

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT is made and entered into this 7<sup>th</sup> day of August, 2018, by and between Duke and Dude, LLC, a Washington Limited Liability Company (hereinafter "Duke and Dude"), and Stephen M. Hayden, as Trustee of the Hayden Unified Credit Trust under will dated August 26, 2005 (hereinafter referred to as "Hayden) (hereinafter collectively referred to as "Seller"), and KITTITAS COUNTY, a political subdivision of the State of Washington (hereinafter referred to as "Purchaser").

A. WHEREAS, Seller is the owner of that certain real property located in Kittitas County and legally described as follows:

That portion of the Southeast Quarter of the Southwest Quarter of Section 28, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, lying East of the County Road, being more particularly described as follows:

Beginning at the quarter section corner on the South boundary of Section 28 and running South 89°56' West on the section line, 458.8 feet to the East line of the County Road; thence North 16°47' East along said road, 203.3 feet; thence North 19°54' East along said road, 1,004.3 feet; thence North 18°12' East along said road, 183.7 feet to a point on the quarter section line; thence South on the quarter section line, 1,313.0 feet to the place of beginning;

and

That portion of the Northwest Quarter of the Southeast Quarter of Section 28, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, which is bounded by a line described as follows:

Beginning at the Southeast corner of said Northwest Quarter of the Southeast Quarter which is the true point of beginning; thence West along the South line of said Northwest Quarter of the Southeast Quarter, 973.8 feet; thence North 09°38' East, 785.94 feet to the South right of way boundary of the Northern Pacific Railroad; thence South 47°55' East along said South right of way boundary, 1,133.8 feet to a point on the East line of said Northwest Quarter of the Southeast Quarter; thence South 02° 41' East, along said East line, 15.0 feet to the true point of beginning;

and

The Southwest Quarter of the Southeast Quarter of Section 28, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

EXCEPT FROM ALL OF THE ABOVE:

1. Right of way for State Highway No. 3 (SR-90) West Side Canal to Bull Road as conveyed to the State of Washington by deed dated June 10, 1965 and recorded September 21, 1965, under Kittitas County Auditor's File No. 324287;
2. Right of way for State Highway No. 2-1 (SR131) West Ellensburg Interchange to Northern Pacific Railway as conveyed to the State of Washington by deed dated June 10, 1965 and recoded September 22, 1965 under Kittitas County Auditor's File No. 324319.

**A FULL LEGAL DESCRIPTION OF THE REAL PROPERTY WILL BE PROVIDED PRIOR TO CLOSING**

(hereinafter referred to as the "Real Property"), together with those certain water rights confirmed in *Ecology v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5 ("Acquavella") as reflected on Exhibit A

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(hereinafter referred to as the "Water Rights"). (The Real Property and the Water Rights are collectively referred to herein as the "Property".)

B. WHEREAS, Seller desires to sell and Purchaser desires to purchase the Real Property and the Water Rights all as is hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing, payment of the purchase price and the mutual covenants hereinafter set forth, the parties hereby agree as follows:

1. Purchase Price: Seller agrees to sell and Purchaser agrees to purchase the Property for a total purchase price of \$4,320,500.00 payable in cash at closing, including earnest money. The allocation of the Purchase Price between the Real Property and the Water Rights is as follows:

Real Property: \$3,300,000.00  
Water Rights: \$1,020,500.00 (plus such additional consideration as set forth in Paragraph 1.1.)

