

PRE-ANNEXATION AGREEMENT

THIS AGREEMENT is entered into this 26 day of July, 2000, between the CITY OF CLE ELUM, a second class municipal corporation organized under the laws of the State of Washington (hereinafter referred to as "City"), TRENDWEST RESORTS, INC., a Washington corporation (hereinafter referred to as "Trendwest Resorts"); TRENDWEST INVESTMENTS, INC., a Washington corporation (hereinafter referred to as "Trendwest Investments"), and TRENDWEST PROPERTIES, INC., a Washington corporation (hereinafter referred to as "Trendwest Properties"). The Trendwest companies shall hereinafter be referred to collectively as "Trendwest."

RECITALS

1. Parties

- 1.1 The City is a second-class municipal corporation organized under the laws of the State of Washington, located in Kittitas County, Washington.
- 1.2 Trendwest Investments, Inc., a Washington corporation licensed to do business in the State of Washington, is the owner of approximately 1,120 acres located in the Bull Frog Flats area of Kittitas County, which lies wholly within the Urban Growth Area of the City of Cle Elum, legally described in Exhibit A hereto, and which property is currently being considered for annexation into the City of Cle Elum, (the "Trendwest UGA Property"). Trendwest Investments purchased the Trendwest UGA Property from JELD-WEN, INC., an Oregon corporation licensed to do business in the State of Washington, on June 21, 2000. Trendwest Investments has assumed the rights and responsibilities of JELD-WEN as those rights and responsibilities are set forth hereunder.
- 1.3 Trendwest Resorts, Inc. is a Washington corporation licensed to do business in the State of Washington and is the parent company to Trendwest Investments, Inc., and Trendwest Properties, Inc. By its signature appearing below, Trendwest Resorts expressly approves the commitments entered into hereby by Trendwest.
- 1.4 Trendwest Properties, Inc., a Washington corporation, is a wholly owned subsidiary of Trendwest Resorts, Inc. Trendwest Properties conducts residential, commercial and recreational development activities upon real property.
- 1.5 Trendwest Investments, Inc. owns additional property adjacent to the Trendwest UGA Property in unincorporated Kittitas County, on which it has plans to develop a master planned resort, (the "MPR"). Trendwest Investments also purchased this additional property from JELD-WEN on June 21, 2000.

2. UGA

- 2.1 On June 23, 1998, the Cle Elum City Council established, pursuant to City of Cle Elum Resolution No. 6/23/98-1, an Urban Growth Area ("UGA") of the City of Cle Elum, which includes the Bull Frog Flats area immediately west of the City.
- 2.2 On December 22, 1998, the Kittitas County Board of Commissioners adopted Ordinance No. 98-24 amending the County Comprehensive Plan to establish the Bull Frog Flats area immediately west of the City as the City of Cle Elum's Urban Growth Area. This decision is final and was not appealed.
- 2.3 On December 22, 1999, the Parties to this Agreement executed an Agreement for Payment of Professional/Staff/Consultant Services providing for reimbursement to the City by Trendwest and JELD-WEN of all costs incurred by the City in connection with its review and processing of all legislative, quasi-judicial and administrative actions related to annexation and development of the UGA and associated infrastructure costs (the "Processing Costs"), with the exception of costs associated with preparation of the EIS for the UGA, which are covered under a separate, five-party agreement between the Parties, Kittitas County, SHAPIRO and McConnell/Burke, Inc. (the "UGA EIS Agreement").

3. Objectives

- 3.1 The Parties agree that it is a mutually beneficial goal that the City of Cle Elum experience healthy fiscal growth to provide the tangible benefits of an economically healthy community and tax base to its residents.
- 3.2 On August 10, 1999, the Cle Elum City Council adopted, by oral motion, a resolution, which provides that the City's existing citizens and ratepayers shall suffer no negative financial impacts as a result of dealing with Trendwest development activities within the UGA. This oral resolution was reduced to writing as appears in Resolution 2/8/2000-1, attached hereto as Exhibit B.
- 3.3 It is the objective of the City of Cle Elum to be a single, integrated community, including areas to be annexed to the City. The primary principles that comprise the City of Cle Elum's single community concept include uniform minimum development and maintenance standards throughout the City including, but not limited to, road standards and snow plowing standards; open, ungated neighborhoods that allow unrestricted public traffic on roads and pedestrian circulation systems; maintaining parks, recreational facilities and open spaces required to meet City standards that are sited in locations accessible to and are open to the public for the use and benefit of all citizens equally, whether such recreational opportunities are created by the City and/or through developer mitigation. Trendwest may provide for private recreational facilities for UGA homeowners and tenants beyond those required to meet city standards, and may include some security measures deemed appropriate by the City for any senior

residential housing constructed in the Trendwest UGA Property.

