

**EVERETT SCHOOL DISTRICT NO. 2**

**RESOLUTION NO. 1076**

**Authorization to Execute A General Release**

A Resolution of the Board of Directors (the "Board") of Everett School District No. 2 (the "District") authorizing the Superintendent or his designee to execute a general release ("Release") releasing SSHI LLC, a Delaware limited liability company, dba DR Horton ("Releasee"), from claims relating to or resulting from the entry onto the District's land by Releasee's contractor without the District's authorization.

**WHEREAS**, the District owns several parcels of Property located in Snohomish County that front on 180th Street SE, more particularly described on Exhibit A, attached hereto (the "District Property");

**WHEREAS**, Releasee made certain improvements within the 180th Street SE right-of-way adjacent to the District Property in August 2012;

**WHEREAS**, during such development, Releasee's contractor mistakenly entered the District Property without the authorization of District, removed timber and a chain link fence, and conducted grading on a portion of the District Property ("Incident").

**WHEREAS**, Releasee has since replaced the chain link fence and hydroseeded all of the areas disturbed by grading.

**WHEREAS**, the Board desires to fully and finally resolve all claims regarding the Incident;

**WHEREAS**, representatives of the District and representatives of Releasee have negotiated the Release, which is attached as Exhibit B and incorporated herein by this reference, setting forth the proposed terms and conditions under which the District will release Releasee from all claims relating to or resulting from the Incident;

**WHEREAS**, the Board has determined that the consideration provided by Releasee in the Release shall fully compensate the District for damages arising from the Incident; and

**WHEREAS**, the Board has concluded that it is in the District's best interest to fully and finally resolve all claims regarding the Incident and to release Releasee from all claims relating to or resulting from the Incident, pursuant to the terms and conditions set forth in the Release, and to execute the Release.

NOW, THEREFORE, be it resolved that:

(a) the Board declare, and hereby declares, that the consideration provided by Releasee in the Release shall fully compensate the District for damages arising from the Incident;

(b) the Board declare, and hereby declares, that it is in the District's best interest to fully and finally resolve all claims regarding the Incident and to release Releasee from all claims relating to or resulting from the Incident, pursuant to the terms and conditions set forth in the Release, and to execute the Release;

(c) the Board authorize and direct, and hereby authorizes and directs, the Superintendent of the District (or his designee) to:

- (i) execute the Release on behalf of the District;
- (ii) deposit consideration collected from the Releasee in accordance with such Release into the appropriate District account(s);
- (iii) execute, acknowledge and deliver all necessary documents, and do any and all other things necessary and advisable to be done to accomplish the foregoing Release, all in accordance with applicable laws or District policies.

**ADOPTED** this 10<sup>th</sup> day of December, 2013, and authenticated by the signatures affixed below:

**BOARD OF DIRECTORS:**

\_\_\_\_\_  
President

*Carol Andrews*

\_\_\_\_\_  
Carol Andrews, Vice-President

*Pam LeSesne*

\_\_\_\_\_  
Pam LeSesne, Director

\_\_\_\_\_  
Jessica Olson, Director

*Ed Petersen*  
\_\_\_\_\_  
Ed Petersen, Director

**ATTEST:**

*Gary D. Cohn*  
\_\_\_\_\_  
Dr. Gary D. Cohn  
Superintendent & Secretary to the Board of Directors  
Everett School District No. 2

EXHIBIT A

Legal Description

PARCEL 1:

LOTS 1 THROUGH 4, INCLUSIVE, SHORT PLAT NO. SP 98 (3-77), RECORDED UNDER AUDITOR'S FILE NUMBER 7707220321, BEING A PORTION OF THE WEST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 27 NORTH, RANGE 5 EAST, W.M.

PARCEL 2:

LOTS 1 THROUGH 4, INCLUSIVE, OF SNOHOMISH COUNTY SHORT PLAT NUMBER SP 193 (7-83), RECORDED UNDER AUDITOR'S FILE NUMBER 8312150303, RECORDS OF SNOHOMISH COUNTY, WASHINGTON BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 27 NORTH, RANGE 5 EAST, W.M.

PARCEL 3:

THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 27 NORTH, RANGE 5 EAST, W.M.; EXCEPT COUNTY ROAD.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.



## General Release

This General Release ("**Release**") is dated as of December 10, 2013, and is made and entered into by and between SSHI LLC, a Delaware limited liability company, dba D.R. Horton ("**Developer**"), and Everett School District No. 2, a municipal corporation of the State of Washington ("**District**"), with reference to the facts set forth below.

### Recitals

- A. District owns certain real property located in Snohomish County (the "District Property"), which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.
- B. Developer made certain sewer improvements ("Sewer Improvements") within the 180th Street SE right-of-way adjacent to the District Property in August 2012. District has connected or used or may in the future connect to or use the Sewer Improvements to service the District Property or a portion thereof.
- C. During such development, Developer's contractor mistakenly entered the District Property without the authorization of District, removed timber and a chain link fence, and conducted grading on a portion of the District Property ("**Incident**").
- D. Developer has since replaced the chain link fence and hydroseeded all of the areas disturbed by its grading.
- E. District and Developer desire to fully and finally resolve all claims regarding the Incident.

