AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CLE ELUM AND SUN 47 NORTH LLC RELATING TO THE DEVELOPMENT OF REAL PROPERTY LOCATED WITHIN THE CLE ELUM URBAN GROWTH AREA, COMMONLY KNOWN AS THE "BULLFROG UGA"

This AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CLE ELUM AND SUN 47 NORTH LLC RELATED TO THE DEVELOPMENT OF REAL PROPERTY WITHIN THE CLE ELUM URBAN GROWTH AREA, COMMONLY KNOWN AS THE "BULLFROG UGA" (this "Agreement") is entered into ___ day of _____, 2023 (the "Effective Date"), by and between SUN 47 NORTH LLC, a Michigan limited liability company ("Sun") and the CITY OF CLE ELUM, a Washington municipal corporation, (hereafter "City"). Sun and the City are collectively referred to as the "Parties."

RECITALS

A. On July 26, 2000, the City, Trendwest Properties, Inc., Trendwest Investments, Inc. (Trendwest Investments, Inc. and Trendwest Properties, Inc. are referred to herein as "Trendwest") entered into a Preannexation Agreement relating to annexation, provision of public facilities and services, and general development requirements for that certain property commonly known as the Trendwest UGA Property as more particularly described therein. That agreement provided for, among other things, the City's preparation of a subarea plan and zoning regulation to apply to the Trendwest UGA Property as a condition of and prior to annexation of the Trendwest UGA Property to the City. That Preannexation Agreement required that no such urban development should occur until after the Trendwest UGA Property was annexed in the City.

B. On December 4, 2000, Trendwest, the Washington Department of Fish and Wildlife and the Yakama Nation entered into that certain Cooperative Agreement addressing certain fish and wildlife impact issues and imposing certain restrictions on development within Trendwest's property (including the Trendwest UGA Property) and certain obligations for habitat acquisition and protection (the "Cooperative Agreement").

C. On June 19, 2001, the Trendwest and the City entered into an Agreement Relating to Water Supply for Bullfrog Flats UGA. The terms of that agreement govern transfer of water rights necessary to serve the Trendwest UGA Property.

D. On June 19, 2001, the Trendwest and the City entered into a Water Supply System Project Development Agreement (the "Water Supply DA") that addresses the requirements for and contributions towards construction of a new Water Supply System to serve the City of Cle Elum, the Town of South Cle Elum, the Trendwest MPR Property (now known as "Suncadia Resort"), and the Trendwest UGA Property. The terms of that Water Supply System Project Development Agreement govern provision of water supply infrastructure to the Property.

E. On October 2, 2001, Trendwest dedicated and conveyed Kittitas County Tax Parcel No. 17127 to the City in that certain Statutory Warranty Deed recorded under Kittitas County Recording No. 200206240071 to satisfy certain obligations under the Preannexation Agreement

and the Water Supply DA. Currently, Kittitas County Tax Parcel No. 17127 is improved with the Water Treatment Plant that serves the City, the Town of South Cle Elum, and Suncadia Resort.

F. On March 18, 2002, the City issued a Final Environmental Impact Statement ("FEIS") relating to Trendwest's proposed development of the Trendwest UGA Property. The FEIS evaluated five "action" alternatives. "Alternative 5" was ultimately proposed to the City as Trendwest's development plan for the Trendwest UGA Property (as further discussed below).

G. On October 30, 2002, the City and Trendwest entered into that certain Development Agreement By and Between the City of Cle Elum, Trendwest Investments, Inc. and Trendwest Properties, Inc. Relating to the Development of Real Property Located Within the Cle Elum Urban Growth Area, Commonly Known as the "Bullfrog UGA" (the "2002 Development Agreement"). The bounds of the Trendwest UGA Property are detailed in ATTACHMENT A of the 2002 Development Agreement.

H. The 2002 Development Agreement incorporated a Master Site Plan and accompanying Conditions of Approval (collectively and as attached the 2002 Development Agreement as ATTACHMENT B, the "Original Plan") governing the development of the Trendwest UGA Property and described certain agreements between the City and Trendwest intended to guide the implementation of the Original Plan. Section 2.1 of the 2002 Development Agreement also required that Trendwest agree to annex the Trendwest UGA Property into the City and, upon annexation, that the City agree to permit the construction of the Trendwest UGA Property as described by the Original Plan.

I. Concurrent with the City's approval of the 2002 Development Agreement, the City also adopted Ordinance 1180. Ordinance 1180 authorized the addition of the "Bullfrog Subarea Plan" to the City's Comprehensive Plan; approved an amendment to the City's zoning map to depict the Trendwest UGA Property (following its annexation) as within the "Planned Mixed Use" zoning district; and adopted zoning regulations that would be applicable to the Planned Mixed Use zoning district following the annexation of the Trendwest UGA Property into the City ("PMU Zoning").

J. On June 10, 2003, the City adopted Ordinance 1196 regarding the annexation of the Trendwest UGA Property into the City. Ordinance 1196 became effective as of June 15, 2003.

K. On August 21, 2003, pursuant to Conditions 79 and 99 in the Original Plan's Conditions of Approval, Trendwest conveyed Kittitas County Tax Parcel No. 14414 to the Cle Elum-Roslyn School District #404 (the "School District") in that certain Statutory Warranty Deed recorded under Kittitas County Recording No. 200309100043 for the School District's use.

L. On March 13, 2007, the City adopted Ordinance 1267, amending Ordinance 1196 to confirm the City's approval of the Original Plan occurred concurrently with the annexation of the Trendwest UGA Property on June 10, 2003.

M. On August 14, 2007, the City, in Resolution 2007-14, accepted from Suncadia LLC, a Delaware limited liability company and Trendwest's successor-in-interest in ownership of the Trendwest UGA Property ("Suncadia"), those certain water supply system improvements (known as the "UGA Transmission Facilities") Trendwest was obligated to construct pursuant to Section 1.5 of the Water Supply DA.

N. The Master Site Plan depicted in the Original Plan depicted a large tract on the southern side of the Trendwest UGA Property labeled as "reserve." The Original Plan's Conditions of Approval reference a "Horse Park Reserve Parcel," and indicate that the "reserve parcel" was a potential site for construction of a Washington State Horse Park equestrian events facility. The "reserve" property, the "Horse Park Reserve Parcel," and the "reserve parcel" are referred to herein as the "Horse Park Reserve Parcel."

O. In 2008, Suncadia, the City, and the Washington State Horse Park Authority ("WSHPA") entered into that certain Agreement Regarding Suncadia Property Donation for the Benefit of the Washington State Horse Park (the "Donation Agreement") regarding Suncadia's donation of a portion of the "Horse Park Reserve Parcel" to the City of Cle Elum for the benefit of the WSHPA.

P. Following the execution of the Donation Agreement, Suncadia conveyed to the City a portion of the Horse Park Reserve Parcel (as legally described in that certain Statutory Warranty Deed recorded under Kittitas County Auditor's No. 200901130002, the "Horse Park Property." Subsequent to the conveyance of the Horse Park Property, Suncadia, the WSHPA executed numerous license and easement agreements to memorialize each party's obligations with regard to the construction and operation of the Horse Park Property. Suncadia's donation of the Horse Park Property, and the relevant parties' subsequent agreements regarding the Horse Park Property, satisfied all of the developer obligations under the Original Plan with regard to the Horse Park Revere Parcel.

Q. On March 28, 2017, the City and New Suncadia LLC, a Delaware limited liability company and Suncadia's successor-in-interest in ownership of the Trendwest UGA Property ("New Suncadia"), entered into certain First Amendment to Development Agreement By and Between the City of Cle Elum, Trendwest Investments, Inc. and Trendwest Properties, Inc. Relating to the Development of Real Property Located Within the Cle Elum Urban Growth Area, Commonly Known as the "Bullfrog UGA" (the "2017 Development Agreement Amendment"). The 2017 Development Agreement extended the term of the 2002 Development Agreement from fifteen (15) years to twenty-five (25) years. The 2002 Development Agreement, as amended by the 2017 Development Agreement Amendment, constitutes the "Original Development Agreement").

R. On October 11, 2021, pursuant to Condition 38 in the Original Plan's Conditions of Approval, New Suncadia conveyed Kittitas County Tax Parcel No. 11850 to the City in that certain Bargain and Sale Deed recorded under Kittitas County Recording No. 20211030027 for the construction of a new Upper Kittitas County Community Recreation Center.

S. In lieu of constructing those certain improvements required by Condition 38(C) of the Original Plan, New Suncadia and the City agreed that a flat, four-million-dollar ($4,000,000) payment to the City would satisfy New Suncadia's obligations under Condition 38. That agreement was memorialized in that certain Recreational Parcel Agreement by and between New Suncadia and the City dated January __, 2021 (the "Recreational Parcel Agreement"). The City has received the First Monetary Contribution and the Second Monetary Contribution (as defined in the Recreational Parcel Agreement), and Sun, as New Suncadia's successor, is obligated to make a third, two-million-dollar ($2,000,000) payment to the City as further detailed in the Recreational Parcel Agreement.