- 3.4 It is the express desire and intent of both the City of Cle Elum and Trendwest that all properties owned by Trendwest Investments, Inc. located within the Cle Elum Bull Frog Urban Growth Area be annexed into the City of Cle Elum in order to form a single, integrated community.
- 3.5 It is the objective of the Parties that the Trendwest UGA Property be developed generally consistent with the land uses and intensities identified in "Bull Frog Urban Growth Area" dated June 23, 1998, which was the basis for the City and County UGA Resolution and Ordinance, respectively.
- 3.6 Nothing in the Agreement, however, shall be interpreted to bind the City of Cle Elum to approve any particular development anywhere within the annexed area nor shall it be construed to relieve any development proposal from requirements set forth in any rules, regulations, or plans in affect now or in the future. The parties agree that development plans will be reviewed and approved by the City in the context of City adoption of amendments to the Comprehensive Plan and Zoning Code and approval of a Development Agreement for the Trendwest UGA Property. These City actions will occur prior to, or concurrent with, annexation, and nothing in this Agreement shall be interpreted to bind Trendwest to annex the UGA Property unless or until the Parties are also ready to adopt these plans, codes, and Development Agreement.

AGREEMENT

4. Annexation

- 4.1 Trendwest agrees to apply to the City to annex the Trendwest UGA Property prior to construction of any part of the proposed development or extension of urban services to this area by the City. Annexation may occur in phases, consistent with any adopted subarea plan and zoning, subject to approval of such phased annexation by the City. Future development of the Trendwest UGA Property shall be consistent with the City of Cle Elum's 1998 Comprehensive Plan as may hereafter be amended by adoption of a UGA Subarea Plan, which seeks to optimize overall community benefits in the use and development of property.
- 4.2 Trendwest agrees that upon annexation into the City of Cle Elum, the Trendwest UGA Property shall assume its proportional responsibility for any and all City general obligation, voted-upon bonded indebtedness and will, like all other residents of the City of Cle Elum, be responsible for all legally assessed City fiscal obligations. At the time of execution of this Agreement, there is no voted-on debt incurred by the City of Cle Elum. Notwithstanding the foregoing, if voted-upon debt is incurred after the date of execution of this Agreement and prior to annexation, then it is the agreement of the Parties that the annexed property will be subject to its pro rata share of such voted-upon debt.

- 4.3 The Parties agree that the City shall adopt a UGA Subarea Plan and zoning and other development standards and regulations pursuant to the authority of RCW 35.13 and/or RCW 35.63 and RCW 43.21C, as more fully described in section 5 below, prior to or concurrent with annexation. The Parties agree that as a condition of annexation, the Trendwest UGA Property shall be fully subject to the City of Cle Elum's comprehensive plan, as amended.

5. Land Uses

- 5.1 The Parties agree that the mix and types of land uses in the UGA shall be those identified in the City's June 23, 1998, Bull Frog Urban Growth Area document (commonly referred to as the "Green Book"), as may be more fully described in Pre-Annexation planning and zoning as may be adopted prior to annexation. Further, the Parties agree that the total number of residential units shall be capped consistent with the analysis in the UGA EIS, although the mix of densities and types of residential units may vary. The Parties recognize that additional residential units would be constructed in the area reserved for the Washington State Horse Park, should that project not proceed or be reduced in size, and additional environmental review may be required, if additional residential units are built in place of the horse park. Adverse impacts from the proposed development of the Trendwest UGA Property shall be assessed in the environmental review pursuant to SEPA, in a Municipal Facilities and Services Expansion Plan to be prepared as described in subsection 6.1.5.4.1 and shall be mitigated through measures identified and imposed in those evaluations, in a subsequently-adopted Fiscal Mitigation Agreement and/or Development Agreement, or during the individual land use and construction permits and approval processes, whichever is applicable. Wherever possible, such mitigation measures shall be imposed on that portion of the development that actually creates the impacts as distinguished from development of the Trendwest UGA Property as a whole. In addition, if impacts on the City from development of the MPR or cumulative impacts from development of both the MPR and the Trendwest UGA Property are proposed to be mitigated by development within the UGA, then Trendwest shall be obligated to provide that mitigation as part of its proposal to develop the Trendwest UGA Property. The Parties agree that the land use principles as set forth therein include, but are not limited to:

5.1.1 Development of the UGA as an integral part of the City of Cle Elum including public streets, utilities, parks and services.

