

**FIFTH ADDITION  
SETTLEMENT AGREEMENT**

This Agreement is made this 5th day of ~~September~~<sup>October</sup>, 2007 by and between Shelley Lake Development, L.L.C. ("Developer") and Shelley Lake Estates Homeowners' Association, a Washington nonprofit corporation ("HOA") and is based upon the following facts and circumstances.

**RECITALS**

- A. The Developer is the plat sponsor of the Shelley Lake Fifth Addition Plat. On December 29, 2005, the Developer received preliminary plat approval subject to certain terms and conditions.
- B. The Developer has proceeded to develop the Shelley Lake Fifth Addition Plat and is in the process of obtaining final plat approval.
- C. The HOA has an interest in certain property located in the Shelley Lake Fifth Addition Plat and is interested in the overall development and welfare of Shelley Lake.
- D. Subject to the terms and conditions of this Settlement Agreement ("Agreement"), the Developer and HOA have cooperatively agreed to certain matters relating to the completion of the Fifth Addition Plat, specifically including the implementation of a Habitat Management Plan ("HMP"), improvement of the mountain trail and completion of certain other conditions of the Fifth Addition Plat. Additionally, subject to the terms and conditions of this Agreement, the Developer has agreed to facilitate the implementation of a HMP by making a financial contribution to assist in the implementation of such plan and the HOA has agreed to oversee and implement the HMP and execute the Fifth Addition Plat.
- E. The Developer and HOA have agreed that the effectiveness of this Agreement is specifically subject to the City of Spokane Valley and State of Washington approving the proposed HMP, not requiring a substantial development permit either for implementation of the HMP or the improvements to the mountain trail and to the Developer's timely payment of the amounts set forth herein.
- G. Both the Developer and HOA recognize and agree that this Agreement is a cooperative effort between the Developer and the HOA and is not intended as an admission of liability or responsibility by any party.

NOW, subject to the terms and conditions hereof, the parties do hereby agree as follows:

1. Eastern Trail. The Developer shall install the bridge and make repairs and improvements to the eastern trail as identified on Exhibit "A" attached hereto and incorporated herein by this reference. The Developer and HOA have agreed to make additional minor revisions to the trail map after receipt of comments from the City of Spokane Valley, which revisions shall include detailing the second handrail and trail width. The Developer has also agreed, to the extent a portion of the trail is located outside the existing easement, that it shall obtain the approval and consent of the adjoining property owner and prepare an Amended Easement to include the trail, as built, within the easement. The Developer's obligations hereunder shall be completed by November 1, 2007.
2. Fourth Addition Trail Easements. The Developer shall cause to be prepared four easement agreements, communicate with the property owners of the encumbered property, and use its best efforts to obtain the approval of the homeowners of the easements. The HOA will assist in obtaining the signatures of the homeowners. The Developer shall be responsible for all necessary drafting, amending and recording of the easements.
3. No Parking Signs. The Developer will have six "No Parking" signs installed, including two signs at each of the turnarounds in reflections and two signs at the turnaround near 304 S. Shelley Lake Lane. The Developer also shall replace the six misspelled Shelley Lake street signs located at three intersections within Shelley Lake. The Developer's obligations hereunder shall be completed by November 1, 2007.
4. Fencing. The Developer agrees that the exterior perimeter fence around the Fifth Addition shall be substantially consistent with the pre-existing exterior fence. The access gate and separate pedestrian gate will match other neighborhood gates and the concrete sidewalks shall be extended to the pedestrian gate. Attached hereto as Exhibit "B" and incorporated herein by this reference is a diagram depicting the location of the exterior fencing (including on the interior side of the drainage pond). Portions of the exterior fencing have already been built. The Developer shall be allowed to post a letter of credit for the cost of the new exterior fencing, subject to approval by the City of Spokane Valley and shall have nine months from execution of final plat to either complete the fence or payment shall be made under the letter of credit.
5. Iron Fence. The Developer shall not be required to contribute to the purchase of a proposed iron fence and the fence, if installed, shall be the sole responsibility of the HOA.
6. Privacy Slats. Upon execution of this Agreement and final plat approval, the

Developer shall pay \$700.00 to the HOA for supplies for privacy slats, and the HOA shall supply the installation labor.

7. Fourth Addition Swale (Tract D). The Developer will install an automatically controlled irrigation system to Tract D as well as grade, place topsoil and hydroseed Tract D. The Developer's obligations hereunder shall be completed by November 1, 2007.
  
8. Habitat Management Plan. The Developer has submitted a HMP to the City of Spokane Valley consisting of a Plan developed by the Spokane County Conservation District ("SCCD") dated March 8, 2007 as well as an overlay of comments concerning the Plan by the Developer's Consulting Biologist, Biology Soil & Water, Inc., dated August 10, 2007. Both the Developer and the HOA support the SCCD HMP and it is the parties' collective intention to work cooperatively to have the HMP approved without delay and have the Plan implemented without the necessity of obtaining a substantial development permit. With regard to the cost and implementation of the HMP, the Developer and HOA agree as follows:
  - (a) Upon final plat approval, the Developer shall pay up to \$65,380.00 towards the implementation of the HMP, specifically including the cost of installing an irrigation system along the lake shore. This amount shall be payable as follows:
    - (i) \$32,690.00 upon execution of this Agreement and final plat approval
    - (ii) \$32,690.00 on or before June 1, 2008.
  