T. On December 7, 2021, New Suncadia conveyed those portions of the Trendwest UGA Property that had not already been conveyed to the City or the School District as described in these recitals to Sun pursuant to that certain Bargain and Sale Deed recorded under Kittitas County Recording No. 202112100038 (the "Property"). The Property is legally described in Exhibit A of this Agreement.

U. Concurrent with Sun's acquisition of the Property, New Suncadia assigned, and Sun assumed, the rights and obligations under the Original Development Agreement pursuant to that certain Assignment and Assumption of Development Agreement dated December 7, 2021 (the "DA Assignment"). The City consented to the DA Assignment on June 16, 2022.

V. As the owner of the Property governed by the Original Development Agreement, Sun has requested a major modification to Original Plan. Sun's request for a modification of the Original Plan is necessitated by Sun's updated vision for the development of the Property (the "Proposed Project"). The Proposed Project contemplates the following modifications to the Original Plan: a reduction of the number of residential units (from 1,334 to 723), a reduction in the size of the business park (from 75 acres to 25 acres), an expansion of retail uses of the business park (to allow retail uses to exceed the Original Plan's 5,000 sq. ft. limitation), and the addition of a recreational vehicle resort (a use permitted under Cle Elum Municipal Code ("CEMC") 17.51.010(D)(1)).

W. The City studied the environmental impacts of the Proposed Project in a Final Supplemental Environmental Impact Statement ("FSEIS") issued on April 16, 2021. The FSEIS evaluated two alternatives: "New Alternative 5" as a "no action" alternative and "Alternative 6" as the "action" alternative comprising the development that would take place under the Proposed Project. New Alternative 5 in the FSEIS approximates Alternative 5 studied in the FEIS

X. On March 9, 2023, the City issued an Addendum to the FSEIS that updated Alternative 6 to reflect the changes to the Proposed Project made after the issuance of the FSEIS (the "Addendum").

Y. Section 6.4.2 of the Original Development Agreement permits major modifications to the Original Plan so long as any such major modification complies with "the public notice, comment, and hearing requirements specified in the PMU Zoning." Currently, the public notice, comment, and hearing requirements for a major modification of the Original Plan are codified at

CEMC 14.30.080 (which governs approvals for "Type 4" permits—including the Major Modification of any development approved in the PMU Zoning district).

Z. On March [__], 2023, Sun submitted the following applications (collectively, the "Major Modification Application") necessary for the development of the Proposed Project:

a. An Application for Mixed Use Approval (as required by CEMC 17.45.080) that modifies the Original Plan (including an updated Site Plan of, proposed "Development Standards" for, and a comprehensive narrative describing the Proposed Project);

b. A Lot Consolidation Application; and

c. A Preliminary Subdivision Application.

AA. On [_____ __], 2023, the City issued a Determination of Completeness for the Major Modification Application.

BB. On [_____ __], 2023, the City issued a Notice of Application for the Major Modification Application. The Notice of Application indicated that, pursuant to CEMC 14.30.020, the City consolidated the components Major Modification Application and indicated that the Major Modification Application would be reviewed using the Type 4 Review Standards described in CEMC 14.30.080.

CC. On [_____ __], 2023, the City issued a staff report on the Major Modification Application and this Agreement.

DD. On [_____ __], 2023, the City's Hearing Examiner conducted an open record hearing on the Major Modification Application and this Agreement. On [_____ __], 2023, the City's Hearing Examiner transmitted its recommendation on the Major Modification Application and this Agreement to the City Council.

EE. The Parties desire that the City Council will independently approve the Major Modification Application (as recommended by the Hearing Examiner and approved by the City Council with conditions, the "Approved Plan"). Once approved by the City Council, the Approved Plan will constitute the "Planned Mixed Use Final Plan" required by CEMC 17.45.100 for development of the Proposed Project.

FF. Sun desires to obtain the City Council's approval of this Agreement, and the City desires to approve this Agreement to (1) facilitate Sun's development of the Proposed Project as reflected in the Major Modification Application and (2) memorialize certain agreements between Sun and the City that are beneficial to the City and not included in the Major Modification Application.

GG. The Parties desire that, upon the City Council's adoption of this Agreement, that the Original Development Agreement and all exhibits and attachments thereto, will be superseded and amended and restated in their entirety.

HH. The Parties intend that the terms and condition of this Agreement will govern the implementation of the Approved Plan.

II. The State Legislature has specifically authorized the negotiation and execution of development agreements, pursuant to RCW 36.70B.170–.210 (the "Development Agreement Statute"), where appropriate to provide additional land use approval and mitigation certainty, especially for larger-scale developments intended to be constructed as a unified whole, but over a period of several years.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Amendment and Restatement of Prior Development Agreement

1.1 This Agreement amends and restates in its entirety that certain Development Agreement By and Between the City of Cle Elum, Trendwest Investments, Inc. and Trendwest Properties, Inc. Relating to the Development of Real Property Located Within the Cle Elum Urban Growth Area, Commonly Known as the "Bullfrog UGA" dated October 30, 2002, as amended by that certain First Amendment to Development Agreement By and Between the City of Cle Elum, Trendwest Investments, Inc. and Trendwest Properties, Inc. Relating to the Development of Real Property Located Within the Cle Elum Urban Growth Area, Commonly Known as the "Bullfrog UGA" dated March 28, 2017.

1.2 The above recitals are incorporated in and made a part of this Agreement.

1.3 The Parties agree to record a Memorandum of Development Agreement (the "Memorandum") no later than thirty (30) days after the later of (1) the Reference Date or (2) the Parties receipt of final order related to the appeal of either this Agreement or the City's approval of any other component of the Major Modification Application enumerated in Recital Z. The Memorandum shall supersede that certain Memorandum of Development Agreement by and between New Suncadia and the City dated March __, 2018, and recorded under Kittitas County Auditor's Number 201803150012.

2. Effective Date and Duration of Agreement

2.1 This Agreement shall take effect immediately upon its adoption by the City Council and execution by all parties, provided that any time periods specified in this Agreement shall be tolled during any appeals of this Agreement or any component of the Approved Plan.

2.2 The Proposed Project shall be vested to the version of the CEMC effective on the date of Sun's submission of a complete Major Modification Application to the City (the "Vested Code"), as modified and supplemented by the Development Standards approved as a part of the Approved Plan. The Vested Code is attached hereto as Exhibit B.

2.3 Subject to the potential default and/or termination provisions of Section 13 below, this Agreement shall be in force for a period of fifteen (15) years after the Reference Date (as that period may be tolled as described in Section 2.1, the "Term"). Land use applications submitted after the end of the Term shall be subject to all policies, plans, rules, and regulations in effect for the City generally, and nothing shall prevent the City from adopting whatever subsequent policies, plans, rules, or regulations it deems are in the public interest for the City as a whole.

3. Vesting

3.1 As defined in Section 2.2 above, the Approved Plan and all complete applications for Subsequent Approvals (as defined in Section 6) submitted before the expiration of this Agreement shall vest to the substantive requirements of the Vested Code, with the following exceptions:

3.1.1 All development activity authorized by the Approved Plan shall be subject to the Uniform Building Codes (including electrical, fire, earthquake, and other similar uniform construction codes) as adopted by the State and City in effect on the date a complete application for the particular construction or building permit is submitted to the City unless otherwise specified in the Development Standards.

3.1.2 The City's authority to require additional SEPA review and potential mitigation in connection with applications for subsequent development or construction approvals shall be as more fully described in the Subsequent SEPA Review Subsection 6.5 below.

3.1.3 Other laws, rules, or regulations deemed by the City as necessary to impose as the only reasonable method to address a public health or safety concern.

3.1.4 Any additional rules, requirements, or mitigation measures determined reasonably necessary to avoid a decision by a state or federal administrative agency, or a court of competent jurisdiction, that the City unlawfully failed to comply with the Endangered Species Act or other state or federal laws or regulations in approving subsequent development or construction permits.

3.1.5 Any requirement or new regulation which the City reasonably believes in good faith is necessary to avoid a decision by a state or federal administrative agency, or a court of competent jurisdiction, that the City's eligibility for funding, grants, program eligibility, or other resources sought by the City would be impaired (for example, if approval of any portion of the development would prohibit the City from being eligible under the National Flood Insurance Program or result in higher premium rates to the City or its property owners).

3.1.6 Any requirements imposed by a state or federal statute or regulation that would impose cumulative standards for compliance on an area-wide basis, such as, by way of illustration only, new water quality standards that might change stormwater and/or sewage treatment requirements. Additional requirements under this Subsection shall only be to the extent necessary to address Sun's proportionate share of such area-wide standards.

3.1.7 Any taxes or fees that may be adopted by the City in the future that are imposed on a city-wide or larger area basis and that are not designed to fund infrastructure, facilities, or services that are specifically funded in the mitigation measures imposed by the City in the Approved Plan, except that Sun shall be given an appropriate credit against such tax or fee if such tax or fee covers any specific mitigation measure contained in the Approved Plan.

3.2 The City's ability to impose new requirements or modifications pursuant to the provisions of Subsections 3.1.1–3.1.7 above shall be limited to the minimum necessary to avoid the consequence or address the requirement described in each Subsection. The City further agrees to advise and consult with Sun when the City believes any such circumstances arises. The Parties agree to resolve any disputes arising out of this Section following the dispute resolution procedures provided for in the Amended and Restated Mediation and Arbitration Agreement attached hereto as Exhibit C (the "Mediation Agreement").