5.1.2 Provision of land for expansion of existing or construction of new public facilities serving the UGA and the community including:

5.1.2.1 Approximately 25 acres for the expansion of the Cle Elum-Roslyn School District No. 404 facilities.

5.1.2.2 Approximately 10 acres for the expansion of the Laurel Hill Memorial Cemetery.

- 5.1.2.3 Approximately 12 acres for the Community Recreation Center; this Upper County Community Recreation Center need not be owned publicly, but shall provide general public access and use on terms and costs comparable to other publicly-owned recreation facilities.
- 5.1.2.4 Approximately 11 acres for the water treatment facility.
- 5.1.3 Incorporating a mix of uses, including:
 - 5.1.3.1 Single Family (4+/- dwelling units per acre, overall) and multiple family (8 to 15 dwelling units per acre, overall) residential with support recreation facilities.
 - 5.1.3.2 Business/Office Park of approximately 80 acres with limited retail and service uses designed to serve the convenience needs of employees of the UGA. This Business/Office park may be developed in phases and subphases, provided a minimum of 40 acres shall be identified in the first phase and an additional 40 acres shall be reserved for subsequent development unless or until Trendwest demonstrates there is insufficient market demand for this subsequent phase and a modification pursuant to section 5.1.5 is appropriate.
 - 5.1.3.3 Golf course open to the public with on-site club house, restaurant, pro shop and recreational facilities; approximately 50 to 100-room hotel, restaurant and hotel gift shop to serve guests of the hotel; a private recreation center and snack bar. These retail uses shall be located internally on the Trendwest UGA Property and shall not be located on Bull Frog Road or SR 903.
 - 5.1.3.4 Washington State Horse Park and associated camping facilities of 80 to 200 acres.
 - 5.1.3.5 The area adjacent to and visible from the Bull Frog I-90 interchange shall not be developed with typical freeway interchange type commercial uses such as gas stations, motels, fast food or national chain restaurants, shopping centers or similar uses, nor shall tall freeway-visible signs be permitted. Future planning efforts between the property owners and the City shall define the type of uses permitted, the appropriate scale of signage, screening and other land use and development standards appropriate to maintain the current character of this interchange. The Parties shall solicit input from Kittitas County, South Cle Elum and any other affected jurisdictions in any such planning efforts.

5.1.4 The Parties agree that prior to development of the Trendwest UGA Property,

the City must have reviewed and approved a master land use plan for each phase, which further defines the details of the mix, type, amount and location of land uses, subject to the terms of a development agreement entered into pursuant to RCW 36.70B.170 et seq., and provided that nothing in this section shall be interpreted to obligate the City to approve any particular development.

- 5.1.5 The mix of land uses described in section 5.1.3 may be modified, through future amendment to any development agreement or land use approval granted for the Trendwest UGA Property if requested by the property owner and if the City, in its reasonable discretion, determines that there is not sufficient market demand for the mix of uses proposed and if the City determines that a different mix of land uses is consistent with the overall intent of the City's comprehensive plan.
 - 5.1.6 A limitation on the retail and service uses development in the UGA to only those described elsewhere in this Agreement, so as to maintain and enhance the existing downtown retail core of the City of Cle Elum.
 - 5.1.7 Protection of the environmentally sensitive areas within the UGA such as the Cle Elum River corridor, flood plain, wooded steep slope areas, and wildlife corridors as well as provide buffers along transportation and utility corridors to retain the wooded character of the site.
 - 5.1.8 Ensure availability of an adequate supply of affordable housing for employees of the Trendwest developments in the UGA and the MPR. Such housing may be located within the UGA, in other parts of the City and/or in the unincorporated area in the vicinity of the UGA.
- 5.2 The Parties may enter into an amendment to this Pre-Annexation Agreement and will enter into a Development Agreement pursuant to the authority of RCW 36.70B.170 et seq., prior to or as a condition of annexation, to implement and commit to the land uses and mitigations required and to establish certain vested rights for the development, as determined appropriate after environmental analysis in the Pre-Annexation planning and zoning review process.
- 5.3 The Parties' obligation to proceed with annexation and development approvals consistent with the terms of this agreement is contingent on the Parties reaching agreement, either through the various utility service and Fiscal Mitigation Agreements described in subsection 7.2 below and/or a Development Agreement on necessary mitigation and responsibility for costs of mitigation of the adverse impacts associated with development of the Trendwest UGA Property. If there are impacts to the City from development of the MPR or cumulative impacts from development of both projects for which mitigation is to be provided in the UGA, then these agreements shall include provision for such mitigation as well. Determination of what, if any mitigation is necessary shall take into account the extent to which tax revenues to the City of Cle Elum as a result of annexation can cover the cost of facilities and/or services to address impacts from the development.

