

RECREATIONAL PARCEL AGREEMENT

This RECREATIONAL PARCEL AGREEMENT (this “Agreement”), dated January ____, 2021 (the “Effective Date”), is executed by and between NEW SUNCADIA, LLC, a Delaware limited liability company (“Suncadia”), and the CITY OF CLE ELUM, a Washington municipal corporation (the “City” and, collectively with Suncadia, the “Parties”).

Recitals

A. Pursuant to Condition 38 (“Condition 38”) of the Conditions of Approval, of the Cle Elum UGA Trendwest Master Site Plan, dated October 8, 2002, which are attached as Exhibit B to and incorporated as part of 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 as of October 30, 2002, as amended by the First Amendment thereto dated March 28, 2017 (as amended, the “Development Agreement”), the City has requested that Suncadia convey approximately 12 acres of the Property to the City for recreational facility purposes as described therein (the “Recreational Parcel”). The real property subject to the Development Agreement is referred to herein as the “Property”.

B. In conjunction with the conveyance of the Recreational Parcel, Suncadia has further agreed to make monetary contributions for the recreational facilities defined in Condition 38 as described in the Agreement below.

Agreements

In consideration of the mutual promises set forth herein and in the Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties hereby agree as follows:

- 1. Establishment and Conveyance of Recreational Parcel.** As soon as commercially feasible following the Effective Date, and in consultation with and after having received approval from the City with regard to the exact boundaries of the same, Suncadia will prepare, complete, and record a boundary line adjustment (“BLA”) to establish a Recreational Parcel consistent with the approved Bullfrog UGA Master Site Plan, for legal conveyance to the City. The City will work with Suncadia in good faith to expedite processing and finalization of the BLA. Within five (5) days after recording of the BLA, Suncadia will dedicate and convey the Recreational Parcel to the City for no compensation.
- 2. First Monetary Contribution.** Suncadia will make a \$400,000.00 “First Monetary Contribution” to the City within ten (10) days after the Effective Date of this Agreement.
- 3. Second Monetary Contribution.** Suncadia will make, or will cause its successor-in-interest to some or all of the Property (a “Suncadia Successor Developer”) to make (in the event that some of the Property is transferred to a third party prior to the due date therefor) a \$1,600,000.00 “Second Monetary Contribution” to the City on or before December 31, 2021, as a monetary contribution for the recreational facilities as described in Condition 38 of the Development Agreement. To evidence Suncadia’s irrevocable commitment to make such monetary contribution on or before such date, Suncadia will execute and deliver to the

City, concurrently with execution and delivery of this Agreement, an unconditional Promissory Note in favor of the City, in the amount of \$1,600,000, the form attached hereto as Exhibit A.

4. **Third Monetary Contribution.** Suncadia will make and/or cause a Suncadia Successor Developer to make a \$2,000,000 Third Monetary Contribution to the City upon approval of the final plat that creates the 1,000th residential unit or December 31, 2025 , whichever comes first. For purposes of this section, “residential unit” is intended to be construed broadly and shall include, but is not limited to, single-family residential units, multi-family residential units, recreational vehicle parking pads, and any other development substantially equivalent to a residential unit. (_____ Suncadia) (_____ City of Cle Elum)

5. **Assignment of Suncadia’s Obligations.** Should Suncadia sell all or a portion of the Property to a Suncadia Successor Developer, any outstanding obligations for monetary contributions as described above shall be fulfilled by New Suncadia prior to closing, unless and to the extent such obligations are assigned to and assumed by any such Suncadia Successor Developer. City approval of such an assignment will be made in accordance with the procedures for “Transfers Requiring City Consent” as described in Section 9 of the Development Agreement, with such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that the City may withhold its consent under Section 9 of the Development Agreement if the City, in its commercially reasonable discretion, determines that any such Suncadia Successor Developer does not have the financial capability to make the remaining outstanding monetary contributions described above. Provided that the City has consented to any such assignment to and assumption by a Suncadia Successor Developer of the obligations to make the remaining monetary contributions required under this Agreement, then effective upon such assignment and assumption taking effect, Suncadia shall automatically be released from any remaining obligations to make monetary contributions to the City under this Agreement.
 - a. To evidence Suncadia’s irrevocable commitment to make such monetary contribution on or before such date, Suncadia will execute and and deliver to the City, concurrently with execution and delivery of this Agreement, an unconditional Promissory Note in favor of the City, in the amount of \$2,000,000, the form attached hereto as Exhibit B.