3.3 This Section is intended to implement the vesting provisions of the Development Agreement Statute, and nothing herein is intended to address or in any way modify other existing state or federal rules or court decisions regarding vested rights under laws adopted by jurisdictions other than the City, including state or federal laws or regulations.

3.4 Except as otherwise specifically set forth in this Agreement, the City shall not apply any City ordinance, resolution, rule, regulation, standard, directive, condition, or other measure (hereinafter, "City Law") to the Approved Plan that is in conflict with the Vested Code or infringes on rights provided by this Agreement, unless agreed to by Sun in writing or imposed pursuant to one of the acknowledged exceptions identified in this Section. Without limiting the generality of the

foregoing, any City Law shall be deemed to conflict with the Vested Code if it would accomplish any of the following results either directly, or through subsequent development reviews and approvals and related conditions of such approvals:

3.4.1 Limits or reduces the development density included in the Approved Plan;

3.4.2 Changes any zoning designation applicable to the Property or the uses of the Property permitted in the Approved Plan;

3.4.3 Limits or controls the location of buildings, structures, clearing, grading, or other improvements within the Property in a manner that is inconsistent with or more restrictive than the limitations in the Vested Code;

3.4.4 Limits or controls the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Proposed Project inconsistent with the Approved Plan or the terms of the Agreement Relating to Water Supply for Bullfrog Flats UGA dated June 19, 2001, and the Water Supply DA, except in the case of public health and safety emergency; provided that nothing in this Agreement shall limit the authority of any public utility, service, or facility provider that is not a party to this Agreement to require anything legally necessary and appropriate prior to its provision of such utilities, facilities and/or services; and provided further that the Parties agree that the terms of the Fourth Amended Upper Kittitas County Regional Wastewater Treatment Facilities Project Agreement, Development Agreement, and Service Agreement between the City, the Town of South Cle Elum, the City of Roslyn, and Suncadia Resort Development LLC, f/k/a Mountainstar Resort Development dated April __, 2008, will govern the provision of wastewater service for the Property;

3.4.5 Requires the issuance of additional permits or approvals by the City other than those required by the Vested Code;

3.4.6 Limits the processing of applications for, or the obtaining of, any Subsequent Approval (as defined below), unless reasonably necessary to address a public health and safety issue.

4. Phasing

4.1 The Parties agree that Sun may proceed with development of the Property according to whatever phasing Sun, in its sole discretion, deems appropriate, provided that any phasing requirements imposed by the Approved Plan are satisfied.

4.1.1 Prior to commencement of any phase (each, a "Phase"), Sun shall submit to the City the documents enumerated in Section 14.30.140(B)(1) of the Vested Code, as well as additional information reasonably requested by the City including but not limited to, information related to impervious surface and building/lot coverage (the "Phase Plan"). The Phase Plan shall include in its application materials a statement of compliance describing how the development of the proposed Phase is consistent with the Approved Plan. The Phase Plan may also include applications for a suite of ministerial permits necessary to implement such Phase, but for the avoidance of doubt, each ministerial permit included in a Phase Plan application shall be processed as outlined in this Section.

4.1.2 The City's review and approval of any Phase Plan application shall be based on the procedures for "Type 1 Review" as described in Section 14.30.050 of the Vested Code, with the following exceptions: (a) the Phase Plan will be reviewed for its consistency only with the Approved Plan as required by Section 17.45.110(C) of the Vested Code, the Development Standards, and applicable provisions of the Vested Code where the Development Standards are silent; and (b) any SEPA review will be as outlined in Section 6 of this Agreement.

4.1.3 The City shall endeavor to process a Phase Plan application within thirty (30) calendar days of deeming such Phase Plan complete, and in no case shall the City's review and approval of a Phase Plan application exceed forty-five (45) calendar days.

4.1.4 Sun shall not be obligated to construct any public facility required by the Approved Plan to service such Phase or make any public facility contribution required by the Approved Plan required for such Phase, prior to the issuance of the first certificate of occupancy or final building permit signoff (as appropriate) for that Phase.

4.1.5 Sun may post a bond or other security to satisfy a portion of its obligations pursuant to this Section.

4.1.6 The Parties agree that developing a mix of uses throughout the development of the Property is a desirable objective and Sun shall diligently strive develop the Property to facilitate this objective as much as is feasible.

4.2 With the exception of the requirements of Subsection 4.1, and the requirements for commencing development, pursuant to Section 5, the Parties agree that Sun's construction of the Approved Plan can proceed at whatever pace or phasing the property owner deems appropriate, based on market conditions, financing, or other private considerations.

5. Single-Family Residential Parcel Development

5.1 As described above in Section 4, the Property may be developed in one or more Phases to be determined by Sun in its sole discretion.

5.2 The Approved Plan includes an approved preliminary subdivision of the single-family residential parcel depicted on the Approved Plan's Site Plan (the "Single-Family Parcel"). For the avoidance of doubt, the Single-Family Parcel may be developed in Phases as permitted under this Agreement and the Approved Plan, and Sun may apply for a final plat of portions of the Single-Family Parcel before buildout is of the entire Single-Family Parcel is completed. Furthermore, the five-year filing period for final plat applications required by Section 16.30.040 of the Vested Code shall be extended for the Term of this Agreement.

6. Subsequent Approvals and Additional SEPA Review

6.1 Development of the Property pursuant to the Approved Plan will require additional reviews and approvals of a variety of ministerial development permits prior to the commencement of and during construction of each Phase (including, but not limited to, any Phase Plan application, the "Subsequent Approvals"). The Parties agree to follow the review and approval procedures of the Vested Code for all such Subsequent Approvals, as modified by this Agreement, and that any complete application for a Subsequent Approval submitted before the expiration of the Term of this Agreement shall be processed.

6.2 The Parties acknowledge that modifications to the Approved Plan may occur during the buildout of the Property to achieve a number of objectives desirable to both Sun and the City, including but not limited to: incorporating new information; responding to changing community and market needs; encouraging reasonably priced housing; responding to changes in technology or patterns of living and working; and encouraging modifications that provide comparable benefit or functional equivalence with no significant reduction of public benefits or environmental protection (collectively, the "Flexibility Objectives").

6.3 A Subsequent Approval shall not be granted if it is determined by the City Planning Director (or its equivalent) that it is inconsistent with any of the provisions or requirements of the Approved Plan, unless a Minor Modification or a Major Modification is approved as part of that review process as follows:

6.3.1 A Minor Modification to the Approved Plan may be approved by the City Planning Director (or its equivalent), provided the proposed Minor Modification is consistent with the overall scope and intent of Approved Plan, is determined to be appropriate to accomplish the Flexibility Objectives described in Subsection 6.2 above and meets the following criteria:

6.3.1.1 The proposed modification does not include residential densities, commercial floor area ratio, or total units, or square footages that exceed the ranges specified in the Approved Plan. Provided, however, if the proposed modification includes a demonstration that any variation from the development capacity in the particular Phase can be accommodated by an increase or decrease in another the development capacity in a subsequent Phase, if the modification approval includes a condition requiring accommodation of this change in the subsequent Phase, and if the City determines that this change is consistent with the overall intent of the Approved Plan, then the City Planning Director (or its equivalent) may approve a Subsequent Approval that is a minor modification to the Approved Plan.

6.3.1.2 The proposed modification does not result in a reduction in the amount of open space required by the Approved Plan. Provided, however, if the proposed modification includes a demonstration that any variation from the amount of proposed open space(s) in one Phase can be accommodated by addition of open space in a subsequent Phase, and only if the modification approval includes a condition requiring accommodation of this open space change in the subsequent Phase, and if the City determines that this change is consistent with the overall intent of the Approved Plan, then the City may approve a minor modification to the Approved Plan. Provided further, that in no event shall any such modification reduce the Cle Elum River Corridor open space depicted on the Approved Plan's Site Plan and in no event shall a minor modification be permitted to alter the character of the Bullfrog Road/I-90 interchange, consistent with the terms of the Cooperative Agreement.

6.3.1.3 The proposed modification does not result in a reduction in the amount or type of housing approved in the Approved Plan.

6.3.1.4 The proposed modification does not trigger the need for additional SEPA review, subject to the provisions of Subsection 6.4 below.

6.3.1.5 The proposed modification does not include a reduction in the width, proposed plantings, or type of any required landscape buffers required by the Approved Plan, unless the City determines that the modification will accomplish all of the same screening functions that the original requirements would provide.

6.3.1.6 The proposed modification does not include uses that were not approved in the Approved Plan.

6.3.1.7 The proposed modification is functionally equivalent, or superior, to the original standard or requirement imposed by the Approved Plan.

6.3.1.8 The proposed modification is compatible with the scale and character of the structures and uses adjacent to the location of the proposed modification, whether such structures and uses are within or outside the Property.

6.3.2 Any proposed modification of the Approved Project that does not meet the criteria for a Minor Modification, as described in Subsection 6.3.1 above, shall be a Major Modification, and shall require an amendment to the Approved Plan, including all of the public notice, comment, and hearing requirements specified in Section 14.30.080 of the Vested Code.