1.1 Additional Consideration. The Purchase Price for the Water Rights is based on preliminary analysis of consumptive use that Purchaser had done in 2016, which determined that there were 54 acres being irrigated and that the water right had a consumptive use of 157 acre-feet per year (157 acre-feet / 54 acres = 2.907 acre-feet per acre per year). The 157 acre-feet of consumptive use multiplied by \$6,500.00 per consumptive acre-foot results in a purchase price of the Water Rights of \$1,020,500.00. If within sixty (60) months of the Closing of this transaction, Purchaser, in a Water Right transfer process, has confirmed a consumptive acre-feet figure that is greater than 157 consumptive acre-feet, the Purchaser shall pay additional consideration equal to the number of consumptive acre-feet above 157 acre-feet that is available for transfer multiplied by \$6,500.00. This obligation on the part of Purchaser to pay additional consideration shall survive the Closing of the sale of the Property, shall not merge into the Statutory Warranty Deed or the Water Rights Deed delivered at Closing. Seller may specifically enforce the rights Seller has to additional consideration in the event Seller is entitled to additional consideration. In the event Seller is entitled to additional consideration then, in that event Purchaser shall notify Seller in writing of the obligation to pay Seller additional consideration within fourteen (14) days of the determination that there are additional consumptive acre-feet available over the 157 acre-feet. Purchaser shall pay Seller the additional consideration within fourteen (14) days of the notice. Seller shall pay real estate excise tax, if any due, on said additional consideration.

2. Earnest Money: Purchaser hereby deposits, and receipt is hereby acknowledged of \$10,000.00 paid or delivered as earnest money in part payment of the purchase price for the aforescribed real estate. Earnest Money and this Agreement shall be held by AmeriTitle for the benefit of the parties hereto.

3. Purchaser's Contingencies: Purchaser's obligations to purchase the Property is specifically subject to and contingent upon the following terms and conditions:

3.1. The adoption of a resolution by the Kittitas County Board of County Commissioners authorizing Purchaser to fund the purchase of the Property and to purchase the Property.

3.2. Within thirty (30) days of the Effective Date, Purchaser's inspection and approval, in Purchaser's sole and absolute discretion, of the physical condition of the Property (the "Property Inspection"), including, without limitation, the conducting of soil tests (including borings), toxic and hazardous waste studies, surveys, engineering, historical use and structural studies. Any costs associated with said inspection shall be paid by Purchaser. In the event Purchaser disapproved of said inspection, then this Agreement shall terminate and the earnest money shall be refunded to Purchaser.

3.3. Purchaser's determination, in Purchaser's sole discretion, of the condition of the title for the Water Rights and such other information as may be reasonably necessary to confirm Seller's ownership

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of the Water Rights and showing title to the same Water Rights to be free and clear of all encumbrances as set forth in Paragraph 6, which determination and approval shall be made or waived by Purchaser within ninety (90) days of the Effective Date of this Agreement. Seller agrees to provide Purchaser, at Purchaser's request, with information related to the diversion and use of the Water Rights.

3.4 Unless otherwise provided herein, all contingencies and conditions require notice in writing of acceptance, non-acceptance, or waiver within the time limits specified herein. In cases where a parties' failure to provide effective notice of acceptance, non-acceptance or waiver causes this Agreement to be terminable by the other party, said termination shall be effective on five (5) business days' notice by the terminating party to the other party of the intent to terminate. Nothing in this Paragraph shall expand or alter a parties' right to terminate or the other party's remedies for wrongful termination or failure to close.

4. Seller's Contingencies. Seller's obligation to sell the Real Property and/or the Water Rights is contingent on Purchaser approving or waiving both contingencies set forth above at Paragraphs 3.2 and 3.3, specifically Seller shall have no obligation to sell the Real Property and the Water Rights if Purchaser does not approve or waive both contingencies set forth above at Paragraphs 3.2 and 3.3 and if Purchaser approves or waives one of the contingencies set forth above in Paragraphs 3.2 and 33, but not the other, then this Agreement shall terminate and all Earnest Money shall be refunded to Purchaser.

5. Sale Subject to Existing Agricultural Lease. Seller has the Property leased to Rafter B, Inc., a Washington corporation. Purchaser agrees to take the Property subject to said lease.

6. Title.

6.1. Title Insurance. Title insurance shall be issued by AmeriTitle. Seller shall pay the cost of Standard Form Title Insurance. Within five (5) days of mutual acceptance of this Agreement, Seller shall arrange for the Closing Agent at Seller's expense, to apply for a preliminary commitment ("Commitment") for an ALTA form Owner's Policy for title insurance ("Policy") described in subparagraph (a) above with inflation protection, endorsements, if available at no additional charge, to be issued by the above title company. Seller shall pay title insurance and cancellation fees.

