SECOND 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"

This Second Amendment ("Second Amendment") to the 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" is entered into as of _____, by and between Bullfrog Flats LLC, a Washington Limited Liability Company registered to conduct business in the State of Washington ("Bullfrog Flats"), and the City of Cle Elum, a Washington municipal corporation (the "City").

RECITALS

A. The City, Trendwest Investments, Inc., and Trendwest Properties, Inc. (collectively, "Trendwest") previously entered into the above referenced Development Agreement dated October 30, 2002, together with all underlying documents ("Agreement"), intended to govern development of approximately 1,100 acres known as the Bullfrog Urban Growth Area.

B. On March 28, 2017, the City and Trendwest's successor-in-interest, New Suncadia, LLC, executed the First Amendment to the Agreement ("First Amendment"). The First Amendment extended the term of the Agreement for an additional ten years, to October 30, 2027.

C. On February 14, 2022, the City approved a transfer of the Agreement from New Suncadia to Sun 47 North, LLC. Sun 47 North, LLC submitted land use applications pursuant to the Agreement; however, on July 1, 2024, Sun 47 North, LLC directed the City to pause its review of Sun 47 North, LLC's applications pending the City's review of applications submitted by Bullfrog Flats.

D. On August 13, 2024, Bullfrog Flats submitted certain applications for development pursuant to the Development Agreement. Concurrent with its development applications, Bullfrog Flats submitted a request to extend the term of the Agreement and to transfer the Agreement to Bullfrog Flats.

E. On _____, 2025, the Hearing Examiner for the City of Cle Elum held a public hearing on Bullfrog Flats' land use applications and the request to extend the term of the 2002 Development Agreement, including the recommended conditions for the Agreement's extension and the potential modifications or additions to the Agreement's Conditions of Approval. On _____, 2025, the Hearing Examiner issued a decision recommending approval of Bullfrog Flats' land use applications.

F. Following a hearing before the Cle Elum City Council regarding Bullfrog Flats' applications and requests held on _____, 2025, the parties have determined to amend the Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Bullfrog Flats, as successor and assign of Trendwest, is acknowledged as a party to the Agreement. All references to "Trendwest" or "Developer" in the Agreement shall refer to Bullfrog Flats, unless context clearly provides otherwise (e.g., there is a reference to an agreement Trendwest executed).

2. Section 1 of the Agreement ("Effective Date and Duration of Agreement") is amended by striking out and replacing subsection 1.3 as follows and adding the following provisions:

1.3 Subject to the potential default and/or termination provisions of Section 10 below, this Agreement's validity may be extended for two additional five-year terms following the current term expiration date of October 30, 2027, subject to conditions precedent to such extensions ("Extension Conditions"). The first five-year term begins October 31, 2027 and extends the Agreement's term to October 30, 2032 ("2032 Extension"). The second five-year term begins October 31, 2032 and extends the Agreement's validity to October 30, 2037 ("2037 Extension"). The 2032 Extension and the 2037 Extension are conditioned upon satisfaction of the following Extension Conditions:

1.3.1 **Water Rights**. The 2032 Extension is conditioned upon submittal of proof of Bullfrog Flats' ownership of water rights sufficient for the entire development authorized under the Agreement. This submittal shall be made as part of the land use or construction permit application for any development following Phases S-1, S-2, and J.

1.3.2 **Minimum Residential Development**. The 2032 Extension is conditioned upon the submittal of complete land use applications (preliminary plat or binding site plan) for a minimum of 600 residential units by October 30, 2027. The 2037 Extension is conditioned upon the submittal of complete land use applications for a minimum of 1,000 residential units by October 30, 2032.

1.3.3 **Affordable Housing**. The 2032 Extension is conditioned upon the satisfaction of one of the two options by October 30, 2027: (1) the conveyance of acreage for affordable housing to the City or other public or non-profit entity approved by the City as provided in Condition #19, or (2) a commitment by Bullfrog Flats that it shall develop and construct the affordable housing units consistent with the requirements of Condition 19. If Bullfrog Flats elects the second option, then Bullfrog Flats shall submit a complete land use application (preliminary plat or binding site plan) for the affordable housing units on or before October 30, 2029, and Bullfrog Flats shall be responsible for delivery of water rights or payment of any other mitigation measures for these low income

housing units, including, but not limited to, utility connection charges, traffic mitigation, school mitigation fees, parks fees, etc. If Bullfrog Flats fails to timely submit a complete land use application, Bullfrog Flats shall not be entitled to the 2037 Extension, and Bullfrog Flats shall convey the acreage for affordable housing to the City or other public or non-profit entity approved by the City as provided in Condition #19 as soon as reasonably practicable.