6.4 Additional SEPA review. As provided for in WAC 197-11-600(3) and CEMC 14.40 and as discussed in Recitals W and X (the "Existing SEPA Documents"), the Parties agree that, in conducting environmental review for the Approved Plan, the City has completed the required environmental review necessary for this Agreement. The Parties also acknowledge that the Existing SEPA Documents are sufficient for the City's review and approval of the Subsequent Approvals, so long as those Subsequent Approvals are within the maximum allowable densities and uses contemplated in the Approved Plan. Pursuant to this Section, however, the City may require supplemental environmental study and impose additional mitigation measures beyond those required by the Approved Plan for a Subsequent Approval, but only to the extent that:

6.4.1 The Subsequent Approval proposes a Major Modification to the Approved Plan, or

6.4.2 The City concludes, pursuant to WAC 197-11- 600(3)(b) (as adopted by the City pursuant to Section 14.40.030 of the Vested Code) that a proposed Minor Modification will result in substantial changes to the Approved Plan that it is likely to have significant adverse impacts not previously analyzed in the Existing SEPA Documents; or

6.4.3 The City concludes, pursuant to WAC 197-1l-600(3)(b) (as adopted by the City pursuant to Section 14.40.030 of the Vested Code) that there is new information indicating probable significant adverse environmental impacts of the Approved Plan not previously analyzed in a SEPA environmental document. This Subsection includes, without limitation,

information that may be obtained from any ongoing monitoring requirements required by the Approved Plan or this Agreement.

6.4.4 Upon receipt of an application for a Subsequent Approval, the City SEPA Responsible Official (the "SEPA Official") shall evaluate the application for purposes of assessing the adequacy of the Existing SEPA Documents, pursuant to the guidelines in this Section. If the SEPA Official determines that additional environmental review is required, it shall direct the applicant to prepare the additional SEPA analysis prior to the City rendering a final decision on the requested Subsequent Approval. Any such additional SEPA analysis shall be limited in scope to only those elements of the environment and potential significant adverse impacts that the SEPA Official determines have not been adequately addressed in the Existing SEPA Documents.

6.4.5 Nothing in this Section shall be construed to affect the SEPA authority of any other permitting agency not a party to this Agreement. Such other permitting authority's SEPA review shall be governed by RCW 43.21C, WAC 197-11, and the particular permitting authority's relevant SEPA rules and procedures.

7. Mitigation of Impacts to Other Governmental Entities. The City and Sun acknowledge that the Approved Plan may impact certain public facilities and services that are owned by public entities or jurisdictions other than the City (each, an "Affected Public Entity"). The Approved Plan's impacts to facilities and services owned or provided by any Affected Public Entity were studied in the Existing SEPA Documents mitigated in the Approved Plan. Sun and the City shall coordinate with and seek input from any Affected Public Entity before modifying any mitigation requirement identified in the Approved Plan with respect to public facilities or public services owned by or provided by an Affected Public Entity without first attempting to obtain the Affected Public Entity's consent. If such consent cannot be reasonably obtained, Sun and the City shall have the right approve the proposed modification to the monitoring requirement imposed by the Approved Project, provided the City determines that the modification will not unreasonably impact any Affected Public Entity.

8. Additional Developer Contributions to Police and Fire Department

8.1 The Approved Plan's projected impacts on the City's provision of police and fire service to the Property are mitigated sufficiently through the Conditions of Approval imposed as a part of the Approved Plan. However, in a desire to provide additional support to the City during the development of the Approved Plan, Sun agrees to make the following contribution to the City for the benefit of the City's Police and Fire Department Budgets (the "Contributions"):

8.1.1 Upon construction commencement, Sun will make a $125,000 contribution to be used for upgrading the existing Fire Station.

8.1.2 Upon construction commencement, Sun will make a $25,000 contribution to assist in the recruitment and training of the first full-time firefighter.

8.1.3 Upon construction commencement, Sun will make a $50,000 contribution to assist in the recruitment and training of two new police officers.

8.1.4 Upon Final Permit Signoff for the 120th ERU, Sun will make a $50,000 contribution to assist in the recruitment and training of another new police officer.

8.1.5 Upon Final Permit Signoff for the 240th ERU, Sun will make a $50,000 contribution to assist in the recruitment and training of another new police officer.

8.1.6 Upon Final Permit Signoff for the 360th ERU, Sun will make a $50,000 contribution to assist in the recruitment and training of another new police officer.

8.1.7 Upon Final Permit Signoff for the 480th ERU, Sun will make a $50,000 contribution to assist in the recruitment and training of another new police officer.

8.1.8 Upon Final Permit Signoff for the 600th ERU, Sun will make a $50,000 contribution to assist in the recruitment and training of another new police officer.

8.2 The Contributions, when made, shall be credited toward the Public Services Fund discussed in Condition 81 as revenue.

8.3 Sun may provide discounts and/or promotional rental rates to new full-time firefighters and police officers to assist with the City's efforts to recruit new employees.

9. Affordable Housing Development

9.1 In addition to the 180 units of multi-family housing Sun will develop as a part of the Approved Plan, Sun shall develop or cause to be developed a minimum of fifty (50) dwelling units that are affordable to households earning less than eighty percent (80%) of the area median income for Kittitas County ("Affordable Housing Units"). The Affordable Housing Units shall not count towards the mix of 1,334 RV Sites and Single and Multi-Family Residential dwelling units included in the Approved Plan.

9.2 At least 24 Affordable Housing Units will be constructed no later than the issuance of a building permit for construction of 50% of the allowed single and multi-family residential units (approximately 337 units). The remaining 26 Affordable Housing Units shall be constructed no later than the issuance of the building permit for the last single or multi-family residential unit.

9.3 Developer shall not be responsible for delivery of water rights or payment of any other mitigation measures for the Affordable Housing Units, including, but not limited to, utility connection charges (water, sewer, or other similar utility connection fees), any traffic, school, police, fire, emergency services, or park mitigations.

10. Credits for Water System Improvements and Adjustment of Sewer Installation Fees.

10.1 Water Tap Fee Credits. The Approved Plan's Conditions of Approval require that Sun pay its proportionate share of the cost of certain improvements to the City's water system (the "Water System Improvements") in the manner provided for in that certain 47 North Water Supply System Impact Mitigation Plan attached to the Conditions of Approval as Exhibit B (the "Water Supply System Impact Mitigation Plan"). The Water Supply System Impact Mitigation Plan requires that Sun deposit its proportionate share of the estimated cost of the Water System Improvements into an escrow account (the "Water System Improvement Escrow") as well as any additional, proportionate amounts required if the cost of constructing the Water System Improvements exceeds the initial estimate of costs.

The Water Supply System Impact Mitigation Plan, however, does not relieve Sun of its obligation to pay generally applicable water utility connection fees ("Water Tap Fees") during buildout of the Approved Plan. Sun will receive a credit from the City, equal the sum of (1) to the amount deposited by Sun into the Water System Improvement Escrow and (2) $500,000.00[1], to be applied to the cost of any Water Tap Fees assessed against development within the Approved Plan. Notwithstanding anything to the contrary in the foregoing, Sun acknowledges that the City is obligated to remit a portion of each Water Tap Fee to Suncadia pursuant to an earlier reimbursement agreement between Suncadia and the City related to earlier, Suncadia-financed improvements to the water supply system (the "City-Suncadia Water Agreement"). Sun will not receive any Water Tap Fee credit that does not allow the City to comply with its obligations to remit to payment to Suncadia under the City-Suncadia Water Agreement.

10.2 Adjustment of Sewer Installation Fees. Because the Approved Plan contemplates the construction of a privately owned and maintained sanitary sewer collection

[1] The Water System Improvement Escrow—that is, the amount deposited by Sun to pay its fair share of the cost of water system improvements necessitated by the Proposed Project—does not capture the value of the easement ($500,000) to be transferred to the City at no cost that is necessary to construct the new water reservoir. However, the calculation of Developer's Water Tap Fees credits should include this credit, as reflected above.

system on the Property, Sun will pay only the "per ERU Connection Charge" portion of the then-current Sewer Installation Fees when connecting structures built within the Approved Plan to the City's sewer system. For the avoidance of doubt, Sun will not pay any portion of a Sewer Installation Fee attributable to any "per ERU Capital Reimbursement Charge." .

11. Transportation System Impact Mitigation. Potential impacts to the City's transportation network resulting from the construction of the Approved Plan were analyzed prior to the City's issuance of FSEIS and the Addendum. The Addendum describes several intersections in the City that either currently do not provide an adequate level of service (LOS) or are projected to fail to provide an adequate LOS at full buildout of the Approved Plan (the "Approved Plan Transportation Impacts"). City and Sun agree that the Approved Plan Transportation Impacts will be addressed pursuant to the terms of that certain 47 North Transportation Impact Mitigation Plan attached hereto as Exhibit D.

12. Assignment

12.1 Sun shall have the right to assign all or any portion of its interests, rights, obligations, or responsibilities under this Agreement to third parties acquiring an interest in all or any portion of the Property, subject to the requirements for City consent described in this Section.