6.2. Title Insurance Exceptions/Exclusions. Seller's title to the Property is to be free and clear of all liens, encumbrances or defects except for those reservations, restrictions, covenants, easements, and rights of way apparent and/or of record which are acceptable to Purchaser. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, existing easements not inconsistent with Purchaser's intended use, and building or zoning regulations or provisions, and the water rights litigation presently pending under *State of Washington, Department of Ecology v. James J. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5, shall not be deemed encumbrances or defects. Encumbrances to be discharged by Seller may be paid out of purchase money at date of closing. If title cannot be made so insurable by Closing, and if Purchaser does not elect to waive any exceptions to the coverage which are not consistent with this subparagraph, this Agreement shall terminate and Purchaser's earnest money shall be refunded, at Purchaser's option.

6.3. Extended Title Insurance. Purchaser acknowledges that coverage afforded by Standard Form Policy of Title Insurance provides limited or no coverage for loss by reason of conflicts in boundary lines, shortage in area, encroachments or other matters which an accurate survey would disclose. More extensive coverage through an extended policy of title insurance may be available for an additional charge and subject to additional requirements imposed by the title company including a survey. If Purchaser requires or desires extended title insurance, Purchaser agrees to pay all costs in excess of those charged for the Standard Form Title Insurance, including, without limitation, increased premiums and survey costs. If a survey is required, Purchaser shall order survey within five (5) business days of receiving notice from the title company that a survey is

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required and the Purchaser shall pay the estimated cost of the survey prior to performance of any survey work or Purchaser can waive requirement for an extended policy and accept Standard Title Insurance.

7. Default: If either party defaults (that is fails to perform the acts required of him) in his contractual performance herein, the non-defaulting party may seek specific performance pursuant to the terms of this Agreement, damages or rescission. If the non-defaulting party seeking damages or rescission is Purchaser, the earnest money, upon demand, shall be refunded. If the non-defaulting party seeking damages or rescission is Seller, the earnest money, upon demand, shall be forfeited and paid to Seller less all charges provided for herein. **In the event the Purchaser fails, without legal excuse, to complete the purchase of the Property, the earnest money deposit made by the Purchaser shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure.**

Initials of: Seller: SMH / Purchaser: 830 SAH

8. Closing:

8.1. Date of Closing: For purposes of this Agreement, "date of closing" shall be constructed as the date upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller.

8.2. Place and Time of Closing: The sale shall be closed in the offices of AmeriTitle (hereinafter the "Closing Agent"), within 30 days after the waiver of contingencies, but in any event not later than **October 1, 2018, which shall be the Termination Date.**

8.3. Prorations at Closing: All taxes for the current year, rents, insurance, interest, mortgage reserves, water and other utilities constitutes liens (and other such amounts) shall be prorated as of the date of closing. Irrigation assessments, if any, shall be prorated on the basis of a 30-day month, 183 day irrigation season (April 15 to October 15).

8.4. Seller's and Purchaser's Deliveries at Closing: At Closing, Seller shall deliver (or cause to be delivered) to Purchaser the following:

8.4.1. Real Property Deed: A duly-executed and acknowledged Statutory Warranty Deed conveying to Purchaser marketable fee simple title to the Real Property (the "Deed") free of all liens and encumbrances and defects in title other than those not objected to (or waived) by Seller as provided for herein. The Deed will be in a form prepared by Seller, subject to the reasonable approval of Purchaser.

8.4.2. Water Rights Deed. A duly-executed and acknowledged Water Rights Deed, in the form attached hereto as Exhibit B, conveying to Purchaser marketable fee simple title to the Water Rights (the "Deed") free of all liens and encumbrances and defects in title other than those not objected to (or waived) by Seller as provided for herein. The Deed will be in a form prepared by Seller, subject to the reasonable approval of Purchaser.