- 5.3.1 The Agreements regarding mitigation of adverse impacts shall, to the maximum extent possible, impose the appropriate shares of the required mitigation on that portion of the development that actually creates the impacts as distinguished from the development of the Trendwest UGA Property as a whole.
- 5.3.2 Trendwest acknowledges that the amelioration of impacts through the recovery of tax revenues must take into consideration legal constraints upon the City relative to the allocation and commingling of tax revenues generated by and designated for certain activities.
- 5.3.3 The Parties recognize that part of the environmental review and mitigation for development of the Trendwest UGA Property will likely include periodic monitoring of various environmental impacts to determine appropriate timing for mitigation and to determine the effectiveness of any mitigation imposed and/or whether additional mitigation is appropriate. If such periodic monitoring demonstrates that the impacts from development in the UGA exceed those originally identified in Trendwest's proposal for development, or if the original mitigation measures are not adequately mitigating the impacts from the development, then additional mitigation measures may be required.

6. Fiscal Impacts and Mitigation

- 6.1 Trendwest is committed to complying with Resolution 2/8/2000-1 of the City of Cle Elum referenced in section 3.2 above, providing that the existing citizens and ratepayers shall suffer no negative financial impacts as a result of dealing with Trendwest development activities in the UGA. To implement that commitment, the Parties agree to the following general principles to guide preparation of a Fiscal Impact Mitigation Agreement between the Parties:
 - 6.1.1 In some cases, Trendwest and the City are considering construction of regional facilities that address impacts from development of the Trendwest UGA Property, but will also address needs for facilities and services for other regional participants. In these cases, an appropriate share of the costs of the planning, design and construction of these regional facilities shall be allocated to the other regional users either upfront, or through appropriate reimbursement mechanisms. The specific shares, timing, and method of contribution should be determined in the specific separate agreement identified in subsection 6.1.5.
 - 6.1.2 Pre-Annexation Processing Costs.
 - 6.1.2.1 Prior to annexation, all professional, staff and consultant costs incurred by the City in its preparation of plans and regulations and review of Trendwest's proposed UGA development shall be reimbursed to the City by Trendwest pursuant to the terms of the Agreement for Payment of Professional/Staff/Consultant Services dated December 22, 1999. As provided for in that agreement, if the City collects permit review fees from other

property owners, from grant sources, or from other development proposals and if City staff time that is otherwise being paid for by Trendwest is used on such other projects, then those other fees should be credited against the costs for such City staff otherwise owed by Trendwest.

6.1.2.2 The Parties agree that said agreement may need to be amended from time to time to address additional topics of necessary mitigation or other professional, staff and/or consultant activities as they may arise in the context of subsequent individual development permit requests and approvals.

6.1.2.3 Unless earlier terminated by the parties, the Agreement for Payment of Professional/Staff/Consultant Services, as amended from time to time, shall continue to remain in full force until such time as the Trendwest UGA Property is annexed into the City of Cle Elum.

6.1.2.4 The Parties expressly intend that this Pre-Annexation Agreement does not supersede that Memorandum of Understanding executed by the Parties on April 13, 1999, until and unless the same is revised or terminated, recognizing that the Mediation and Arbitration Agreement dated and executed by the parties on December 7, 1999, does supersede Section IX. Dispute Resolution as contained in the April 13, 1999, Memorandum of Understanding between the parties.

6.1.2.5 The Parties hereto acknowledge that notwithstanding this Agreement, the City must and will remain independent and not subject to improper influence in the exercise of its governmental functions in preparing for the event of annexation and subsequent processing of land development proposals for the Trendwest UGA Property.

6.1.2.6 Trendwest acknowledges that payments made under any such agreement to mitigate pre-annexation financial impacts in no way constitute a commitment by the City to, in any way, compromise its obligations to objectively and independently carry out its own governmental duties, responsibilities and functions.

6.1.2.7 All costs incurred pursuant to this section shall not be recoverable by Trendwest through any future shortfall or fiscal impact mitigation agreement, provided that any fees received by the City from any third party for the services of any City staff that are otherwise fully funded by Trendwest pursuant to separate agreement between the City and Trendwest shall be credited against the costs otherwise owed by Trendwest for such

City staff positions.