12.2 Assignments Not Requiring City Consent. Sun may enter into an agreement to assign all or any portion of its interests, rights, obligations, and responsibilities under this Agreement and to release Sun from its obligation and responsibilities without obtaining written consent from the City if such transfer relates to an assignment concerning property that has been established as a separate legal parcel. However, Sun may assign without City consent only those obligations and responsibilities that can be fulfilled exclusively within the boundaries of, and by the development upon, the parcel or parcels being transferred (the "Parcel Obligations"). Parcel Obligations include, by way of illustration only and without limitation, such items as individual lot landscaping or buffering requirements, building setback, height or design requirements, wood-burning stove prohibitions, and such access and infrastructure improvements to be constructed solely within the boundaries of the parcel and intended to serve only the building(s) or uses located within that parcel. As a condition of this type of transfer, Sun shall remain responsible for all obligations and responsibilities pursuant to the Approved Plan and this Agreement other than the Parcel Obligations.

12.3 Assignments Requiring City Consent.

12.3.1 All other assignments of any of the rights, responsibilities, and obligations of Sun that propose to release Sun from its obligations and responsibilities pursuant to the Approved Plan and this Agreement shall not take effect

unless and until Sun has obtained written consent from the City. The City's consent shall not be unreasonably withheld, conditioned, or delayed.

12.3.2 Such proposed assignment may release Sun from obligations under the Approved Plan and this Agreement that pertain to that portion of the Property being transferred, provided that the transferee expressly assumes such obligations and responsibilities.

12.3.3 To the extent any proposed assignment relates to mitigation measures designed to specifically benefit an Affected Public Entity, the City shall not give its consent to such transfer until it has first consulted with such Affected Public Entity regarding such transfer, but no such consultation shall cause the City to withhold its consent to the transfer.

12.3.4 A notice of the proposed assignment, including the provisions regarding assumption of Sun's obligations, shall be provided to the City and any Affected Public Entity in the matter set forth in Subsection 14.6 below at least sixty (60) days in advance of the proposed date of transfer. Failure of the City to respond within forty-five (45) days after the date the notice is received by the City shall be deemed to be the City's approval of the assignment in question.

12.3.5 The City may refuse to give its consent to an assignment only if there is a material reason for such refusal, including without limitation, the assignee's failure to perform under the Approved Plan or a failure to demonstrate adequate financial capability of the transferee to perform the obligations proposed to be transferred.

12.3.6 The City shall be entitled to contract, at Sun's expense, with third parties to assist with a reasonable due diligence review of a proposed assignment agreement. City determinations with regard to consent to transfers shall be made by the City Council and are appealable to Kittitas County Superior Court.

13. Default and Termination

13.1 No party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of 120 days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the 120-day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. Any disputes regarding what constitutes a default or what is necessary to cure the default shall be subject to all of the provisions of the Mediation Agreement. The provisions

of this Subsection notwithstanding, the City shall retain the authority to require immediate cure of any default that the City determines constitutes an immediate threat to public health and safety.

13.2 A party not in default under this Agreement shall have all rights and remedies provided by law or equity including, without limitation, damages, specific performance, or writs to compel performance or require action consistent with this Agreement. The City shall further have the right to withhold Subsequent Approvals for those portions of the Property that are reasonably necessary to ensure cure of the default.

13.3 The City shall have no liability to any person or party for any damages, costs, or attorneys' fees under this Section so long as the City exercises reasonable and good faith judgment in seeking remedies against appropriate parties or portions of the Property.

13.4 Termination.

13.4.1 Sun shall have the right, at its sole option, to elect to terminate this Agreement by giving the City six months' written notice of its intent to do so, provided such notice includes Sun's commitment to abandon development of the Property pursuant to the Approved Plan. Any proposal to revise the terms of this Agreement during the development of the Property pursuant to the Approved Plan shall be processed as an amendment of this Agreement rather than as a termination of this Agreement to be followed by a new development agreement. Termination shall take effect six months after the City's receipt of Sun's notice of termination. Upon termination, this Agreement shall expire and be of no further force and effect, and a notice of such termination shall be recorded in the records of Kittitas County.

13.4.2 The City shall have the right to terminate this Agreement only if Sun defaults on its obligations pursuant to this Agreement, the City follows the notice of default requirements in Subsection 13.1, and Sun fails to cure the default within the time periods specified in this Agreement. Provided, however, if Sun objects to the notice of default, the City shall not terminate this Agreement unless and until the Parties have completed the dispute resolution process described in the Mediation Agreement. However, the City is entitled to withhold Subsequent Approvals until the default issue is resolved.

14. Payment for Professional, Staff, and Consultants. On August 27, 2002, Trendwest and the City entered into that certain Restated and Amended Agreement for Payment of Professional, Staff, and Consultant Services (the "Payment Agreement"), regarding certain payments to be made by Trendwest to offset the cost to the City of processing permits

related to the Original Plan. The Payment Agreement was memorialized as Attachment 6 to Attachment B of the Original Development Agreement. As of the Effective Date, the parties agree that the Payment Agreement is hereby terminated in its entirety. On and after the Effective Date, the City will assess fees related to applications for Subsequent Approvals utilizing the then-current City fee schedule or a future side agreement between Sun and the City.

15. Miscellaneous Provisions

15.1 Sun shall support the City's efforts to obtain any necessary right-of-way or easement and to construct an off-site connection from the Property's trails depicted on the Site Plan to the existing Coal Mines Trail. In addition, once the City has obtained the necessary right-of-way or easement, Sun shall pay the City the cost of materials to construct the trail connection, in an amount not to exceed $25,000. The City shall be responsible for the equipment and labor to construct the connection.

15.2 Developer may seek City approval for an interpretive center in the Managed Open Space[2], as defined in provided that additional environmental review of any such interpretative center shall first be required, and an interpretive center may only be permitted if the proposed center will not interfere with the requirements of the Conservation Agreements[3] and the interpretive center is designed to avoid or mitigate any significant or material harm to or interference with salmon passage, spawning, or rearing in the Cle Elum River. Any interpretative center shall be reviewed pursuant to the Site and Design Review standards described in CEMC 14.30.140 approved utilizing Type 1 Permit processing procedures described in CEMC 14.03.050.

16. General Provisions

16.1 Parties and Authority. The signatories below to this Agreement represent that they have the full authority of their respective entities to commit to all of the terms of this Agreement, to perform the obligations hereunder and to execute the same.

16.2 Voluntary Agreement. The Parties 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 Sun are

[2] "Managed Open Space" is the property subject to that certain Managed Open Space Grant of Conservation Easement (Restated) between New Suncadia, LLC, and the Kittitas Conservation Trust dated December 3, 2015 (as recorded at Kittitas County Auditor's No. 201512110029 "Managed Open Space Easement").

[3] The term "Conservation Agreements" includes (1) the Cooperative Agreement; (2) that certain Cle Elum River Corridor Grant of Conservation Easement between MountainStar Resort Development, LLC d/b/a Suncadia Development Company and Kittitas Conservation Trust dated August 31, 2004 (as recorded at Kittitas County Auditor's No. 200409020038, the "River Corridor Conservation Easement"); (3) that certain Natural Open Space Grant of Conservation Easement (Restated) between New Suncadia, LLC, and the Kittitas Conservation Trust dated December 3, 2015 (as recorded at Kittitas County Auditor's No. 201512110029, the "Natural Open Space Easement"); and (4) the Managed Open Space Easement.

voluntary, and Sun acknowledges that it is fully aware that the City has relied on the recitals and commitments contained in this Agreement in making the land use and development decisions contained in this Agreement and the Approved Plan. Sun acknowledges that it is entering into this Agreement knowingly and voluntarily in consideration of the benefits to be derived therefrom.

16.3 Amendment. This Agreement shall only be amended in writing and only after approval by the Cle Elum City Council.

16.4 Other Agreements. This document contains the entire agreement between the Parties with respect to the subject matter of the Agreement. The Parties have previously executed other agreements, as further discussed in the Recitals. This Agreement is intended to be consistent with the terms of such other agreements, but to the extent of that any provision of this Agreement conflicts with those other agreements, the terms of this Agreement shall control.

16.5 Uncontrollable Circumstances. Neither Party shall be deemed to be in default where delays in performance or failures to perform are due to war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, epidemics, pandemics, or other restrictions or bases for excused performance which is not within the reasonable control of the Party to be excused, provided that any such cause that excuses one Party from performing its obligations pursuant to this Agreement shall similarly be cause for the other Party to not perform its corresponding obligations pursuant to this Agreement.

16.6 Correspondence and Notice. All notices or communications required by this Agreement must be in writing, and may either be delivered personally, or by certified mail, or express delivery service, return receipt requested. Such notices or communications shall be deemed to be received upon the delivery date indicated on the return receipt. Any Party may, by giving ten (10) days' written notice to the other Party, designate any other address to substitute for the address contained in this Agreement, either for a particular duration or permanently. Such notices and communications shall be given to the Parties at their addresses set forth below:

To the City: City of Cle Elum 119 W. 1st Street Cle Elum, WA 98922	*with a copy to:*	Alexandra Kenyon Kenyon Disend PLLC 11 Front Street South Issaquah, WA 98027

To Sun: Sun Communities, Inc. c/o Bill Raffoul, SVP Development 27777 Franklin Road, Suite 200 Southfield, MI 48034	*with a copy to:*	Clayton P. Graham Brent Droze Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610

16.7 Applicable Law and Venue.

16.7.1 This Agreement is entered into under the laws of the State of Washington, and the Parties intend that Washington law shall apply to interpretation of this Agreement.