(_____ Suncadia) (_____ City of Cle Elum)

6. **Forbearance; Incorporation of Agreement into any Modification of the Development Agreement.** So long as the Recreational Parcel is timely conveyed to the City as required by this Agreement, and so long as the monetary contributions required to be made to the City under this Agreement are made when due, the City agrees to forbear from taking any legal action against Suncadia or any Suncadia Successor Developer related to Condition 38. In the event that there is any Major Modification or other amendment or modification to the Development Agreement, the monetary and other obligations of Suncadia and/or any Suncadia Successor Developer related to the Recreational Parcel thereunder shall be consistent with and not more onerous than the terms set forth in this Agreement. In approving any such Major Modification or other amendment or modification to the Development Agreement, nothing in this Section 6 shall prohibit the City from establishing additional conditions related to parks, recreation, and open space provided that any such additional conditions are reasonably related to the impacts generated by the proposed Major Modification or other amendment or modification to the Development Agreement.

7. Miscellaneous.

7.1 This Amendment constitutes the entire agreement between the parties relating to its subject matter. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement supersedes all previous communications, representations, correspondence, or other agreements, understandings or courses of dealing, either oral or written, between the Parties hereto.

7.2 This Amendment may be executed and delivered in one or more counterparts by original, electronic, and/or telecopy signatures, each of which shall constitute an original, and all of which when taken together shall constitute one and the same instrument. Telecopy or emailed signatures and photocopies of signatures shall be as valid and as binding as original signatures for all purposes.

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

7.4 In any judicial action to enforce or determine a party's rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, including fees and costs incurred in the appeal of any ruling of a lower court.

EFFECTIVE as of the date written above.

CITY OF CLE ELUM, a Washington municipal corporation

By: _____

Name: _____

Its: _____

NEW SUNCADIA, LLC, a Delaware limited liability company

By: Suncadia Operating Member, LLC a Delaware limited liability company,
Its Managing Member

By: _____

Name: _____

Its: _____

By: LDD Suncadia Manager, Inc., a Delaware corporation,
Its Manager

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBITS

Exhibit A Promissory Note (\$1,600,000)

Exhibit B Promissory Note (\$2,000,000)

EXHIBIT A PROMISSORY NOTE

\$1,600,000 (U.S.)

January __, 2021

For value received, the undersigned, NEW SUNCADIA, LLC, a Delaware limited liability company (“Suncadia”), promises to pay to the order of the CITY OF CLE ELUM, a Washington municipal corporation (the “City”), at such place as the City may from time to time designate in writing, the sum of One Million Six Hundred Thousand Dollars (\$1,600,000), in lawful money of the United States of America.

1. Recreational Parcel Agreement. This Note evidences the obligation of Suncadia to make the Secondary Monetary Contribution required to be made to the City under that certain Recreational Parcel Agreement entered into by and between Suncadia and the City concurrently herewith (the “Agreement”). Suncadia hereby agrees to perform and comply with all of the agreements, terms, and conditions of this Promissory Note (this “Note”) and the Agreement.

2. Term of Loan and Maturity Date. This Note will have a term (the “Term”) that commences on the date hereof and terminates on December 31, 2021, unless the City accelerates this Note pursuant to an Event of Default, in which case this Note shall mature on the date of acceleration (the applicable date being referred to herein as the “Maturity Date”). No interest shall be due on this Note.

3. Events of Default. Any failure to pay this Note in full on the Maturity Date, and any other default by Suncadia under the Agreement that is not cured within fifteen (15) days of the City notifying Suncadia of the default, shall constitute an “Event of Default” under this Note upon notice from the City to Suncadia.

4. Acceleration; Default Rate. Upon the occurrence of an Event of Default, the City may declare, at its sole option and without any further notice, the entire indebtedness evidenced hereby immediately due and payable in full, and, from the time of exercise of such option, the entire indebtedness shall bear interest at an annual rate of 10% (the “Default Rate”). Failure to exercise this option or any other right the City may have shall not constitute a waiver of the right to exercise such option or any other right in the event of any subsequent Event of Default.

5. Costs and Fees of Collection. Suncadia shall also be liable for all costs, expenses, and fees incurred by the City in collecting any amounts owing hereunder, including, without limitation, reasonable attorney’s and expert witness fees.

6. Waiver of Presentment. Suncadia hereby waives diligence, demand, presentment for payment, notice of protest, and notice of nonpayment of this Note. Suncadia further consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note at any time and from time to time for any reason whatsoever. Any such extension or release may be made without notice to Suncadia and without discharging Suncadia’s liability.