- 6.1.3 Utility Design Costs. The Parties have previously entered into separate agreements providing for the design of certain City water and wastewater treatment facilities. Those agreements shall continue to govern those consultant costs and activities and shall not be superseded by the terms of this Pre-Annexation Agreement.
- 6.1.4 UGA EIS Costs. The Parties have previously entered into a separate agreement providing for reimbursement of costs associated with the City's preparation of an EIS for the UGA. That agreement shall continue to govern those costs and shall not be superseded by the terms of this Pre-Annexation Agreement.
- 6.1.5 Post-Annexation Costs and Mitigation of Fiscal Impacts. Prior to the effective date of annexation, the Parties shall complete the Municipal Facilities and Services Expansion Plan described in subsection 6.1.5.4.1 below and enter into a Fiscal Mitigation Agreement, either as a stand-alone agreement, as an amendment to this Pre-Annexation Agreement, or as part of a Development Agreement authorized pursuant to RCW 36.70B.170 et seq. that fully addresses accounting for revenues and costs related to the proposed development and provides for mitigation of fiscal impacts from the proposed development to the City of Cle Elum, consistent with the principles articulated in City Resolution No. 2/08/2000-1 and the following principles:
- 6.1.5.1 *Professional, Staff, & Consultant Costs.* Those professional, staff and consultant costs incurred by the City after annexation related to the City's ongoing review and processing of land use plans and regulations necessary for the UGA, development approvals and construction permits for the Trendwest development in the UGA shall be reimbursed to the City in a manner equivalent to that used for Pre-Annexation processing costs described in section 6.1.2. After adoption of a Subarea plan, development regulations and development standards for the UGA, all future professional, staff, and consultant costs for legislative actions in the City shall be governed by the provisions of the general government fiscal mitigation agreement(s) described in section 6.1.5.4. Processing costs for development approvals and construction permits for the Trendwest development in the UGA shall not be included in any shortfall accounting nor eligible for shortfall reimbursement, provided that any fees received by the City from any third party for the services of any City staff that are otherwise fully funded by Trendwest pursuant to separate agreement between the City and Trendwest shall be credited against the costs otherwise owed by Trendwest for such City staff positions.

6.1.5.2 *Utility Capital Costs* shall be paid for by Trendwest, pursuant to the cost-sharing and reimbursement terms to be established in separate agreements for water treatment facility costs and wastewater treatment facility costs that require Trendwest to pay for all costs associated with these utility improvements that would not otherwise be required to address existing City deficiencies, but for the proposed Trendwest development within the UGA and the Master Planned Resort. If any of the utilities are designed to provide regional services, then appropriate shares of such regional utility costs shall also be charged to such regional users. Trendwest's obligations regarding utility capital costs and the Parties' obligations to proceed with the provisions of this Agreement are contingent on final decisions by the City and acceptance by Trendwest of appropriate cost-sharing mechanisms described in section 6.2.

Additional Capacity

6.1.5.3 *Utility Operating Costs.* The Parties acknowledge that the new utility facilities may have a higher operations and maintenance ("O/M") cost than existing City utility facilities or a higher O/M cost than what utility facility improvements would have been necessary to serve the City without development of any of the Trendwest properties. The amount of such increased costs should be documented by establishing a base cost estimate before the new facilities are placed into service. These base cost estimates may need to be adjusted after completion of construction of the new utility facilities. Any costs above that base cost beyond the regular rate of inflation for such utility facilities' operation shall be the responsibility of Trendwest. Each ERU user rate shall have a component for O/M. Until such time as new Trendwest property connections multiplied by this O/M component of the rate generates adequate revenues to pay for this higher O/M cost, Trendwest shall pay the difference through a monthly utility O/M shortfall payment. As with utility capital costs, if any of the utilities are designed to provide regional service, then appropriate shares of such regional utility O/M costs shall be allocated to such regional users. If this Agreement is terminated pursuant to section 7.4 then Trendwest's obligations for O/M shortfall shall be as provided in such termination.

6.1.5.4 *General Government Capital and Operating Costs.*

6.1.5.4.1 To identify the need for and amount of mitigation of this potential adverse impact to the City, the Parties agree to develop a Municipal Facilities and Services Expansion Plan ("MFSEP") that

identifies what general government capital expenditures and operating expenses are necessary to serve the UGA at a level consistent with existing City standards for such facilities and services. This MFSEP shall examine strategies that strive to time the incurring of new capital expenditures to that point where the City has sufficient debt capacity from the increase in assessed value associated with the UGA to cover bonding for such capital facilities. Similarly, this MFSEP shall strive to time increased general government operating expenses such that they are incurred when the City has increased tax revenues from the Trendwest UGA Property sufficient to pay for such increased operating expenses.

