

OPTION TO PURCHASE REAL ESTATE

This OPTION TO PURCHASE REAL ESTATE ("Option" or "Agreement") is made by and between SSHI LLC dba D.R. HORTON SEATTLE DIVISION ("Optionor"), and the CITY OF OLYMPIA, a municipal corporation organized under the laws of the State of Washington ("Optionee"), together known as the parties (the "Parties"), effective as of the Effective Date (as defined below in Section 3.9.15).

A. Optionor is the owner of certain real property located in the City of Olympia, Thurston County, Washington, legally described on Exhibit A-1 attached hereto ("Ashton Woods Property").

B. Optionee has determined that Optionor's Ashton Woods Property is suitable property for a public park for recreation and open space purposes.

C. The signatories to this Agreement are authorized to execute associated documents, to correct legal descriptions if need be, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee agree as follows:

1. **Property.** Optionor hereby agrees to and does grant to Optionee an Option to Purchase the fee title rights to certain real property legally described herein on Exhibit A-1, subject to the terms and conditions set forth herein, and Optionee hereby agrees to and does purchase an option from Optionor for purchase of the Property legally described on Exhibit A-1, subject to the terms and conditions set forth herein:

1.1 **Land.** Approximately 74 acres, more or less, constituting the entire site commonly known as Ashton Woods Property located in the City of Olympia, Thurston County, Washington, shown in a sketch on Exhibit A-2 attached hereto (the "Land"), which includes the fee title to an approximately 55-foot wide (2.76 acres) Permanent Easement across a portion of the Optionor's real property which easement had been previously granted and conveyed to Optionee for purposes of an access road and waterline easement.

1.2 **Appurtenances.** This Option shall include all rights, privileges and easements appurtenant to the Land owned by Optionor, including without limitation any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (all of which are collectively referred to as the "Appurtenances");

The Land and Appurtenances described in **Section 1** above are herein collectively referred to as the "Property."

2. **Option Terms.** The terms of the Option shall be as follows:

2.1 **Term of Option.** The initial term of this Option shall be for a period expiring on March 30, 2016 and this Option may be renewed for one additional period expiring on June 30, 2017, as set forth in this Section.

2.2 Purchase Price for the Property. If Optionee exercises its Option **on or before June 30, 2016** to purchase the Property, the purchase price for the Property (the "Purchase Price") shall be **Five Million Dollars (\$5,000,000.00)**. If Optionee exercises its Option on or after July 1, 2016 and before June 30, 2017 to purchase the Property, the Purchase Price shall be **Six Million Dollars (\$6,000,000.00)**.

2.3 Payment for Option and Application to Purchase Price. Optionee shall pay to Optionor **Two Hundred and Fifty Thousand Dollars (\$250,000.00)** for the first Option period ending on March 30, 2016. If Optionee wishes to extend its Option for an additional period ending on June 30, 2017, Optionee shall deliver written notice thereof along with an additional payment of **Two Hundred Fifty Thousand Dollars (\$250,000.00)** to Optionor prior to expiration of the first Option period. If Optionee fails to so notify and make payment when due, its right to extend the Option shall expire. All Option payments made hereunder shall be non-refundable, except as expressly provided herein or in the event of a default by Optionor hereunder.

Should Optionee exercise its Option to Purchase the Property, the amount of all Option payments paid to Optionor shall be applied to and deducted from the Purchase Price for the Property.

2.4 Option to Purchase shall be a Covenant. The Option granted by Optionor to Optionee shall be a covenant running with the Land and shall be binding on all present and future owners and occupiers of the Property, their successors, heirs and assigns. This Option shall be recorded with the Auditor of Thurston County, Washington on the Option Closing Date (as defined below).

2.5 Option Closing Date and Deposit of Documents. Subject to the satisfaction of the contingencies set forth in Sections 2.7 and 2.8 below, the Closing for this Option to Purchase shall be at the offices of the "Escrow Agent" on a mutually acceptable date not later than thirty (30) days after the Effective Date of this Option (the "Option Closing Date"), unless otherwise agreed to by the Parties. The Escrow Agent shall be Thurston County Title Insurance Company, in its capacity as Escrow Agent, located at 105 8th Ave SE, Olympia, Washington 98501. On the Option Closing Date, Escrow Agent shall record the executed Option to Purchase Real Estate between Optionor and Optionee and the Option amount for the first Option period shall be delivered by Optionee to the Escrow Agent for delivery to Optionor. Optionor and Optionee will use their reasonable best efforts, consistent with and subject to their respective rights and obligations as otherwise set forth in this Option, to cause Closing for the Option to Purchase to occur within thirty (30) days of the Effective Date.