7. No Waiver/Remedies Cumulative. If the City delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any of the City’s rights, or of any breach, default, or failure of condition of or under this Note. No waiver by the City of any of its rights, or of any such breach, default, or failure of condition shall be effective unless the waiver is expressly stated in a writing signed by the City. All of the City’s

remedies in connection with this Note or under applicable law shall be cumulative, and the City's exercise of any one or more of those remedies shall not constitute an election of remedies.

8. Prepayment. Suncadia may prepay this Note in whole or in part at any time without premium or penalty of any kind.

9. Applicable Law and Venue. This Note is made with reference to and is to be construed in accordance with the laws of the State of Washington, without regard to the choice of law rules of any state. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Note, the parties specifically understand and agree that venue shall be exclusively in Kittitas County, Washington.

ORAL AGREEMENTS NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

DATED as the day and year first above written.

NEW SUNCADIA, LLC,
a Delaware limited liability company

By: Suncadia Operating Member, LLC
a Delaware limited liability company,
Its Managing Member

By: LDD Suncadia Manager, Inc.
a Delaware corporation,
Its Manager

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT B PROMISSORY NOTE

\$2,000,000 (U.S.)

January __, 2021

For value received, the undersigned, NEW SUNCADIA, LLC, a Delaware limited liability company (“Suncadia”), promises to pay to the order of the CITY OF CLE ELUM, a Washington municipal corporation (the “City”), at such place as the City may from time to time designate in writing, the sum of Two Million Dollars (\$2,000,000), in lawful money of the United States of America.

1. Recreational Parcel Agreement. This Note evidences the obligation of Suncadia to make the Secondary Monetary Contribution required to be made to the City under that certain Recreational Parcel Agreement entered into by and between Suncadia and the City concurrently herewith (the “Agreement”). Suncadia hereby agrees to perform and comply with all of the agreements, terms, and conditions of this Promissory Note (this “Note”) and the Agreement.

2. Term of Loan and Maturity Date. This Note will have a term (the “Term”) that commences on the date hereof and terminates on December 31, 2028, unless the City accelerates this Note pursuant to an Event of Default, in which case this Note shall mature on the date of acceleration (the applicable date being referred to herein as the “Maturity Date”). No interest shall be due on this Note.

3. Events of Default. Any failure to pay this Note in full on the Maturity Date, and any other default by Suncadia under the Agreement that is not cured within fifteen (15) days of the City notifying Suncadia of the default, shall constitute an “Event of Default” under this Note upon notice from the City to Suncadia.

4. Acceleration; Default Rate. Upon the occurrence of an Event of Default, the City may declare, at its sole option and without any further notice, the entire indebtedness evidenced hereby immediately due and payable in full, and, from the time of exercise of such option, the entire indebtedness shall bear interest at an annual rate of 10% (the “Default Rate”). Failure to exercise this option or any other right the City may have shall not constitute a waiver of the right to exercise such option or any other right in the event of any subsequent Event of Default.

5. Costs and Fees of Collection. Suncadia shall also be liable for all costs, expenses, and fees incurred by the City in collecting any amounts owing hereunder, including, without limitation, reasonable attorney’s and expert witness fees.

6. Waiver of Presentment. Suncadia hereby waives diligence, demand, presentment for payment, notice of protest, and notice of nonpayment of this Note. Suncadia further consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note at any time and from time to time for any reason whatsoever. Any such extension or release may be made without notice to Suncadia and without discharging Suncadia’s liability.

7. No Waiver/Remedies Cumulative. If the City delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any of the City’s rights, or of any breach, default, or failure of condition of or under this Note. No waiver by the City of any of its rights, or of any such breach, default, or failure of condition shall be effective unless the waiver is expressly stated in a writing signed by the City. All of the City’s

remedies in connection with this Note or under applicable law shall be cumulative, and the City's exercise of any one or more of those remedies shall not constitute an election of remedies.

8. Prepayment. Suncadia may prepay this Note in whole or in part at any time without premium or penalty of any kind.

9. Applicable Law and Venue. This Note is made with reference to and is to be construed in accordance with the laws of the State of Washington, without regard to the choice of law rules of any state. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Note, the parties specifically understand and agree that venue shall be exclusively in Kittitas County, Washington.

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DATED as the day and year first above written.

NEW SUNCADIA, LLC,
a Delaware limited liability company

By: Suncadia Operating Member, LLC
a Delaware limited liability company,
Its Managing Member

By: LDD Suncadia Manager, Inc.
a Delaware corporation,
Its Manager

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____