8.4.3. Closing Statement: the closing statement, prepared by the Title Company, reflecting the financial terms of the transaction contemplated by this Agreement (the "Closing Statement") executed by Seller.

8.4.4. Further Instruments: Any and all further instruments which Purchaser or the Title Company shall request of Seller in order to meet requirements of the Commitment or to otherwise effect the conveyance of the Property as contemplated in this Agreement.

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8.5. Purchaser's Deliveries at Closing: At Closing, Purchaser shall deliver to Seller (i) the remainder of the Purchase price, subject to proration and adjustment, as provided herein; (ii) the Closing Statement, executed by Purchaser; and (iii) any and all further instruments which Seller or the Title Company shall request of Purchaser in order to meet requirements of the Commitment or to otherwise effect the conveyance of the Property as contemplated in this Agreement.

8.6. Closing Costs. The Closing costs of this transaction shall be allocated as follows:

PURCHASER	COST OR EXPENSE	SELLER
	Seller's attorney's fees, if any	X
X	Purchaser's attorney's fees, if any	
	Premium due for Standard Policy of Title Insurance	X
X	Premium due for Extended Policy of Title Insurance	
	Survey, if required	
	Real Estate Excise Tax	X
	Recording fees to clear/un-encumber title	X
X	Recording feeds for deed	
½	Title Company closing or escrow charges	½

9. Form of Conveyance: Title shall be conveyed by Statutory Warranty Deed free of encumbrances or defects except those otherwise noted herein. The Statutory Warranty Deed shall be prepared by Seller.

10. Possession: Seller shall deliver possession of the Property to Purchaser at Closing.

11. Seller's Representations, Warranties and Covenants. Sellers represent and warrant to Purchaser that, as of the date of this Agreement and as of the Closing Date, the following statements are true and correct:

11.1 Authority. Sellers have full right, title, authority and capacity to execute and perform this Agreement and to consummate all of the transactions contemplated herein, and the individuals who on Sellers' behalf executes and delivers this Agreement and all documents to be delivered to Purchaser hereunder are and shall be duly authorized to do so.

11.2 Litigation. There are no actions, suits, proceedings or litigation pending or to the best of Sellers' knowledge threatened against Sellers before any court or administrative agency which might result in Sellers being unable to consummate this transaction, or which relates to the Property (including relating to the presence of hazardous substances or materials on the Property) or Sellers' ability to transfer the Property.

11.3 Title. Sellers are the sole owners of the Property and have good and marketable title thereto.

11.4 Governmental Actions. Sellers have made no request or application for, and to the best of Sellers' knowledge, there are no proceedings to alter or restrict the current zoning or other use restrictions applicable to the Property.

11.5 Taxes. Sellers have paid all local, state and federal taxes and assessments attributable to the period prior to the Closing Date which, if not paid, would constitute a lien on the Property.

11.6 Licenses and Permits. To the best of Sellers' knowledge, all licenses, approvals, permits and certificates from governmental and quasi-governmental agencies or private parties necessary for the use and operation of the Property by Sellers as it is currently being used and operated are currently possessed by Sellers.

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11.7 No Violations. Sellers have received no notice of any violations of any applicable federal, state or local laws, rules or ordinances affecting the Property or the use, occupancy or ownership thereof, including, without limitation, violations of the zoning, building, health, toxic and hazardous waste, environmental and other laws, codes, ordinances, regulations, orders and requirements of any city, county, state, federal or any other governmental authority having jurisdiction thereof.

11.8 Change in Circumstances. If, prior to the Closing Date, Sellers becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement, then Sellers shall promptly give written notice thereof to Purchaser. If Sellers gives written notice of such a change, or if Purchaser otherwise has actual notice of such a change, Purchaser shall have the option to terminate this Agreement within ten (10) business days after Purchaser receives written notice of the changed fact or circumstance (or the end of the Due Diligence Period, if later) and to thereafter have the Earnest Money, together with accrued interest, if any, immediately returned to it and all of Sellers' and Purchaser's obligations under Agreement shall terminate, except those that expressly survive a termination of this Agreement.