2.6 Exercise of Option to Purchase. The Optionee may exercise this Option to Purchase by timely giving notice to Optionor or its successors, heirs or assigns, as provided in Section 3.8 below, of Optionee's decision to purchase the Property upon the terms set forth herein. If Optionee fails to timely exercise the Option to Purchase, this Agreement shall terminate and no longer be effective.

2.7 Title and Survey Matters for Option. Optionee has ordered a preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by Thurston County Title Insurance Company ("Title Company"), describing the Property, showing all matters pertaining to the Property and Optionor as vested fee owner in the Property. Nothing herein shall be construed as imposing any cost obligation upon the Optionor. In the event that the initial title binder contains unacceptable title exceptions to Optionee, then Optionee shall notify Optionor within fifteen (15) days after the Effective Date. Optionor shall notify Optionee thereafter within ten (10) days if Optionor agrees, in its sole discretion, to remove or otherwise cure such objectionable matters (failure to timely respond shall be deemed an election not to remove or cure). If Optionor elects to remove or cure any matters, Optionor shall not be obligated to remove or cure unless and until Optionee exercises the Option to Purchase under Section 2.6. If Optionor elects or is deemed to have elected not to remove or cure any

matter objected to, then this Option shall terminate and neither Optionor nor Optionee shall thereafter have any further liability or obligation under this Option. All title matters referenced in the initial preliminary commitment and not objected to by Optionee within fifteen (15) days after the Effective Date shall be deemed "Pre-Approved Title Matters." Optionor agrees that it shall not, except as permitted herein, further encumber title to the Property at any time during the period of the Option in any manner that would materially and adversely affect title to the Property (as determined by Optionee in its reasonable discretion), otherwise Optionee may terminate this Agreement and shall receive a refund of its Option payments.

2.8. Initial Inspection; Environmental Reports. Optionor shall not be required to provide Optionee any environmental reports that Optionor has related to any hazardous materials or chemicals regulated by the Model Toxics Control Act concerning the Property, including phase 1 and 2 environmental assessments, until the Sale Closing Date. Optionee, however, shall be entitled to perform any of its own tests or other studies concerning all aspects of the Property, including without limitation the environmental condition of the Property, within the period after the Effective Date and prior to the Option Closing Date in Section 2.5, and shall have the right and permission for its employees, representatives, consultants and agents to enter upon the Property or any part thereof at all reasonable times for the purpose, at Optionee's cost and expense, of making all tests and/or studies of the Property that Optionee may wish to undertake, including, without limitation, soils tests, toxic and hazardous waste studies, and surveys, provided, however, that Optionee shall schedule all access to the Property in advance with Optionor and shall be required to obtain Optionor's written consent prior to conducting any invasive testing, which consent shall not be unreasonably withheld. Optionee shall further indemnify and hold harmless Optionor from and against any mechanic's or other liens or claims, causes of action, costs, expenses, or liabilities that may be filed or asserted against the Property or Optionor arising out of or relating to any actions taken by Optionee or its employees, agents, consultants or representatives in connection with the Property. Optionee, to the extent necessary, shall reasonably restore the Property at Optionee's sole cost and expense to its conditions immediately prior to any access or testing by Optionee or its employees, agents, consultants and representatives. If Optionee performs a phase I environmental assessment on the Property as a part of its initial inspection and such phase I recommends or otherwise indicates that a phase II environmental assessment or other supplemental environmental testing should be conducted, the Parties agree that the Option Closing Date shall be extended to the date that is seven (7) business days after Optionee receives the results back on its phase II or supplemental testing (so long as Optionee promptly orders the phase II or additional testing), in order to provide adequate time for issuance of reports or laboratory analysis of testing results obtained by Optionee or its employees, representatives, consultants and agents. The environmental and all other studies and assessments of the Property shall be subject to Optionee's satisfaction in all aspects of the Property for Optionee's intended use, in Optionee's sole discretion. If Optionee is not satisfied with its environmental and other studies and assessments of the Property prior to the Option Closing Date, then Optionee may terminate this Agreement in its sole discretion and neither Optionee nor Optionor shall have any further liability or obligation under this Option.