16.7.2 Venue and jurisdiction to enforce all obligations under this Agreement shall lie in the Kittitas County Superior Court.

16.8 Severability.

16.8.1 If any term or provision of this Agreement, or its applicability to a particular situation, is found to be invalid, void or unenforceable by a court of competent jurisdiction, and if such cause of action was brought by someone who was not a party to this Agreement, then the remaining provisions of this Agreement or its applications to other situations shall continue in full force and effect. Provided, however, if the provision found invalid, void or unenforceable is a material provision of this Agreement, necessary to accomplish its purpose and intent, this Agreement shall be terminated, unless the Parties negotiate and execute an amendment to this Agreement that addresses the material invalid, void or unenforceable provision in a manner that responds to the Court's decision and is consistent with the intent of this Agreement. The Parties agree to negotiate in good faith to agree on such amendment.

16.8.2 If the action which results in a court finding any provision of this Agreement to be invalid, void, or unenforceable is brought by Sun or its successors or assigns, then this Agreement shall be deemed to be terminated and the termination provisions of Section 11, including the Post-Termination obligations, shall apply.

16.9 No Third-Party Beneficiary. Except as expressly provided for and limited in Subsection 7.1 regarding Affected Public Entities, nothing in this Agreement is intended to create any third-party beneficiary relationships.

16.10 No Joint Venture. Nothing in this Agreement is intended to create any type of joint venture relationship between the Parties as to the Property or its development.

16.11 Attorney's Fees and Costs. In any judicial action to enforce or determine a party's rights under this Agreement, the prevailing party (or the substantially prevailing party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees and costs, including fees and costs incurred in the appeal of any ruling of a lower court.

16.12 Mutual Drafting and Construction. The Parties agree that both Parties participated fully in the negotiation and drafting of this Agreement and the rules of construction of ambiguities against the drafter shall not apply to either Party.

16.13 Binding on Successors and Recording. This Agreement shall run with the land and be binding upon and inure to the benefit of the Parties, their respective heirs, successors, and assigns, subject to the provisions for assignment of obligations described in Section 10 above. A complete copy of this Agreement shall be kept at Cle Elum City Hall and made available to anyone requesting review or a copy.

16.14 Covenants, Conditions, and Restrictions. Sun shall have the right to record such additional covenants, conditions, and restrictions ("CC&Rs") against all or any portion of the Property, provided that those CC&Rs are consistent with the requirements of the Approved Plan and this Agreement. At least sixty (60) days prior to recording any such CC&Rs, Sun shall provide the City Attorney with a copy of the proposed CC&Rs for the City Attorney to review for consistency with the Approved Plan and this Agreement. The City Attorney shall review the CC&Rs and provide Sun with any objections, in writing, within thirty (30) days after receipt of the CC&Rs. The proposed CC&Rs shall not require any public review or comment prior to recording.

16.15 Indemnification.

16.15.1 General Indemnification. Each party shall protect, defend, indemnify and hold harmless the other party and their officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever ("Claims"), which are caused by or result from any negligent act or omission of the party's own officers, agents, and employees in performing obligations pursuant to this Agreement. In the event that any suit based upon such a Claim is brought against a party, the party whose negligent action or omissions gave rise to the Claim shall defend the other party at the indemnifying party's sole cost and expense, provided that each party shall retain the right to select its own counsel for such defense. If final judgment be rendered against the other party and its officers, agents, and employees, the party whose actions or omissions gave rise to the claim shall satisfy the same. In the event of concurrent negligence, each party shall indemnify and hold the other party harmless only to the extent of that party's

negligence. The indemnification to the City hereunder shall be for the benefit of the City as an entity, and not for members of the general public.

16.15.2 Additional Indemnification. If any person brings suit or counterclaim against the City challenging the provisions of or the City's authority to enter into this Agreement and/or seeking recovery of any monies paid pursuant to this Agreement, then Sun agrees to indemnify, defend and hold the City harmless from any judgment and shall pay for the City's (and its officers', agents', employees', and contractors') costs of suit, pre- or post-judgment interest, consequential damages, and reasonable attorneys' fees, expert witness fees, staff time, consultants' fees, and all other directly related out-of-pocket expenses, and reimbursement of any monies paid pursuant to this Agreement. It is further specifically and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity, as between themselves, under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The Parties have mutually negotiated this waiver. The provisions of this indemnification shall survive the expiration or termination of this Agreement.

16.16 Conflicts. In the event of any conflict between the provisions of the Approved Plan and this Agreement, the provisions of the Approved Plan shall control over this Agreement.

16.17 This Agreement may be executed in counterparts.

Dated as of the day and year first written above.

CITY OF CLE ELUM

_____
Jay McGowan
Mayor

Approved as to form:

_____
Alexandra Kenyon
City Attorney

SUN 47 NORTH LLC,
a Michigan limited liability company

_____
Bill Raffoul
SVP, Development

Exhibits:
A: Legal Description of the Property
B: Vested Code
C: Mediation Agreement
D: Transportation System Impact Mitigation Plan

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1, 2, 3, AND 4, TRACTS A, B, C, D AND E, AND TRACTS RW-1, RW-2 AND RW-3 OF THE CITY OF CLE ELUM SHORT PLAT NO. SUB-2007-001, AS RECORDED AUGUST 8, 2007, IN BOOK I (I) OF SHORT PLATS, PAGES 212 AND 213, UNDER AUDIT0R'S FILE NO. 200708080012, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 27 AND THE EAST HALF OF SECTION 28, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON;

TOGETHER WITH PARCELS 3 AND 5 OF BOUNDARY LINE ADJUSTMENT SURVEY, RECORDED APRIL 16, 2008, IN BOOK 35 OF SURVEYS, PAGES 8 AND 9, UNDER AUDITOR'S FILE NO. 200804160004, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF SECTIONS 21, 28, 32 AND 33 OF TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON;

ALSO TOGETHER WITH LOTS 1B AND AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED MAY 23, 1995 UNDER AUDITOR'S NO. 581721 AND FILED IN BOOK 21 OF SURVEYS, PAGES 12 AND 13, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

ALSO TOGETHER WITH LOTS 1E AND 1F, AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED OCTOBER 11, 1996 UNDER AUDITOR'S FILE NO. 199610110005 AND FILED IN BOOK 22 OF SURVEYS, PAGES 96 AND 97, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF SECTION 30, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

ALSO TOGETHER WITH LOTS 3 AND 4, AS DESCRIBED AND /OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED JUNE 13, 1995 UNDER AUDITOR'S FILE NO. 582256 AND FILED IN BOOK 21 OF SURVEYS, PAGES 46 AND 47, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF THE NORTH HALF OF SECTION 31, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

ALSO TOGETHER WITH LOTS 1C AND 2A, AS DESCRIBED AND /OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED FEBRUARY 26, 2002 UNDER AUDITOR'S FILE NO. 200202260030 AND FILED IN BOOK 27 OF SURVEYS, PAGE 91, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF THE NORTH HALF OF SECTION 32, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

ALSO TOGETHER WITH TRACTS B AND C, AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED APRIL 02, 2021 UNDER AUDITOR'S FILE NUMBER 202104020107 AND FILED IN BOOK 43 OF SURVEYS, PAGE 181, RECORDS KITTITAS COUNTY, STATE OF WASHINGTON; BEING A PORTION OF SECTIONS 28, 29, 32 AND 33, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, WASHINGTON;

EXCEPT ANY PORTION THEREOF LYING WITHIN THE BOUNDARY OF THE COUNTY ROAD KNOWN AS BULLFROG ROAD AS ESTABLISHED BY AGREEMENT, DEDICATION DEED AND SLOPE AND DRAINAGE EASEMENT RECORDED UNDER AUDITOR'S FILE NO. 20060118001;

AND EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF CLE ELUM BY DEED RECORDED UNDER AUDITOR'S NO._____.

CONTAINING 889.3 ACRES, MORE OR LESS.

EXHIBIT B

VESTED CODE

See Attached

EXHIBIT C

MEDIATION AND ARBITRATION AGREEMENT

AMENDED AND RESTATED MEDIATION AND ARBITRATION AGREEMENT
between
THE CITY OF CLE ELUM
and
SUN 47 NORTH LLC

THIS AMENDED AND RESTATED MEDIATION AND ARBITRATION AGREEMENT (this "Agreement") is entered into by and between the City of Cle Elum, a Washington municipal corporation ("City"), and Sun 47 North LLC, a Michigan limited liability company ("Developer"), effective as of the date of that certain that certain Amended and Restated Development Agreement by and between the City and Developer dated _____ ___, 2023 (the "Development Agreement") of which this Plan is incorporated part of. Any term not defined herein shall be assigned the meaning given to in the Development Agreement.

RECITALS

WHEREAS, the City is a second-class municipal corporation organized under the laws of the state of Washington and located in Kittitas County, Washington.

WHEREAS, Sun is a Michigan limited liability company corporation registered to do business in the state of Washington and is the owner of approximately 900 acres of real property located in the City (the "Property").