Initials of: Seller: \_\_\_\_\_ / SMT Purchaser: PEO  
SMT

12. Purchaser's Representations and Warranties.

12.1. The persons who have executed this Agreement have been duly authorized to do so by Purchaser. All documents delivered at Closing will be executed by a duly authorized person. Purchaser has a good and legal right to enter into this Agreement and to perform all covenants of Purchaser contained in this Agreement in accordance with its terms.

12.2. Purchaser is duly organized, validly existing, and in good standing under the laws of the state of its formation. Purchaser has the full power and authority to execute, deliver and perform its obligations under this Agreement.

12.3. None of the representations or warranties made by Purchaser contain any untrue statements of material fact or omit a material fact necessary in order to make the statements not misleading. All representations and warranties of Purchaser shall be true on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

13. Condition of Property. Purchaser offers to purchase the Property in its present condition on the terms noted. Seller hereby warrants that to the best of his knowledge the premises described herein and the improvements thereon do not materially violate the applicable building or zoning regulations and that he is unaware of any material defect in the premises or improvements thereon.

13.1. "AS-IS" Sale. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT AND WITHOUT LIMITING THE WARRANTIES CONTAINED IN THE DEED DELIVERED AT CLOSING, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS PURCHASING THE PROPERTY IN AN "AS-IS" CONDITION "WITH ALL FAULTS" KNOWN AND UNKNOWN, AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESSED OR IMPLIED, OF ANY NATURE WHATSOEVER FROM OR ON BEHALF OF SELLER, INCLUDING WITHOUT LIMITATION, THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND USE. PURCHASER HEREBY WAIVES ANY AND ALL CLAIMS WHICH THE PURCHASER HAS OR MAY HAVE AGAINST THE SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE PROVIDED HEREIN OR IN THE DEED DELIVERED AT CLOSING. WAIVER OF THE INSPECTION PERIOD CONTINGENCY SHALL, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT AND WITHOUT LIMITING THE WARRANTIES CONTAINED IN THE DEED DELIVERED AT CLOSING CONSTITUTE PURCHASER'S ACKNOWLEDGMENT TO SELLER THAT PURCHASER HAS FULLY INSPECTED THE PROPERTY AND PURCHASER ASSUMES THE

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RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS, INCLUDING SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION. SELLER AND PURCHASER ACKNOWLEDGE THAT THIS DISCLAIMER HAS BEEN SPECIFICALLY NEGOTIATED.

13.2. Purchaser acknowledges that (1) Purchaser has had and/or will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigation as Purchaser deems necessary, desirable or appropriate with respect to the Property, and (2) except as otherwise expressly set forth in this Agreement or in the Deed delivered at Closing, neither Seller, nor anyone acting for or on behalf of Seller, has made any representation, warranty, promise or statement, express or implied, to Purchaser, or to anyone acting for or on behalf of Purchaser, concerning the Property or the condition, use or development thereof. Purchaser represents that, in entering into this Agreement, Purchaser has not relied on any representation, warranty, promise or statement, express or implied, of Seller, or anyone acting for or on behalf of Seller, other than as expressly set forth in this Agreement, and that Purchaser shall purchase the Property based upon Purchaser's own prior investigation and examination of the Property. If Purchaser elects not to inspect the Property or to terminate this Agreement on or before the Contingency Date, such election will be made at Purchaser's sole discretion, in reliance solely upon the tests, analyses, inspections and investigations that Purchaser makes, or had the right to make and opted not, or otherwise failed, to make, and not in reliance upon any alleged representation made by or on behalf of Seller, except as set forth in this Agreement.