2.9. Physical Condition to Remain Substantially the Same. The physical condition of the Property, including forest cover, shall remain substantially the same as it is at the time of Optionee's signature to this Agreement. If at any time during the Option period, the Land is cleared, logged, mined, or the forest cover is otherwise materially disturbed, Optionee is entitled to the return of its option payments made under Section 2.3. Optionor is entitled to proceed with the permitting of its proposed development of the Property. If any governmental authority requires Optionor to record any matters against the Property in connection with Optionor's permitting of its proposed development of the Property, such matters shall be deemed Pre-Approved Title Matters, so long as they do not materially and adversely affect Optionee's intended use of the Property for a public park (as determined in Optionee's reasonable discretion).

2.10 Additional Terms. The additional terms in **Sections 3.8 and 3.9**, and all subsections respectively thereunder, shall also apply to this Option to Purchase.

3. After Exercise of Option to Purchase. If Optionee timely exercises the Option to Purchase, the Parties shall enter into a "Purchase and Sale Agreement" for such sale, based upon the following terms and conditions, within thirty (30) days after Optionee's exercise of its Option to Purchase the Property. The Parties agree that such Purchase and Sale Agreement shall be entered into solely for the purpose of memorializing the following terms and conditions and shall not contain any new or modified terms or conditions that are contrary to those set forth below, unless agreed upon by the Parties in their sole and absolute discretion. The Parties acknowledge and agree that all material terms and conditions of a purchase and sale agreement are set forth below.

3.1 Payment of Purchase Price upon Exercise of Option to Purchase. On the "Sale Closing Date" (defined below), Optionee as "Buyer" (or the "City of Olympia" or the "City") shall deposit with Escrow Agent the amount of the Purchase Price less any amounts to be credited against the Purchase Price pursuant to the Option. The Purchase Price shall be paid to Optionor as "Seller" ("SSHI LLC dba D.R. Horton Seattle Division") at the time of the Sale Closing Date by wire transfer, or by certified, cashier's, treasurer's or bank check(s) based on Seller's instruction to the Escrow Agent. Within three (3) business days following the execution and delivery of the Purchase and Sale Agreement, Buyer and Seller shall open escrow with Escrow Agent, by depositing with Escrow Agent a copy of the Purchase and Sale Agreement and Buyer's notice exercising the Option to Purchase.

3.2. Closing Date for Purchase and Sale Agreement. The Closing shall be held at the offices of the Escrow Agent on a date that is mutually acceptable to the Parties not later than thirty (30) days after the exercise of the Option to Purchase and complete execution (including Seller's Corporate Approval) of the Purchase and Sale Agreement (the "Sale Closing Date"), unless otherwise agreed by the Parties. Closing shall occur when the Deed (as hereinafter defined) to Buyer is recorded and the Purchase Price is delivered to the Escrow Agent for delivery to Seller. Seller and Buyer will use their reasonable best efforts, consistent with and subject to their respective rights and obligations as otherwise set forth in this Purchase and Sale Agreement, to cause the Sale Closing to occur on or not later than the Sale Closing Date, which shall be not later than thirty (30) days after the Option to Purchase has been exercised and complete execution of the Purchase and Sale Agreement.

3.3. Title and Survey Matters.

3.3.1 Title Binder. Promptly after exercising the Option to Purchase, Buyer shall order an updated preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by Title Company describing the Property, showing all matters pertaining to the Property and listing Buyer as the prospective named insured, in a form acceptable to Buyer, updating the initial preliminary commitment to the exercise date of the Option to Purchase and Purchase and Sale Agreement. Such updated preliminary commitment, supplemental reports and true, correct and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder." Nothing herein shall be construed as imposing any cost obligation upon Seller.

3.3.2 Title Review. Within seven (7) business days of Buyer's receipt of the updated commitment ("Title Review Period"), Buyer shall review the Title Binder, and, shall notify Seller what new exceptions to title since the initial commitment, if any, are unacceptable. Any new exceptions that are not disapproved by Buyer in writing during the Title Review Period and all Pre-Approved Title Matters shall constitute "Permitted Exceptions." Seller shall remove any or all exceptions that are not

Permitted Exceptions prior to the Sale Closing Date or shall notify Buyer that it will not remove such exceptions; if Seller shall fail to remove any such exceptions objected to by Buyer from title prior to the Sale Closing Date, and Buyer states in writing that it is unwilling to take title subject thereto, then the Purchase and Sale Agreement shall terminate and neither Seller nor Buyer shall thereafter have any further liability or obligation under the Purchase and Sale Agreement. However, if Seller causes any new exception to title on the Property after the Option Closing Date (other than Pre-Approved Title Matters) that materially and adversely affects title to the Property (as reasonably determined by Buyer), then Buyer may terminate the Purchase and Sale Agreement and, in such event, Buyer is entitled to receive return of the Option payments paid to Seller. Seller shall not be required to incur any expense in order to render its title marketable or remove any matter disapproved by Buyer; provided that, Seller shall not refuse to remove any disapproved item that involves only payment of a monetary obligation secured by a lien or other encumbrance on the Land.