WHEREAS, Sun's predecessor-in-interest in the Property, Trendwest Properties, Inc. ("Trendwest") and the City previously entered into that certain Development Agreement by and between the City of Cle Elum, Trendwest Investments, Inc., and Trendwest Properties, Inc. Relating to the Development of Real Property Located Within the Cle Elum Urban Growth Area, Commonly Known as the "Bullfrog UGA" dated October 30, 2002 (the "Original DA")

WHEREAS, Trendwest previously entered into that certain Mediation and Arbitration Agreement with the City dated December 7, 1999 (the "Original Mediation Agreement"), related to Trendwest's proposed development of the Property. The Original Mediation Agreement is incorporated into the Original DA as Attachment 3 to Attachment B, and was intended to govern any dispute arising from the parties performance under the Original DA.

WHEREAS, the Development Agreement is an amendment and restatement of the Original DA.

WHEREAS, the purpose of this Agreement is to establish a uniform process for expeditiously resolving disputes that arise during the performance of each party's obligations under the Development Agreement and the Approved Plan.

The following Agreement is made upon the basis of the foregoing Recitals, and in consideration of the mutual promises and covenants herein, and the mutual benefits to be derived by the parties therefrom.

AGREEMENT

1. Amended and Restated Agreement. This Agreement amends and restates in its entirety Original Mediation Agreement.

2. Application of Mediation and Arbitration Provisions. Any dispute, controversy, disagreement, or impasse related to the terms and conditions of the Development Agreement and the Approved Plan that the parties cannot resolve informally through their respective representatives (hereinafter a "Dispute") shall be addressed through the mediation process set forth in Section 2 below.

3. Mediation. The parties agree to the following mediation process to resolve any Disputes.

3.1 Notice of a Dispute. In the event of a Dispute, a party may provide written Notice of Dispute to the other party. The Notice of Dispute shall describe the nature of the Dispute. The Parties shall meet within ten (10) days of the receipt of a Notice of Dispute in an effort to resolve the Dispute informally.

3.2 Notice of a Demand for Mediation. If the parties are unable to resolve the Dispute informally pursuant to Section 2.1 above, either party may give written Notice of a Demand for Mediation ("Notice of Mediation") to the other party. Within five (5) days of the receipt of a Notice of Mediation, the parties shall select a mediator meeting the qualification requirements set forth in Subsection 3.3 below.

3.3 Mediation Meeting/Discovery; Venue. If possible, a meeting with the mediator shall be held within fourteen (14) days from the appointment of the mediator, on a date and at a time selected by the mediator after consulting with the parties, and in no case shall the mediation take place later than thirty (30) calendar days from the selection of the mediator. The mediator shall work with the parties to produce a suitable compromise. The mediator shall establish the format of the mediation meeting.

4. Arbitration. In the event any Dispute subsequent to the execution of this Agreement is not resolved through mediation as set forth in Section 2 above, the Dispute, upon demand made by either party, shall be resolved by expedited mandatory, binding arbitration as set forth in this section. Nothing in this section shall restrict or limit the ability of any party to obtain injunctive relief in Kittitas County Superior Court if such injunctive relief is necessary to avoid imminent or irreparable harm to either of the parties, which might occur prior to or during the pendency of the arbitration process described herein.

4.1 Notice of Demand for Arbitration. Either party may demand arbitration under this section by providing the party with written Notice of Demand for Arbitration ("Notice of Demand"). The notice shall describe the reasons for the demand, the nature of the dispute and the amount, if any, of any disputed monetary sum.

4.2 Appointment of Arbitrator. Within ten (10) days of the receipt of the Notice of Demand, the parties shall agree upon a single arbitrator meeting the qualification requirements described below. If the parties are unable to agree upon an arbitrator within the ten (10) day period, the parties shall submit a request for appointment of an arbitrator to the Seattle office of the American Arbitration Association (the "AAA"). The AAA shall have fifteen (15) days from the date of submission of such request to designate an arbitrator meeting the qualification requirements described below. If the AAA is unable to find an arbitrator meeting the qualification requirements within such fifteen (15) day period, then within the earlier of ten (10) days from the expiration of such fifteen (15) day period or the receipt of notice from the AAA of its inability to find a suitable arbitrator, the parties shall request that the Superior Court for Kittitas County appoint an arbitrator who, in the court's discretion, meets or most nearly meets the qualification requirements described below.

4.3 Qualification Requirements. The mediator or arbitrator appointed in accordance with Subsections 3.2 and 4.2 above must be a licensed attorney with experience as a mediator or arbitrator, and with a minimum of fifteen (15) years of cumulative experience in the areas of municipal law, land use law, and commercial real estate or commercial litigation.

4.4 Arbitration Hearings/Discovery; Venue. The arbitration hearing shall occur within thirty (30) days from the date on which the arbitrator is appointed as described above. The hearing shall in no event last longer than three (3) consecutive business days. There shall be no discovery or dispositive motion practice (such as motions for summary judgment or to dismiss or the like) except as may be permitted by the arbitrator. The arbitrator shall not be bound by any rules of civil procedures or evidence, but rather shall consider such writings and oral presentations as reasonable business persons would use in the conduct of their day-to-day affairs and may require the parties to present the case in a manner as the arbitrator may determine to be appropriate, including submission of written declarations in a timely fashion. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association will apply. It is the intention of the parties to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing to the parties on all issues. The venue of any arbitration hearing conducted pursuant to this agreement shall be in Kittitas County, Washington.

The Dispute will be submitted to the arbitrator as "baseball" or final-offer arbitration, whereby each party will submit what it deems to be its most reasonable position to the arbitrator and the arbitrator will select one of those two positions. The arbitrator will have no discretion to select or award a position other than to select one of those submitted by the parties.

4.5 Decision. The arbitrator's decision shall be made within thirty (30) calendar days of the commencement of the arbitration hearing. As noted in Subsection 4.4 above, the arbitrator shall have no authority to fashion a compromise resolution of the dispute that has not been presented by either of the parties. The award shall be final, and judgment may be entered in any court having jurisdiction thereof. The arbitrator may award specific performance. The parties may file suit in Kittitas County Superior Court for enforcement of, or any other action relating to, the arbitrator's decision. The party whose position is not selected or awarded will be responsible

for all attorneys' fees, costs, and expenses (incurred in connection with the arbitration of a Dispute subject to this Agreement)."

5. Notices. Notices under this Agreement must be delivered personally or by depositing the same in the U.S. mail, certified, return receipt requested, postage prepaid, properly addressed and sent to the following addresses or such other addresses as each party may from time to time designate by written notice to the other:

To the City: City of Cle Elum 119 W. 1st Street Cle Elum, WA 98922	*with a copy to:*	Alexandra Kenyon Kenyon Disend PLLC 11 Front Street South Issaquah, WA 98027
To Sun: Sun Communities, Inc. c/o Bill Raffoul, SVP Development 27777 Franklin Road, Suite 200 Southfield, MI 48034	*with a copy to:*	Clayton P. Graham Brent Droze Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104-1610 Mark P. Krysinski Taft Stettinius & Hollister LLP 27777 Franklin Rd., Suite 2500 Southfield, MI 48034

6. Severability. In the event that any term, condition, provision, clause, or portion of this Agreement is deemed by a court of competent jurisdiction to be unlawful, in excess of authority, void, unconstitutional, or unenforceable or in conflict with any other applicable provision, condition, clause or other portion of this Agreement, it is the intent of the parties that the remainder of the Agreement shall be unaffected and shall continue in full force and effect to carry out the intent of the parties. To this end, the parties declare any disputed terms and conditions to be severable from the others.

EXHIBIT D

47 NORTH TRANSPORTATION IMPACT MITIGATION PLAN

This 47 North Transportation Impact Mitigation Plan (this "Plan") is entered into by and between the City of Cle Elum, a Washington municipal corporation ("City"), and Sun 47 North LLC, a Michigan limited liability company ("Developer"), effective as of the date of that certain that certain Amended and Restated Development Agreement by and between the City and Developer dated _____ ___, 2023 (the "Development Agreement") of which this Plan is incorporated part of. Any term not defined herein shall be assigned the meaning given to in the Development Agreement.

RECITALS

A. Potential impacts to the City's transportation network resulting from the construction of the Approved Plan were analyzed prior to the City's issuance of the Final Supplemental Environmental Impact Statement on April 16, 2021 (the "FSEIS") and the Addendum thereto on March 9, 2023 (the "Addendum"). Collectively, the FSEIS and the Addendum constitute the "Environmental Documents").

B. The traffic analysis underpinning the City's conclusions in the Environmental Documents was based on standard traffic analysis and engineering principles, and current industry standards, and input from City, Kittitas County, the State Department of Transportation, and the public.[4]

C. The traffic analysis utilized traffic count data from 2019, as supplemented by data collected in July 2022, for the study area based off of peak traffic during the summer months to project traffic counts in 2025, 2031, and 2037.[5]

D. The traffic analysis studied a total of twenty-seven (27) intersections for level of service ("LOS") during estimated peak PM traffic during the summer months of 2025, 2031, and 2037, and those intersections' performance during those three years was compared to the current LOS standards adopted by the City.[6]

E. If an intersection was anticipated to operate at non-compliant LOS, the Addendum identified potential mitigations including road widening to accommodate merge or turn-lanes, stop control and turn restrictions, as well as traffic signalization and roundabouts.[7]

F. The Addendum describes intersections in the City that either do not exist and are required to serve the Project, currently do not provide an adequate level of service ("LOS"), or are projected to fail to provide an adequate LOS at full Project buildout (the "Intersections").[8]

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[4] *See* FSEIS at 3-9.
[5] *See* FSEIS at 3-9; Addendum at 3.6-1.
[6] *See* FSEIS at 3-9.
[7] *See* Addendum at Table 3.6-6
[8] See Addendum Table 3.6-5.