6.1.5.4.2 The Parties recognize that, in some cases, such costs for facilities and services may only be incurred in certain threshold increments that may or may not exactly match a straight calculation of "pro-rata" share based on population or other level of service standard. In those situations where a threshold increment is triggered because of the development of all or a portion of the Trendwest UGA Property, Trendwest, or any other developer of all or a portion of the Trendwest UGA Property shall be obligated to reimburse the City for the threshold increment. Similarly, if the cumulative impacts from development of the Trendwest UGA Property and the MPR trigger certain threshold impacts on City facilities or services, Trendwest may be obligated to provide the full increment for those mitigations.

6.1.5.4.3 The Parties agree that the City will incur additional general government capital and operating costs to serve development within the UGA, such as increased police services and associated capital expenditures, increased fire service and associated capital expenditures and public works facilities and associated increased maintenance costs. The Parties also agree that, following annexation, the City will begin to

receive additional tax revenues from development within the UGA that will offset, at least in part, such additional capital costs and operating expenses, although it is likely that the additional costs and expenses will exceed the additional revenues at the early stages after annexation. Any general government capital and operating expenditures that are necessary to serve Trendwest development in the UGA consistent with existing levels of service or adopted City level of service standards shall be reimbursed to the City by Trendwest, or any other developer of the Trendwest UGA Property. Such costs shall be determined as part of the MFSEP and incorporated in the Fiscal Mitigation Agreement and/or the Development Agreement for the Trendwest UGA Property. To the maximum extent possible, such costs shall be identified as mitigation for individual development proposals within the UGA and imposed as conditions of approval of such individual development proposals consistent with the provisions of the Fiscal Mitigation Agreement and/or the Development Agreement. If the City is asked to provide any general government services to the MPR, then provision of such general government services should be addressed in a separate agreement regarding those service costs.

6.1.5.4.4

If the Parties, through preparation of the MFSEP, are unable to time the general government capital expenditures or operating costs to that point where the City has sufficient assessed value for debt capacity and/or tax revenues from the Trendwest UGA Property, the Parties shall then enter into a Shortfall Mitigation Agreement that provides for Trendwest, or any other developer of any portion of the Trendwest UGA Property to reimburse the City for such revenue shortfalls that are attributable to the facilities and services required to serve the relevant portion of the Trendwest UGA Property. Such Shortfall Mitigation Agreement shall be a condition of approval of any development request that triggers the need for such facilities or services. The

Parties agree to negotiate an enforceable agreement that will determine when the provisions for payment of shortfalls will commence and terminate, an accounting method to track revenues and expenses that are attributable to the Trendwest UGA Property and whether the City has any legal mechanism to commit to reimbursement of any shortfall payments at such time as the City has sufficient debt capacity to commit to such reimbursement. If the City is asked to provide any general government facilities or services to the MPR, then Trendwest and the City shall enter a separate agreement to address the mitigation for the cost of such facilities or services before the City is obligated to provide them. Such agreement(s), once executed, shall be subject to the terms and provisions of that Mediation and Arbitration Agreement executed by the Parties on December 7, 1999.

6.1.5.4.5 If Trendwest asks the City to provide a level of facilities or services in excess of that normally provided by the City, Trendwest shall be fully responsible for any costs associated with such excess facilities or services.

6.2 Possible Reimbursement for Utility Extension and Capital Improvements.

6.2.1 The Parties agree that Trendwest's expenditures for utility extension and capital improvements for the City to serve the Trendwest UGA Property are eligible for partial reimbursement by other property owners or other new development that specifically benefit from such improvements, through various legal reimbursement mechanisms such as a Local Improvement District, a Latecomers' Agreement, hookup charges, impact fees, or such other legally appropriate mechanisms for reimbursement.

6.2.2 Further, such expenditures by Trendwest may be reduced by the availability of economic development grants or other governmental sources of financing where appropriate. However, nothing in this section shall be construed to obligate the City to finance, pursue or approve any alternate source of financing or reimbursement as contemplated by this paragraph without first including appropriate public process.

6.2.3 The City agrees to take the steps required to establish a Local Improvement District, Latecomers' Agreements, hookup charges and/or impact fees or other

legal mechanisms for reimbursement in accordance with law, whereby other property owners who benefit from such utility extensions and improvements at a later date shall be charged a fair pro-rata share of the cost, provided that all costs associated with establishment of such mechanisms for reimbursement are paid by Trendwest and/or any other participants in regional facilities, and further provided that such mechanisms permit the City's retention of a reasonable amount for the collection and administration of the reimbursement mechanisms in a fiscally responsible manner acceptable to the Washington State Auditor.