3.3.3 Title Policy. At Sale Closing, Seller and Buyer shall cause Title Company to issue an Owner's standard coverage title insurance policy (ALTA 2006 Owners Policy) ("Title Policy") to Buyer, at Buyer's cost. The Title Policy shall (a) be issued in the amount of the total Purchase Price and (b) insure fee simple, indefeasible title to the Property in Buyer, subject only to the Permitted Exceptions and the standard printed exceptions. The Title Policy may contain endorsements as Buyer may require; provided that Buyer shall be solely responsible for all additional costs and requirements to obtain such endorsements.

3.4. Conditions to Buyer's Obligations.

3.4.1 Continued Inspection of the Property. For the sole purpose of confirming that no aspect of the Property has materially and adversely changed from the date of Buyer's initial inspection and assessment of the Property under Section 2.8 above, Buyer and its employees, representatives, consultants and agents shall have the right and permission from the Option Closing Date through the Sale Closing Date (or earlier termination of the Option or Purchase and Sale Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of making all tests and/or studies of the Property that Buyer may wish to undertake, including, without limitation, soils tests, toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, that Buyer shall schedule all access to the Property in advance with Seller and shall be required to obtain Seller's written consent prior to conducting any invasive testing. Buyer shall further indemnify and hold harmless Seller from and against any mechanic's or other liens or claims, causes of action, costs, expenses, or liabilities that may be filed or asserted against the Property or Seller arising out of or relating to any actions taken by Buyer or its employees, agents, consultants or representatives in connection with the Property. To the extent necessary, Buyer shall reasonably restore the Property at its sole cost and expense to its condition immediately prior to any access or testing by Buyer or its employees, agents, consultants and representatives. Buyer's exercise of its Option to Purchase and any subsequent purchase of the Property shall be subject to its satisfaction that no aspect of the Property has materially and adversely changed for Buyer's intended use from the date of Buyer's initial inspection and assessment of the Property under Section 2.8 above, in Buyer's reasonable discretion. Buyer shall be required to satisfy itself of this condition prior to exercising the Option to Purchase under Section 2.6. Upon exercising the Option to Purchase, Buyer shall be deemed to have accepted the condition and all aspects of the Property. Buyer acknowledges that the sale of the Property shall be strictly on an "As-Is" basis, with all faults and defects, whether known or unknown, and Buyer agrees that, as of the Sale Closing Date, Buyer shall be deemed to have waived and released Seller from any and all claims, suits, demands, liabilities, damages and other obligations arising in connection with or related to the Property, other than those arising as a result of any intentional wrongful act of Seller. Notwithstanding the foregoing, in the event of a material and adverse change occurring upon or relating to the condition of the Property after exercising the Option

to Purchase and before the Sale Closing, then Buyer may terminate the Option to Purchase and Purchase and Sale Agreement and Buyer shall be entitled to a refund of its Option payments.

Buyer hereby waives the right to any seller disclosure statement which would otherwise be required under RCW Chapter 64.06. Further, in the event a seller's disclosure statement or any portion thereof is required under RCW Chapter 64.06, pursuant to RCW 64.06.040(3), Buyer hereby waives any right of rescission of the Purchase and Sale Agreement that Buyer might otherwise have under RCW Chapter 64.06.

3.4.2 Additional Closing Conditions. Buyer's obligation to purchase the Property shall also be subject to the following conditions that must be satisfied as of Closing:

(i) All representations and warranties of Seller contained in the Purchase and Sale Agreement shall be true, accurate and complete at the time of the Sale Closing as if made again at such time;

(ii) Seller shall have performed all obligations to be performed by it hereunder on or before the Sale Closing (or, if earlier, on or before the date set forth in the Purchase and Sale Agreement for such performance);

(iii) At Sale Closing, title to the Property shall be in the condition required by **Section 3.3** herein and in the Purchase and Sale Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

(iv) At Closing, the physical condition and forest cover of the Property shall be substantially the same as on the date the Option is signed by Optionee, ordinary wear and tear excepted.