1.3.4 **Recreational Amenities**. The 2032 Extension is conditioned upon submittal of a complete land use or construction permit application for the recreational amenities set forth in Condition #40 of the Agreement (as modified through Bullfrog Flats' minor modification request, replacing the proposed lake and clubhouse with a public park and to-be-determined public amenities), by October 30, 2027. The City shall provide Bullfrog Flats with input regarding the design and types of recreational amenities desired by the City, and Bullfrog Flats shall exercise all reasonable good faith efforts to consider and incorporate the City's input into its application. By June 15, 2025, Bullfrog Flats shall schedule and lead a minimum of two (2) study sessions before the Cle Elum City Council regarding the recreational amenities, during which Bullfrog Flats may present proposals and options for discussion. The City shall provide its input at these study sessions and may provide additional input no later than August 30, 2025. These provisions do not alter or otherwise affect the City's review and decision-making procedures under the CEMC and this Agreement.

1.3.5 **Buffer Requirements**. Conditions #27 through Condition #29 of the Agreement require the establishment of certain buffers to be placed in separate tracts. The 2032 Extension is conditioned upon satisfaction of these conditions as part of Bullfrog Flats' boundary line adjustment/master plat applications, which shall identify the required buffer tracts.

1.3.6 **Business Park**. The 2037 Extension is conditioned upon submittal of a complete land use or construction permit application for at least one commercial building in the Business Park portion of the project, or in the alternative, a complete application for a major modification to the Business Park portion of the project requesting changes in land use restrictions for future development of that portion of the project, by October 30, 2032.

1.3.7 **Traffic**. Prior to final plat approval for Phases S-1, S-2, and J, and as a condition of the Master Plat, Bullfrog Flats shall enter into and comply with all requirements and conditions of the Agreement Between the City of Cle Elum and Bullfrog Flats for the Mitigation and Monitoring of Transportation Impacts Associated with the Bullfrog UGA Development, on substantially the same terms as set forth in Attachment C to the Staff Report. The executed agreement shall be incorporated by reference herein.

1.3.8 **Water**. Prior to final plat approval for Phases S-1, S-2, and J, and as a condition of the Master Plat, Bullfrog Flats shall enter into and comply with all

requirements and conditions of the Agreement Between the City of Cle Elum and Bullfrog Flats for the Mitigation and Monitoring of Water Impacts Associated with the Bullfrog UGA Development, on substantially the same terms as set forth in Attachment D to the Staff Report. The executed agreement shall be incorporated by reference herein. If the City determines that any of the water improvements described in the Water System Agreement are triggered before the Water System Agreement has been executed, then the City shall have the right to pause its review of any pending applications for the Bullfrog UGA development until the Water System Agreement has been executed.

1.3.9 **Public Facilities and Services**. Bullfrog Flats shall comply with all conditions relating to access, utilities, and public facilities and services identified as necessary to serve the minimum residential units set forth in Section 1.3.2 by October 30, 2027 for the 2032 Extension, and by October 30, 2032 for the 2037 Extension. If Bullfrog Flats has submitted applications for more than the minimum residential units required during a particular term (e.g., if Bullfrog Flats has submitted applications for over 600 residential units by October 30, 2027), for any units exceeding the minimum residential unit threshold specified in section 1.3.2, Bullfrog Flats will not be required to comply with the conditions relating to completion of access, utilities, and public facilities and services during that particular term. Bullfrog Flats shall have the option to achieve compliance during the subsequent term.

1.3.10 **Fiscal Shortfall –** Bullfrog Flats shall comply with all requirements and conditions relating to monitoring of fiscal impacts and potential shortfall mitigation required in Condition #98 of the Agreement (as amended).