  - (b) In consideration of the Developer's agreement to financially assist in implementing the HMP, the HOA agrees to oversee and administer the implementation of the Plan. The HOA further agrees to make a good faith effort to apply for and obtain any and all grants that may be available for this project and that the grants, if any received, shall be paid over to the Developer in reduction of the \$65,380.00 total sum the Developer has agreed to pay. Provided further, the HOA's obligation to seek grants and to forward such grants for shoreline work to the Developer shall terminate on December 31, 2009. The HOA further agrees to pay any amount in excess of \$65,380.00 which is required to implement the HMP. The Developer's obligations regarding the HMP and its implementation shall be limited to the Developer's payment of all costs, permits or studies required for the approval of the HMP and to paying \$65,380.00 as set forth herein.
  
9. Lake Ownership. The Developer will provide a title report verifying the legal description of the deed to the Shelley Lake Tract is accurate and the Developer shall pay the cost of preparing any required documents and recording the documents. To

the extent necessary, the Developer shall transfer ownership of the Shelley Lake Tract and common areas within the Shelley Lake Fifth Addition to the HOA. The Developer's obligations hereunder shall be completed within 60 days of final plat approval.

10. Water Rights and Pumping. By separate agreement, the Developer, Robert L. Heitman, Jr. and HOA have agreed to a Well Lease Agreement, which specifically shall include a provision regarding periodic water quality testing and the Developer and Robert L. Heitman, Jr.'s agreement to pay an amount not to exceed \$13,500.00 towards the purchase of a whole lake aeration system in the event the water quality standards set forth in the Well Lease Agreement are not met or the lake aeration system is otherwise required in accordance with the terms of the Well Lease Agreement.
11. Mutual Release. Subject to the Developer and HOA completing all of their respective affirmative obligations set forth herein, the parties do hereby mutually release each other and their members, successors, managers, board of directors and successors from any claims or demands relating to any of the obligations or responsibilities set forth herein.
12. Performance Bond/Letter of Credit. The Developer shall provide mutually acceptable separate performance bonds or letters of credit to insure the prompt payment of certain items set forth herein to the extent such items are not completed prior to the latter of the execution of this Agreement or Shelley Lake Fifth Addition final plat approval as follows.
  - (a) \$17,500.00 for vehicle and pedestrian gates and sidewalk extensions, Tract D Fourth Addition work completion, completion of the eastern trail as well as completion of any other obligations hereunder for which a separate performance bond or letter of credit is not specified. The amount of the performance bond or letter of credit shall be reduced by the reasonable agreement of the parties based upon the amount of work, if any, completed by the Developer prior to final plat approval.
  - (b) \$13,500.00 for the aeration system, which shall be combined with a separate bond or letter of credit required under the Well Lease Agreement;
  - (c) \$32,690.00 for balance of HMP funding due 6/1/2008;
13. Integration. Except for the Well Lease Agreement described in paragraph 10, the parties acknowledge this Agreement constitutes the complete and final expression of the parties' intentions with respect to all matters set forth herein and there are no other prior oral or written agreements or inducements which may affect or modify the same.
14. Modification. No supplement, modification or amendment to this Agreement shall be

binding unless executed in writing by all of the parties hereto. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement whether or not similar, nor shall any waiver constitute a continuing waiver.

15. Binding Nature of Agreement. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, executors, representatives, members, heirs, administrators and assigns.
16. Interpretation of Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.
17. Arbitration. The parties agree that any and all claims and disputes arising under, out of, or relating to the interpretation of this Agreement shall be submitted to binding arbitration. The parties agree that the arbitration shall be conducted pursuant to RCW 7.04A *Arbitration*. The parties shall attempt to select a single, mutually agreeable arbitrator. If an agreement cannot be reached, then the Superior Court for Spokane County shall appoint an arbitrator. The expense of the Arbitrator shall be shared equally by the parties
18. Miscellaneous.
  - (a) This Agreement shall be construed as if it had been prepared jointly by all the parties hereto and any uncertainty or ambiguity shall not be interpreted against one or more of the parties as drafter.
  - (b) Each of the parties hereto has been represented by counsel of their choice in the negotiation and execution of this Agreement.
  - (c) In the event a dispute arises as to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.
  - (d) This Agreement may be executed in one or more counterparts and by facsimile signature which, collectively, shall constitute the entire agreement of the parties.
  - (e) The parties to this Agreement agree to execute any other documents reasonably required to implement this Agreement, specifically including, but not limited to, the Fifth Addition Final Plat and Well Lease Agreement. All Developer obligations hereunder that do not include an explicit future deadline must be completed prior to the HOA's execution of the Fifth Addition Final Plat. The Developer specifically agrees to execute the Well Lease Agreement prior to the HOA's execution of the Fifth Addition Final Plat.