(v) The Purchase and Sale Agreement must be approved by the City of Olympia's City Council.

If the conditions set forth in this **Section 3.4** are not satisfied as of Sale Closing and Buyer does not waive the same, Buyer or Seller may terminate the Purchase and Sale Agreement, and thereafter neither Buyer nor Seller shall have any further liability one to the other under the Purchase and Sale Agreement, and, except as provided in the following sentence, Buyer shall be entitled to receive return of the Option payments paid to Seller. If the City Council does not approve a Purchase and Sale Agreement containing the terms and conditions agreed to herein, failure of such condition shall not entitle Buyer to receive a return of its Option payments. In such event, Optionor shall be entitled to retain the Option payments.

3.5 Seller's Representations. Seller is a limited liability company duly formed and validly existing under the laws of the State of Delaware, and is authorized to conduct business in the State of Washington. Seller has all necessary power and authority to enter into the Purchase and Sale Agreement, subject to Seller's Corporate Approval requirements set forth in **Section 3.9.16** below. The Purchase and Sale Agreement shall constitute the legal, valid, binding and enforceable obligation of Seller and Buyer.

3.6 Seller Provision of Further Information. From the Option Closing Date to the Sale Closing Date, Seller will notify Buyer of each event of which Seller becomes aware materially affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

3.7 Closing in the Purchase and Sale Agreement.

3.7.1 Time and Place. Provided that all the contingencies set forth in the Purchase and Sale Agreement have been previously fulfilled, the Sale Closing shall take place at the place and time determined as set forth in **Section 3.2** above.

3.7.2 Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to, the payment to Seller of any of the Purchase Price, Seller shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Deed.** A statutory warranty deed ("Deed"), conveying to Buyer title to the Property, free and clear of all liens, encumbrances, conditions, easements, assignments, and restrictions, except for the Permitted Exceptions, in the form attached hereto as **Exhibit B**.

(ii) **Title Documents.** Such other documents, including, without limitation, certificates of good standing as shall be reasonably required by the Title Company (at no cost or additional liability to Seller) as a condition to its insuring Buyer's fee simple title to the Property free of any exceptions, other than the Permitted Exceptions, and any other documents reasonably requested by Title Company to close the sale. Seller shall also obtain and provide proof of conveyance back to Buyer of all rights conveyed by the Bargain and Sale Mineral Deed conveyed to DRH Energy, Inc., recorded with the Thurston County Auditor on January 8, 2007, and re-recorded on July 19, 2007.

(iii) **Authority.** Such evidence as the Title Company shall require as to authority of Seller to convey the Property to Buyer.

3.7.3 Delivery by Buyer. Buyer shall deliver the Purchase Price to Seller at Sale Closing and any other documents reasonably requested by Title Company to close the sale.

3.7.4 Payment of Costs. Notwithstanding the foregoing, Seller and Buyer shall pay their own respective costs incurred with respect to the consummation of the purchase and sale of the Property including, without limitation, attorneys' fees. Notwithstanding the foregoing, Buyer shall pay the premium for the Owner's Title Policy to be issued by Title Company to Buyer, the fee to record the Deed, and the escrow fee. Seller shall also pay any excise tax due upon the sale of the Property.

3.7.5 Property Taxes. In the event Seller has prepaid any taxes on the Property as of the date of Sale Closing, Seller shall be entitled to a pro rata refund on the amount paid pursuant to RCW 84.60.050.

3.7.6 Monetary Liens. Seller shall pay or cause to be satisfied at or prior to Sale Closing all recorded monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements.