### Agreement

NOW THEREFORE, IN CONSIDERATION of the above Recitals, mutual agreements and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Consideration.** Developer shall pay District the total sum of three thousand Dollars (\$3,000) within 30 days following the full execution of this Release. Further, Developer, waives, and is deemed to have waived, any right it may have or have had to collect latecomers fees pursuant to RCW Chapter 57.22 related to the Sewer Improvements, and Developer releases District from any obligation to pay such latecomers fees. District shall make no further demand or claim to Developer regarding the Incident.
2. **Release.** On behalf of themselves, their successors in interest, heirs and assigns, the parties hereby forever and unconditionally release and discharge each other, including all managers, members, officers, directors, principals, partners, employees, employers, legal representatives, parent corporations, affiliates,

predecessors and successors in interest, agents, attorneys, assigns, elected officials, and their respective members, shareholders, officers, directors, principals, partners, employees, agents, attorneys and assigns ("**Released Parties**") from any and all rights, liabilities, claims, demands, damages, costs, fees, expenses, losses, judgments, liens, interests, debts, actions and causes of action of every kind whatsoever that in any way, directly or indirectly, relate to or result from the Incident including, without limitation, any claims for property damage, misrepresentation, fraud, emotional distress, consequential damages and punitive damages that they have, had or may have relating in any way to the Incident, regardless of whether asserted before, on or after the date hereof, and regardless of whether known or unknown on the date hereof ("**Released Claims**").

3. **Covenant Not to Sue.** The parties, their successors in interest, heirs or assigns, shall not bring or prosecute any Released Claim against any of the Released Parties in any legislative, judicial, administrative, or other forum or proceeding.
4. **Unknown Claims.** This Release constitutes a full and final release of any and all Released Claims that Developer or District has, had or may ever have against the Released Parties relating to the Released Claims.
5. **ADVICE OF COUNSEL.** THE PARTIES ACKNOWLEDGE THAT THEY ARE VOLUNTARILY ENTERING INTO THIS RELEASE FOR THE CONSIDERATION SET FORTH ABOVE. THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED BY OR HAVE HAD THE OPPORTUNITY TO CONSULT LEGAL COUNSEL IN CONNECTION WITH THE GRANTING OF THE RELEASES CONTAINED IN THIS RELEASE. THIS DOCUMENT HAS LEGAL CONSEQUENCES AND SHOULD BE REVIEWED BY LEGAL COUNSEL.
6. **Evidence of Waiver of Latecomers Fees.** Upon request by District or any third party, Developer shall provide written evidence of Developer's waiver of the latecomers fees with respect to the District Property to Silver Lake Water and Sewer District.
7. **Governing Law.** This Release shall be construed and enforced in accordance with the laws of the State of Washington.
8. **Miscellaneous.** The obligations of the parties hereunder shall be specifically enforceable and shall inure to the benefit of and be binding upon their respective successors and assigns. This Release constitutes the entire agreement between parties respecting its subject matter and shall not be modified or amended except in a writing signed by all parties. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Release and is hereby waived. This Release shall be construed as a whole. The misplacement, addition or omission of a word or character shall not change



the intent of any part of this Release from that set forth by this Release. This Release may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. Signatures transmitted by facsimile or PDF shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, this Release has been executed as of the date set forth above.

**DISTRICT:**

Everett School District No. 2


By: 

Print Name: Gary Cohn

Print Title: Superintendent

**DEVELOPER:**

SSHI LLC,  
a Delaware limited liability company  
dba D.R. Horton

By: 

Print Name: MICHAEL T JONES

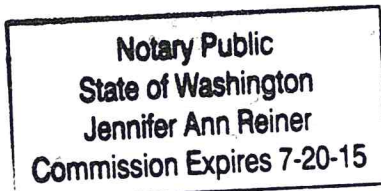
Print Title: DIVISION PRESIDENT

## ACKNOWLEDGMENTS

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I do hereby certify that Mike T. Jones, personally known to me to be the Division Pres of SHLR of Washington, Inc., the Washington corporation that is the manager of SSHI LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

GIVEN under my hand and official seal this 19<sup>th</sup> day of December, 2013.

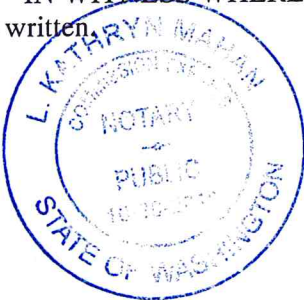


Jennifer Ann Reiner  
Print Name Jennifer Ann Reiner  
NOTARY PUBLIC in and for the State of Washington; residing  
at: Monroe, WA  
My commission expires: 7-20-15

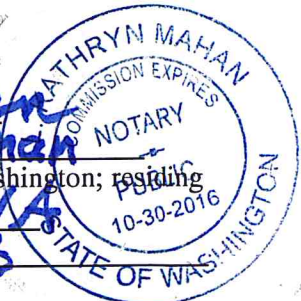
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Snohomish

THIS IS TO CERTIFY that on this 10 day of December, 2013, before me,  
a Notary Public in and for the State of Washington, duly commissioned and sworn, came  
Barry Cohn, personally known or having presented satisfactory evidence to be the  
Supt. of Everett Public Schools, the entity that executed the foregoing  
instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity  
for the uses and purposes therein mentioned, and on oath stated that she/he is authorized to execute the  
said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first  
above written.



L. Kathryn Mahan  
Print Name L. Kathryn Mahan  
NOTARY PUBLIC in and for the State of Washington; residing  
at: P.O. Box 1000, Vernon, WA  
My commission expires: 10-30-16



**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

**PARCEL 1:**

LOTS 1 THROUGH 4, INCLUSIVE, SHORT PLAT NO. SP 98 (3-77), RECORDED UNDER AUDITOR'S FILE NUMBER 7707220321, BEING A PORTION OF THE WEST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 27 NORTH, RANGE 5 EAST, W.M.

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