13.3. Hazardous Materials Waiver and Release. Purchaser, on behalf of itself, its successors and assigns, hereby releases the Seller and its officers, directors, members, employees, partners, affiliates, successors and assigns (hereinafter referred to as the "Releasees") from and against any and all claims, demands, causes of action, suits, sums paid in settlement of any of the foregoing, judgments, losses, damages, injuries, liabilities, penalties, enforcement actions, fines, taxes, liens, encumbrances, costs or expenses (including, without limitation, reasonable attorneys' fees) (hereinafter referred to collectively as the "Claims") known or unknown, arising out of, related in any way to the presence, misuse, use, disposal, release or threatened re lease of any Hazardous Materials at the Property and any liability or Claim related to the Property arising under Environmental Laws. Purchaser acknowledges that unknown and unsuspected Hazardous Materials may hereafter be discovered on or about the Property, and Purchaser knowingly releases Seller from any and all liability related thereto.

13.4. Material Defects. Purchaser, on behalf of itself, its successors and assigns, hereby releases Seller from and against any and all Claims known or unknown, arising out of, or related in any way to the condition of the Property, the condition of the structure of the Improvements or any equipment, systems and appliances related thereto, and other such aspects of the Property, the valuation, salability or utility of the Property, or its suitability for any purpose whatsoever.

13.5. The provisions of this Section shall survive indefinitely any Closing or termination of this Agreement and shall not be merged into the Closing documents.

14. Acceptance: This offer to purchase is made subject to its acceptance by Seller on or before twelve o'clock midnight of **August 3, 2018**. If Seller does not accept this Agreement within the time specified, the earnest money shall be refunded to Purchaser on demand.

15. Attorney Fees: If either party to this Agreement is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable attorneys' fees and costs of suit, including, but not limited to filing fees, service fees, deposition costs and any expert witness costs regardless of whether at trial, on appeal, in any bankruptcy proceeding, arbitration matter, with or without resort to suit.

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Seller: SMD /Date: 8.5.18

16. Governing Law and Venue: This Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington. Venue of any lawsuit arising out of this Agreement shall be in Kittitas County, Washington.

17. Notices: Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Agreement shall be in writing and shall be (i) personally delivered, (ii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the date after transmission) to the parties' addresses set forth herein. Either party may change such address for notice. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if mailed, on the earlier of receipt of three (3) days after deposit thereof in the U. S. mail

18. Time of Performance: Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto, including, but not limited to, the proper tender of each of the sums required by the terms hereof to be paid.

19. Section Headings: The word or words appearing at the commencement of sections and subsections of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those sections or subsections.

20. Invalidity: In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.

21. Legal Relationships: The parties to this Agreement execute the same solely as a seller and a purchaser. No partnership, joint venture or joint undertaking shall be construed from these presents and except as herein specifically provided neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefited by this Agreement. Any married person executing this Agreement hereby pledges his or her separate property and such person's and his or her spouse's marital communities in satisfaction hereof.

22. Assignment; Successors: Neither the Purchaser nor the Seller may sell, transfer, assign, pledge or encumber its interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. A purported sale, transfer, assignment, pledge or encumbrance shall be null and void and of no force or effect. Subject to the restrictions contained herein, the rights and obligations of the Seller and Purchaser shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successor-in-trust, and assigns.

23. Entire Agreement: All understandings and agreements, written and verbal, previously existing between the parties, if any, are merged into this Agreement which alone fully and completely expresses agreement of the parties, and the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied herein. This Agreement may be modified only by a written amendment executed by all parties.

24. Interpretation: This Agreement has been reviewed by both parties and each party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such party desired. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.

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Purchaser: PEO /Date: 8-7-18 Seller: SWH /Date: 8-6-18



25. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement.

26. Amendment: This Agreement may not be modified or amended except by the written agreement of the parties.

27. Effective Date. When used in this Agreement, the term "Effective Date" is the date the last party to execute this Agreement executes it as disclosed by the respective date appearing below each party's signature. Each party authorizes the endorsement of such date for administrative reference in the space provided in the Agreement's heading.


IN WITNESS WHEREOF the parties have signed and delivered this Agreement as of the day and year first above written.

