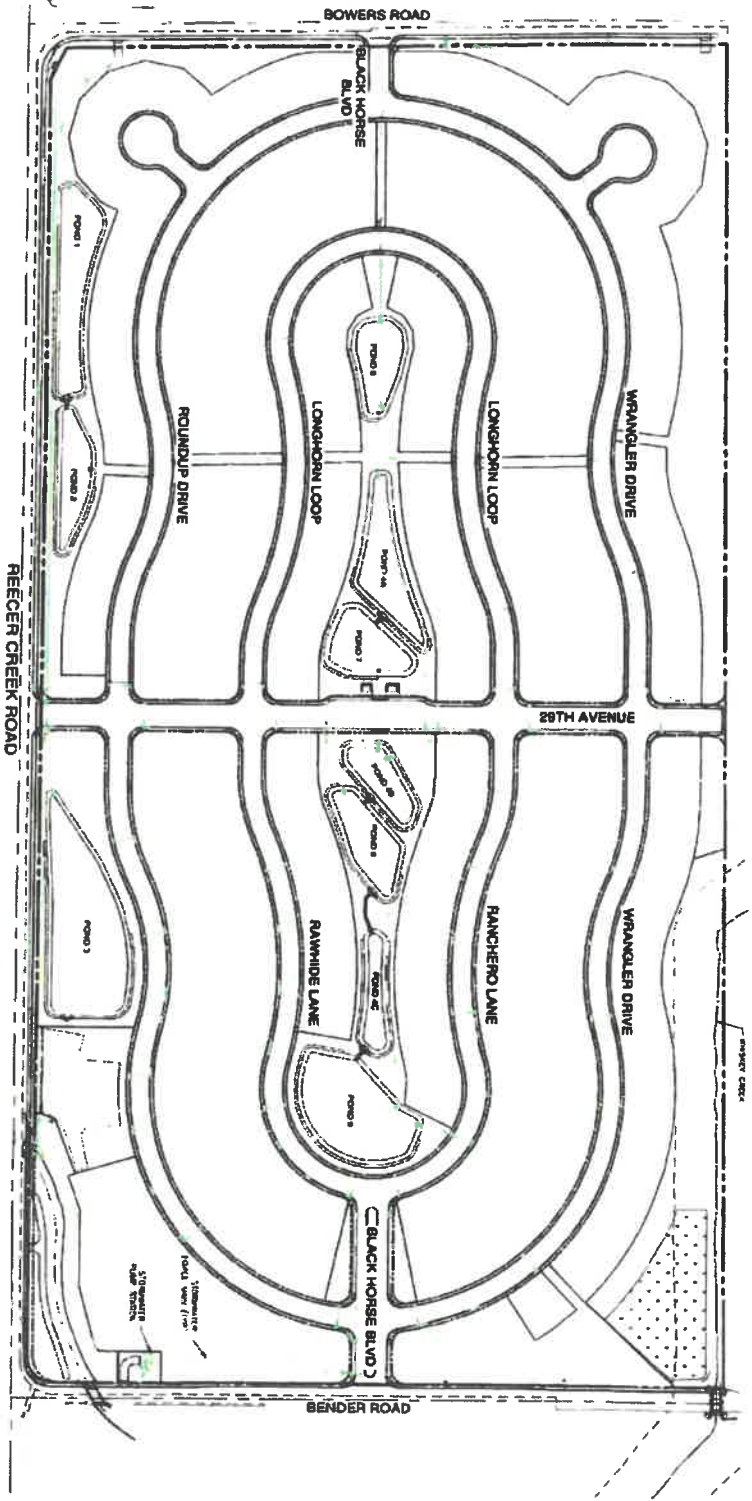
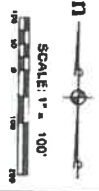
- Starting and ending water surface elevation
- Starting and ending pond volume
- Any pond water surface excursions into the required one foot of freeboard
- Observed pond disposal rate compared to the design disposal rate.

The annual report will summarize monthly data and provide:

- Changes in pond volume by month
- Overall change in pond volume for the year
- Any pond water surface elevation excursions into the required one foot of pond freeboard.

Kittitas County Department of Public Works will review submitted monitoring reports and respond to DRH with any performance concerns. Failure in meeting design performance expectations will be addressed by the County and could include extensions of pond monitoring beyond the initial two year required period. Final pond acceptance will be issued by the County based on the submitted pond monitoring reports. Meeting all design performance parameters during the two-year monitoring period constitutes compliance resulting in final pond acceptance by the County.

BLACK HORSE STORMWATER CONTROL IMPROVEMENTS PLAN



STORMWATER CONTROL IMPROVEMENTS INCLUDE: ALL PONDS AS SHOWN ON THIS PLAN. THIS PLAN IS FOR STORMWATER CONTROL AND NOT FOR CONSTRUCTION. SEE THE INFRASTRUCTURE FOR MORE DETAILS.

EXHIBIT C

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| <p>D.R. HORTON</p> <p>BLACK HORSE AT WHISKEY CREEK</p> <p>MTTITAS COUNTY EXHIBIT B WASHINGTON</p> | | <p>CSM CONSULTING ENGINEERS, LLC</p> <p>3320 20th Ave SW, Seattle, WA 98149</p> <p>www.csmcivil.com</p> <p>Civil Engineering Land Planning Surveying Project Management Environmental Engineering</p> | <p>DATE: 10/15/2013</p> <p>BY: [Signature]</p> <p>SCALE: 1" = 100'</p> |
|--|--|--|--|