3.7.7 Possession. Possession and use of the Property shall be delivered to Buyer at Sale Closing.

3.8 Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Seller: D. R. Horton, America's Builder
12910 Totem Lake Blvd, N.E., Suite 220
Kirkland, WA 98034
Attn: Kevin Capuzzi, Senior VP/Division and Shasta Smith, Esq.
E-mail: kcapuzzi@drhorton.com;
stsmith@drhorton.com
Phone: 425-821-3400; Fax: 425-814-2638

With copies to: D. R. Horton, West Region
501 W. Broadway, Suite 1200
San Diego, CA 92101
Attn.: William E. Mayer, Esq.
E-mail: wemayer@drhorton.com
Phone: 619-849-4947

D. R. Horton, Inc.
301 Commerce Street, Suite 500
Fort Worth, TX 76102
Attn: Ted I. Harbour, Esq. and Mark Karnes, Esq.
E-mail: tedharbour@drhorton.com;
mkarnes@drhorton.com
Phone: 817-390-8200; Fax: 817-390-1709

Buyer: City of Olympia
P.O. Box 1967
Olympia, WA 98507-1967
Attn: Mark Barber, City Attorney
E-mail: mbarber@ci.olympia.wa.us
Phone: 360-753-8338; Fax 360-570-3791

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

3.9 Miscellaneous.

3.9.1 Applicable Law and Venue. The Option and Real Estate Purchase and Sale Agreement shall in all respects, be governed by the laws of the State of Washington. Venue for any lawsuits concerning this agreement shall be in Thurston County Superior Court.

3.9.2 Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations under the Option and Purchase and Sale Agreement, to carry out the intent of the parties hereto.

3.9.3 Modification or Amendment, Waivers. No amendment, change or modification of the Option or Purchase and Sale Agreement shall be valid, unless in writing and signed by all of the parties hereto. Except as otherwise expressly set forth in this Section, the Option or Purchase and Sale Agreement may only be amended, modified, or changed by a traditional written document properly executed by Seller and Buyer (including Seller's Corporate Approval). Such amendment may be transmitted by e-mail, facsimile, or other method permitted by the provisions for giving notice in the Section 3.8. Except as otherwise expressly set forth in this Section with respect to execution by an Authorized Officer, (1) Seller does not assent or agree to and will not be bound by any electronic signature or other electronic record, and (2) Buyer and Seller agree that the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act, and any other laws applicable to contracting electronically do not and shall not apply to the execution of the Option and Purchase and Sale Agreement or any amendment hereto. Buyer and Seller acknowledge and agree that execution of the Option and Purchase and Sale Agreement or any amendment to the Option and Purchase and Sale Agreement by an Authorized Officer for the purpose of Corporate Approval may be accomplished by electronic signature utilizing DocuSign or any similar technology. No waiver of any breach of any covenant or provision in the Option and Purchase and Sale Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in the Option and Purchase and Sale Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

3.9.4 Successors and Assigns. All of the terms and provisions contained in the Purchase and Sale Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Buyer shall not be permitted to assign the Option or the Purchase and Sale Agreement, or any part thereof, to any other party.

3.9.5 Entire Agreement. The Option and Purchase and Sale Agreement shall constitute the entire understanding and agreement of the Parties with respect to their subject matters and any and all prior agreements, understandings or representations with respect to such subject matters are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under the Option and Purchase and Sale Agreement to any person, firm or corporation other than the Parties.

3.9.6 Attorneys' Fees. Should either party bring suit to enforce the Option or Purchase and Sale Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

3.9.7 Construction. Captions are solely for the convenience of the Parties and are not a part of the Option or Purchase and Sale Agreement. The Option and Purchase and Sale Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms

of the Option or Purchase and Sale Agreement is not a business day, the action shall be taken on the next succeeding business day.

3.9.8 Partial Invalidity. If any term or provision of the Option or Purchase and Sale Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of Option or the Purchase and Sale Agreement shall not be affected thereby; and each such term and provision of the Option or Purchase and Sale Agreement shall be valid and be enforced to the fullest extent permitted by law.

3.9.9 Survival. The covenants, agreements, representations and warranties made in the Option or Purchase and Sale Agreement shall survive the Option or Sale Closing Dates unimpaired and shall not merge into the Deed and the recordation thereof.

3.9.10 Finders' or Brokers' Fees. Seller and Buyer each hereby represent and warrant to the other that no broker, agent or finders' fees or commissions, or other similar fees, are due or arising in connection with any of the transactions contemplated by the Option or Purchase and Sale Agreement. Optionor/Seller and Optionee/Buyer each hereby agree to indemnify, defend and hold the other harmless from and against any loss, liability, damage, cost, damage, claim or expense, including interest, penalties and reasonable attorneys' fees, that the other party shall incur or suffer because of any claim by a broker, agent, or finder claiming by, through, or under such indemnifying party, whether or not such claim is meritorious, for any compensation with respect to the entering into of the Option or Purchase and Sale Agreement, the sale and purchase of the Property, or the consummation of the transactions contemplated herein.