**SELLER:**

DUKE AND DUDE, LLC, a Washington  
Limited Liability Company

  
By: Stephen M. Hayden  
Its: Managing Member

HAYDEN UNIFIED CREDIT TRUST  
UNDER WILL DATED AUGUST 26, 2005

  
By: Stephen M. Hayden, Trustee

Date: August 6, 2018

**ADDRESS:**  
2950 Killmore Road  
Ellensburg, WA 98926

**PHONE NUMBER:**  
509-929-1931

**PURCHASER:**

KITTITAS COUNTY, a political subdivision of  
The State of Washington:

  
By: Laura E. Osiadacz  
Title: Commissioner

Date: August 7, 2018

**ADDRESS:**  
205 W 5th Ave, Suite 108  
Ellensburg, WA 98926

**PHONE NUMBER:**  
509-962-7508

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**EXHIBIT A**

CLAIMANT NAME: **Duke and Dude, LLC, a Washington limited liability company; Stephen M. Hayden, as Trustee of the Hayden Unified Credit Trust under will dated August 26, 2005** COURT CLAIM NO. 00576

Certificate Number: S4-83608-J

Subbasin: 07 Reecer Creek

Source: Reecer Creek

Use: Irrigation of 56 acres and stock water

Period of Use: April 1 to October 15 for irrigation; February 1 to November 30 for stock water

Quantity: 4.33 cubic feet per second, 1075.2 acre-feet per year for irrigation; 0.03 cubic foot per second, 3 acre-feet per year for stock water

Priority Date: **June 30, 1885**

Point of Diversion: 900 feet north and 1100 feet west from the east quarter corner Section 28, being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T. 18 N., R. 18 E.W.M.

Place of Use: That portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 28, T. 18 N., R. 18 E.W.M. lying southwesterly of the Burlington Northern Railroad right-of-way, and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of said section described as follows: Commencing at the southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; thence east 300 feet, more or less, to the point of beginning; thence east 850 feet, more or less, to the Burlington Northern Railroad right-of-way; thence northwesterly 1030 feet, more or less, along said right-of-way; thence southwesterly 720 feet, more or less, to the point of beginning; and that portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of said section lying east of Desmond Road.

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INITIALS:

Purchaser: 820 /Date: 8.7.18 Seller: SMH /Date: 8-6-18  
Seller: SMH /Date: 8-6-18

**EXHIBIT B**

<b>TREASURER'S USE ONLY</b>	<b>RECORDER'S USE ONLY</b>
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**After recording return to:**

Jeff Slothower  
 Lathrop, Winbauer, Harrel,  
 Slothower & Denison, LLP  
 P.O. Box 1088  
 Ellensburg, WA 98926

DOCUMENT TITLE: WATER RIGHTS DEED

GRANTOR: DUKE AND DUDE, LLC, a Washington Limited Liability Company; and STEPHEN M. HAYDEN, as Trustee of THE HAYDEN UNIFIED CREDIT TRUST UNDER WILL DATED AUGUST 26, 2005

GRANTEE: KITTITAS COUNTY, a political subdivision of the State of Washington

LEGAL DESCRIPTION: Water rights appurtenant to land located in the County of Kittitas, State of Washington

ASSESSOR'S TAX PARCEL NO.: 611033

**WATER RIGHTS DEED**

THE GRANTOR, DUKE AND DUDE, LLC, a Washington Limited Liability Company (hereinafter "Duke and Dude"), STEPHEN M. HAYDEN, as Trustee of THE HAYDEN UNIFIED CREDIT TRUST UNDER WILL DATED AUGUST 26, 2005 (hereinafter referred to as "Hayden") (hereinafter collectively referred to as "Grantor"), for and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration in hand paid, conveys and delivers to KITTITAS COUNTY, a political subdivision of the State of Washington, Grantee, all of Grantors' right, title, and interest in and to the water rights arising under or related to Claim No. 00576 as confirmed in the Conditional Final Order Subbasin No. 7 (Reecer Creek) on October 29, 2001, in *State of Washington v. Acquavella, et al.*, Yakima County Superior Court Cause No. 77-2-01484-5, more fully described on Exhibit A attached hereto and incorporated herein by reference (hereinafter the "Water Rights"), which Water Rights are appurtenant to the real property situated in the County of Kittitas, State of Washington, legally described on Exhibit B (the "Property") attached hereto and incorporated herein by reference.