G. The Intersections must be improved during or after the full buildout of the Project. The Intersections include the following:

1. "Project Entrance Intersections," including
   a. 28. Bullfrog Rd./Resort Entrance (compact roundabout)
   b. 30. SR-903/New Connector Road (compact roundabout)

2. "Background Intersections," including:
   a. 2. Bullfrog Rd./I-90 WB Ramp (compact roundabout)
   b. 8. Ranger Station Rd./Miller Ave./W 2nd St. (compact roundabout)
   c. 11. Douglas Munro Blvd./W 1st St. (compact roundabout)
   d. 12. N. Pine St./W. 1st St. (traffic signal)
   e. 13. N. Stafford Ave./W 2nd St. compact (roundabout)

3. "2025 Intersections"
   a. 7. Denny Ave./W. 2nd St. (merge refuge)
   b. 9. N. Pine St./W 2nd St. (compact roundabout)
   c. 15. N. Oakes Ave./W. 2nd St (compact roundabout)

4. "Subsequent Phase Improvements," including:
   a. 1. Bullfrog Rd./I-90 EB Ramp (roundabout)
   b. 3. Bullfrog Rd./Tumble Creek Dr. (merge refuge)
   c. 21. Pennsylvania Ave./1st St. (Roslyn) (4-way stop)

H. Collectively, the Project Entrance Intersections, the Background Intersections, and the 2025 Intersections required for Developer to operate the first Phase of the Project. The Background intersections and the 2025 Intersections and are referred to herein as the "Shared Phase I Improvements." Taken together, the Project Entrance Intersections, the Shared Phase I Improvements and the Subsequent Phase Improvements constitute the "Project Transportation Improvements."

I. The total estimated cost for designing and constructing all of the Project Transportation Improvements is $7,000,000.00.[9] (the "Total Transportation Mitigation Cost"). Of the Total Transportation Mitigation Cost, Developer bears sole responsibility for the full construction costs associated with the Project Entrance Entitlements, currently estimated at $1,600,000.00 ("Developer's Sole Responsibility"). Adjusting the Total Transportation Mitigation Cost for Developer's Sole Responsibility results in a net of $5,400,000.00 to be equitably shared between Developer and the City for the construction of the Shared Phase I Improvements (the "Shared Transportation Mitigation Cost").

[9] All transportation improvement costs and percentage shares described herein are based on (1) preliminary engineering estimates for the cost of each improvement type (*e.g.*, compact roundabout, signalization, etc.) as described on p. 3-36 of the FSEIS and each party's proportionate share of the cost of each improvement using Method B listed in Addendum Table 3.6.5.

J. Of the Shared Transportation Mitigation Cost, $3,650,000[10] is attributable to the Shared Phase I Improvements (the "Shared Phase I Improvement Cost") and $1,750,000[11] attributable to the Subsequent Phase Improvements (the "Subsequent Phase Improvements Cost").

K. The Environmental Documents discuss two methodologies for satisfying Developer's obligations to pay its fair share of the Total Transportation Mitigation Cost: Method A and Method B.[12]

L. The City and Developer desire that the Shared Transportation Mitigation Cost and the Subsequent Improvements Mitigation Cost (collectively, the "Shared Transportation Mitigation Costs") be apportioned using "Method B," in which the Developer is responsible for paying:

1. None of the cost of Intersection improvements where LOS falls below an acceptable level because of background traffic not attributable to the Project;

2. 100% of the cost of Intersection improvements where LOS falls below an acceptable level solely because of traffic generated by the Project; and

3. A proportionate share of the cost of Intersection improvements where the LOS falls below an acceptable LOS at least in part because of the additional traffic generated by the Project

M. Under Method B, Developer's proportionate share of the Shared Transportation Mitigation Costs is estimated to be $1,052,000.00[13] ("Developer's Proportionate Share"), with the City obligated to pay the remainder of the Total Transportation Mitigation Cost (the "City's Proportionate Share"). The City's Proportionate Share is $4,347,000.00.[14]

N. Typically, developers pay their proportionate share of any required transportation improvements either before issuance of building permits or at the time when construction of the improvement becomes necessary (as determined through monitoring). Thereafter, the municipality will make its contribution and construct the required improvement. The arrangement described in this recital is referred to as the "Normal Method."

O. As of the Development Agreement's Effective Date, the City represents it does not have sufficient capital available to pay its proportionate share of design and construction of the Shared Phase I Improvements or the Subsequent Phase Improvements pursuant to the Normal Method.

P. The parties have a mutual interest in timely construction of the Project Transportation Improvements. Therefore, the City and the Developer desire that, instead of

[10] *See id*.
[11] *See id*.
[12] *See, e.g.*, Addendum at p. 3.7-12.
[13] *See* fn. 7, *supra*. .
[14] Calculated by subtracting Developer's Proportionate Share from the Shared Transportation Mitigation Cost.

proceeding under the Normal Method, Developer will fund an escrow account to provide the City with three million six hundred fifty thousand dollars ($3,650,000.00), an amount equal to the Shared Phase I Improvement Cost.

NOW, THEREFORE, Developer and the City agree as follows:

AGREEMENT

1. **Recitals Incorporated**. Recitals A – P recited above are hereby incorporated into this Plan.

2. **Escrow Established.** Within thirty business days following the City's approval of the Amended and Restated Development Agreement, the Major Modification Application, and the expiration or satisfaction of any appeals thereof, Developer shall fund an escrow account in the amount of three million six hundred fifty thousand ($3,650,000.00) (the "Transportation Network Improvement Escrow") to be used for the construction of the Improvements. The City shall administer the City's use of the Transportation Network Improvement Escrow as provided for herein.

A. Before the City uses any funds from the Transportation Network Improvement Escrow to fund the construction of the Improvements, the City will:

i. use reasonable efforts to apply for grants and pursue any other available, alternative funding mechanism to cover the cost of construction of the Improvements to the maximum extent possible (including the Developer's proportionate share of those costs); and

ii. demonstrate, through use of reliable monitoring data generated by the City, that any 2025 Intersection or Subsequent Phase Improvement is required to prevent such Intersection from failing upon completion a particular Phase of the Project.

B. Any use of the Transportation Network Improvement Escrow shall first be for the City's construction of the Shared Phase I Improvements. The City must complete all Shared Phase I Improvements before it may use any remaining funds in the Transportation Network Improvement Escrow for the construction of the Subsequent Phase Improvements.

C. The City shall, no later than March 31st of each year, provide Developer with a detailed accounting of the following: the funds debited from the Transportation Network Improvement Escrow in the past fiscal year; the Improvements toward which those funds were directed; the current status and planned completion date for the Improvements; and the amount remaining in the Transportation Network Improvement Escrow.

D. To the extent that the City spends funds from the Transportation Network Improvement Escrow in excess of Developer's Proportionate Share, the City and Sun will enter into an agreement that will provide Sun with assurances that it will be reimbursed for any amount spent by the City in excess of Developer's Proportionate Share, whether that be through a latecomer's agreement, tax increment financing, collection of transportation impact fees on new development, or a future amendment to the Development Agreement.

E. For the avoidance of doubt, if the City receives grants or proceeds from other alternative funding mechanisms intended to be used for construction of the Project Transportation Improvements that exceed the City's Proportionate Share, the City may retain such money if all of the Project Transportation Improvements have been constructed.

3. **City Obligations.** The City will ensure, through consultation with Developer, that any required Improvements for a particular Phase are completed in time to correspond with completion of said Phase. In the event that Improvements required for a particular Phase are not completed before such Phase is completed, the City shall not withhold certificates of occupancy or other final approvals necessary for Developer's operation of the Phase.

4. **Escrow Termination**. The Plan, and the parties' obligations hereunder, shall terminate on the earlier of the following: the City's completion of construction of all of the Improvements; the City's earlier use of all funds deposited in the Transportation Network Improvement Escrow pursuant to the terms of this Plan; or the expiration of the term of Development Agreement (the "Termination Date"). If funds remain in the Transportation Network Improvement Escrow on the Termination Date, Developer shall be entitled to a refund of any amount remaining in the Transportation Network Improvement Escrow that exceeds Developer's Total Proportionate Share. Notwithstanding the foregoing, the City's obligation to reimburse Developer in accordance with Section 2(D) above shall survive the termination of this Plan and the Development Agreement.

5. **Limitation of Developer Responsibility**. By depositing three million six hundred fifty thousand ($3,650,000.00) into the Transportation Network Improvement Escrow in accordance with the terms of this Plan, the City agrees that Developer has satisfied its obligations to mitigate for the transportation network impacts of the Project.