1.4 Before the expiration of the Agreement, Bullfrog Flats may request in writing that the City provide an assessment of whether the Extension Conditions have been satisfied, to which the City shall respond as promptly and expeditiously as reasonably possible. If Bullfrog Flats has not complied with the Extension Conditions required for the 2032 Extension or 2037 Extension by the applicable extension deadline, despite making reasonable efforts to do so, the City shall provide Bullfrog Flats with a notice of default identifying the specific Extension Conditions Bullfrog Flats has failed to satisfy. If Bullfrog Flats satisfies the Extension Conditions within thirty (30) calendar days after receiving written notice of default, then Bullfrog Flats will be entitled to the applicable Agreement extension term. If the nature of the Extension Condition cannot be reasonably satisfied within the thirty-day period, then Bullfrog Flats must provide the City with written documentation of its good faith efforts to timely achieve compliance, including but not limited to (1) commencement of satisfaction of the Extension Condition within the thirty-day period, (2) demonstration of diligent past efforts to attempt to timely satisfy the Extension Condition, (3) an explanation of why the Extension Condition could not be satisfied by the applicable extension deadline or within the thirty-day period, and (4) identification of specific steps to satisfy the Extension Condition as soon as reasonably practicable. If the City determines that Bullfrog Flats has demonstrated the required good faith efforts, then the City shall identify an additional period for satisfaction of the

Extension Conditions. Satisfaction of the Extension Conditions during the additional period granted by the City shall entitle Bullfrog Flats to the applicable Agreement extension term.

Bullfrog Flats shall be solely responsible for satisfaction of the Extension Conditions. Apart from processing applications and responding to requests from Bullfrog Flats pursuant to this provision, the City shall have no obligation to satisfy or cause any of the Extension Conditions to be satisfied.

If any of the Extension Conditions are not satisfied pursuant to the terms specified above, the Agreement shall automatically expire at the end of that term or at the end of the applicable additional period for compliance determined by the City, and Bullfrog Flats shall not be entitled to an additional term.

1.5 At the end of the Agreement's term, the property described in Attachment A to the Agreement shall be subject to all policies, plans, rules, and regulations in effect for the City generally, whether they have been adopted since the effective date of this Agreement or not, 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 of Cle Elum as a whole.

3. Section 3 of the Agreement ("Vesting") is amended to add the following new subsections:

3.6 The above provisions in Section 3 regarding vesting shall apply only to complete applications for preliminary plats, binding site plans, and building permits filed by October 30, 2027. Specifically, complete applications submitted by October 30, 2027 shall vest to the Construction Standards and Development Standards in Attachment 2 to the Conditions of Approval of the Agreement, and to the levels of service standards specified in Condition #95 of the Agreement, unless the parties mutually agree that the 2024 City of Cle Elum Construction Standards for the Private Construction of Public Facilities will apply. Complete applications submitted by October 30, 2027 do not vest to the critical areas code; the Uniform Building Codes; stormwater regulations; taxes or fees imposed on a city-wide or larger area basis, including but not limited to utility hookup fees, connection charges, and capital reimbursement charges; and other exceptions to vesting listed in Section 3.1; these exceptions to vesting apply to all applications submitted under this Agreement.

3.7 Any applications filed on or after October 31, 2027 through October 30, 2032 shall be subject to the following vesting provisions:

3.7.1 Any applications filed during this period shall vest to the "2024 City of Cle Elum Construction Standards for the Private Construction of Public Facilities," as adopted by the City in Ordinance No. 1691.

3.7.2 Any applications filed during this period shall vest to all other codes, development standards, levels of service, and other laws, standards, and requirements in effect on October 31, 2027, provided that said codes, development standards, and requirements allow for development consistent with the approved

Master Site Plan and Master Plat and would not trigger a major modification as defined under Section 6.4 of the Agreement. By way of example, a code provision that reduces the residential densities allowed under the Master Plat, or that prohibits a use allowed in the Master Plat, are examples of codes or laws that would not apply to the UGA development, unless the code provision is imposed pursuant to one of the exceptions to vesting listed in Section 3.1.

3.8 Any applications filed on or after October 31, 2032 through October 30, 2037 shall vest to the levels of service and the current version of the City of Cle Elum Construction Standards for the Private Construction of Public Facilities in effect on October 31, 2032. Such applications shall vest to all other codes, development standards, laws, and requirements in effect on October 31, 2027, provided that said codes, development standards, laws, and requirements allow for development consistent with the approved Master Site Plan and Master Plat and would not trigger a major modification as defined under Section 6.4 of the Agreement. By way of example, a code provision that reduces the residential densities allowed under the Master Plat, or that prohibits a use allowed in the Master Plat, are examples of codes or laws that would not apply to the UGA development, unless the code provision is imposed pursuant to one of the exceptions to vesting listed in Section 3.1.

4. Section 6 of the Agreement ("Subsequent Development Approvals and SEPA Review") is amended by adding the following new subsection 6.4.3:

6.4.3 Future review of any land use or development applications for the Business Park shall be reviewed pursuant to the vested process described in Section 3 and applicable code provisions for binding site plans; provided, however, that any Major Modifications arising out of or relating to the Business Park shall be subject to Type IV approval, including all of the public notice, comment, and hearing requirements specified in the PMU Zoning, as well as subsequent SEPA review as provided in Subsection 6.5.