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Seller: \_\_\_\_\_

Purchaser: \_\_\_\_\_

Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P.  
 Attorneys at Law  
 201 West Seventh Avenue  
 Post Office Box 1088  
 Ellensburg Washington 98926  
 Telephone 509-925-6916  
 Fax 509-962-8093

INITIALS:

Purchaser: JSO /Date: 8.7.18 Seller: SMH /Date: 8-6-18





HAYDEN UNIFIED CREDIT TRUST  
UNDER WILL DATED AUGUST 26, 2005

By: Stephen M. Hayden, Trustee

STATE OF WASHINGTON            )  
  ) ss.  
County of Kittitas                )

I certify that I know or have satisfactory evidence that STEPHEN M. HAYDEN is the individual who appeared before me, and said individual acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Trustee of HAYDEN UNIFIED CREDIT TRUST UNDER WILL DATED AUGUST 26, 2005, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
My Commission Expires: \_\_\_\_\_

---

Seller: \_\_\_\_\_  
Purchaser: \_\_\_\_\_

*Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P.*  
*Attorneys at Law*  
*201 West Seventh Avenue*  
*Post Office Box 1088*  
*Ellensburg Washington 98926*  
*Telephone 509-925-6916*  
*Fax 509-962-8093*

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INITIALS:

Purchaser: REO /Date: 8.7.18    Seller: SMA /Date: 8-6-18

**EXHIBIT B**  
**(Legal Description of Real Property)**

That portion of the Southeast Quarter of the Southwest Quarter of Section 28, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, lying East of the County Road, being more particularly described as follows:

Beginning at the quarter section corner on the South boundary of Section 28 and running South 89°56' West on the section line, 458.8 feet to the East line of the County Road; thence North 16°47' East along said road, 203.3 feet; thence North 19°54' East along said road, 1,004.3 feet; thence North 18°12' East along said road, 183.7 feet to a point on the quarter section line; thence South on the quarter section line, 1,313.0 feet to the place of beginning;

and

That portion of the Northwest Quarter of the Southeast Quarter of Section 28, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington, which is bounded by a line described as follows:

Beginning at the Southeast corner of said Northwest Quarter of the Southeast Quarter which is the true point of beginning; thence West along the South line of said Northwest Quarter of the Southeast Quarter, 973.8 feet; thence North 09°38' East, 785.94 feet to the South right of way boundary of the Northern Pacific Railroad; thence South 47°55' East along said South right of way boundary, 1,133.8 feet to a point on the East line of said Northwest Quarter of the Southeast Quarter; thence South 02° 41' East, along said East line, 15.0 feet to the true point of beginning;

and

The Southwest Quarter of the Southeast Quarter of Section 28, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

EXCEPT FROM ALL OF THE ABOVE:

1. Right of way for State Highway No. 3 (SR-90) West Side Canal to Bull Road as conveyed to the State of Washington by deed dated June 10, 1965 and recorded September 21, 1965, under Kittitas County Auditor's File No. 324287;
2. Right of way for State Highway No. 2-1 (SR131) West Ellensburg Interchange to Northern Pacific Railway as conveyed to the State of Washington by deed dated June 10, 1965 and recoded September 22, 1965 under Kittitas County Auditor's File No. 324319.

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Seller: \_\_\_\_\_

Purchaser: \_\_\_\_\_

*Lathrop, Winbauer, Harrel, Slothower & Denison, L.L.P.*  
*Attorneys at Law*  
201 West Seventh Avenue  
Post Office Box 1088  
Ellensburg Washington 98926  
Telephone 509-925-6916  
Fax 509-962-8093

INITIALS:

Seller: SMH /Date: 8-6-18  
Purchaser: SSD /Date: 8-7-18 Seller: SMH /Date: 8-6-18