6.2.4 Nothing in this section shall be construed to require the City to agree to establishment of an LID, a Latecomer's reimbursement, hookup charges, impact fees, or other reimbursement mechanisms unless and until the City has complied with all of the constitutional and statutory requirements for consideration of such mechanisms, and only if the City then determines, in its sole discretion, that establishment of the reimbursement mechanism and the associated costs are consistent with those requirements.

6.2.5 Trendwest's obligation to fund necessary facility, infrastructure and government services described in this Agreement and the Parties' obligation to proceed with the provisions of this Agreement are contingent on the City establishing and Trendwest accepting a reasonable reimbursement mechanism to recover fair pro rata shares from other property owners and/or regional users who benefit.

7. General Provisions

7.1 Voluntary Agreement. The Parties hereto intend and acknowledge that this Agreement is a voluntary contract binding upon the Parties hereto, as well as their successors and assigns. The Parties recognize that the financial obligations undertaken by Trendwest are voluntary, and Trendwest acknowledges that it is fully aware that the City has relied on Trendwest's recitals and commitments made above and further herein, that it understands that City has relied upon said recitals in making the decision to commit to planning for annexation. Trendwest acknowledges that it is entering into this Agreement knowingly and voluntarily in consideration of the benefits to be derived therefrom.

7.2 Additional Agreements.

7.2.1 The Parties hereto intend and acknowledge that additional agreements shall be entered into as a result of and in conjunction with this Agreement. It is the Parties' intention that all subsequent agreements entered into between the Parties, which effectuate the implementation of the objectives, and agreements contained herein shall become Addenda hereto and incorporated herein as if fully and originally contained in the text of this Agreement.

- 7.2.2 Without limitation, those agreements expected to be executed by the Parties as a result of and in relation to this Agreement shall likely include, but not necessarily be limited to: Sewer Cost and Capacity Allocation Agreement; Comprehensive Water Policy Agreement; Water Treatment Plant and Water Transmission Line Easements and Property Transfer Agreement(s); Water Cost and Capacity Allocation Agreement; Relinquishment of Easement for Existing Cle Elum River Transmission Line; Fiscal Mitigation Agreement for costs and expenses and revenue stream shortfalls; Staffing Agreements; Regionalized Water Treatment Plant Construction Funding Agreement; and SubArea Development Standards Agreement.
- 7.2.3 The Parties further acknowledge two additional City policies that shall govern development of the Trendwest properties: The City of Cle Elum/UGA Water Supply Policy (City of Cle Elum Resolution 11/23/99-1) and The City of Cle Elum/Trendwest MPR Water Rights/Supply Policy. (City of Cle Elum Resolution No. 3-14-00-1.)
- 7.3 Best Efforts. The Parties hereto agree that they will use their best efforts to timely negotiate and execute those agreements necessary to enable the City of Cle Elum to annex the Trendwest UGA Property in accordance with the letter and spirit of this Pre-Annexation Agreement.
- 7.4 Termination.
- 7.4.1 The Parties agree that this Agreement shall remain in full force and effect for twenty (20) years from the date of execution hereof unless terminated by mutual agreement of the Parties, termination by Trendwest through withdrawal and abandonment of the UGA development as described in subsection 7.4.2, or termination if the City does not approve the annexation for this area.
- 7.4.2 Trendwest may terminate this Agreement, consistent with the conditions set forth in this section 7.4 by withdrawing its application for annexation and/or development of the Trendwest UGA Property. Withdrawal of a pending application or proposal, and substitution of a new or revised proposal or application by Trendwest, shall not be grounds for termination of this Agreement, nor shall the submission of a new or revised proposal or application by an entity wholly or partially related to Trendwest, its sister or parent companies. The Parties agree that the City shall not be obligated to accept any further application from Trendwest or a successor-in-interest to the Trendwest UGA Property without the property owner agreeing to reinstate this Agreement or a substantially similar agreement.
- 7.4.3 In the event this Agreement is terminated, the Parties agree that Trendwest shall be obligated to reimburse the City for all its expenses reasonably incurred in an effort to restore the City to its pre-Trendwest fiscal condition.