5. Subsection 6.5.3 of the Agreement is amended as follows (with deletions shown by strikethroughs, and additions shown by underlining):

6.5.3 The City concludes, pursuant to the SEPA Rules, WAC 197-11-600(3)(b), and CEMC 15.28.220 that <u>(i)</u> there is new information indicating probable significant adverse environmental impacts of the Trendwest UGA Development not previously analyzed in a SEPA environmental document<u>, or that (ii) pursuant to WAC 197-11-600(3)(b)(ii) and -(4), there are minor changes to the project and/or there is new information about the project that does not result in significant new or different environmental impacts or mitigation measures, in which case an addendum may be prepared to evaluate and disclose the effects, if any, of the changes to the project or the new environmental information</u>. This Subsection includes, without limitation, information that may be obtained from the ongoing monitoring requirements contained with the Conditions of Approval and described in Section 8 below.

6. Subsection 6.5.4 of the Agreement is amended as follows (with deletions shown by strikethroughs, and additions shown by underlining):

6.5.4 Upon receipt of an application for a Subsequent Approval and concurrent with the Conditions of Approval compliance review described in Subsection 6.4, the City SEPA Responsible Official shall evaluate the application for purposes of assessing the adequacy of the existing SEPA review, pursuant to the guidelines in this Section. The City Planner shall include his or her assessment in the finding of compliance or noncompliance.~~, and if additional SEPA review is required, shall direct the applicant to prepare the additional SEPA analysis prior to a final decision on the requested Subsequent Approval~~ If additional SEPA review is required, the SEPA Responsible Official shall determine the appropriate document needed to comply with SEPA and whether the document should be prepared by the City or the applicant.. Any such additional SEPA analysis shall be limited in scope to only those elements of the environment and potential significant adverse impacts that the City SEPA Responsible Official determines have not been adequately addressed in previous SEPA document.

7. Section 11 of the Agreement ("General Provisions") is amended to add the following new subsection 11.18. Additionally, Attachment 3 to the Agreement's Conditions of Approval ("12/17/99 Mediation and Arbitration Agreement"), generally describing the dispute resolution provisions for the Agreement and subsequent related agreements, is hereby deleted and replaced in its entirety with the new subsection 11.18. All references to Attachment 3, the Mediation and Arbitration Agreement, or the provisions therein shall be interpreted as referring to subsection 11.18.

11.18 DISPUTE RESOLUTION.

11.18.1 In the event that any dispute, controversy, disagreement or impasse arises out of or relates to the Development Agreement ("Dispute"), the parties shall use their best efforts to resolve the dispute informally and expeditiously. 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 business days of the receipt of a Notice of Dispute in an effort to resolve the Dispute informally.

11.18.2 If the parties are unable to resolve the Dispute informally, the parties agree to first attempt to resolve the dispute amicably through mediation. Either party may give written Notice of a Demand for Mediation to the other party. The parties shall cooperate in selecting a mediator and in scheduling the mediation proceedings as soon as reasonably practical. The parties agree to participate in the mediation in good faith and to share equally in its costs.

11.18.3 If the parties are unable to resolve the Dispute via mediation, the parties may commence a legal action. The venue of any legal action between the parties shall be in the superior court of Kittitas County, Washington. Each party shall bear its own attorneys' fees, costs, and expenses.

8. **RATIFICATION**. Except as set forth in this Second Amendment, (i) all terms and conditions of the Agreement are hereby ratified and affirmed and shall remain in full force and effect; (ii) in the event of any conflict, inconsistency, or disagreement between the terms of this Second Amendment and the Agreement, the terms of this Second Amendment shall control; and (iii) all capitalized terms not otherwise expressly defined in this Second Amendment shall have the same meanings ascribed to such capitalized terms in the Agreement.

9. **AUTHORITY**. Each person executing this Second Amendment on behalf of a party to the Agreement represents and warrants that it has the full power, authority, and legal right to execute and deliver this Second Amendment on behalf of such party and that this Second Amendment constitutes the legal, valid, and binding obligations of such party, its heirs, representatives, successors and assigns, enforceable against such party in accordance with its terms.

10. **COUNTERPARTS; SIGNATURES.** This Second Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. A PDF or electronically transmitted signature on this Second Amendment shall be binding as an original.

[SIGNATURE PAGE]