3.9.11 Time. Time is of the essence of every provision of the Option and Purchase and Sale Agreement.

3.9.12 Force Majeure. Performance by Seller or Buyer of their obligations under the Option or Purchase and Sale Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

3.9.13 No Individual Liability. In no event shall any shareholder, officer, director, member, partner, affiliate, agent or employee of Optionor/Seller or any of Optionor's/Seller's affiliates be or be held liable or responsible in any way for the obligations or liabilities of Optionor/Seller under the Option or Purchase and Sale Agreement.

3.9.14 Counterparts. The Option or Purchase and Sale Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one agreement; but in making proof of the Option or Purchase and Sale Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of the Option or the Purchase and Sale Agreement may be combined to form multiple fully-executed counterparts; and (ii) a facsimile signature or an electronically scanned signature shall be deemed to be an original signature for all purposes. All executed counterparts of the Option or Purchase and Sale Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement either as Option or Purchase and Sale Agreement.

3.9.15 Effective Date. The term, “**date of this Agreement**”, or “**date hereof**”, or “**Effective Date**”, as used herein, shall mean the later of the following dates: (1) the date of Buyer’s signature; (2) the date of Seller’s signature; (3) the date of the Corporate Approval of Seller; or (4) the date of approval by the City of Olympia’s City Council.

3.9.16 CORPORATE APPROVAL OF SELLER. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NEITHER THE OPTION NOR PURCHASE AND SALE AGREEMENT NOR ANY AMENDMENT THERETO, SHALL BE A VALID AND ENFORCEABLE OBLIGATION OF OPTIONOR/SELLER UNLESS THE OPTION OR PURCHASE AND SALE AGREEMENT AND AMENDMENT IS EXECUTED BY EITHER ONE OF DONALD R. HORTON, DAVID AULD, MICHAEL MURRAY, OR BILL WHEAT, WITHIN 10 BUSINESS DAYS OF THE EXECUTION OF THE OPTION OR PURCHASE AND SALE AGREEMENT OR SUCH AMENDMENT BY OPTIONEE/BUYER AND OPTIONOR’S/SELLER’S REPRESENTATIVES.

3.9.17 Release of Option. If Optionee fails to timely exercise its Option to Purchase or should the Purchase and Sale Agreement terminate for any other reason hereafter, Optionee/Buyer shall promptly execute and deliver to Optionor/Seller a termination and release of the Option to Purchase or Purchase and Sale Agreement in recordable format in order for Optionor/Seller to clear title of the obligations hereunder.

3.9.18 Default. If Optionee/Buyer defaults under any material provision of the Option to Purchase or Purchase and Sale Agreement and does not cure such material default after a ten (10) day notice and opportunity to cure is given by Optionor/Seller, Optionor/Seller may terminate the Option or Purchase and Sale Agreement by notice to Optionee/Buyer and Optionor/Seller shall be entitled to retain the Option payments made hereunder, as its sole and exclusive remedy, except for the provisions set forth in Section 3.9.6 above. If Optionor/Seller defaults under any material provision of the Option or Purchase and Sale Agreement and does not cure such material default after a ten (10) day notice and opportunity to cure is given by Optionee/Buyer, Optionee/Buyer may terminate the Option or Purchase and Sale Agreement by notice to Optionor/Seller and Optionee/Buyer shall be entitled to receive a refund of the Option payments made hereunder, as its sole and exclusive remedy, except for the provisions set forth in Section 3.9.6 above.

[Signatures follow on next page.]

DATED as of the date first set forth above.

SELLER:

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

By: SHLR of Washington, Inc., a Washington
corporation, its manager

By _____

Its: _____

Date: _____

By _____

Its: _____

Date: _____

SELLER's CORPORATE APPROVAL:

By: _____

Name: _____

Title: _____

An Officer of Purchaser Not an Individual

Date of Execution: _____,

BUYER:

The City of Olympia, a Washington municipal
corporation

By _____

Its: _____

Date: _____

APPROVED AS TO FORM:

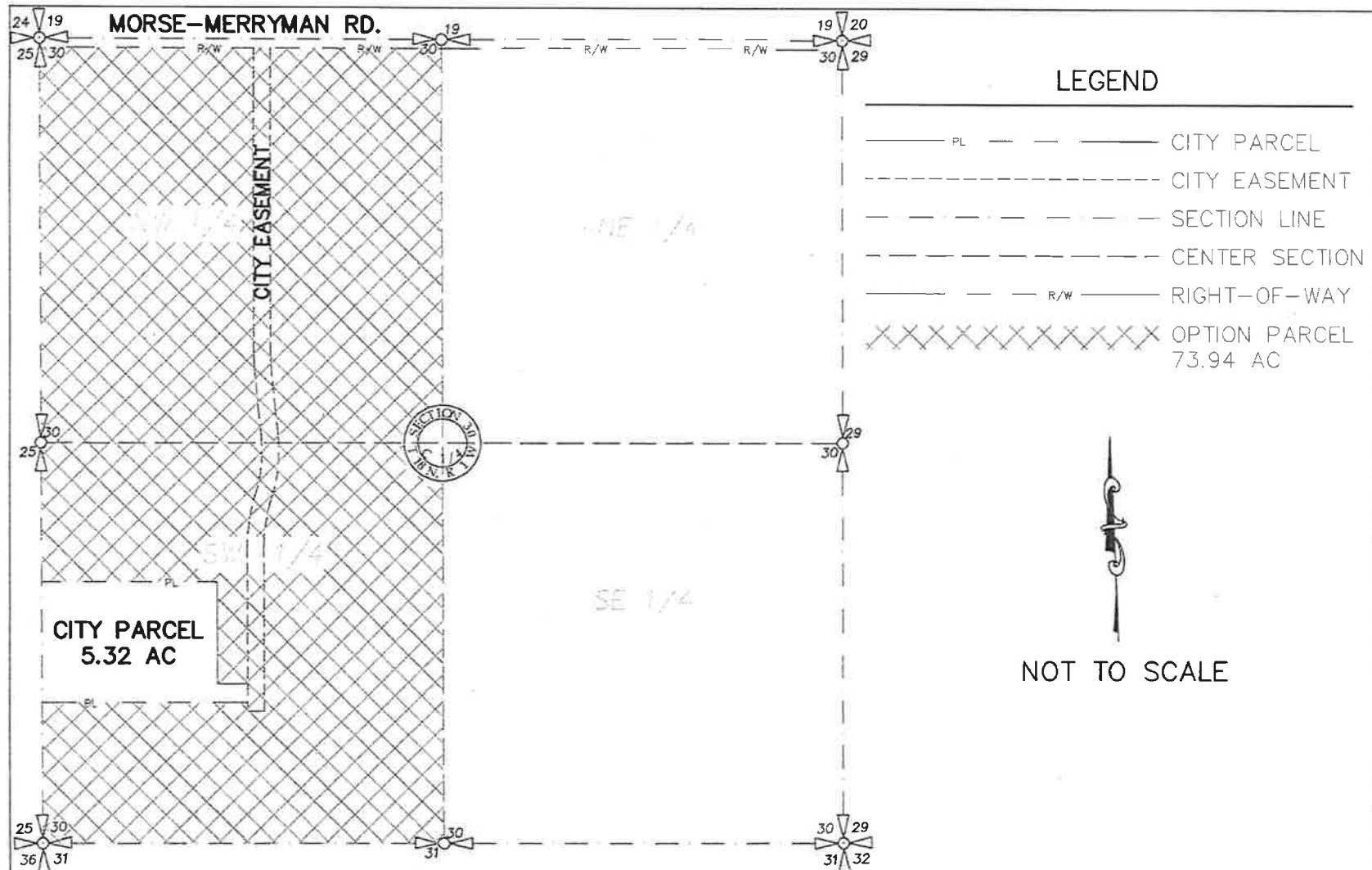


City Attorney

EXHIBIT A-1
Ashton Woods Property Legal Description

The West Half of the Southeast Quarter of Section 30, Township 18 North, Range 1 West, W.M.; EXCEPTING therefrom the North 30 Feet for Morse-Merryman Road; ALSO EXCEPT that portion conveyed to the City of Olympia by deed recorded January 22, 2014 under Auditor's File No. 4377516, records of Thurston County, Washington.
Situate in the County of Thurston, State of Washington.

EXHIBIT A-2
Sketch of Land



		PROJECT NO.	CITY OF OLYMPIA	DRAWING NAME
DRAWN	LFC		EXHIBIT "A2"	ASHTON
QC REVIEW	LFC	DATE	WEST HALF OF THE SOUTHEAST QUARTER	
SCALE	N.T.S.	JUNE 2015	SECTION 30, T. 18 N., R. 1 W., W.M.	SHEET 1 OF 1

Form of Deed