- 7.4.4 The Parties either already have or agree to specify in the subsequent agreements regarding provision of infrastructure and government services what expenses Trendwest shall be obligated to reimburse the City for such efforts to restore the City to its "pre-Trendwest" fiscal condition.
- 7.4.5 Nothing in this Agreement shall be interpreted to bind the City to provide any facilities or services to serve the MPR. Any such commitments must be the subject of separate agreements.
- 7.4.6 Termination shall be preceded by a minimum ninety-day (90-day) written notice from Trendwest. Receipt of such notice by the City shall then trigger those steps necessary to insure reimbursement to the City, as will be specified in subsequent agreements on reimbursement for such costs.
- 7.4.7 Once this Agreement has been terminated consistent with the requirements of this section 7.4 and Trendwest has made adequate provision to pay the costs necessary to restore the City to its pre-Trendwest fiscal position, the City shall record a release of the Trendwest UGA Property from the obligations of this Agreement and release any lien that has been imposed on the Trendwest UGA Property, except as is necessary to secure or enforce any of the reimbursements determined necessary to restore the City to its pre-Trendwest fiscal position as described in this section 7.4. Any dispute regarding the need for any ongoing lien shall be subject to the provisions of the Mediation and Arbitration Agreement described in section 6.1.2.4 above. To the extent possible, the Parties agree to first rely on any established reimbursement mechanisms as security for any post-termination obligations.

7.5 Notices. All notices required pursuant to this Agreement shall be sent to the following:

TO THE CITY:

City of Cle Elum
119 W. 1st Street
Cle Elum, WA 98922

With a copy to:
Erin L. Anderson
Cone, Gilreath, Ellis, Cole & Anderson
P. O. Box 499
Ellensburg, WA 98926

TO TRENDWEST:

Trendwest Properties, Inc.
P.O. Box 887
109 S. 1st Street
Roslyn, WA 98941

With a copy to:
John W. Hempelmann
Cairncross & Hempelmann
701 5th Avenue, 70th Floor
Seattle, WA 98104-7016

- 7.6 Effective Date. This Agreement shall become effective on the date first appearing above.
- 7.7 Binding Effect. This Agreement shall run with the land and shall be binding upon, and inure to the benefit of, the parties and their respective heirs, successors and assigns. A memorandum of this Agreement shall be recorded by the City against the real property described in Exhibit A with the Kittitas County Auditor.
- 7.8 Obligations to Constitute a Lien. If Trendwest Resorts, Trendwest Properties and/or Trendwest Investments fail to perform any of the obligations under this Agreement or pay any of the amounts associated therewith and if the City reasonably determines that other reimbursement mechanisms that have been imposed, such as the reimbursement mechanisms described in section 6.2, are not adequate to fulfill the outstanding obligations of this Agreement, then the City may record a Notice of Lien Claim against the real property described in Exhibit A. Any dispute regarding the need for any ongoing lien shall be subject to the provisions of the Mediation and Arbitration Agreement described in section 6.1.2.4 above. The lien shall encumber the Trendwest UGA Property described in Exhibit A until paid and may be foreclosed upon in accordance with the general lien foreclosure laws then in effect in the State of Washington. The foreclosure amount shall include the cost of filing the lien, attorney's fees and such other fees and costs as may be necessary to enforce the lien and collect the amount due.
- 7.9 Governing Law. This Agreement is entered into under the laws of the State of Washington, and the Parties intend that Washington law shall apply to the interpretation hereof.
- 7.10 Enforcement. Venue and jurisdiction to enforce all obligations under this Agreement, except those subject to mediation or arbitration, shall lie in the Kittitas County Superior Court. The obligations of the Parties hereunder may not have an adequate remedy by way of an action for damages, and may be enforced by an action for specific performance. The City may condition its approvals of development applications for Trendwest upon performance of Trendwest's financial obligations under this Agreement.
- 7.11 Attorneys' fees and Costs. In the event either party commences proceedings in Superior Court to enforce this Agreement, the prevailing party shall be entitled to an award of attorneys' fees and costs and disbursements, including expert witness fees, reasonably incurred or made in such proceedings, including appellate proceedings.
- 7.12 Amendment. This Agreement may be modified only by written instrument duly executed by both Parties, after approval by the Cle Elum City Council.

DATED this 26 of July, 2000.

CITY OF CLE ELUM

Jay M. Howan

~~Hon. Gary Berndt, Mayor~~


Pro Tem

ATTEST:

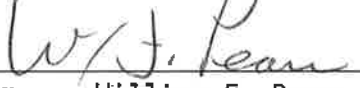
DeLiela Bannister

DeLiela Bannister, Cle Elum City Clerk


TRENDWEST RESORTS, INC.


By: William F. Peare
Its: President

TRENDWEST INVESTMENTS, INC.


By: William F. Peare
Its: President

TRENDWEST PROPERTIES, INC.


By: William F. Peare,
Its: President